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

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

CAVA Group, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

5812
(Primary Standard Industrial
Classification Code Number)

47-3426661
(L.R.S. Employer
Identification No.)

14 Ridge Square NW, Suite 500
Washington, D.C. 20016
202-400-2920
(Address, including zip code, and telephone number, including area code, of registrant’s principal executive offices)

Robert Bertram
Chief Legal Officer
CAVA Group, Inc.
14 Ridge Square NW, Suite 500
Washington, D.C. 20016
202-400-2920
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Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement is declared effective.

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, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer” “smaller reporting company” and “emerging growth company” in Rule 12b-2 of the Exchange Act:

Large accelerated filer ☐ Accelerated filer ☐
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 pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

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 this Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.
This is CAVA Group, Inc.’s initial public offering of our common stock (“common stock”). We are offering shares of common stock. Prior to this offering, there has been no public market for our common stock. We expect that the initial public offering price of our common stock will be between $ and $ per share. We intend to apply to list our common stock on the New York Stock Exchange (the “NYSE”) under the symbol “CAVA.”

We are an “emerging growth company” as defined in Section 2(a)(19) of the Securities Act of 1933, as amended (the “Securities Act”), and, as such, we have elected to comply with certain reduced public company reporting requirements for this prospectus and may elect to do so in future filings.

Neither the Securities and Exchange Commission (the “SEC”) nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

See “Risk Factors” beginning on page 22 to read about factors you should consider before buying shares of our common stock.

We have granted the underwriters the right, for a period of 30 days from the date of this prospectus, to purchase up to additional shares of common stock from us at the initial public offering price less the underwriting discount.

The underwriters expect to deliver the shares against payment in New York, New York on or about , 2023.

(1) See “Underwriting” for additional information regarding underwriting compensation.

J.P. Morgan Jefferies Citigroup Morgan Stanley Piper Sandler Baird Stifel William Blair

, 2023
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Through and including the 25th day after the date of this prospectus, all dealers that effect transactions in these shares of common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers’ obligations to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

You should rely only on the information contained in this prospectus or in any free writing prospectus we may authorize to be delivered or made available to you. Neither we nor the underwriters have authorized anyone to provide you with different information. Neither we nor any of the underwriters take any responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus, or any free writing prospectus, as the case may be, or any sale of shares of our common stock. Our business, results of operations and financial condition may have changed since such date.

For investors outside the United States: we are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. Neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside the United States.
INDUSTRY AND MARKET DATA

Within this prospectus, we reference information and statistics regarding the industry in which we operate. We have obtained this information and statistics from various independent third-party sources, independent industry publications, reports by market research firms and other independent sources. Some data and other information contained in this prospectus are also based on management’s estimates and calculations, which are derived from our review and interpretation of internal surveys and independent sources, including the CAVA Brand Health Survey. The information is as of its original publication dates (and not as of the date of this prospectus). Data regarding the industries in which we compete and our market position and market share within these industries are inherently imprecise and are subject to significant business, economic and competitive uncertainties beyond our control, but we believe they generally indicate size, position and market share within these industries. While we believe such information is reliable, we have not independently verified any third-party information. While we believe our internal company research, data and estimates are reliable, such research and estimates have not been verified by any independent source.

In addition, assumptions and estimates of our and our industry’s future performance are subject to a high degree of uncertainty and risk due to a variety of factors, including those described in “Risk Factors.” These and other factors could cause our future performance to differ materially from our assumptions and estimates. See “Forward-Looking Statements.” As a result, you should be aware that market, ranking, and other similar industry data included in this prospectus, and estimates and beliefs based on that data may not be reliable. Neither we nor the underwriters can guarantee the accuracy or completeness of any such information contained in this prospectus.

TRADEMARKS, SERVICE MARKS, TRADENAMES, AND COPYRIGHTS

We own a number of registered and common law trademarks and pending applications for trademark registrations in the United States. Unless otherwise indicated, all trademarks, service marks, trade names, and copyrights appearing in this prospectus are proprietary to us, our affiliates, and/or licensors. This prospectus also contains trademarks, tradenames, service marks, and copyrights of third parties, which are the property of their respective owners. Solely for convenience, the trademarks, tradenames, service marks, and copyrights referred to in this prospectus may appear without the ®, ™, or © symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the rights of the applicable licensors to these trademarks, tradenames, service marks, and copyrights. We do not intend our use or display of other parties’ trademarks, tradenames, service marks, or copyrights to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

BASIS OF PRESENTATION

The following terms are used in this prospectus and have the following meanings unless otherwise noted or indicated by the context:

- “Adjusted EBITDA” is defined as net income (loss) adjusted to exclude interest expense (income), net, provision for (benefit from) income taxes, and depreciation and amortization, further adjusted to exclude equity-based compensation, other income, net, impairment and asset disposal costs, and restructuring and other costs;
- “Adjusted EBITDA Margin” is defined as Adjusted EBITDA as a percentage of revenue;
- “Cash on Cash Returns” is defined as CAVA Restaurant-Level Profit for the second full year of operations of new CAVA restaurant openings, excluding conversions of Zoes Kitchen locations, divided by their cash build-out expenses, net of landlord incentives and excluding pre-opening costs;
- “CAVA Average Unit Volume” or “CAVA AUV” represents total revenue of operating CAVA Restaurants that were open for the entire trailing thirteen periods and includes sales from CAVA digital kitchens for such period, divided by the number of operating CAVA Restaurants that were open for the entire trailing thirteen periods;
• “CAVA Brand Health Survey” refers to CAVA's brand health survey of approximately 2,500 survey participants that was conducted in summer of 2022 and administered by Kantar;

• “CAVA digital kitchen” is defined to include kitchens used for third-party marketplace and native delivery, digital order pickup and/or centralized catering production, and that has neither in-restaurant dining nor customer-facing make lines;

• “CAVA Digital Revenue Mix” represents the portion of CAVA revenue related to digital orders as a percentage of total CAVA revenue;

• “CAVA hybrid kitchen” is defined to include kitchens that have enhanced kitchen capabilities to support centralized catering production and that also have in-restaurant dining and customer-facing make lines;

• “CAVA Restaurant-Level Profit,” a segment measure of profit and loss, represents CAVA Revenue in the specified period less food, beverage, and packaging, labor, occupancy, and other operating expenses, excluding depreciation and amortization, in the period. CAVA Restaurant-Level Profit excludes pre-opening costs;

• “CAVA Restaurant-Level Profit Margin” represents CAVA Restaurant-Level Profit as a percentage of CAVA Revenue;

• “CAVA Restaurants” is defined to include all CAVA restaurants, including converted Zoes Kitchen locations and CAVA hybrid kitchens, that are open as of the end of the specified period. CAVA Restaurants exclude one restaurant operating under a license agreement and CAVA digital kitchens;

• “CAVA Revenue” is defined to include all revenue attributable to CAVA restaurants in the specified period, excluding one restaurant operating under a license agreement;

• “CAVA Same Restaurant Sales Growth” is defined as the period-over-period sales comparison for CAVA restaurants that have been open for 365 days or longer (including converted Zoes Kitchen locations that have been open for 365 days or longer after the completion of the conversion to a CAVA restaurant);

• the “Company,” “we,” “us,” and “our” mean the business of CAVA Group, Inc. and its subsidiaries;

• “CPG” means Consumer Packaged Goods;

• “digital orders” means orders made through catering, digital channels, such as the CAVA app and the CAVA website. Digital orders include orders fulfilled through third-party marketplace and native delivery and digital order pick-up;

• “eNPS” represents Employee Net Promoter Score, a measurement regarding the strength of employees’ commitment to their organization;

• “guest traffic” means the number of entrees ordered in-restaurant and through digital orders;

• “Mediterranean category” means restaurants serving food that is based on traditional cuisine from Greece and the Levant region;

• “Net New CAVA Restaurant Openings” is defined as new CAVA restaurant openings (including CAVA restaurants converted from a Zoes Kitchen location) during a specified reporting period, net of any permanent CAVA restaurant closures during the same period;

• “preferred stock” refers to our Series A Preferred Stock, $0.0001 par value, Series B Preferred Stock, $0.0001 par value, Series C Preferred Stock, $0.0001 par value, Series D Preferred Stock, $0.0001 par value, Series E Preferred Stock, $0.0001 par value, and Series F Preferred Stock, $0.0001 par value; and

• “specialty locations” include college campuses and transit hubs.
We operate on a 52-week or 53-week fiscal year that ends on the last Sunday of the calendar year. In a 52-week fiscal year, the first fiscal quarter contains sixteen weeks and the second, third, and fourth fiscal quarters each contain twelve weeks. In a 53-week fiscal year, the first fiscal quarter contains sixteen weeks, the second and third fiscal quarters each contain twelve weeks, and the fourth fiscal quarter contains thirteen weeks. References to any “year” and “quarter” mean “fiscal year” and “fiscal quarter,” respectively, unless the context requires otherwise. References to “fiscal 2023,” “fiscal 2022,” “fiscal 2021,” “fiscal 2020,” “fiscal 2019,” and “fiscal 2016” relate to our fiscal years ended December 31, 2023, December 25, 2022, December 26, 2021, December 27, 2020, December 29, 2019, and December 25, 2016, respectively, unless the context otherwise requires. References to “first quarter of 2022” refers to the sixteen weeks ended April 17, 2022 and “first quarter of 2023” refers to the sixteen weeks ended April 16, 2023. References to “thirteen periods” are to the 13 accounting periods we have in each fiscal year, with each accounting period being four weeks, except in a 53-week fiscal year which will contain one accounting period of five weeks.

Numerical figures included in this prospectus have been subject to rounding adjustments. Accordingly, numerical figures shown as totals in various tables may not be arithmetic aggregations of the figures that precede them.

NON-GAAP FINANCIAL MEASURES

This prospectus contains “non-GAAP financial measures” that are financial measures that either exclude or include amounts that are not excluded or included in the most directly comparable measures calculated and presented in accordance with accounting principles generally accepted in the United States (“GAAP”). Specifically, we make use of the non-GAAP financial measures “Adjusted EBITDA” and “Adjusted EBITDA Margin.”

We present Adjusted EBITDA and Adjusted EBITDA Margin in this prospectus as supplemental measures of financial performance that are not required by, or presented in accordance with, GAAP. We believe they assist investors and analysts in comparing our operating performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our operating performance. Management believes Adjusted EBITDA and Adjusted EBITDA Margin are useful to investors in highlighting trends in our operating performance, while other measures can differ significantly depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which we operate, and capital investments. Management uses Adjusted EBITDA and Adjusted EBITDA Margin to supplement GAAP measures of performance in the evaluation of the effectiveness of our business strategies, to make budgeting decisions, and to compare our performance against that of other peer companies using similar measures. Management supplements GAAP results with non-GAAP financial measures to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone provide.

Adjusted EBITDA and Adjusted EBITDA Margin are not recognized terms under GAAP and should not be considered as alternatives to net income (loss) or net income (loss) margin as measures of financial performance or cash provided by operating activities as measures of liquidity, or any other performance measure derived in accordance with GAAP. Additionally, these measures are not intended to be measures of free cash flow available for management’s discretionary use, as they do not consider certain cash requirements such as interest payments, tax payments, and debt service requirements. Because not all companies use identical calculations, the presentation of these measures may not be comparable to other similarly titled measures of other companies and can differ significantly from company to company. For a discussion of the use of these measures and a reconciliation of the most directly comparable GAAP measures, see “Summary—Summary Historical Financial and Other Data.”
A LETTER FROM OUR CO-FOUNDER AND CHIEF EXECUTIVE OFFICER

We trace our roots back to a first-generation trio of friends, sons of immigrants from Greece: Ted Xenohristos, Ike Grigoropoulos, and Dimitri Moshovitis. Their long-time friendship began in the school cafeteria. The aroma that filled the air as Ted unpacked his mom’s spanakopita, still flakey and warm, drew them together instantly among a sea of P&B sandwiches. As the years progressed, so did their friendship, transcending the lunchroom. With a mutual appreciation for food, family, and their heritage, they dreamt of sharing the Mediterranean Way with others.

In bringing their dream to fruition, the three friends navigated entrepreneurial missteps as they prepared to open their first restaurant, from inadvertently using a kitchen hood meant for a bakery to selecting a location off the beaten path in a small, quiet shopping center. Still, they felt lucky just to open the doors of CAVA Mezze in Rockville, MD, in 2006. But I attribute the success of that first restaurant to more than just luck. Beyond the exceptional mezze (shared plated) that defined the menu and their heightened attention to the guest experience, they kept their parents’ trials and tribulations, lifelong restaurant workers themselves, at the forefront of their decision-making process. They were determined to create a space where team members were treated with respect and could build a career rather than merely find employment. I believe that this holistic approach that combines food, hospitality, and a genuine appreciation for their team became the foundations that allowed our vision to bloom and the CAVA mission of bringing heart, health, and humanity to food to take root.

Drawn to the ethos of the Mediterranean Way, guests of all kinds flocked to CAVA Mezze, often waiting hours for a table. Looking around, you could see families with small children connecting after a long day, couples on dates, solos on barstools, and large group gatherings. CAVA Mezze’s ambiance was one of inclusivity, exuding warmth and familiarity that made it feel like an extension of home, confirming what Ted, Ike, and Dimitri knew all along: that Mediterranean is more than a cuisine. It is a way of being, one that people wanted more of. In fact, guests began requesting extra portions of the signature dips and spreads to take a bit of CAVA to savor at home.

With the popularity of the first eatery and with the encouragement of their customers, the trio began selling their signature dips and spreads in local grocery stores in 2008. I joined them a year later to help grow their packaged products offering. We quickly discovered that we shared similar philosophies on life, business, and food. With this mutual realization and aligned perspectives, Ted, Ike, and Dimitri asked me to become their fourth partner. Together, we envisioned a meaningful opportunity to grow CAVA and share the Mediterranean Way with a broader audience who similarly desired wholesome, nutritious, and flavorful food at a reasonable price in a welcoming atmosphere. We knew that if we did this right, we would win their hearts...and their stomachs.

In 2011, we opened our first CAVA, which Dimitri termed our “chef casual” format—bringing inventive modern perspectives to Mediterranean. CAVA’s walk-the-line model, incorporating successful elements of our full-service restaurant and packaged products, allows us to conveniently meet our guests’ diverse tastes and dietary preferences. Utilizing this format, using fresh ingredients while roasting, grilling, and braising with fire enables us to make the layered flavors and experiences our guests have come to love accessible to a larger audience. CAVA’s holistic approach to modern wellness, with a focus on health, taste, and convenience, delivers a satisfying meal that leaves guests feeling good afterward. One guest’s comment sums up this perfect balance: “after eating CAVA, I don’t need a snack or a nap.”

The CAVA experience continues to resonate with guests who appreciate our bold, healthful, flavorful meals and exceptional guest experience as we expand across the country. Our acquisition of Zoe’s Kitchen in 2018 offered an extensive portfolio of quality real estate to convert into CAVA restaurants: a way to accelerate our expansion and provide significant scale, especially in the Sun Belt and suburbs. We recently opened our 263rd CAVA location and expect to have approximately 300 restaurants operating in 24 states and the District of Columbia by the end of this year, solidifying CAVA as the leading Mediterranean brand.

CAVA has transcended that initial vision that Ted, Ike, and Dimitri shared so many years ago, but our core identity has never changed. Whether in that first restaurant or our “chef casual” format, we remain dedicated to providing an authentic Mediterranean culinary experience that harmoniously blends flavor and health to fit the modern needs of our guests. I am proud of what we have built together: how we have embraced the diverse and evolving landscape of our interconnected world. And as we continue along this incredible journey, we hope you join us at our table for the next exciting chapter in our story.

With gratitude,

BRETT SCHULMAN
SUMMARY

This summary highlights selected information that is presented in greater detail elsewhere in this prospectus. This summary does not contain all of the information that you should consider before deciding to invest in our common stock. You should read the entire prospectus carefully, including “Risk Factors” and our financial statements included elsewhere in this prospectus, before making an investment decision. This summary contains forward-looking statements that involve risks and uncertainties.

Our Mission

To Bring Heart, Health, And Humanity To Food

CAVA: Defining A Category

CAVA is the category-defining Mediterranean fast-casual restaurant brand, bringing together healthful food and bold, satisfying flavors at scale. Rooted in our rich Mediterranean heritage, we bring a timeless approach to modern wellness through our authentic cuisine and vibrant brand experience. Guided by our mission, we believe food is a unifier for a more diverse and inclusive world for our guests, Team Members, and our grower and rancher partners, where all are welcome at our table. We believe that consumers should not have to choose between taste and health – our innovative cuisine appeals to a wide variety of preferences, satisfying the modern consumer’s desires for flavorful, craveable, and nutritious food without compromise.

Over the past 12 years, we have established ourselves as the only national player at scale in the fast-growing Mediterranean category, with more than twice the number of restaurants compared to our next largest competitor in the category. Our brand and our opportunity transcend the Mediterranean category to compete in the large and growing limited-service restaurant sector as well as the health and wellness food category. CAVA serves guests across gender lines, age groups, and income levels and benefits from generational tailwinds created by consumer demand for healthy living and a demographic shift towards greater ethnic diversity. We meet consumers’ desire to engage with convenient, authentic, purpose-driven brands that view food as a source of self-expression. The broad appeal of our food combined with these favorable industry trends drive our vast opportunity for continued growth.

We have assembled an experienced and passionate team and made significant investments in differentiated digital and manufacturing infrastructure to drive powerful national growth and unit economics. Our strong results reflect our broad appeal and are highlighted by having:

• Driven total revenue from $45.4 million in fiscal 2016 to $564.1 million in fiscal 2022, a 52.2% compound annual growth rate (“CAGR”), and from $159.0 million in the first quarter of 2022 to $203.1 million in the first quarter of 2023, an increase of 27.7%;
• Driven CAVA Revenue from $41.2 million in fiscal 2016 to $448.6 million in fiscal 2022, a 49.0% CAGR, and from $112.0 million in the first quarter of 2022 to $196.8 million in the first quarter of 2023, an increase of 75.7%;
• Achieved CAVA Same Restaurant Sales Growth for fiscal 2022 of 14.2% (when compared to fiscal 2021) and 23.6% (when compared to fiscal 2019), and 28.4% for the first quarter of 2023 (when compared to the first quarter of 2022);
• Delivered net loss of $59.0 million in fiscal 2022 compared to $37.4 million in fiscal 2021, and $2.1 million in the first quarter of 2023 compared to $20.0 million in the first quarter of 2022, and delivered Adjusted EBITDA of $12.6 million in fiscal 2022 compared to $14.6 million in fiscal 2021, and $16.7 million in the first quarter of 2023 compared to $(1.6) million in the first quarter of 2022;
• Proven portability across 22 states and Washington, D.C., with a 82% suburban, 14% urban, and 4% specialty location mix as of April 16, 2023.

Number of CAVA Restaurants

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- $2.4 Million CAVA AUV for Fiscal 2022
- 20.3% CAVA Restaurant-Level Profit Margin for Fiscal 2022
For fiscal 2019, fiscal 2020, fiscal 2021, fiscal 2022, first quarter 2022, and first quarter 2023, less than 1%, 1.1%, 9.1%, 30.8%, 23.0%, and 44.5%, respectively, of total revenue was attributable to CAVA Restaurants that were converted from a Zoes Kitchen location.

For fiscal 2019, fiscal 2020, fiscal 2021, fiscal 2022, first quarter 2022, and first quarter 2023, less than 1%, 2.4%, 16.4%, 38.7%, 32.7%, and 45.9%, respectively, of CAVA Revenue was attributable to CAVA Restaurants that were converted from a Zoes Kitchen location.

For fiscal 2019, fiscal 2020, fiscal 2021, fiscal 2022, first quarter 2022, and first quarter 2023, CAVA Restaurant-Level Profit and Margin was 19%, 22%, 16%, 17%, 13%, 18%, 20%, 17%, 19%, and 25% respectively.

(1) For fiscal 2019, fiscal 2020, fiscal 2021, fiscal 2022, first quarter 2022, and first quarter 2023, less than 1%, 1.1%, 9.1%, 30.8%, 23.0%, and 44.5%, respectively, of total revenue was attributable to CAVA Restaurants that were converted from a Zoes Kitchen location.

(1) For fiscal 2019, fiscal 2020, fiscal 2021, fiscal 2022, first quarter 2022, and first quarter 2023, less than 1%, 2.4%, 16.4%, 38.7%, 32.7%, and 45.9%, respectively, of CAVA Revenue was attributable to CAVA Restaurants that were converted from a Zoes Kitchen location.
The CAVA Experience – What Makes Us Unique

We believe that our guests should not have to make sacrifices to eat better. With the variety and choice we provide, every order is built upon a unique combination of fresh flavors and textures, customized to suit our guests’ tastes and preferences, with no compromises in health, flavor, or satisfaction.

No Compromises – Where Taste and Health Unite

Vibrant Mediterranean Flavors to Discover and Crave

CAVA offers something for every palate and preference. Whether our guests are looking for indulgent and hearty or healthful and flavorful meals, our authentic Mediterranean cuisine delivers. Our offerings are well-suited for multiple dayparts and occasions, from an everyday option at lunch to a hearty dinner and to catered meals, all of which can be conveniently delivered as our food travels well. This drives a balanced daypart split of 55% / 45% between lunch and dinner and a diversified channel mix of 65% / 35% between in-restaurant and digital for fiscal 2022.

We source 85% of our ingredients (based on total spend for fiscal 2022) directly from growers, ranchers, and producers to provide our guests with high-quality ingredients while maintaining high standards for quality, sustainability, and transparency. Rooted in a sustainable sourcing ethos, we use ingredients that are clean label and in certain products, such as our CPG hummus, are certified organic. Our proprietary dips and spreads are centrally produced to provide our guests with a delicious and consistent offering.
We believe food is an outlet for self-expression, so we offer endless customization. With 38 thoughtfully curated, high-quality ingredients presented to guests in a walk-the-line format, approximately 80% of our guests opt for a custom meal option.

**38 INGREDIENTS — OVER 17.4 BILLION COMBINATIONS**

We also offer chef-curated selections for our guests. From our colorful Harissa Avocado Bowl to seasonal favorites like our Roasted White Sweet Potato + Feta Bowl, we meet our guests’ desire for an effortlessly delicious and nutritious meal while introducing them to new flavor experiences.

**CHEF-CURATED AND SEASONAL OPTIONS**

**CORE MENU**
- Harissa Avocado Bowl
- Greek Chicken Pita
- Crispy Falafel Pita

**SEASONAL MENU**
- Lemon Chicken Bowl
- Roasted White Sweet Potato + Feta Bowl

**Broad Appeal with Diversity at Our Core**

We believe the attractiveness and diversity of our food, flavors, and formats result in a differentiated, broad guest appeal. CAVA is a destination of choice across incomes, ages, geographies, and walks of life, from time-starved professionals to families enjoying a meal together. Our menu fulfills a broad range of dietary preferences,
from hearty and indulgent to vegan, vegetarian, gluten-free, dairy-free, paleo, keto, and nut-free diets. The attractive pricing of our food, when combined with generous portions, provides substantial value to our guests.

The broad appeal of the CAVA experience underpins the rich diversity of our guests. Our guests span gender lines and age groups, with a strong Millennial and a growing Gen Z contingent, as well as all income brackets:

Scalable Multi-Channel and Digitally Connected Experience

Our multi-channel strategy is built around our guest experience and is continually evolving to meet guests where, when, and how they want CAVA. We have developed an extensive multi-channel experience that consists of in-restaurant dining, digital pick-up, drive-thru pick-up, delivery, catering, and CPG offerings fully supported by our robust digital infrastructure. The foundation of this infrastructure is a microservices platform that is designed to easily scale with current and future growth. Our success across channels is reflected in our 51% growth in digital sales in fiscal 2022 and a 27% higher average guest check for digital orders compared to in-restaurant orders. Moreover, our digital guests typically engage with us in more than one channel.

CAVA’S MULTI-CHANNEL EXPERIENCE

Inviting And Efficient In-Restaurant Experience

We individually design our restaurants for their communities, while maintaining our brand essence. Our dining rooms are oriented to encourage community gathering, while the aesthetic of our open kitchens stimulates our guests’ senses, creating an inviting, transparent, and memorable culinary experience. Our restaurant operating model supports high volumes with speed through our labor-efficient walk-the-line production format. We are focused on continually enhancing our restaurant operations and reducing complexity to maximize efficiency while delivering an exceptional guest experience.
**Established, Flexible Off-Premises Platform**

Our robust digital platform supports our guest demand for convenience. We enable delivery, digital pick-up, drive-thru pick-up, and catering powered by dedicated, second “digital make lines” in all restaurants. We also operate CAVA digital kitchens to further optimize off-premises production in select markets and trade areas. Using the CAVA app or website, our guests can effortlessly customize their favorite dish and choose to either pick it up from their local CAVA restaurant or have it delivered. A scalable digital infrastructure and an extensive network of fully integrated delivery partners back our simple and intuitive guest experience.

**Personalized In-App Experience**

Our CAVA app, which includes our patented technology, merges our in-restaurant and digital experience to create a personalized guest experience. We have designed our interfaces to provide a feeling of ‘digital hospitality,’ including a visual bowl and pita builder bridging the digital and physical experience. These tools create a highly visual experience with easy navigation, allowing users to utilize the walk-the-line ordering process they experience at our restaurants. From quick reordering of favorite meals to in-app delivery to streamlined payment options, the app enhances the on-the-go CAVA experience. In fiscal 2022, we increased the monthly active users on the CAVA app by 63%. In addition, between January 2022 and August 2022, the CAVA app was the third fastest year-over-year growing quick-service restaurant app by monthly active users according to an independent third-party publication.

**Integrated Loyalty Program**

Our loyalty program creates a value-added experience for guests both in-restaurant and through our digital channels, enabling them to earn rewards as they purchase. Our payment and loyalty pass is integrated, including the ability to use digital wallets such as Apple Pay, creating greater utility and convenience for our guests. As of April 16, 2023, we had approximately 3.7 million loyalty members, representing a 56% year over year increase in loyalty membership.

**Scalable Data-Driven Growth Engine**

Our flexible and scalable data architecture, together with our data analytics, position us to better understand guests’ preferences, connecting that insight to digital experiences to develop a personalized relationship, incentivize habituation, and drive growth. We have designed our guest user interfaces to leverage our data architecture for dynamic merchandising based on a wide range of variables to surface highly relevant and impactful content. Our significant investments in data infrastructure allow us to continuously improve the guest experience to drive deeper engagement.

**Added Access with Consumer Packaged Goods**

Our CPG offering acts as an extension of the CAVA brand, allowing our guests to take the essence of CAVA home with them. We offer a full line of dips and spreads, ranging from Crazy Feta to Traditional Hummus to Tzatziki, as well as dressings, such as Lemon Herb Tahini and Yogurt Dill. A range of our dips and spreads are sold nationally through grocery stores, including Whole Foods Markets, and our dressings are available at grocery stores in select markets.

**Devoted Team Members Driving Culture and Hospitality**

Inspired by the Mediterranean Way and defined by a genuine expression of hospitality and warmth, we want our Team Members – who carry on the CAVA culture every day – to build a career and not merely find employment. We continuously nurture our talent-rich pipeline by offering a clear promotional track for Team Members to become General Managers, with a goal of filling more than 75% of General Manager positions through internal promotions.

We invest in programs to support our Team Members personally and professionally, from our Employee Assistance Program and mental health benefits for all Team Members to our CAVAYou Continuing Education Program and our non-profit Goodness Fund, which we created to support our Team Members in times of need. The
results of these initiatives are evidenced by our eNPS score in the 71st percentile, which indicates a high level of commitment according to Denison Consulting, which conducted our 2022 Team Member engagement survey. In addition, on average, we rank in the top quintile within the diversity and inclusion category, based on our Team Members’ responses to our 2022 Team Member engagement survey. Embodying the CAVA ethos of hospitality, our devoted Team Members deliver positive guest experiences, as reflected in our Yext score, an analytical tool measuring customer reviews, of 4.3, which reflects 88% of our restaurants performing in the top quartile of similar Yext businesses.

**Experienced, Founder-Led Management Team**

Our highly experienced and passionate team is inspired by our Co-Founders, Ike Grigoropoulos, Chef Dimitri Moshovitis, and Ted Xenohristos, our Chief Concept Officer, and led by our Chief Executive Officer and Co-Founder Brett Schulman, in creating a powerful culture that serves as a strong foundation for our shared success, grounded in the Mediterranean Way. We have assembled an accomplished and talented senior management team with extensive experience, including Tricia Tolivar (Chief Financial Officer), Jennifer Somers (Chief Operations Officer), Chris Penny (Chief Manufacturing Officer), Kelly Costanza (Chief People Officer), and Rob Bertram (Chief Legal Counsel). Our senior team contributes deep industry insights and expertise from years of industry experience at leading restaurant and consumer companies such as Taco Bell, Mattel, AutoZone, and Ollie’s Bargain Outlet. Our Co-Founders and senior management team have transformed CAVA into a nationwide concept, seamlessly managing the integration of our Zoes Kitchen acquisition in 2018, and agiley growing the Company through the COVID-19 pandemic to where it is today.

**Strong Financial Results Driven By Powerful Unit Economics**

Our category-defining brand, authentic offering, and attractive business model are supported by powerful unit economics that drive our strong performance. We increased the number of CAVA Restaurants from 22 as of the end of fiscal 2016 to 263 as of April 16, 2023, representing a CAGR of 49%. We have steadily grown CAVA Revenue each year since 2016, except for a slight decline in fiscal 2020 as a result of the COVID-19 pandemic. Since the Zoes Kitchen acquisition, through April 16, 2023, we have successfully converted 145 Zoes Kitchen locations into CAVA restaurants, in addition to opening 51 new CAVA restaurants during such period. At the same time, we have successfully managed through the mid-to-high-single digit inflationary environment and were able to expand CAVA Restaurant-Level Profit Margin to 20.3% in fiscal 2022, despite only increasing our in-restaurant menu price by less than 5%.

We have meaningfully grown CAVA Same Restaurant Sales each fiscal quarter for the past nine fiscal quarters. We will continue to focus on maximizing the potential of our existing CAVA restaurants to drive CAVA Same Restaurant Sales Growth.

**CAVA Same Restaurant Sales Growth**
CAVA Same Restaurant Sales Growth was materially impacted in fiscal 2021 due to the temporary impacts of the COVID-19 pandemic on CAVA Revenue during fiscal 2020.

For purposes of calculating CAVA Same Restaurant Sales Growth compared to the corresponding period in fiscal 2019, we only include CAVA restaurants that were open as of the beginning or during the corresponding period in fiscal 2019.

We have demonstrated the ability to drive strong unit economics alongside rapid growth. Over the course of hundreds of new restaurant openings and conversions, our team has worked continuously to refine every aspect of our restaurant opening playbook. We have developed a clear framework and significant operating expertise, enabling us to confidently expand in new and existing markets. We aim to grow average unit volumes ("AUV") and restaurant-level profit margins as we increase CAVA’s brand awareness. The following chart sets forth our target economics for new CAVA restaurant openings, excluding conversions of Zoes Kitchen locations:

<table>
<thead>
<tr>
<th>Target Average New Unit Economics ($ in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUV(1)</td>
</tr>
<tr>
<td>CAVA Restaurant-Level Profit Margin(1)</td>
</tr>
<tr>
<td>Net Capital Expenditures(2)</td>
</tr>
<tr>
<td>Cash On Cash Returns(1)</td>
</tr>
</tbody>
</table>

(1) Reflects targets for the second full year of operations.
(2) Reflects capital expenditures incurred to open a restaurant, net of tenant allowances.

Our target new unit economics are substantiated by our strong track record of AUV growth and our aggregate Cash on Cash Returns of approximately 40%, which is calculated on a combined basis for all CAVA restaurants opened prior to fiscal 2018 to exclude the impact of the COVID-19 pandemic. In addition, in fiscal 2022 and the first quarter of 2023, we achieved CAVA AUV of $2.4 million and $2.5 million, respectively, with CAVA Restaurant-Level Profit Margin of 20.3% and 25.4%, respectively.

We have achieved success across 22 states and Washington, D.C. with strong AUV across regions and across formats in suburban, urban, and specialty locations. With proven portability across diverse market types and geographies, we see further opportunities to leverage our trade areas and further penetrate our existing markets.

<table>
<thead>
<tr>
<th>CAVA Restaurants by Geography(1)</th>
<th>CAVA Restaurants by Format(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>($ in millions)</td>
<td>($ in millions)</td>
</tr>
<tr>
<td>Restaurants</td>
<td>Restaurants</td>
</tr>
<tr>
<td>Average Age(2)</td>
<td>CAVA AUV(3)</td>
</tr>
<tr>
<td>CAVA AUV(3)</td>
<td>Suburban</td>
</tr>
<tr>
<td>Mid-Atlantic</td>
<td>59</td>
</tr>
<tr>
<td>West</td>
<td>15</td>
</tr>
<tr>
<td>Northeast</td>
<td>24</td>
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<tr>
<td>Southeast</td>
<td>35</td>
</tr>
<tr>
<td>Southwest</td>
<td>42</td>
</tr>
<tr>
<td>Suburban</td>
<td>137</td>
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<tr>
<td>Urban</td>
<td>31</td>
</tr>
<tr>
<td>Specialty</td>
<td>7</td>
</tr>
</tbody>
</table>

(1) For CAVA restaurants open for at least thirteen periods as of April 16, 2023.
(2) Average age represents, as of April 16, 2023, the period of years that CAVA restaurants have been open to guests.
(3) For the trailing thirteen periods ended April 16, 2023.
Our strong financial results, proven portability, and broad appeal of our brand are further evidenced by substantial diversity across geographies and formats and revenue diversity across dayparts and channels, as shown in the charts below.

### Significant Market Opportunity Supported By Accelerating Consumer Trends

We compete in the large and growing U.S. limited service restaurant industry, which was estimated to be more than $325 billion in 2021. We believe that our differentiated offerings and broad appeal provides us with significant whitespace opportunity in the Mediterranean and health and wellness food category, and we also expect to benefit from several strong and emerging trends:

#### Evolving Consumer Preferences for Authentic and Ethnic Cuisine

The ethnic diversity of the U.S. population continues to increase with approximately 48% of Gen Z consumers identifying as members of a minority group, as compared to 39% of Millennials. This melting pot of cultures fuels the ever-growing consumer interest in exploring new and exciting cuisines, and we believe CAVA is optimally positioned to capitalize on this generational shift. The Mediterranean category, which was estimated to be almost $40 billion in 2021, is a notable growth area within the restaurant industry as the American palate becomes more drawn to unique and exciting flavors while still focusing on health. As the first and only Mediterranean brand at scale, CAVA shapes and defines the category; we believe Mediterranean cuisine is growing significantly as consumers become more familiar with our brand and our strong, authentic, craveable, on-trend flavors.

#### Increased Focus on Health and Wellness

Consumers across various age groups are focused on improving their health and wellness, with 70% wanting to be healthier and approximately 50% placing healthy eating as a top priority according to an independent third-party survey. This focus on health and wellness has allowed the global health and wellness food category to grow to approximately $840 billion in 2022.

The Mediterranean diet has been ranked the #1 best diet overall by U.S. News & World Report for six years in a row. We believe that the health and nutrition of our food, together with our walk-the-line model, enables our guests to customize and optimize their well-being and meet their specific health and dietary needs while enjoying the flavors they crave, and allows us to compete effectively in the health and wellness food category, where we believe we have significant whitespace opportunity.

#### Emphasis on Combined Quality and Convenience

Modern consumers expect to be able to customize where, when, and how they enjoy their food, without compromising the quality of their food or experience. Whether it is an in-restaurant order, an order picked up in-restaurant, a drive-thru pick-up order or a delivery order, CAVA’s easy and quick access has been key to our success and is expected to strengthen as we further enhance channels of access for our guests. The rise and focus on digital channels have been reinforced by the impact of COVID-19 on the restaurant industry. For example, CAVA Digital Revenue Mix was 35% in fiscal 2022, compared to 13% pre-pandemic.
Our Growth Opportunities

We intend to expand our business and passion for the Mediterranean Way by executing the following growth strategies:

**New Restaurants – A Substantial Whitespace Opportunity**

We are in the early stages of fulfilling our total restaurant potential. We have driven strong and consistent performance across our diverse base of restaurants, with more than 80% of our restaurants in suburban locations and the remainder in high-footfall city center and specialty locations throughout the continental United States – from Lancaster, PA, to Los Angeles, CA, and from Back Bay in Boston, MA to Birmingham, AL.

As of April 16, 2023, we had 263 restaurants across 22 states and Washington, D.C. We anticipate having 34 to 44 Net New CAVA Restaurant Openings in the remainder of fiscal 2023, which includes opening the remaining 8 conversions of Zoes Kitchen locations that we expect to complete by the fall of 2023. Based on our internal analysis and third-party research, we believe there is potential to have more than 1,000 CAVA restaurants in the United States by 2032. We currently have a strong new restaurant pipeline with 100 new sites for which we have signed letters of intent as of April 16, 2023, which is well in excess of our planned new restaurant openings in 2023 and 2024. These new openings are expected to be in both existing markets where there is unfulfilled consumer demand and new markets waiting to experience CAVA. For example, in 2024, we intend to enter and develop attractive new geographies, such as the Midwest.

**Grow Within Existing Markets**

The lines at our restaurants, the continued increase in digital adoption, and the historical and recent research we have obtained through the CAVA Brand Health Survey confirm the significant demand for CAVA in existing markets. We believe there is an opportunity to increase density within our existing markets while continuing to grow AUV in those markets. Historically in certain markets, the restaurants we subsequently open after the fourth restaurant opening achieve higher starting AUV as compared to the initial restaurants opened in those markets. Furthermore, we expect the 59 and 73 restaurants that we opened in fiscal 2021 and 2022, respectively, will continue to grow and generate higher AUV as they mature. When a new CAVA restaurant is opened, we generally observe significant organic sales growth over time, driven by the excitement around the novelty of our brand and sustained by the broad appeal of our offering.

**Enter and Scale New Markets**

We have demonstrated the relevance and portability of the CAVA brand as evidenced by success in 22 states and Washington, D.C. as of April 16, 2023. We believe the whitespace for CAVA extends nationwide, underpinned by our brand strength, well-developed pipeline of talent across key functional and operating areas, corporate infrastructure, new restaurant opening playbook, and attractive unit economic model supporting the execution of our new market growth strategy. Before entering new markets, we develop a comprehensive market plan that plots a clear path for future development. In addition, when determining new locations, we use a data-driven approach to heat-map demographic and psychographic data and identify trends that historically correlate with a trade area’s revenue potential to meet our unit-level returns criteria.

**Drive Culinary Innovation**

We believe the excitement we build around our menu will attract more traffic to our restaurants and across our digital channels. We are focused on menu innovation to continue delighting our guests with vibrant Mediterranean flavors and healthful food. We intend to introduce new and unique items to our core staples like Harissa Honey Chicken, while also offering limited-time menu items through seasonal innovation such as our White Sweet Potato + Feta Bowl. Our culinary innovation engine will continue to keep our passionate fans engaged and constantly excited to experience CAVA.
Leverage our Digitally Enabled Multi-Channel Offering

Our digital platform has been an important contributor to our growth. We will continue to enhance our channel offerings in order to maximize our value proposition to our guests while making it easy to engage with CAVA. We intend to leverage our interconnected physical and digital ecosystem to continue to increase convenience and access to our brand while enhancing our adaptability across trade areas.

Format Flexibility to Drive Growth

We are introducing new formats, such as CAVA digital kitchens, CAVA hybrid kitchens and drive-thru pick-up lanes, to better suit evolving consumer demands and to tailor to our guests’ preferred channels. We are currently piloting CAVA digital kitchens in select markets to serve as centralized production hubs, and we are also currently piloting CAVA hybrid kitchens in select markets where we believe there is strong demand for our catering services. In addition, we have seen success since our initial launch of restaurants with drive-thru pick-up locations in 2019. Restaurants with drive-thru pick-up capabilities generally achieve higher sales compared to other restaurants. We currently expect that a significant portion of our new restaurants opening in fiscal 2023 and beyond will have drive-thru pick-up capabilities. We plan to continue driving growth with new and improved formats and convenience channels tailored to our guest preferences.

Improved Digital Customization

Our digital strategy is a key element to our future growth as consumers evolve and look for more convenient and personalized ways to engage with CAVA. Our ability to dynamically surface content across various modes of engagement, whether through the CAVA app, website, or in-restaurant, has allowed effortless navigation and personalized experiences. For example, leveraging our in-restaurant digital menu boards and CAVA app, we plan to highlight top trending mixes and provide our guests with loyalty program rewards when they select those combinations. We continue to make targeted digital investments that provide a personalized end-to-end guest experience guided by data. We also have several initiatives, such as in-restaurant one-tap loyalty and pay, loyalty program enhancements, and catering customer relationship management (“CRM”), in development.

Enhanced Loyalty Offering

Our approximately 3.7 million loyalty members represented 25% of our sales for the first quarter of 2023. We see a large growth opportunity in driving new and existing guests to join our loyalty program. We intend to leverage our in-house data architecture to engage with our guests in effective ways as we continue to refine and evolve our loyalty program, including introducing menu exclusives to drive adoption, enhancing targeting capabilities to amplify conversion, and instituting engagement challenges to motivate frequency and rekindle lapsing guest relationships. In addition, we plan to adopt a more tailored approach to our loyalty program by providing unique personalized digital content in the CAVA app powered by our digital ecosystem, offering physical items such as merchandise, and making cross-channel offers to develop a richer emotional connection with our guests.

Broaden our Catering Offering

We are currently in the early stages of our catering program and plan to expand our catering capabilities to more CAVA locations around the country by leveraging our kitchen production. We believe this will help to drive CAVA Same Restaurant Sales across our restaurant base.

Grow Consumer Packaged Goods

We have built a well-established CPG business consisting of CAVA dips, spreads, and dressings. Our CPG offerings are currently sold in more than 650 grocery stores nationwide, including Whole Foods Markets across the country. We will continue to innovate in this highly attractive category by increasing our SKUs as well as channels of distribution.
**Increase Brand Awareness**

Each new restaurant we open increases our brand awareness and allows us to introduce the Mediterranean Way to, and reach, more guests. With our focus on hospitality and our ability to execute at a high-level, the expansion of our restaurant base is an effective and cost-efficient way of marketing our purpose-driven, authentic brand, in addition to being an important growth driver. Our aided brand awareness has grown from 41% in the first half of fiscal 2021 to 44% in the second half of fiscal 2022, with significant runway to further increase brand awareness and guest engagement in both our existing and new markets, which will allow us to create, capture, and retain new demand.

To further increase brand awareness, we will also focus on the following:

*Local Community Engagement*

As we enter into new markets, we tailor our marketing, media, and outreach to engage each local market. For example, we host Community Days when we open a new restaurant, where we provide free meals to all who come through our doors. We suggest and match donations received on Community Days to benefit local nonprofit partners that focus on underserved neighborhoods. This increases our brand awareness while simultaneously supporting our mission by bringing heart, health, and humanity to food in each new community we enter.

*Amplify our Brand Expression Through Collaborations*

We have recently tapped into a new mode of guest engagement through brand collaborations with genuine CAVA fans. Our first campaign with top influencer, Emma Chamberlain, in 2022 drove incremental traffic, increased brand awareness with the Gen Z audience, and helped CAVA be voted for the first time as one of upper income female Gen Z’s top five favorite restaurant brands in a third-party survey. We see opportunities to build upon this success and execute other brand collaborations to fortify our brand awareness across attractive demographics.

*Grow our Social Community*

A core strength of our brand is our passionate fan base that engages on social media. With hundreds of thousands of followers across our social communities and over 2.6 million engaged ‘likes’ on TikTok, these channels allow us a deeper way to engage our guests and reinforce our brand essence. We intend to continue to use dynamic content, relevant cultural moments, micro-influencer partnerships, and other partnerships to grow our community and drive brand awareness.

*Leverage our CPG Offerings*

Our Consumer Packaged Goods, sold in over 650 grocery stores nationwide, give us an opportunity to engage with consumers through multiple, high-value touchpoints that amplify brand awareness. Whether on a grocery store shelf or in a refrigerator in a guest’s home, this channel allows for increased awareness of the CAVA brand.

**Capitalizing on our Significant Investments in Infrastructure**

We have made significant investments in our infrastructure across critical areas of our business to support our future growth and provide operating leverage, including the following:

- **Technology Infrastructure**: Our robust infrastructure, including a unified data warehouse and master data management platform, allows for clean, consistent, and actionable data across the enterprise.

- **Digital Platform**: We have built a fully integrated digital platform based on an agile, flexible, and scalable micro-services architecture, including dynamic content management and order flow throttling capabilities.

- **Catering**: Our proprietary catering CRM supports our channel growth opportunity.

- **Manufacturing**: We currently operate a 30,000-square-foot production facility in Maryland and recently commenced building a state-of-the-art production facility in Virginia. Our proprietary dips and spreads are
centrally produced to enable our restaurants to focus on all other aspects of food preparation. We expect that our production facilities will support at least 750 restaurants, as well as our CPG business, with the potential to add additional capacity over time.

- **Supply Chain**: We have established a direct sourcing model comprised of trusted grower, rancher, and producer partners who will enable us to maintain the quality and consistency of our ingredients as we scale.

- **People**: We have made significant hires across key functional and operational areas.

We believe these investments will continue to enable consistent, cost-effective production while deepening our competitive advantage and extending our leadership in the Mediterranean category.

**Summary of Risk Factors**

Investing in our common stock involves a high degree of risk. You should carefully consider all of the risks described in “Risk Factors” before deciding to invest in our common stock. If any of the risks actually occurs, our business, results of operations, prospects, and financial condition may be materially adversely affected. In such case, the trading price of our common stock may decline and you may lose part or all of your investment. Below is a summary of some of the principal risks we face:

- our industry is highly competitive;
- our ability to open new restaurants while managing our growth effectively and maintaining our culture;
- our historical growth may not be indicative of our future growth;
- our ability to successfully identify appropriate locations and develop and expand our operations in existing and new markets;
- the impact of changes in guest perception of our brand;
- the impact of food safety issues and food-borne illness concerns;
- the risks associated with leasing property;
- our ability to manage our manufacturing and supply chain effectively;
- our ability to successfully optimize, operate, and manage our production facilities;
- the risks associated with our reliance on third parties;
- the impact of increases in food, commodity, energy, and other costs;
- the impact of increases in labor costs, labor shortages, and our ability to identify, hire, train, motivate and retain the right Team Members;
- our ability to attract, develop, and retain our management team and key Team Members;
- the impact of any cybersecurity breaches;
- the impact of failures, or interruptions in, or our inability to effectively scale and adapt, our information technology systems;
- the impact of economic factors and guest behavior trends;
- the impact of evolving rules and regulations with respect to environmental, social, and governance (“ESG”) matters;
- the impact of climate change and volatile adverse weather conditions; and
the other factors discussed under “Risk Factors.”

Implications of Being an Emerging Growth Company

We qualify as an “emerging growth company” as defined in Section 2(a)(19) of the Securities Act. As a result, we are permitted to, and intend to, rely on exemptions from certain disclosure requirements that are applicable to other companies that are not emerging growth companies. Accordingly, in this prospectus, we (i) have presented only two years of audited financial statements; and (ii) have not included a compensation discussion and analysis of our executive compensation programs. In addition, for so long as we are an emerging growth company, among other exemptions, we will:

- not be required to engage an independent registered public accounting firm to report on our internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”);
- not be required to comply with the requirement in Public Company Accounting Oversight Board Auditing Standard 3101, The Auditor’s Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, to communicate critical audit matters in the auditor’s report;
- be permitted 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” in our periodic reports and registration statements, including in this prospectus;
- not be required to disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of the chief executive officer’s compensation to median employee compensation; or
- not be required to submit certain executive compensation matters to stockholder advisory votes, such as “say-on-pay,” “say-on-frequency,” and “say-on-golden parachutes.”

We will remain an “emerging growth company” until the earliest to occur of:

- our reporting of $1.24 billion or more in annual gross revenue;
- our becoming a “large accelerated filer,” with at least $700 million of equity securities held by non-affiliates;
- our issuance, in any three year period, of more than $1.0 billion in non-convertible debt; and
- the fiscal year end following the fifth anniversary of the completion of this initial public offering.

The Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”), also permits an emerging growth company such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We have elected to use this extended transition period under the JOBS Act.

Our Corporate Information

CAVA Group, Inc. was originally incorporated in Delaware on February 27, 2015. Our principal offices are located at 14 Ridge Square NW, Suite 500, Washington, D.C. 20016. Our telephone number is 202-400-2920. We maintain a website at cava.com. The reference to our website is intended to be an inactive textual reference only. The information contained on, or that can be accessed through, our website is not part of this prospectus.
The Offering

Issuer
CAVA Group, Inc.

Common stock offered by us
shares (or shares if the underwriters exercise their option to purchase additional shares of common stock in full).

Option to purchase additional shares of our common stock
We have granted the underwriters a 30-day option from the date of this prospectus to purchase up to additional shares of our common stock at the initial public offering price, less underwriting discounts, and commissions.

Common stock to be outstanding immediately after this offering
shares (or shares if the underwriters exercise their option to purchase additional shares of common stock in full).

Use of proceeds
We estimate that the net proceeds to us from this offering will be approximately $ million (or approximately $ million, if the underwriters exercise their option to purchase additional shares of common stock in full), assuming an initial public offering price of $ per share, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. For a sensitivity analysis as to the offering price and other information, see “Use of Proceeds.”

We intend to use the net proceeds to us from this offering for new restaurant openings and for general corporate purposes. See “Use of Proceeds.”

Dividend policy
We have no current plans to pay dividends on our common stock. Any decision to declare and pay dividends in the future will be made at the sole discretion of our Board of Directors (our “Board of Directors”) and will depend on, among other things, our results of operations, cash requirements, financial condition, legal, tax, regulatory, and contractual restrictions, including restrictions in the agreements governing our indebtedness, and other factors that our board of directors may deem relevant. See “Dividend Policy.”

Concentration of Ownership
Following completion of this offering, our executive officers, directors, and each of our stockholders who own 5% or more of our outstanding common stock and their affiliates, in the aggregate, will beneficially own approximately % of the outstanding shares of our common stock, based on the number of shares outstanding as of , 2023.

Directed Share Program
At our request, the underwriters have reserved % of the shares of common stock offered by this prospectus for sale, at the initial public offering price, to certain tiers of eligible CAVA Rewards members, certain suppliers, certain individuals identified by our executive team and other certain individuals affiliated with us. The number of shares of our common stock available for sale to the general public will be reduced to the extent these individuals purchase such reserved shares. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same basis as the other shares offered by this prospectus. Any shares sold under the directed share program, other than to our directors, officers, and existing significant stockholders, will not be subject to the terms of any lock-up agreement. See “Underwriting.”

Risk factors
Investing in shares of our common stock involves a high degree of risk. See “Risk Factors” beginning on page 22 for a discussion of factors you should carefully consider before investing in shares of our common stock.

Proposed trading symbol
“CAVA.”
Unless we indicate otherwise or the context otherwise requires, this prospectus:

- reflects and assumes:
  - no exercise by the underwriters of their option to purchase additional shares of our common stock;
  - an initial public offering price of $ per share of our common stock, which is the mid-point of the estimated price range set forth on the cover page of this prospectus;
  - the automatic conversion of shares of our preferred stock outstanding on a one-to-one basis into shares of our common stock at the consummation of this offering;
  - the filing and effectiveness of our amended and restated certificate of incorporation and the adoption of our amended and restated bylaws immediately prior to the consummation of this offering; and
  - a forward stock split of our Common Stock, which will occur prior to the consummation of this offering;

- does not reflect shares of our common stock issuable upon exercise of outstanding stock options ("Options") at a weighted average exercise price of $ per share; and

- does not reflect shares of our common stock reserved for future issuance under our 2015 Equity Incentive Plan (the “2015 Equity Incentive Plan”), and our new 2023 Equity Incentive Plan (the “2023 Equity Incentive Plan”) and 2023 Employee Stock Purchase Plan (the “ESPP”), each of which we intend to adopt in connection with this offering. See “Management—Executive Compensation—Compensation Arrangements to be Adopted in Connection with this Offering—Employee Stock Purchase Plan.”
SUMMARY HISTORICAL FINANCIAL AND OTHER DATA

Set forth below is our summary historical financial and other data as of the dates and for the periods indicated. The summary statements of operations and summary cash flow data for the years ended December 25, 2022 and December 26, 2021, and the balance sheet data as of December 25, 2022 and December 26, 2021, have been derived from our audited financial statements included elsewhere in this prospectus. The summary statements of operations and summary cash flow data for the sixteen weeks ended April 16, 2023 and April 17, 2022, and the balance sheet data as of April 16, 2023, have been derived from our unaudited financial statements included elsewhere in this prospectus. The unaudited financial statements have been prepared on a basis consistent with our audited financial statements included in this prospectus and reflect, in the opinion of management, all adjustments of a normal, recurring nature that are necessary for a fair statement of the financial information contained in those statements. The results of operations for any period are not necessarily indicative of the results to be expected for any future period, and our results for any interim period are not necessarily indicative of the results that may be expected for any full fiscal year.

We operate on a 52-week or 53-week fiscal year that ends on the last Sunday of the calendar year. In a 52-week fiscal year, the first fiscal quarter contains sixteen weeks and the second, third, and fourth fiscal quarters each contain twelve weeks. In a 53-week fiscal year, the first fiscal quarter contains sixteen weeks, the second and third fiscal quarters each contain twelve weeks, and the fourth fiscal quarter contains thirteen weeks.

You should read the following summary financial and other data below together with the information under “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements included elsewhere in this prospectus. Share and per share data in the table below does not reflect the -for-one forward stock split, which will occur prior to the consummation of the offering.

<table>
<thead>
<tr>
<th>Sixteen Weeks Ended</th>
<th>Fiscal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td></td>
</tr>
<tr>
<td>April 16, 2023</td>
<td>203,083</td>
</tr>
<tr>
<td>April 16, 2022</td>
<td>564,119</td>
</tr>
<tr>
<td>Statement of Operations Data</td>
<td></td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
</tr>
<tr>
<td>Restaurant operating costs (excluding depreciation and amortization):</td>
<td></td>
</tr>
<tr>
<td>Food, beverage, and packaging</td>
<td>59,118</td>
</tr>
<tr>
<td>Labor</td>
<td>52,154</td>
</tr>
<tr>
<td>Occupancy</td>
<td>16,599</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>24,648</td>
</tr>
<tr>
<td>Total restaurant operating expenses</td>
<td>152,519</td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>29,024</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>12,859</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>2,215</td>
</tr>
<tr>
<td>Pre-opening costs</td>
<td>5,999</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>2,719</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>205,335</td>
</tr>
<tr>
<td>Loss from operations:</td>
<td>(2,252)</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>25</td>
</tr>
<tr>
<td>Other income, net</td>
<td>(174)</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>(2,103)</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>38</td>
</tr>
<tr>
<td>Net loss</td>
<td>(2,141)</td>
</tr>
<tr>
<td>Loss per common share:</td>
<td></td>
</tr>
<tr>
<td>Net loss per share, basic and diluted</td>
<td>$(3.90)</td>
</tr>
<tr>
<td>Weighted average outstanding, basic and diluted</td>
<td>548,973</td>
</tr>
</tbody>
</table>

| Pro forma net loss per share, basic and diluted |
| Pro forma weighted average outstanding, basic and diluted |

### Balance Sheet Data (as of end of period)

| Cash and cash equivalents | $22,716 | $39,125 | $140,332 |
| Total assets             | $603,954 | $583,883 | $362,195 |
| Total liabilities        | $392,687 | $370,078 | $92,908  |
| Preferred stock          | $662,308 | $662,308 | $662,308 |
| Total stockholders’ equity | (451,041) | (448,503) | (393,021) |

### Cash Flow Data

| Cash flows provided by operating activities | $25,679 | $(2,363) | $6,038 | $3,393 |
| Cash flows used in investing activities    | $(39,097) | $(22,291) | $(104,161) | $(56,309) |
| Cash flows provided by (used in) financing activities | $(2,991) | $(1,355) | $(3,084) | $143,152 |

### Other Financial Data and Key Performance Measures (unaudited)

| CAVA Revenue(1) | $196,761 | $112,006 | $448,594 | $278,219 |
| CAVA Same Restaurant Sales Growth(2) | 28.4% | 19.9% | 14.2% | 45.2% |
| CAVA AUV(3) | $2,547 | $2,375 | $2,398 | $2,305 |
| CAVA Restaurant-Level Profit(4) | $49,983 | $19,592 | $91,093 | $50,884 |
| CAVA Restaurant-Level Profit Margin(5) | 25.4% | 17.5% | 20.3% | 18.3% |
| CAVA Restaurants(6) | 263 | 177 | 237 | 164 |
| Net New CAVA Restaurant Openings(7) | 26 | 13 | 73 | 59 |
| CAVA Digital Revenue Mix(8) | 36.6% | 35.3% | 34.5% | 37.4% |
| Adjusted EBITDA(9) | $16,746 | $(1,576) | $12,615 | $14,642 |
| Net loss margin | (1.1)% | (12.6)% | (10.5)% | (7.5)% |
| Adjusted EBITDA Margin(9) | 8.2% | (1.0)% | 2.2% | 2.9% |

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(1) “CAVA Revenue” is defined to include all revenue attributable to CAVA restaurants in the specified period, excluding one restaurant operating under a license agreement.

(2) “CAVA Same Restaurant Sales Growth” is defined as the period-over-period sales comparison for CAVA restaurants that have been open for 365 days or longer (including converted Zoes Kitchen locations that have been open for 365 days or longer after the completion of the conversion to a CAVA restaurant). CAVA Same Restaurant Sales Growth was materially impacted in fiscal 2021 due to the temporary impacts of the COVID-19 pandemic on CAVA Revenue during fiscal 2020. CAVA Same Restaurant Sales Growth for fiscal 2021, as compared to fiscal 2019, would have been 23.6%. For purposes of calculating CAVA Same Restaurant Sales Growth compared to fiscal 2019, we only include CAVA restaurants that were open as of the beginning or during fiscal 2019.

(3) “CAVA AUV” represents total revenue of operating CAVA Restaurants that were open for the entire trailing thirteen periods and includes sales from CAVA digital kitchens, divided by the number of operating CAVA Restaurants that were open for the entire trailing thirteen periods. For purposes of calculating CAVA AUV for the sixteen weeks ended April 16, 2023 and April 17, 2022, the applicable measurement period is the entire trailing thirteen periods ended April 16, 2023 and April 17, 2022, respectively.

(4) “CAVA Restaurant-Level Profit,” a segment measure of profit and loss, represents CAVA Revenue in the specified period less food, beverage, and packaging, labor, occupancy, and other operating expenses, excluding depreciation and amortization, in the period. CAVA Restaurant-Level Profit excludes pre-opening costs.

(5) “CAVA Restaurant-Level Profit Margin” represents CAVA Restaurant-Level Profit as a percentage of CAVA Revenue.

(6) “CAVA Restaurants” is defined to include all CAVA restaurants, including converted Zoes Kitchen locations and CAVA hybrid kitchens, that are open as of the end of the specified period. CAVA Restaurants exclude one restaurant operating under a license agreement and CAVA digital kitchens.

(7) “Net New CAVA Restaurant Openings” is defined as new CAVA restaurant openings (including CAVA restaurants converted from a Zoes Kitchen location) during a specified reporting period, net of any permanent CAVA restaurant closures during the same period.

(8) “CAVA Digital Revenue Mix” represents the portion of CAVA revenue related to digital orders as a percentage of total CAVA revenue.
“Adjusted EBITDA” is defined as net income (loss) adjusted to exclude interest expense (income), net, provision for (benefit from) income taxes, and depreciation and amortization, further adjusted to exclude equity-based compensation, other income, net, impairment and asset disposal costs, and restructuring and other costs. We describe these adjustments reconciling net loss to Adjusted EBITDA in the table below. “Adjusted EBITDA Margin” is defined as Adjusted EBITDA as a percentage of revenue.

We present Adjusted EBITDA and Adjusted EBITDA Margin in this prospectus as supplemental measures of financial performance that are not required by, or presented in accordance with, GAAP. We believe they assist investors and analysts in comparing our operating performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our operating performance. Management believes Adjusted EBITDA and Adjusted EBITDA Margin are useful to investors in highlighting trends in our operating performance, while other measures can differ significantly depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which we operate, and capital investments. Management uses Adjusted EBITDA and Adjusted EBITDA Margin to supplement GAAP measures of performance in the evaluation of the effectiveness of our business strategies, to make budgeting decisions, and to compare our performance against that of other peer companies using similar measures. Management supplements GAAP results with non-GAAP financial measures to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone provide.

Adjusted EBITDA and Adjusted EBITDA Margin are not recognized terms under GAAP and should not be considered as alternatives to net income (loss) or net income (loss) margin as measures of financial performance or cash provided by operating activities as measures of liquidity, or any other performance measure derived in accordance with GAAP. Additionally, these measures are not intended to be measures of free cash flow available for management’s discretionary use, as they do not consider certain cash requirements such as interest payments, tax payments, and debt service requirements. Because not all companies use identical calculations, the presentation of these measures may not be comparable to other similarly titled measures of other companies and can differ significantly from company to company.

Our Adjusted EBITDA and Adjusted EBITDA Margin measures have 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 does not reflect our cash expenditures or future requirements for capital expenditures or contractual commitments;
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- Adjusted EBITDA does not reflect the interest expense, or the cash requirements necessary to service interest or principal payments, on our debts;
- Adjusted EBITDA does not reflect period to period changes in taxes, income tax expense, or the cash necessary to pay income taxes;
- Adjusted EBITDA does not reflect the impact of earnings or cash charges resulting from matters we consider not to be indicative of our ongoing operations;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and Adjusted EBITDA does not reflect any cash requirements for such replacements; and
- other companies in our industry may calculate Adjusted EBITDA and Adjusted EBITDA Margin differently than we do, limiting their usefulness as comparative measures.

Because of these limitations, Adjusted EBITDA and Adjusted EBITDA Margin should not be considered as measures of discretionary cash available to invest in business growth or to reduce indebtedness.
The following tables provide a reconciliation of net loss to Adjusted EBITDA and net loss margin to Adjusted EBITDA Margin for the periods presented:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Fiscal</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
<td>2022</td>
<td>2021</td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (2,141)</td>
<td>$ (20,018)</td>
<td>$ (58,987)</td>
<td>$ (37,391)</td>
<td></td>
</tr>
<tr>
<td>Non-GAAP Adjustments:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>25</td>
<td>343</td>
<td>47</td>
<td>4,810</td>
<td></td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>38</td>
<td>40</td>
<td>93</td>
<td>117</td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>12,859</td>
<td>12,819</td>
<td>42,724</td>
<td>44,538</td>
<td></td>
</tr>
<tr>
<td>Equity-based compensation</td>
<td>1,205</td>
<td>783</td>
<td>3,981</td>
<td>5,475</td>
<td></td>
</tr>
<tr>
<td>Other income, net</td>
<td>(174)</td>
<td>(258)</td>
<td>(919)</td>
<td>(20,288)</td>
<td></td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>2,719</td>
<td>3,431</td>
<td>19,753</td>
<td>10,542</td>
<td></td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>2,215</td>
<td>1,284</td>
<td>5,923</td>
<td>6,839</td>
<td></td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$ 16,746</td>
<td>$ (1,576)</td>
<td>$ 12,615</td>
<td>$ 14,642</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Fiscal</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
<td>2022</td>
<td>2021</td>
<td></td>
</tr>
<tr>
<td>Revenue</td>
<td>$ 203,083</td>
<td>$ 159,011</td>
<td>$ 564,119</td>
<td>$ 500,072</td>
<td></td>
</tr>
<tr>
<td>Net loss margin</td>
<td>(1.1)%</td>
<td>(12.6)%</td>
<td>(10.5)%</td>
<td>(7.5)%</td>
<td></td>
</tr>
<tr>
<td>Adjusted EBITDA Margin</td>
<td>8.2 %</td>
<td>(1.0)%</td>
<td>2.2 %</td>
<td>2.9 %</td>
<td></td>
</tr>
</tbody>
</table>
Risk Factors
RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider all of the risks and uncertainties described below and the other information set forth in this prospectus before deciding to invest in shares of our common stock. If any of the following risks actually occurs, our business, results of operations, prospects, and financial condition may be materially adversely affected. In such case, the trading price of our common stock could decline and you may lose all or part of your investment. Some statements in this prospectus, including statements in the following risk factors, constitute forward-looking statements. See “Forward-Looking Statements.”

Risks Related to Our Business and Our Industry

We operate in a highly competitive industry.

The restaurant industry is highly competitive with respect to, among other things, food quality and presentation, taste preferences, price, brand reputation, digital engagement, service, value, and location. The food manufacturing industry is also highly competitive with respect to, among other things, food quality, taste, functional benefits, nutritional value and ingredients, convenience, brand loyalty and positioning, food variety, product packaging, shelf space, price, and promotional activities. We face significant competition from national, regional, and locally-owned restaurants, including limited service restaurants, particularly within the fast-casual dining and traditional fast-food categories, who offer in-restaurant, carry-out, delivery, and/or catering services. We also compete with grocery stores, convenience stores, meal subscription services, and delivery kitchens, especially those that target guests who seek high-quality food. Our CPG business also faces competition from other producers of dips, spreads, and dressings and other pantry and food items. Further, as we continue to innovate upon our digital strategy and offer more ways to reach our guests through digital channels, such as the CAVA app and the CAVA website, we expect to face increasing competition from food delivery services, which promote a wide variety of restaurant options on their websites.

Many of our competitors have been operating for longer and have a more established market presence than us, and have better locations, greater name recognition and resources than we do, and, as a result, these competitors may be better positioned to attract guests. Our larger competitors may also be able to take advantage of greater economies of scale than we can and may be better able to increase prices to reflect cost pressures and increase their marketing and promotional activity, including through discount strategies. Our competitors may also be able to identify and adapt to changes in guest preferences more quickly than us due to their resources and scale. Changes in guests’ tastes, nutritional and dietary trends, methods of ordering, and number and location of competing restaurants often affect the restaurant industry. If we are unable to successfully compete, our sales volume and/or pricing may be subject to downward pressure and we may not be able to increase, or sustain, our growth rate or revenue or reach profitability.

Further, as we expand our geographic presence and develop our digital channels, we anticipate we will face increased competition for channel access. Our competitors will likely grow in number as the Mediterranean food category grows, and we may face the risk that new or existing competitors will mimic our business model, menu offerings, marketing strategies, and overall concept.

Any of the above competitive factors may materially adversely affect our business, financial condition, and results of operations.

Our future growth depends on our ability to open new restaurants while managing our growth effectively and maintaining our culture, and our historical growth may not be indicative of our future growth.

Our growth depends on our ability to successfully open a significant number of new restaurants on a profitable basis. As of April 16, 2023, we owned and operated 263 CAVA restaurants in 22 states and Washington, D.C. Since the Zoes Kitchen acquisition, through April 16, 2023, we have successfully converted 145 Zoes Kitchen locations into CAVA restaurants. In fiscal 2022, we had 73 Net New CAVA Restaurant Openings, which includes the conversion of 63 Zoes Kitchen locations. We anticipate having 34 to 44 Net New CAVA Restaurant Openings in the remainder of fiscal 2023, which includes opening the remaining 8 conversions of Zoes Kitchen locations that we
expect to complete by the fall of 2023. A significant number of new restaurants we opened in the last few years have been conversions of Zoes Kitchen locations, which has helped drive the growth of our business. If we are unable to sustain the pace of new restaurant openings, all of which are expected to be from greenfield expansions following the conversions of the remaining Zoes Kitchen locations, our growth rate may decline. In addition, given the size and scale we have achieved, we expect our growth rates in percentage terms to moderate in the future. Therefore, our historical growth rates are not indicative of our future growth.

Our ability to open new restaurants depends on various factors, some of which are outside of our control. For example, delays in construction and increased construction costs, including as a result of the COVID-19 pandemic, as well as delays in inspections and the receipt of necessary permits, have caused, and may continue to cause, a delay in opening restaurants, resulting in increased costs and lower than anticipated sales. Furthermore, while we work to manage cost overrun risks for our new restaurant development projects with detailed architectural plans, guaranteed or fixed price contracts, forward buys of certain equipment and materials, and close supervision by our executives and personnel, we have in the past experienced, and expect we will continue to experience, increased construction costs. In addition, we may not be able to anticipate and adapt to all of the changing demands that our planned expansion will impose on our existing digital infrastructure, including our restaurant management systems and back office technology systems and processes, as well as financial and management controls, and we may not be able to hire and retain the management and personnel necessary to support such expansion at a reasonable costs, or at all, all of which could harm our guest experience and our business.

Our ability to manage our growth effectively will require us to continue to enhance these systems, processes, and controls and identify, hire, train, motivate, and retain management and operating personnel, particularly in new restaurant locations. In addition, we must maintain our culture as our operations expand and as we onboard new Team Members, as we believe our culture is a key competitive advantage and an important contributor to our success. Our business, financial condition and results of operations could be negatively affected if we are unable to manage our growth effectively while preserving our culture.

Our ability to manage our growth effectively will require us to continue to enhance these systems, processes, and controls and identify, hire, train, motivate, and retain management and operating personnel, particularly in new restaurant locations. In addition, we must maintain our culture as our operations expand and as we onboard new Team Members, as we believe our culture is a key competitive advantage and an important contributor to our success. Our business, financial condition and results of operations could be negatively affected if we are unable to manage our growth effectively while preserving our culture.

We may not be able to successfully identify appropriate locations and develop and expand our operations in existing and new markets.

Our ability to successfully execute on our growth strategy requires us to identify target markets where we can gain a foothold or expand our existing footprint on a profitable basis. As part of that strategy, we sometimes enter into geographic markets in which we have little or no prior operating experience. For example, we plan to expand into the Midwest where we currently do not have a presence and have no restaurant operating experience.

We may not be able to develop presence in new target markets, which may have more competitive conditions or different guest tastes and discretionary spending patterns as compared to our existing markets. It is also possible that our Mediterranean cuisine will be of limited appeal in any new market. We may incur higher costs in a new market, particularly to make significant investments in advertising and promotional activity to build brand awareness and attract new guests. We may also incur additional costs relating to the transportation and distribution of supplies and entering into contracts with new third parties, and we may face more competitive labor conditions in a new market. Until we attain a critical mass in a market, the restaurants we open in that market may incur higher food distribution costs and reduced operating leverage. As a result, restaurants we open in new markets may take longer to reach expected sales and profit levels on a consistent basis. If we are unable to successfully enter new markets, it could have an adverse effect on our business, financial condition, and results of operations.

After identifying a new market, we must then identify and secure quality locations within such market. Each new location requires that we take into account numerous factors in order to be profitable, such as:

- negotiating leases with acceptable terms;
- obtaining licenses, permits, and approvals on a timely basis;
- complying with applicable zoning, land use, environmental, health and safety, and other governmental rules and regulations (including interpretations of such rules and regulations);
• unforeseen engineering or environmental problems;

• proximity of a potential location to an existing location;

• identifying, hiring, and training qualified Team Members to meet staffing needs;

• local economic trends, population density, and area demographics; and

• longer permitting or inspection cycles and availability of construction and restaurant equipment and services.

Our Zoes Kitchen acquisition provided us with an extensive portfolio of real estate, allowing us to rapidly expand by converting Zoes Kitchen locations into CAVA restaurants. However, all Zoes Kitchen locations have since either been converted or closed or are in the process of being converted and we cannot guarantee that we will be able to develop a robust new restaurant pipeline, which would impact our future growth. We may not be able to successfully identify and secure a sufficient number of attractive restaurant locations in new or existing markets. For those locations where we are able to secure an attractive restaurant location, our progress in developing and subsequently opening new restaurants may be slower than desired, resulting in increased costs and lower than expected sales. Our inability to appropriately identify sites and develop and open new restaurants could impact our growth strategy and have a material adverse effect on our business, financial condition, and results of operations.

New restaurants may not be profitable, and may negatively affect sales at our existing locations.

Although we institute certain operating and financial performance targets for new restaurants, these new restaurants may not meet these targets or may take longer than anticipated to do so. We typically incur the most significant portion of pre-opening costs associated with a given restaurant within the three months preceding the opening of the restaurant. Historically, labor and operating costs associated with a newly opened restaurant are materially greater in the first six months of operations, both in aggregate dollars and as a percentage of revenue. Our new restaurants typically take a period of time to reach planned operating efficiency, due to costs and challenges associated with identifying, hiring, training, and retaining qualified Team Members, including General Managers, and instilling and enforcing CAVA standards, among other reasons. Any new restaurants that we open may not be profitable or achieve operating results similar to those of our existing restaurants on a similar time frame or at all, our historical pre-opening costs may not be indicative of future pre-opening costs and increases in CAVA AUV that we have experienced in the past may not be indicative of future results. Newer restaurants may also reduce CAVA AUV as these restaurants typically achieve lower sales when they first open. If our new restaurants do not perform as planned, our business, financial condition, and results of operations could be harmed.

In addition, the opening of new restaurants in or near markets in which we already have a restaurant could adversely affect sales at existing restaurants, particularly in markets where we have a high concentration of restaurants, such as the Washington, D.C./Maryland/Virginia metropolitan area. Existing restaurants within a market could also make it more difficult to build our guest base for a new restaurant in the same market. While our plan is to open new restaurants that are not expected to materially affect sales at our existing restaurants, it is possible that new restaurants may cannibalize sales at our existing restaurants, which could adversely affect our profitability.

Negative changes in guest perception of our brand could negatively impact our business.

Our reputation for quality food and our brand’s connection to guests have been critical to our business and to our success in existing markets, and will continue to be critical to our success as we enter new markets. Any incident that diminishes guest loyalty or guests’ positive perception of our food could significantly damage the value of our brand and, in turn, damage our business and prospects.

Negative publicity, regardless of its accuracy, may adversely affect our business and brand value. These could include concerns about our food’s quality and safety, the impact that our food and products (including our packaging) may have on the environment, data security breaches, third-party service providers (including relating to delivery services and information technology), employment-related claims, or government or industry findings concerning our restaurants or our industry, or other concerns, which may be outside our control. Moreover, the
negative impact of adverse publicity relating to any one CAVA restaurant or any of our CPG offerings may extend far beyond such restaurant to affect some or all of our other restaurants and our other product offerings. Negative publicity generated by such incidents may be amplified by the use of social media and platforms that enable guests to review our restaurants and food, which allows individuals to access a broad audience of our guests and other interested persons. See “—Our inability or failure to utilize, recognize, respond to, and effectively manage the immediacy of social media could have a material adverse effect on our business.” The risks associated with such negative publicity, cannot be completely mitigated and may result in damage to our brand.

Our efforts to market our restaurants and brand may not be successful.

Due to the highly competitive nature of our industry, we must effectively and efficiently promote and market our restaurants and brand to attract and retain guests and sustain our competitive position. Marketing investments may be costly. Our marketing strategy primarily includes using public relations, digital and social media, promotions, and in-restaurant messaging, and we may from time to time change our marketing strategies and spending. We expect to increase our investment in advertising and promotional activities as we expand, including targeted marketing offers to incentivize and reward loyal guests, and attract guests in new markets. If our marketing initiatives are unsuccessful or ineffective and do not meet our performance targets, such as the introduction of new menu offerings that do not generate the level of sales that we expect, our business, financial condition, and results of operations may be adversely affected.

Additionally, some of our competitors are able to devote more resources to marketing and advertising than we are able to. If our competitors increase spending on marketing and advertising, if our funds available for marketing funds decrease, if our marketing strategies or pricing methodologies are less effective than those of our competitors or if we are otherwise unable to adequately respond to changes in our competitors’ marketing strategies, our business, financial condition, and results of operations may be adversely impacted.

Food safety issues and food-borne illness concerns may harm our business.

We handle high-risk foods, such as uncooked meats, in our restaurants. Although our proprietary dips and spreads are centrally produced, we freshly prepare most of our menu items at our restaurants, and food safety issues (such as food-borne illness and food contamination outbreaks) may occur. Although we have instituted food safety policies and procedures in each of our restaurants, incidents may nonetheless result both from our restaurant personnel’s failure to comply with such policies and procedures and for other reasons beyond our control. If any guest becomes, or is under the belief that they have become, ill due to a food safety issue, we may temporarily close some restaurants, which would adversely impact our results of operations.

Food safety issues may be caused by a variety of factors, many of which are out of our control. For example, these incidents may occur when guests or other individuals, including Team Members, enter our restaurant while ill and contaminate ingredients, surfaces, or other individuals. We cannot guarantee that food items will be properly maintained throughout the supply and delivery chain. Our third-party distributors and suppliers may not fully comply with our or their own food safety programs, and these third parties could cause food-borne illness incidents. For example, we have previously experienced food safety incidents we believe were attributable to issues at a third-party supplier. Any food safety issue arising from a distributor or supplier will likely affect multiple restaurants rather than a single restaurant. The risk of food safety issues is also increased with respect to catering orders and orders delivered through third-party delivery service providers, as we often have limited or no control over how the food is delivered or served. In addition, our restaurants and production facilities are subject to review and examination by local, state and federal authorities, which may result in temporary or permanent closures. Such closures may negatively impact results and damage our brand.

Food items produced at our and our third-party co-manufacturers’ facilities are vulnerable to spoilage, contamination and food safety issues. Although we have instituted processes and systems at our production facilities designed to ensure compliance with applicable food safety regulations and standards, we cannot guarantee that the CPG offerings that are manufactured at our facilities will not be recalled, for example due to possible human error or manufacturing defects. Furthermore, while we require our third-party co-manufacturers to comply with our food safety standards, we do not have control over their manufacturing and packaging processes. In addition, we also do
not have control over handling procedures once our food has been shipped for distribution. We may need to recall or withdraw some or all of our food if it becomes damaged, contaminated, adulterated, misbranded, whether caused by us or someone in our manufacturing or supply chain. A recall or withdrawal could result in destruction of food ingredients and inventory, negative publicity, temporary facility closings for us or our third-party contract manufacturers, supply chain interruption, substantial costs of compliance or remediation, fines, and increased scrutiny by federal, state, and foreign regulatory agencies. New scientific discoveries regarding food safety and food manufacturing may bring additional risks and latent liability. If consumption of any food causes or is alleged to cause injury, we may be subject to litigation and may be liable for monetary damages as a result of a judgment against us or fines by federal, state, and foreign regulatory agencies.

In the event of a food safety or food packaging incident, the protocols and procedures that we have in place and the public statements we make in response to such incident may not be sufficient to address the potential impact to the safety of our guests and our reputation. Furthermore, any food safety or food packaging incident, whether actual or perceived, could result in negative publicity and public speculation and adversely impact our brand, reputation, and sales. This risk is exacerbated by the fact that social media enables negative publicity, whether or not accurate, to be rapidly disseminated before there is any meaningful opportunity to investigate, respond to and address an issue. In addition, any food safety or food packaging incident that occurs, whether solely at a competitor’s restaurant, or at one of our manufacturing partners’ facilities, or at our facilities, could result in negative publicity about the restaurant industry generally or with respect to our CPG offerings, which could in turn have an adverse effect on our business. In addition, the health and environmental risks of organic fluorine and per- and polyfluoroalkyl substances (“PFAS”) have been the subject of increased regulatory scrutiny and litigation involving us and others in the restaurant industry. See “Business—Legal Proceedings.”

Lastly, the occurrence of food-borne illnesses or food safety issues could result in a temporary supply disruption and adversely affect the price and availability of affected ingredients.

All of these factors could have an adverse impact on our brand and our ability to attract guests, which could in turn have a material adverse effect on our business, financial condition (including our ability to obtain financing) and results of operations.

If we are unable to maintain or increase prices, our margins may decrease.

We strive to use high-quality ingredients that are often more costly than lower quality ingredients and/or ingredients that are farmed through less environmentally conscious methods. Our continued success depends on our ability to persuade our guests that the variety and choice of healthful, flavorful food that we provide is worth the higher prices compared to eating at many of our competitors. If we are unable to persuade our guests about the quality of our food, we may be required to change our pricing, advertising, or promotional strategies to retain existing guests or attract new guests, which could adversely affect the strength of our brand and our business, financial condition, and results of operations.

We rely in part on price increases from time to time to offset cost increases, including the cost of ingredients, commodities, insurance, labor, marketing, taxes, real estate and other key operating costs, and improve the profitability of our business. We have increased the prices of our food over the past few years, and we expect to further increase prices in the future. Our ability to maintain prices or effectively implement price increases may be affected by a number of factors, including competition, the effectiveness of our marketing programs, the continuing strength of our brand, and general economic conditions, including inflationary pressures. During challenging economic times, consumers may be less willing or able to dine out or purchase pre-packaged dips, spreads, and dressings, making it more difficult for us to maintain prices and/or effectively implement price increases. In addition, increasing prices could negatively affect the loyalty of our existing guest base and cause them to reduce their spending with us or impact our ability to attract new guests, particularly as we expand our footprint into new geographies where guests might have greater price sensitivity. If our price increases are not accepted by guests and reduce sales volume, or are insufficient to offset increased costs, our business, financial condition, and results of operations could be adversely affected.
The growth of our business depends on our ability to accurately predict guest trends and demand and successfully introduce new menu offerings and improve our existing menu offerings.

Our success is dependent, in part, upon our ability to respond effectively to changes in guests’ eating habits and government regulations and to adapt our menu offerings to trends in eating habits. The success of our business depends on our ability to identify these changing preferences and behaviors, to distinguish between short-term trends and long-term changes in such preferences and behaviors, and to continue to develop and offer food that appeals to guests through the channels that they prefer. Consumer preference and behavior changes include dietary trends, attention to different nutritional aspects of foods and beverages (see “—Risks Related to Legal and Governmental Regulation—We are subject to extensive laws and regulatory requirements, and failure to comply with, or changes in, these laws or regulations could have an adverse impact on our business.”), preferences for certain sales channels, reduced demand for food away from home as a result of the recent increase in remote and hybrid working arrangements, concerns regarding the health effects of certain foods and beverages, attention to sourcing practices relating to ingredients, animal welfare concerns, environmental concerns regarding packaging, among others. These changes in guests’ eating habits can occur rapidly, which requires us to adapt with similar speed. To the extent we are unwilling or unable to timely respond to shifting guest preferences, guests’ demand for our food and offerings may be reduced.

If guests’ eating habits change, we must timely and appropriately respond to such changes, which may include the modification or removal of certain menu items, which could cause us to incur implementation costs and be operationally burdensome. In particular, the introduction of innovative menu offerings and CPG offerings involves considerable risk. It may be difficult to establish new supplier relationships for new menu or CPG offerings and determine appropriate menu and CPG offering ingredients. Any new menu or CPG offering may not generate sufficient guest interest and sales to become profitable or to cover the costs of its development and promotion and may reduce our operating income. If our efforts are not successful, or if there is a significant shift in guest demand away from our menu or CPG offerings, our business could be adversely affected.

If we are unable to accurately predict guest trends and demand and successfully introduce new menu offerings and improve our existing menu offerings, our brand, business, financial condition, and results of operations may be materially adversely affected.

We are subject to risks associated with leasing property.

We operate all of our restaurants in leased facilities. Many of our current leases do not contain early termination options and we expect restaurants that we open in the future will be subject to similar long-term leases without early termination options. It is challenging to locate and secure leases on favorable terms for new restaurants as competition for locations in our target markets is intense, and development and leasing costs may continue to increase.

When our leases expire, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to pay increased occupancy costs or to close restaurants in desirable locations and result in negative publicity concerning any such termination or non-renewal. We may not be able to control increases in occupancy costs, particularly increases driven by macroeconomic factors, such as the current inflationary environment, or in geographies where the real estate market conditions favor landlords and developers. These potential increased occupancy costs and closed restaurants could have an adverse effect on our business, financial condition, and results of operations. Furthermore, the inability to renew an existing lease in key target markets could adversely affect our ability to execute on our overall growth strategy.

In addition, we may choose to close or relocate a restaurant if it fails to meet our performance targets, which may cause us to incur significant lease termination expenses as well as additional expenses in connection with securing a new lease and construction and other costs in opening a new replacement restaurant. Conversely, if we deem the lease termination and relocation expenses to be too high, we may decide to keep an underperforming restaurant open, or sublease it, which may hurt our overall profitability and results of operations. We currently sublease certain properties and face future liability if subtenants default or incur contingent liabilities. If we continue to sublease properties, we may be unable to enter into such arrangements on acceptable terms and, even if we do,
such arrangements may result in our incurring liabilities and expenses in future periods or the rent payments that we receive from subtenants being less than our rent obligations under the leases.

CAVA Group, Inc. has guaranteed the obligations of various of its subsidiaries, as the tenant, under a number of leases. In addition, we have provided credit support in respect of our leases in the form of letters of credit and cash security deposits. If there were to be a default under any of our leases, the applicable landlords could draw under the letters of credit and/or seize the security deposit, which could adversely affect our financial condition and liquidity.

Payments under our operating leases account for a significant portion of our operating expenses, and represented 9.8% and 11.0% of our revenue in fiscal 2022 and fiscal 2021, respectively. These substantial operating lease obligations could have negative consequences to our financial condition and results of operations, including requiring a substantial portion of our available cash to be applied to pay our rental obligations, thus reducing cash available for other purposes, as well as limiting our flexibility in planning for, and reacting to, changes in our business or our industry.

**We may not be able to successfully expand our digital and delivery business, which is subject to risks outside of our control.**

For fiscal 2022 and fiscal 2021, CAVA Digital Revenue Mix was 34.5% and 37.4%, respectively. The expansion of our digital and delivery business is important to the growth of our business. Our ability to expand our digital business will depend in part on our ability to improve and evolve our technology, including our website, the CAVA app and use of third-party delivery marketplaces, to remain competitive within the industry. The CAVA app and online ordering system could be interrupted by technological failures or user errors, or be subject to cyber-attacks, which could adversely impact our sales and brand image.

Substantially all of our delivery orders, including native delivery orders, are fulfilled through our third-party delivery partners. If a third-party delivery service we utilize (particularly for our native delivery orders) fails to deliver food orders to our guests in a timely manner or provides unsatisfactory delivery service, our guests may attribute the bad experience to us and may choose to stop ordering from us. If a third-party delivery service we utilize ceases or curtails operations, experiences damage to its brand image, increases its fees, or gives greater priority or promotions on its platforms to our competitors, our delivery business and our sales may be negatively impacted. Furthermore, the third-party food delivery service industry has been consolidating and may continue to consolidate, which may give third-party delivery companies more leverage in negotiating the terms and pricing of contracts, which in turn could negatively affect our profitability.

In addition, from time to time, our employees make deliveries to guests who have placed catering and delivery orders. As a result, we may be subject to additional workplace injury and other claims, such as personal injury claims and claims with respect to damaged property if such employees were to be involved in an accident, or otherwise act outside of their job function, while making food deliveries to our guests. We could also be held vicariously liable for any acts, omissions, and/or negligence of employees that deliver our food and may be subject to various claims asserting other forms of liability, including tort actions, brought by, or against, us and our employees. We could experience a higher rate of accidents or mishaps to the extent such deliveries are made by employees using modes of transport that are not owned or maintained by the Company. The risk of these claims may increase, and the cost to the Company to insure against such perils may rise or become more difficult to obtain, as the number of catering and delivery orders we fulfill increases.

Finally, as we expand our proprietary delivery services for services such as catering and native delivery, we expect to face competition from third-party delivery marketplaces who may have greater financial resources to spend on marketing and advertising. We would also face increased risks relating to shortage of delivery personnel in our markets, accidents, or other incidents involving delivery personnel while delivering our food, and any errors or delays in providing delivery services to our guests could result in a failure to meet our guests’ expectations and have an adverse impact on our business and brand.
Our inability or failure to utilize, recognize, respond to, and effectively manage the immediacy of social media could have a material adverse effect on our business.

Social media and internet-based communication or review platforms give individual users immediate access to a broad audience. However, these platforms can facilitate rapid dissemination of negative publicity, such as negative guest or Team Member experiences. Adverse publicity, regardless of its accuracy, concerning our restaurants and our brand, may be shared on such platforms at any time and have the potential to quickly reach a wide audience. The resulting harm to our reputation from negative publicity on social media may be immediate, without affording us an opportunity to correct or otherwise respond to the information or circumstance that is the subject of such publicity. It is challenging to monitor and anticipate developments on social media in order to effectively and timely respond and our failure to do so, or to do so successfully, may have a material adverse effect on our business.

However, social media platforms are a rapidly evolving and important marketing tool, which we utilize to help us engage with guests and potential guests. For example, we maintain Facebook, Instagram, and TikTok accounts, among other accounts, and have partnered, and expect to continue to partner, with social media influencers who promote our brand and may also produce content for us. As the landscape of social media platforms develops, we must maintain our presence on existing platforms and establish a presence on emerging platforms. Many of our competitors are expanding their use of social media. Our continued success will depend on our ability to continuously innovate and develop our social media strategies to best maintain broad appeal with guests, brand relevance, and effectively compete with our peers, and we may not do so effectively. In addition, a ban of a social media platform, such as TikTok, on which we, and social media influencers that we partner with, have acquired significant followers, may adversely affect our ability to engage with guests and promote our brand.

There are a variety of additional factors associated with our use of social media that may harm our business and result in negative publicity, including the possibility of improper disclosure of proprietary information, exposure of personally identifiable information of our Team Members or guests, the failure by us or our Team Members to comply with applicable law and regulations, any inappropriate use of social media platforms by our Team Members, fraud, hoaxes, or malicious dissemination of false information. Furthermore, association with influencers or celebrities who become embroiled in controversy, regardless of whether such controversy is related to our business, could damage our reputation, and our partnership with any such influencer or celebrity could be difficult and costly to unwind and otherwise address.

We have a history of losses and, especially if we continue to grow at an accelerated rate, we may not achieve or maintain profitability in the future.

We have incurred operating losses each year since our inception, including net losses of $59.0 million and $37.4 million for fiscal 2022 and fiscal 2021, respectively. We anticipate that our operating expenses will increase substantially in the foreseeable future, in particular, as we continue to open new restaurants, expand marketing channels and operations, hire additional Team Members and increase other general and administrative costs. Furthermore, as a public company, we will incur additional legal, accounting, and other expenses that we did not incur as a private company. As a result, our net losses may continue for the foreseeable future. In addition, while conversions require initial capital investments, such costs are typically significantly lower for a conversion as compared to a new restaurant opening. Therefore, following the completion of conversions of all remaining Zoes Kitchen locations, which we expect to complete by the fall of 2023, we expect that the capital expenditure requirements to open a new restaurant will be significantly higher than we have experienced in the past few years. Further, we currently expect that a significant portion of our new restaurants opening in fiscal 2023 and beyond will have drive-thru pick-up capabilities, which require significant additional capital expenditures as restaurants with drive-thru pick-up capabilities are typically larger, resulting in higher real estate costs as well as incremental infrastructure and construction costs.

These efforts and additional expenses may prove more expensive than we expect, and we cannot guarantee that we will be able to increase our revenue to offset such expenses. Our revenue growth may slow or our revenue may decline for a number of other reasons, including reduced demand for our food, increased competition, or if we cannot capitalize on growth opportunities. If our revenue does not grow at a greater rate than our operating expenses, we will not be able to achieve profitability.
We may not realize the anticipated benefits from past and potential future acquisitions, investments or other strategic initiatives, including our acquisition of Zoes Kitchen and the associated conversions to CAVA restaurants.

From time to time we may consider opportunities to acquire or make investments in new or complementary businesses, facilities, technologies, or products, or enter into strategic initiatives, that may enhance our capabilities, expand our manufacturing network, complement our current offerings, or expand the breadth of our markets. For example, we acquired Zoes Kitchen in 2018 with the goal of significantly expanding the size and geographic scope of our business.

Entering into acquisitions and investments and other strategic initiatives involve numerous risks, including:

- expenses, delays, or difficulties in integrating acquired business, facilities, technologies, or products into our organization, including the failure to realize expected synergies and the inability to retain and integrate personnel;
- expending significant cash or incur substantial debt to finance acquisitions, which indebtedness may restrict our business or require the use of available cash to make interest and principal payments;
- issues maintaining uniform standards, procedures, controls, and policies;
- diversion of management’s attention and resources from operating our business to effectively execute the integration;
- adverse effects on existing business relationships with suppliers, distributors, and partners;
- guest acceptance of the acquired company’s offerings;
- our ability to meet our targeted revenue, profit, and cash flow from acquired companies;
- the possibility that we have acquired substantial contingent or unanticipated liabilities in connection with acquisitions;
- the inability to identify all material issues concerning the companies we acquire or invest in; and
- the possibility that investments we have made may decline significantly in value, which could lead to the potential impairment of the carrying value of goodwill associated with acquired businesses.

We do not know if we will be able to identify acquisitions or strategic relationships we deem suitable, whether we will be able to successfully complete any such transactions on favorable terms or at all or whether we will be able to successfully integrate any acquired business, facilities, technologies, or products into our business or retain any key personnel, suppliers, or guests. In particular, the success of our Zoes Kitchen acquisition depends in part on our ability to complete the profitable conversion of the Zoes Kitchen locations into CAVA restaurants, and we cannot guarantee that each conversion of a Zoes Kitchen location will function as we anticipate. Furthermore, we may in the future acquire restaurants with the plan of converting those restaurants into CAVA restaurants and we may not be able to do so successfully while ensuring that the converted restaurant meets our CAVA standards. Our failure to successfully complete or integrate such acquisitions could have a material adverse effect on our financial condition and results of operations. Our ability to successfully grow through strategic transactions depends upon our ability to identify, negotiate, complete, and integrate suitable target businesses, facilities, technologies, and products and to obtain any necessary financing. These efforts could be expensive and time-consuming and may disrupt our ongoing business and prevent management from focusing on our operations.

We may not be able to manage our manufacturing and supply chain effectively, which may adversely affect our results of operations.

There is risk in our ability to effectively scale production and processing and effectively manage our manufacturing and supply chain requirements. For example, we rely on a limited number of suppliers, and, in some
cases, on single-source suppliers, for several ingredients. Some of these suppliers are small family-owned business or sole proprietors who may not be able to quickly scale their production to match our growth, or at all. As we continue to grow our business, if we are unable to obtain the desired amount of ingredients from these suppliers, we may be forced to modify our CPG and menu offerings or our recipes, or obtain ingredients from different suppliers that may be at a higher cost or may be of a lower quality than our original ingredients. Any of these changes could result in changes to our food taste and quality and could be less appealing to our guests, and any increase in costs could have an adverse impact on our profitability and results of operations. See “—Risks Related to Supply Chain—Our reliance on third parties could have an adverse effect on our business, financial condition, and results of operations.”

We must accurately forecast demand for each of our CPG and menu offerings to ensure that we have adequate available manufacturing capacity and supply. Our forecasts are based on multiple assumptions which may cause our estimates to be inaccurate and affect our ability to obtain adequate manufacturing capacity and quantities from our distributors, suppliers, and manufacturing partners in order to meet demand, which could prevent us from meeting partner and guest demand and harm our brand and our business.

We must also continuously monitor our inventory against forecasted demand. If we underestimate demand, we risk having inadequate supplies. On the other hand, if we have too much food inventory on hand, it may reach its expiration date and become unusable. If we are unable to manage our supply chain effectively, our operating costs could increase and our profit margins could decrease.

We may not successfully optimize, operate, and manage our production facilities.

As we continue to expand our menu and CPG offering, we may need to add or enhance our production capabilities and our production operations may become increasingly complex and challenging. Failure to successfully address such challenges in a cost-effective manner could harm our business and results of operations. The expansion of our production capabilities requires investments of capital and we cannot guarantee that we will be able to obtain the capital necessary to support such expansion on favorable terms, or at all. In addition, a substantial delay in bringing any new facility, including our new production facility in Virginia, up to full production on our projected schedule would put pressure on the rest of our business operations to meet demand and production schedules and may hinder our ability to produce all the food needed to meet guest and consumer demand and/or to achieve our expected financial performance. Furthermore, the opening of a new facility requires the efforts and attention of our management and other personnel, which has and will continue to divert resources from our existing business operations. We will also need to hire and retain more skilled Team Members to operate any new facility, including the facility in Virginia. Even if a new facility is brought up to full production according to our current schedule, the capital expenditures and other investment expenses for such new facility may be greater than the corresponding sales and it may not provide us with all the operational and financial benefits that we expect to receive.

Our production facilities infrastructure is tailored to meet the specific needs of our business. A natural disaster, severe weather, fire, power interruption, work stoppage, labor shortages or unrest, restrictive governmental actions, outbreaks of pandemics or diseases (such as the COVID-19 pandemic), or other calamity at our production facilities would significantly disrupt our ability to operate our business. The facilities and the manufacturing equipment we use is costly to replace or repair and may require substantial lead-time to do so. Suppliers that provide spare parts and external service engineers for maintenance, repairs and calibration face risks of disruption or disturbance to their businesses, including as a result of the COVID-19 pandemic or other related factors, which may lead to disruption in our production. In addition, our ability to procure new processing and packaging equipment may face more lengthy lead times than is typical.

We may experience plant shutdowns or periods of reduced production as a result of regulatory issues, equipment failure, or delays in deliveries. Any such disruption or unanticipated event may cause significant interruptions or delays in our business and loss of inventory and/or data, or render us unable to produce food items for our restaurants or for our CPG operations in a timely manner, or at all. We currently have property and business disruption insurance coverage in place for our Maryland facility, and plan to obtain similar coverage for our Virginia facility upon completion of its construction. The Virginia facility is currently covered by a builder’s risk policy, and
we have plans to extend insurance coverage to certain long-lead time items and materials. However, such insurance coverage may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, or at all.

If we do not have sufficient production capacity or experience a problem with our production facilities, our restaurants may experience delays or stoppages in receiving certain of our food items and our ability to meet guest and consumer demand could be impacted, which could in turn adversely affect our brand, business, financial condition, and results of operations.

Risks Related to Supply Chain

*Our reliance on third parties could have an adverse effect on our business, financial condition, and results of operations.*

We engage with third-party suppliers for some of our food items and products, including packaging, and we rely on a distribution network with a limited number of distribution partners for the majority of our national distribution program for our restaurants. For example, we currently utilize a sole supplier for high-pressure processing. Due to our reliance on certain suppliers, distributors, and third-party contract manufacturers, the change in terms or cancellation of our arrangements with any one of our suppliers, distributors, or third-party contract manufacturers or the disruption, delay, or inability of these parties to deliver such food items or materials to our restaurants, may materially and adversely affect our results of operations while we establish alternative supply and distribution channels.

Although we believe that alternative supply and distribution are available, we may not be able to easily locate replacement suppliers or distributors who provide ingredients or products that meet our high-quality standards. For example, the olive oil we use is sourced from a specific supplier meeting our high standards for taste and quality. Any failure to timely replace or engage suppliers or distributors who meet our specifications could increase our expenses, cause delays in our production and cause food and item shortages for our CPG production and at our restaurants. A shortage at a restaurant could, in turn, cause such restaurant to remove items from its menu. If that were to happen, affected restaurants could experience significant reductions in sales during the shortage and thereafter, if guests change their dining habits as a result. Alternatively, if we are required to lower or otherwise change our specifications in order to obtain sufficient supply, it could impact the taste and quality of our food, which could in turn impact demand for our food and offerings. Our focus on key ingredients would make the consequences of a shortage of such an ingredient, or a change in the quality of our ingredients, more severe. In addition, we cannot guarantee that we will be able to identify or negotiate with alternative suppliers or distributors on terms that are commercially reasonable to us.

Moreover, given that we do not control the businesses of our suppliers and distributors, our efforts to specify and monitor the standards under which they perform may not be successful. Certain food items are perishable and/or may be contaminated, and we have limited control over whether these items will be delivered to us in appropriate condition for use in our restaurants. If any of our distributors or suppliers perform inadequately, or our distribution or supply relationships are disrupted for any reason, our business, financial condition, and results of operations could be materially adversely affected.

*We may experience shortages, delays, or interruptions in the delivery of food items and other products.*

Our restaurants and CPG operations are dependent on frequent deliveries of fresh food that meets our specifications. Shortages, delays, or interruptions in the supply or delivery of food items and other supplies to our restaurants and CPG operations, whether by third-party partners or us, may be caused by severe weather or weather changes resulting in destruction of crops, changes in the quality of the crops, or ingredients that do not meet our specifications; natural disasters such as hurricanes, tornadoes, floods, droughts, wildfires, and earthquakes; macroeconomic conditions resulting in disruptions to the shipping and transportation industries; labor issues such as increased costs or worker shortages, or other operational disruptions at our distributors, suppliers, vendors, or other service providers; the inability of our service providers to manage adverse business conditions or remain solvent; cyber-attacks and technological failures; and other conditions beyond our control. We have in the past, and may in the future experience shortages, delays or interruption in other supplies and materials, such as food packaging.
which are required and/or desired to operate our restaurants and/or produce our CPG offerings. Such shortages, delays, or interruptions could adversely affect the availability, quality, and cost of the items we buy, the operations of our restaurants, and our CPG operations. Recent supply chain disruptions have increased some of our costs and limited the availability of certain food and other items for our restaurants and may continue to do so.

In addition, we have in the past, and may from time to time, experience shortages of, and delays in receiving, construction materials, restaurant equipment and other supplies required to build out and open a new CAVA restaurant or convert a Zoes Kitchen location. This may require us to incur higher costs to procure these materials, equipment and supplies from alternative sources, or cause a delay in the opening of a new restaurant.

If we encounter supply shortages, delay, or interruptions, are unable to identify alternative sources at a reasonable cost, or at all, or otherwise incur higher costs, our business, financial condition, and results of operations could be adversely affected.

We may face increases in food, commodity, energy, and other costs.

Our profitability depends in part on our ability to anticipate and react to changes in food, commodity, energy, and other costs. The prices we pay are subject to fluctuations beyond our control, such as problems in production, or distribution, food safety concerns, government regulation, livestock markets, food recalls, climate conditions, labor strikes or shortages, and macroeconomic conditions. In particular, we purchase substantial quantities of chicken, which is subject to significant price fluctuations due to conditions affecting weather, feed and chicken prices, industry demand, and other factors. Our results of operations may also be adversely affected by increases in the price of utilities, such as natural gas, electric, and water, the costs of insurance, labor, marketing, taxes, and real estate, all of which could increase due to inflation, changes in laws, shortages or interruptions in supply, competition, or other events beyond our control.

For example, due to the recent inflationary environment, we experienced mid- to high-single digit increases relating to food and packaging costs, which put pressure on our gross margins. To moderate the effects of these rising costs, we instituted proactive initiatives to create efficiencies in our in-bound logistics and other supply chain costs, such as an increased focus on food portioning, food production during off-peak hours and food waste management. We also modestly increased our in-restaurant menu prices by less than 5% in fiscal 2022 in response to the inflationary environment. We cannot assure you that we will be able to effectively mitigate any inflationary pressures in the future, whether by instituting further operating efficiency initiatives or by increasing menu prices.

Any increase in the prices of the ingredients most critical to our menu and offerings, such as chicken, would have an adverse effect on our results of operations. If the cost of one or more ingredients significantly increases, or there are certain unforeseen events, such as poor weather conditions that damage the quality of an ingredient, we may choose to temporarily suspend serving menu items that use such ingredients or modify our menu offerings rather than pay the increased cost and/or provide a lower quality product.

In addition, some of our produce items are imported. Any restrictions on the import of products imposed by government authorities, as well as any new or increased import duties, tariffs, sanctions, or taxes, geopolitical developments, such as the ongoing armed conflict in Ukraine, or other changes in U.S. trade or tax policy, could result in higher food and supply costs. Furthermore, new or heightened COVID-19 restrictions or supply chain disruptions in such countries may cause us to face shortages of one or more ingredients.

We have chosen to enter into contracts for some but not all of our ingredients. In addition, we generally do not have long-term supply pricing agreements with our ingredient suppliers. We purchase some of our raw materials in the open market, and although we may decide to enter into certain forward pricing arrangements with our suppliers and distributors, some of which contain variable trigger events, these arrangements generally are relatively short in duration and may provide only limited protection from price changes, and the extent to which we use these arrangements may vary from time to time. Furthermore, the use of these arrangements may limit our ability to benefit from favorable price movements, may cause us to incur increased transaction expense and may expose us to complex or unforeseen market risks, such as counterparty or interest rate risk. Our efforts to mitigate future price risk through forward contracts, careful planning, and other activities may not fully insulate us from increases in commodity costs. Furthermore, some of our raw materials are sourced from a limited number of suppliers and we
cannot guarantee that we will be able to continue to obtain such materials from our existing suppliers, or alternate suppliers, at the same or lower prices or at all. See “—Our reliance on third parties could have an adverse effect on our business, financial condition, and results of operations.”

We cannot guarantee that any cost increases can be offset by increased prices, that increases in prices will be fully absorbed by our guests without any resulting change to their demand for our food, or that we will generate sales growth in an amount sufficient to offset inflationary and other cost pressures, particularly with the high rates of inflation in fiscal 2022. Any cost increases could have an adverse effect on our profitability, business, financial condition, and results of operations.

Risks Related to Human Capital

We may face increases in labor costs, labor shortages, and difficulties in identifying, hiring, training, motivating, and retaining the right Team Members.

We believe that our continued success will depend on our ability to identify, hire, train, motivate, and retain Team Members who understand and appreciate our culture and are able to effectively represent our brand. If we are unable to identify, hire, train, motivate, and retain our Team Members, our restaurants could be short-staffed, we may be forced to incur overtime expenses, our ability to operate our current restaurants may be limited and our expansion into new restaurants could be delayed. We may also suffer disruptions to our CPG operations. The restaurant industry generally has a high turnover rate. While we have taken, and will continue to take, a number of steps in order to reduce our turnover, we cannot be certain that our turnover rates will decrease in the future. We have and may be forced to temporarily close restaurants, or reduce restaurant hours or CPG production, as a result of labor shortages, which could result in reduced revenue. Furthermore, if our Team Members decide to and successfully unionize, this could result in a change to our culture, an increase in our labor and other costs, and disruptions to our business, as well as impact the speed at which we can make changes to our organization. In addition, our responses to any union organizing efforts could negatively impact how our brand is perceived and have adverse effects on our business and expose us to legal risk.

The market for qualified talent is competitive and we must provide increasingly attractive wages, benefits, and workplace conditions to retain qualified Team Members, particularly with respect to restaurant managerial positions where the pool of qualified candidates can be small. Increases in wage and benefits costs, including as a result of increases in minimum wages and other governmental regulations affecting labor costs, may significantly increase our labor costs and operating expenses and make it more difficult to fully staff our restaurants. From time to time, legislative proposals are made to increase the minimum wage at the U.S. federal, state, and local level, such as California Assembly Bill No. 257, the Fast Food Accountability and Standards Recovery Act (the “FAST Act”), which passed in September 2022 and which proposes to create a council to set, among other things, minimum wages and working condition standards in the broadly defined fast food industry. Because we employ a large workforce, any wage increases and/or expansion of benefits mandates will have a particularly significant impact on our labor costs. In addition, our suppliers, distributors, and business partners may be similarly impacted by wage and benefit cost inflation, and many have or will increase their prices for goods and services in order to offset their increasing labor costs.

Furthermore, maintaining appropriate staffing and hiring and training new staff, both for our restaurants and our facilities, requires precise workforce planning, which has become more complex due to, among other things:

• significant staffing and hiring issues in the restaurant industry throughout the country, which have been exacerbated by the COVID-19 pandemic;

• laws related to wage and hour violations or predictive scheduling, such as “Fair Workweek” or “secure scheduling,” in certain geographic areas where we operate as well as New York City’s “just cause” termination legislation;

• low levels of unemployment, which has resulted in aggressive competition for talent, wage inflation, and pressure to improve benefits and workplace conditions to remain competitive; and
The so-called “great resignation” trend.

In particular, several jurisdictions in which we operate, including New York City, have implemented “Fair Workweek” legislation, which requires fast food employers to provide employees with specified notice in scheduling changes and pay premiums for changes made to employees’ schedules, among other requirements. The regulations are often complex to administer and have evolved over time and may continue to do so. Furthermore, similar legislation may be enacted in other jurisdictions in which we operate, and in jurisdictions where we may enter in the future, and such regulatory structures, in turn, could result in missed corporate opportunities due to diverted management attention, as well as increased costs, both in terms of ongoing compliance and resolution of alleged violations.

We face many of these same risks with respect to the Team Members who work within our support center departments. Our information technology and other systems are critical to the management and growth of our business, and our success will depend in part on our ability to hire, motivate, and retain these qualified personnel.

Additionally, we engage a number of independent contractors to work for us in various aspects of our business, in particular in our information technology and marketing departments. Therefore, we are subject to federal, state, and local laws regarding independent contractor classification, which are subject to judicial and agency interpretation and may change from time to time. In the event of a reclassification of the independent contractors as employees, we could be exposed to various liabilities and additional costs. These liabilities and additional costs could include exposure (for prior and future periods) under federal, state, and local laws, and workers’ compensation, unemployment benefits, labor, and employment laws, as well as potential liability for penalties and interest.

If we fail to hire, motivate, and retain Team Members, experience higher labor costs, and/or fail to appropriately plan our workforce for any of the reasons described above, our ability to open new restaurants, manage our information technology systems and grow sales at existing restaurants may be adversely affected.

Our success depends on our ability to attract, develop, and retain our management team and key Team Members.

Our success depends largely upon the continued service of our executive leadership team and other key management personnel, particularly our Co-Founder and Chief Executive Officer, Brett Schulman, and our Co-Founder and Chief Concept Officer, Ted Xenohristos. Members of our leadership team, both individually and as a group, play an integral role in the development and growth of our company. We also rely on our leadership team in setting our strategic direction, spearheading innovation, operating our business, managing vendor relationships, identifying, recruiting, and training key personnel, identifying expansion opportunities, arranging necessary financing, and leading general and administrative functions. From time to time, there may be changes in our senior management team, which could disrupt our business, particularly if non-compete clauses in employment agreements are deemed to be unenforceable for any reason, including as a result of regulatory restrictions. Moreover, the replacement of one or more of our leadership team or other key management personnel could involve significant time and expense and may significantly delay or prevent the achievement of our business objectives. In addition, 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. We currently do not maintain any key person life insurance policies for any of our executive officers. If we are unable to attract, hire, retain, and incentivize sufficiently experienced and capable management personnel, our business and financial results may suffer.

Risks Related to Information Technology Systems, Cybersecurity, Data Privacy, and Intellectual Property

Security breaches of our electronic processing of credit and debit card transactions, the CAVA app, or confidential guest or Team Member information (including personal information) may adversely affect our business.

Operating our business requires the collection, use, storage, retention, adaptation, alteration, processing, disclosure, transfer, transmission, and protection (“Processing”) of large volumes of personal information (which may also be referred to as “personal data” or “personally identifiable information”) of guests, Team Members, and others, and other sensitive, proprietary, and confidential information, including credit and debit card numbers. Our
reliance on technology has grown as we have grown, and the scope and severity of risks posed to our systems from compromises to our information technology systems and cyber threats has increased in part due to the sophistication of attacks as well as the legal and regulatory framework pertaining to privacy and data security matters.

From time to time, we have been, and likely will continue to be, the target of attempts to compromise our information technology systems and data, such as credential stuffing, distributed denial-of-service attacks, ransomware, viruses, malware, phishing attacks, break-ins, social engineering, security breaches, or other cybersecurity incidents to our data, network, or systems. In addition, if any of our critical suppliers or distributors is the subject of a cyber or ransomware attack, we could experience a significant disruption in our supply chain and possibly shortages of key ingredients. The techniques and sophistication used to conduct cyber-attacks and breaches of information technology systems, as well as the sources and targets of these attacks, change frequently and are often not recognized until such attacks are launched or have been ongoing for a period of time. While we continue to make significant investment in physical and technological security measures, Team Member training, and third-party services designed to anticipate cyber-attacks and prevent breaches, our information technology networks and infrastructure, and those of third parties with which we have business relationships, could be vulnerable to damage, disruptions, shutdowns, or breaches of personal or confidential information. Efforts to hack or breach security measures, failures of systems or software to operate as designed or intended, viruses, operator error, or inadvertent releases of data all threaten our and our business partners’ information systems and records. Due to these scenarios, we cannot provide assurance that we will be successful in adequately responding to, or preventing, such breaches or data loss.

Any intentional attack or an unintentional event that results in unauthorized access to systems to disrupt operations, corrupt data, or steal or expose intellectual property, personal or confidential information of our guests, Team Members or ourselves could result in widespread negative publicity, damage to our reputation, a loss of guests, disruption of our business and legal liabilities, resulting in operational inefficiencies and a loss of sales.

The majority of our restaurant sales are paid with credit or debit cards, but we accept certain other payment methods such as Apple Pay, and we may offer new payment options in the future. The use of these payment options subjects us to rules, regulations, contractual obligations, and compliance requirements, including payment network rules and operating guidelines, data security standards and certification requirements, and rules governing electronic funds transfers. These requirements and related interpretations may change over time, which has made and could continue to make compliance more difficult or costly. In connection with credit or debit card transactions in-restaurant, we collect and transmit confidential information, including payment information, to card processors. The systems currently used for transmission and approval of electronic payment transactions, and the technology utilized in electronic payments themselves, all of which can put electronic payment at risk, are determined and controlled by the payment card industry, not by us, through enforcement of compliance with the Payment Card Industry - Data Security Standards (as modified from time to time, “PCI DSS”). We must abide by the PCI DSS in order to accept electronic payment transactions. If we fail to abide by the PCI DSS, we could be subject to fines, penalties, or litigation, which could adversely affect our results of operations. Furthermore, the payment card industry requires vendors to be compatible with smart chip technology for payment cards (“EMV-Compliant”), or else bear full responsibility for certain fraud losses, referred to as the EMV Liability Shift. To become EMV-Compliant, merchants often utilize EMV-Compliant payment card terminals at the point-of-sale and obtain a variety of certifications. We may become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and we may also be subject to lawsuits or other proceedings relating to these types of incidents.

Our business is subject to complex and evolving laws and regulations regarding privacy, data protection, and cybersecurity.

There are numerous U.S. federal, state, local, and international laws and regulations regarding privacy, data protection, and cybersecurity that govern the Processing of personal information and other information. The scope of these laws and regulations is expanding and evolving, subject to differing interpretations, may be inconsistent among jurisdictions, or conflict with other rules. We are also subject to the terms of our privacy policies and obligations to third parties related to privacy, data protection, and cybersecurity.
For example, the California Consumer Privacy Act of 2018 ("CCPA") took effect on January 1, 2020, which broadly defines personal information, gives California residents expanded privacy rights and protections, and provides for civil penalties for certain violations. Furthermore, in November 2020, California voters passed the California Privacy Rights and Enforcement Act of 2020 ("CPRA"), which amends and expands CCPA with additional data privacy compliance requirements and establishes a regulatory agency dedicated to enforcing those requirements. On March 2, 2021, Virginia enacted the Virginia Consumer Data Protection Act, creating the second comprehensive U.S. state privacy law, which took effect on January 1, 2023 (the same day as CPRA took effect). Additional states, such as Colorado, Connecticut, Iowa, and Utah, have since also passed comprehensive state privacy laws that impose additional obligations and requirements on businesses. Data privacy laws and regulations are constantly evolving and can be subject to significant change or interpretive application. Varying jurisdictional requirements could increase the costs and complexity of our compliance efforts and violations of applicable data privacy laws can result in significant penalties. In addition, laws, regulations, and standards covering marketing and advertising activities conducted by telephone, email, mobile devices and the internet are applicable to our business, including the Telephone Consumer Protection Act (the “TCPA”) and the Controlling the Assault of Non-Solicited Pornography and Marketing Act (“CAN-SPAM Act”). The TCPA places certain restrictions on making outbound calls, faxes and text messages to consumers. The CAN-SPAM Act imposes penalties for the transmission of commercial emails that do not comply with certain requirements, such as providing an opt-out mechanism for stopping future emails from the sender. Any failure, or perceived failure, by us to comply with applicable data protection or other laws could result in proceedings or actions against us by governmental entities or others, subject us to significant fines, penalties, judgments, and negative publicity, require us to change our business practices, increase the costs and complexity of compliance, and adversely affect our business.

Additionally, the information, security, and privacy requirements imposed by governmental regulation are increasingly demanding and evolving. Laws require businesses to notify affected individuals, governmental entities, and/or credit reporting agencies of certain security incidents affecting personal information. Such laws are not all consistent, and compliance in the event of a widespread security incident is complex and costly and may be difficult to implement. Our existing general liability and cyber liability insurance policies may not cover, or may cover only a portion of, any potential claims related to security breaches to which we are exposed or may not be adequate to indemnify us for all or any portion of liabilities that may be imposed.

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

We may not be able to adequately protect or enforce our rights in our intellectual property.

We rely on a combination of trademark, patent, trade secret, copyright laws, as well as contractual provisions, confidentiality, and inventions assignment agreements, and other intellectual property laws to protect our proprietary and intellectual property assets and rights. Our intellectual property, particularly our trademarks, is material to the conduct of our business and our marketing efforts as our brand recognition is one of our key differentiating factors from our competitors. The success of our business depends in part on our ability to use our trademarks, service marks, and other proprietary intellectual property, including our name and logos and the unique character, atmosphere, and ambiance of our restaurants, to increase brand awareness and further develop our brand reputation in the market.

However, the steps we have taken to protect our intellectual property in the United States may not be adequate. We have registered and applied to register trademarks and other intellectual property in the United States, but we cannot guarantee that our trademark applications will be approved. We may not be able to adequately protect our trademarks and other intellectual property, and third parties may oppose and successfully challenge the validity and/or enforceability of our trademarks and other intellectual property. In the event that our trademarks are successfully challenged, we could be forced to rebrand our goods and services, which could result in loss of brand recognition, and could require us to devote substantial resources to advertising and marketing new brands that may not ultimately
be successful. Moreover, even if we successfully register our trademarks and other intellectual property, our competitors may develop similar menu items and concepts, and adequate remedies may not be available in the event of an unauthorized use or disclosure of our trade secrets and other intellectual property. We have in the past instituted and may from time to time in the future be required to institute, litigation, or other proceedings to enforce our trademarks and other intellectual property. Such litigation or other proceedings could result in substantial costs and diversion of resources and could negatively affect our sales, profitability, and prospects regardless of whether we are able to successfully enforce our rights.

In addition, any success we have had registering and protecting our intellectual property in the United States does not guarantee that we will have similar success in other jurisdictions. We do not currently own any material registered intellectual property outside the United States. Although we do not currently operate outside the United States, should we choose in the future to expand our operations outside the United States, a failure to protect and maintain our brand in such other jurisdictions could adversely affect our business, results of operations, and financial condition.

We maintain a policy requiring our Team Members to enter into an agreement to protect our intellectual property rights and other proprietary information. However, we cannot guarantee that such agreements adequately protect our intellectual property rights and other proprietary information. We cannot guarantee that these agreements will not be breached, that we will have adequate remedies in the event of a breach, or that the respective Team Members will not assert rights to our intellectual property rights or other proprietary information. In addition, we may fail to enter into confidentiality agreements with all parties who have access to our trade secrets or other proprietary information. Failing to protect and maintain the secrecy of our trade secrets or other confidential information for any reason could adversely affect our business, results of operations, and financial condition.

We have been, and may in the future be, subject to claims that we violated certain third-party intellectual property rights.

Third parties may assert, including in a lawsuit, that we infringe, misappropriate, or otherwise violate their intellectual property rights. In addition, we periodically receive communications that claim we have infringed, misappropriated, or otherwise violated others’ intellectual property rights. Any claim against us relating to intellectual property, with or without merit, could be time consuming, expensive to settle or litigate, and could divert the attention of our management, even if we were ultimately successful. Litigation regarding intellectual property rights is inherently uncertain due to the complex issues involved, and we may not be successful in defending ourselves in such matters. Any claims successfully brought against us could subject us to significant liability for damages, and we may be required to stop using brands, products, technology, or other intellectual property alleged to be in violation of a third-party’s rights in one or more jurisdictions where we do business. We also might be required to seek a license for third-party intellectual property or enter into a settlement or coexistence agreement that may limit our rights or the scope of our business operations in some way. Even if a license is available, we could be required to pay significant royalties or submit to unreasonable terms, which could increase our operating expenses. We may also be required to develop alternative non-infringing branding or products, which could require significant time and expense. If we cannot license or develop replacements for any allegedly infringing aspect of our business, we could be forced to limit our service and may be unable to compete effectively. Any of these results could adversely affect our business, financial condition, and results of operations.

We rely heavily on information technology systems and failures, or interruptions in, or not effectively scaling and adapting, our information technology systems could harm our business.

We rely heavily on information technology systems, including the point-of-sale and payment processing system in our restaurants, our restaurant management systems, technologies supporting our digital and delivery business, such as our website, the CAVA app, and online and mobile ordering platforms, management of our supply chain, our rewards program, collection of cash, credit, and debit card transactions, technologies that facilitate marketing and promotion initiatives, Team Member engagement and payroll processing, payment card transactions, and various other processes and transactions. Many of the critical information technology systems that we rely on are provided and managed by third parties, and we are reliant on these third-party providers to implement protective measures that ensure the security and availability of our systems and their systems. In addition, some of our critical
information technology systems are managed by our Team Members, and our continued ability to manage our business efficiently and effectively will depend on our ability to identify, hire, train, motivate, and retain information technology Team Members who understand and appreciate our culture. See “—Risks Related to Human Capital—We may face increases in labor costs, labor shortages, and difficulties in hiring, training, motivating, and retaining the right Team Members.” Our ability to manage our business efficiently and effectively depends significantly on the availability, reliability, and security of these systems.

We may from time to time experience service interruptions, outages, or other performance problems due to a variety of factors, including infrastructure changes, human or software errors, capacity constraints due to an overwhelming number of guests accessing our technology infrastructure simultaneously, downtime or outages of third-party services, and denial of service attacks or other malicious activity. These information technology systems, including our online and mobile ordering platforms, may now or in the future contain undetected errors, bugs, or vulnerabilities which may cause the systems to malfunction or be interrupted. Although we have operational safeguards in place, these safeguards may not be effective in preventing degradations or interruptions of our information technology systems or platforms to operate effectively and be available.

As our business expands, it may become more difficult to scale, maintain and improve our online and mobile ordering platforms. If our online and mobile ordering platforms are unreliable, unavailable, compromised, or otherwise fail when guests attempt to access them or they do not load as quickly as guests expect, guests may seek other services, and may not return to our platforms as often in the future. In some instances, we may not be able to identify the cause of performance problems within an acceptable period of time, and, in cases where we rely on third-party information technology infrastructure, we may not have sufficient contractual recourse against such third parties to make us whole for losses resulting from the failure of such infrastructure. Remediation of such problems could result in significant, unplanned capital investments and harm our business, financial condition, and results of operations.

To the extent that we do not effectively address capacity constraints, respond adequately to service interruptions and degradations, upgrade our systems as needed or continually develop and deploy our technology and network architecture to accommodate actual and anticipated changes in guest demand, our business and results of operations would be harmed.

The successful operation of our business depends upon the performance and reliability of internet, mobile, and other infrastructure, as well as of our third party vendors, none of which are under our control.

Our business and ability to acquire, retain, and serve our guests are highly dependent upon the reliable performance of our website and the CAVA app and the underlying network and server infrastructure.

Our in-restaurant and online and mobile ordering businesses depend on the performance and reliability of internet, mobile, and other infrastructures that are not under our control. Almost all access to the internet is maintained through telecommunication operators who have significant market power that could take actions that degrade, disrupt, or increase the cost of users’ ability to access our platform.

Disruptions in internet infrastructure, cloud-based hosting, or the failure of telecommunications network operators to provide us with the bandwidth we need to provide our services, could temporarily shut down our in-restaurant ordering business and could interfere with the speed and availability of our online and mobile ordering platforms. If our online and mobile ordering is unavailable when guests attempt to access them, or if our online and mobile ordering does not load as quickly as guests expect, guests may not return to our online and mobile ordering platforms as often in the future, or at all, and may use our competitors’ platforms more often. In addition, we have no control over the costs of the services provided by national telecommunications operators. If mobile internet access fees or other charges to internet users increase, our digital orders may decrease, which may in turn cause our revenue to significantly decrease.

We also use various third-party vendors, such as software as a service and infrastructure as a service, to provide support to our restaurant operations, core enterprise, and supply chain systems, cybersecurity solutions and cloud based hosting of our proprietary applications. We also outsource certain accounting, payroll and human resource functions to business process service providers. The failure of any service provider or vendor to fulfill their
obligations could disrupt our operations. Additionally, any changes we may make to the services we obtain from our vendors, or from any new vendors we employ, may disrupt our operations.

Any of these events could damage our reputation, significantly disrupt our operations, and subject us to liability, which could adversely affect our business, financial condition, and results of operations.

Risks Related to Legal and Governmental Regulation

We are subject to extensive laws and regulatory requirements, and failure to comply with, or changes in, these laws or regulations could have an adverse impact on our business.

Our restaurants are subject to U.S. federal, state, and local licensing and regulation by health, sanitation, food, occupational safety, and other agencies, which are subject to change from time to time. Our license requirements include those relating to the preparation and sale of food and beverages as well as food safety requirements. In addition, the development and operation of our restaurants depends to a significant extent on the selection and acquisition of suitable locations, which are subject to zoning, land use, environmental, and other regulations and requirements. 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 would adversely affect our business, financial condition, and results of operations.

Various U.S. federal, state, and local employment and labor laws and regulations govern our relationships with our Team Members. These laws and regulations relate to, among other matters, overtime, wage and hour requirements, unemployment tax rates, workers’ compensation rates, mandatory health benefits, healthcare laws, immigration status, and other wage and benefit requirements. Complying with these laws and regulations subjects us to substantial expense and non-compliance could expose us to significant liabilities. We may incur legal costs to defend against, and we could suffer losses from, these and similar cases. The amount of such losses or costs could be significant.

Our operations are also subject to, among other U.S. federal, state, and local laws and regulations, the following:

- the Americans with Disabilities Act, which provides civil rights protections to individuals with disabilities in the context of employment, public accommodations, and other areas, including our restaurants;
- the U.S. Food and Drug Administration (“FDA”), which oversees the safety of the entire food system, including inspections and mandatory food recalls, menu labeling, and nutritional content;
- the U.S. Equal Employment Opportunity Commission, which is a federal agency that was established to administer and enforce civil rights laws against workplace discrimination;
- the U.S. Fair Labor Standards Act, which governs such matters as minimum wages and overtime;
- the U.S. Occupational Safety and Health Act, which governs worker health and safety, as well as rules and regulations regarding the COVID-19 pandemic; and
- the FAST Act, which proposes to create a council to set, among other things, minimum wages and working condition standards in the broadly defined fast food industry. See “—Risks Related to Human Capital—We may face increases in labor costs, labor shortages, and difficulties in hiring, training, motivating, and retaining the right Team Members.”

In addition, we are subject to changes in U.S. federal, state, and local regulations that impact the ingredients and nutritional content of the food and beverages we offer. For example, there are various menu labeling laws requiring multi-unit restaurant operators to disclose to guests certain nutritional information, and there are other laws restricting the use of certain types of ingredients in restaurants. An unfavorable report on, or reaction to, our ingredients, the size of our portions, or the nutritional content of our menu items and products could negatively influence the demand for our offerings. Furthermore, any changing requirements with respect to labeling would increase our costs.
All of these regulations impose obligations on us, and any increase in our obligations thereunder could increase our costs of doing business and require us to make changes to our business model.

Compliance with U.S. federal, state, and local laws and regulations, and new laws or changes in these laws, or regulations that impose additional requirements, can be costly (some or all of which costs may not be covered by insurance) and require significant resources and attention from our senior management. Any failure, or perceived failure, to comply with laws or regulations could result in, among other things, revocation of required licenses, civil and criminal liability to us or our personnel, higher Team Member turnover and negative publicity, and could expose us to litigation, or governmental investigations, or proceedings, which could have a material adverse effect our business, financial condition, and results of operations.

We are subject to various claims and legal actions that could distract management, increase our expenses, or subject us to monetary damages or other remedies.

We have been, and will likely continue to be, subject to various claims and legal actions that may adversely affect our business. These legal proceedings, which could include class action lawsuits and allegations of illegal, unfair, or inconsistent employment practices, including wage and hour, discrimination, harassment, wrongful termination, and vacation and family leave laws; food safety issues including related to food-borne illness, food packaging or food contamination and adverse health effects from consumption of our food; the nutritional content of food sold; disclosure and advertising practices; exposure to COVID-19; data security or privacy breaches and other cybersecurity incidents, claims, and allegations; intellectual property infringement; lease issues; violation of the federal securities laws or state corporations law, or other concerns.

Even if the allegations against us in current or future legal matters are unfounded or we ultimately are not held liable, the costs to defend ourselves may be significant and may cause a diversion of management’s attention and resources, and a negative impact on our business, financial condition, and results of operations. In addition, such allegations may generate negative publicity, which could impact our brand and reputation and reduce sales.

Although we maintain what we believe to be adequate levels of insurance to cover any of these liabilities, insurance may not be available at all or in sufficient amounts with respect to these or other matters. See “Business—Legal Proceedings.” A judgment or other liability in excess of our insurance coverage for any claims or any adverse publicity resulting from claims could adversely affect our business, financial condition, and results of operations.

If tax laws change or we experience adverse outcomes resulting from examination of our tax returns or disagreements with taxing authorities, it could adversely affect our business, financial condition, and results of operations.

We are subject to federal, state, and local tax laws and regulations in the United States. The application and interpretation of these laws in different jurisdictions affect our operations in complex ways and are subject to change, and some changes may be retroactively applied. Our future effective tax rates and the value of our deferred tax assets could be adversely affected by changes in tax laws, including impacts of the Tax Cuts and Jobs Act of Public Law No. 115-97 (the “TCJA”) and the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”). The United States is also actively considering changes to existing U.S. tax laws that, if enacted, could increase our tax obligations or require us to change the manner in which we operate our business. For example, in August 2022, the Inflation Reduction Act (the “IRA”) was signed into law. The IRA, among other things, includes a new 15% corporate minimum tax as well as a 1% excise tax on corporate stock repurchases, subject to certain exceptions.

In addition, we are subject to the examination of our income and other tax returns by the Internal Revenue Service and other tax authorities. We regularly assess the likelihood of adverse outcomes resulting from such examinations to determine the adequacy of our provision for income taxes. Although we believe we have made appropriate provisions for taxes in the jurisdictions in which we operate, changes in the tax laws, or challenges from tax authorities under existing tax laws could adversely affect our business, financial condition, and results of operations.
Our ability to use our net operating loss carryforwards may be limited.

We have incurred substantial federal and state net operating losses (“NOLs”). Our ability to use these NOLs to offset potential future taxable income and related income taxes that would otherwise be due is dependent upon our generation of future taxable income before the expiration dates of the NOLs, and we cannot predict with certainty when, or whether, we will generate sufficient taxable income to use all of our NOLs. In addition, under the rules of Section 382 of the Internal Revenue Code of 1986, as amended (the “Code”), if a corporation undergoes an “ownership change,” generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation’s ability to use its NOLs to offset its post-change taxable income or taxes annually may be limited. The applicable rules generally operate by focusing on changes in ownership among holders owning, directly or indirectly, 5% or more of the stock of a company, as well as changes in ownership arising from new issuances of stock by the company. Similar rules may apply under state tax laws. As a result of these rules, if we experience ownership changes as a result of this offering or future transactions in our stock, then we may be limited in our ability to use our NOL carryforwards to offset our future taxable income if any.

Furthermore, under the TCJA, as amended by the CARES Act, NOLs generated in taxable years beginning after December 31, 2017, may be utilized to offset no more than 80% of taxable income annually for taxable years beginning after December 31, 2020. For state income tax purposes, there may also be periods during which the use of NOLs is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed.

There is also a risk that due to regulatory changes, such as suspensions on the use of NOLs, our existing NOLs could expire or otherwise be unavailable to offset future income tax liabilities. For these reasons, we may not be able to realize a tax benefit from the use of our NOLs, whether or not we attain profitability.

General Risk Factors

Economic factors and guest behavior trends, which are uncertain and largely beyond our control, may adversely affect guests’ behavior and our ability to maintain or increase sales at our restaurants.

The restaurant industry depends on guests’ discretionary spending, which is affected by macroeconomic conditions that are beyond our control, such as depressed economic activity, recessionary economic cycles, inflation, guests’ income levels, financial market volatility (which may be exacerbated due to the recent turmoil in the banking industry), investment losses, reduced access to credit, increased levels of unemployment, reduced home values and increased foreclosure rates, slow or stagnant pace of economic growth, increased energy costs, interest rates, social unrest, political dynamics, and other economic factors that may negatively affect the restaurant industry.

Current macroeconomic conditions and events, such as inflation, high interest rates, and recent turmoil in the banking industry, may increase the risk of a recession. Guests’ preferences tend to shift to lower-cost alternatives during recessionary periods and other periods in which disposable income is adversely affected. Therefore, sales volume in our restaurants could decline if guests choose to reduce the amount they spend on meals, choose to dine out less frequently or reduce the amount they spend on meals while dining out. The demand for our CPG offerings could also decline. If negative economic conditions persist for a long period of time or become pervasive, guests’ changes to their discretionary spending behavior that would otherwise be transitory, including the frequency with which they dine out, may become permanent.

Furthermore, we cannot predict the effects that actual or threatened armed conflicts, including the ongoing armed conflict in Ukraine, terrorist attacks, efforts to combat terrorism, heightened security requirements, or a failure to protect information systems for critical infrastructure could have on our operations, the economy, or guests’ confidence generally. Any of these events could affect guests spending patterns or result in increased costs for us due to heightened security measures we may need to take.

Any of the above factors, or other unfavorable changes in macroeconomic conditions affecting our guests or us, could have an adverse impact on guests’ demand for our food and cause us to, among other things, reduce the number and frequency of new restaurant openings, which could have the effect of having a material adverse effect on our business, financial condition, and results of operations.
Pandemics and outbreaks, such as the ongoing COVID-19 pandemic, have had, and may continue to have, an adverse impact on our business.

Pandemics and outbreaks, such as the ongoing COVID-19 pandemic, and the related efforts to contain pandemics, such as travel restrictions, shelter-in-place orders, and business slowdowns, have affected all of the regions in which we conduct business and in which our guests and partners are located and have adversely impacted global economic activity.

The COVID-19 pandemic has had, and may continue to have, adverse effects on our sales volumes and the ability to adequately staff our restaurants. For example, during periods of the COVID-19 pandemic, government restrictions have required us to temporarily close some of our restaurants, offer only pick-up, and impose social distancing requirements. In addition, we experienced staffing shortages due to illness, quarantine requirements, and fear of contracting COVID-19, as well as government mandates requiring our Team Members to be fully vaccinated against COVID-19 in order to operate indoor dining. We also experienced temporary disruptions in certain supplies, transportation bottlenecks, increased raw material, and food costs, as well as higher costs associated with the purchase of personal protective equipment and other measures that we took to ensure compliance with changing regulations relating to restaurants and running our business. The COVID-19 pandemic also adversely affected our ability to execute our growth plans, including delaying the construction of new restaurants and conversions of Zoes Kitchen locations into CAVA restaurants, increasing the costs of such constructions and conversions, and making it more challenging to successfully enter into new markets. The extent of the impacts from the COVID-19 pandemic is affected in part by the extent of the government restrictions as well as differences in attitudes and reactions to the restrictions in the locations where we have our restaurants and from which we source our food and supplies.

Currently, none of our restaurants are subject to any pandemic-related government restrictions. However, we continue to experience labor shortages, temporary supply chain disruptions, and delays in both the construction of new restaurants and the conversions of Zoes Kitchen locations into CAVA restaurants. While we have developed, and expect to continue to develop, plans to help mitigate the negative impact of the COVID-19 pandemic on our business, our efforts may not be effective, and a protracted economic downturn may limit the effectiveness of our mitigation efforts.

If we are to experience any other pandemic or outbreak, our business, financial condition, and results of operations could be adversely impacted, including in ways similar to the impact of the COVID-19 pandemic.

We are subject to evolving rules and regulations with respect to ESG matters.

We are subject to a variety of ESG-related rules and regulations promulgated by a number of governmental and self-regulatory organizations. ESG-related rules and regulations continue to evolve in scope and complexity, and the increase in costs to comply with such evolving rules and regulations, as well as any risk of noncompliance, could adversely impact our business, financial condition, and results of operations. In addition, there is an increasing public focus by regulators, guests, investors, and other stakeholders on ESG matters. Evolving ESG rules, regulations and stakeholder expectations increase general and administrative expenses and may divert management’s attention to the consideration and measurement of metrics and standards related to these rules, regulations, and stakeholder expectations.

We may communicate certain aspirational initiatives and goals regarding ESG-related matters to our stakeholders. These aspirational initiatives and goals could be difficult and expensive to quantify and implement. In addition, such aspirational initiatives and goals are subject to risks and uncertainties, many of which may not be foreseeable or may be outside of our control. We may be criticized for the scope or nature of such aspirational initiatives or goals, for any revisions to such initiatives or goals, or for failing, or being perceived to have failed, to achieve such initiatives or goals.

If our ESG-related data, processes and reporting are incomplete or inaccurate, or if we fail to achieve progress with respect to our, and our industry’s ESG-related aspirational goals, it could lead to private, regulatory, or administrative challenges or proceedings, including with respect to our disclosure controls and procedures, as well as adverse publicity, any of which could damage our reputation and our business.
Climate change and volatile adverse weather conditions could adversely affect our restaurant sales or results of operations.

Climate change has caused, and may continue to cause, more severe, volatile weather or extended droughts, which could increase the frequency and duration of weather impacts on our operations. Adverse weather conditions have in the past and may in the future negatively affect sales at our restaurants, and, in more severe cases such as regional winter storms, hurricanes, tornadoes, wildfires, or other natural disasters, may cause temporary restaurant closures, all of which negatively impact our restaurant sales, as well as temporary production stoppages at our production facilities. Climate change could also adversely impact our production facilities, our distribution channels, and our third-party contract manufacturers’ operations, particularly where certain food is primarily sourced from a single location. Similarly, extended periods of unseasonably warm temperatures during the winter season or cool weather during the summer season could result in higher instances of food spoilage. It is possible that weather conditions may impact our business more than other businesses in our industry because of the significant concentration of our restaurants in certain locations, such as the risk of earthquakes in Southern California, coastal winds in New York and North Carolina, wind and water intrusion in southeast coastal areas, and winter storms and freezes in the northeast.

In addition, our supply chain is subject to increased costs caused by the effects of climate change. Increasing weather volatility and changes in global weather patterns can reduce crop size and crop quality, which could result in decreased availability or higher pricing for our produce and other ingredients. These factors are beyond our control and, in many instances, unpredictable. Climate change and government regulation relating to climate change could also result in construction delays for new restaurants and interruptions to the availability or increases in the cost of utilities.

Furthermore, our business could be adversely affected if we are unable to effectively address increased concerns from the public, stockholders, and other stakeholders on climate change and related environmental sustainability and governance matters. See “—We are subject to evolving rules and regulations with respect to ESG matters.” The ongoing and long-term costs of these impacts related to climate change and other sustainability related issues could have a material adverse effect on our business, financial condition, and results of operations.

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

Our operations depend upon our ability to protect our critical information technology equipment and systems against physical theft and damage from power loss, cybersecurity attacks (including ransomware), improper or unauthorized usage by Team Members, telecommunications failures or other catastrophic events, such as fires, earthquakes, tornadoes and hurricanes, climate change, widespread power outages caused by severe storms, as well as from internal and external security breaches, incidents, malware, viruses, worms, and other disruptive problems. Any damage, failure, or breach of our information systems that causes an interruption in our operations could have a material adverse effect on our business and subject us to litigation or actions by regulatory authorities. To mitigate potential risk posed by natural disasters or other catastrophic events, we have disaster recovery procedures and business continuity plans in place and back up and off-site locations for recovery of certain electronic and other forms of data and information. However, if we are unable to fully implement our disaster recovery plans, we may experience delays in recovery of data, inability to perform vital corporate functions, tardiness in required reporting and compliance, failures to adequately support field operations, and other breakdowns in normal communication and operating procedures that could have a material adverse effect on our financial condition, results of operation, and exposure to administrative and other legal claims. In addition, these threats are constantly evolving, which increases the difficulty of accurately and timely predicting, planning for and protecting against the threat. As a result, our disaster recovery procedures and business continuity plans may not adequately address all threats we face or protect us from loss.

The failure of any bank in which we deposit our funds could have an adverse effect on our financial condition.

Although we generally seek to diversify our cash and cash equivalents across several financial institutions in an attempt to minimize exposure to any one of these entities, we currently have cash and cash equivalents deposited in
several financial institutions significantly in excess of federally insured levels. If any of the financial institutions in which we have deposited funds ultimately fails, we may lose our deposits over $250,000 at such financial institutions, and/or we may be required to move our accounts to another financial institution, which could cause operational difficulties, such as delays in making payments to our partners and employees, which could have an adverse effect on our business and financial condition.

**Our quarterly financial results may fluctuate significantly, including due to factors that are not in our control.**

Our quarterly financial results may fluctuate significantly, including due to factors that are not in our control, and could fail to meet investors’ expectations for various reasons, including:

- negative publicity about the safety of our food, packaging, employment-related issues, litigation, or other issues involving our restaurants;
- fluctuations in supply costs, including as a result of inflation, particularly for our most significant ingredients, and our inability to offset the higher cost with price increases without adversely impacting guest spending;
- labor availability and wages of Team Members, including as a result of inflation;
- increases in marketing or promotional expenses;
- the timing of new restaurant openings and related revenue and expenses, such as increased labor expenses, and the operating costs at newly opened restaurants;
- the impact of inclement weather and natural disasters, such as freezes and droughts, which could decrease sales volumes and increase the costs of ingredients;
- the amount and timing of equity-based compensation;
- litigation, settlement costs, and related legal expenses;
- tax expenses, asset impairment charges, and non-operating costs; and
- variations in general economic conditions and events, including the impact of inflation and recent turmoil in the banking industry.

Historically, seasonal factors have also caused our revenue to fluctuate from quarter to quarter. Our revenue per restaurant is typically lower in the first and fourth fiscal quarters due to reduced traffic as a result of colder temperatures and the holiday season. Furthermore, we operate on a 52-week or 53-week fiscal year. In a 52-week fiscal year, the first quarter contains sixteen weeks as compared to twelve weeks for the second, third, and fourth quarters (and thirteen weeks for the fourth quarter in a 53-week fiscal year).

As a result of these factors and the differences among our fiscal quarters, our quarterly operating results as well as our key performance measures, such as CAVA Same Restaurant Sales Growth and CAVA Restaurant-Level Profit Margin, may fluctuate significantly from quarter to quarter and our results for any one quarter are not indicative of any other quarter.

**Following completion of this offering, our executive officers, directors, and holders of 5% or more of our common stock will collectively beneficially own approximately % of the outstanding shares of our common stock, which may limit your ability to influence the outcome of important transactions.**

Following completion of this offering, our executive officers, directors, and each of our stockholders who own 5% or more of our outstanding common stock and their affiliates, in the aggregate, will beneficially own approximately % of the outstanding shares of our common stock, based on the number of shares outstanding as of . While these stockholders currently do not act together as a group, if some or all of them were to do so in the future, such group of stockholders may exercise significant influence over or control matters requiring approval by our stockholders, including the election and removal of directors and the approval of mergers,
acquisitions, or other extraordinary transactions, as a result of their aggregate ownership. They may also have interests that conflict or differ from yours and may vote in a way with which you disagree, and which may be adverse to your interests. This concentration of ownership may also have the effect of delaying, preventing, or deterring a change in control of our company, and could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company or by discouraging others from making tender offers for our shares, which may ultimately affect the market price of our common stock.

Risks Related to Our Indebtedness

Our ability to incur a substantial level of indebtedness may reduce our financial flexibility, affect our ability to operate our business, and divert cash flow from operations for debt service.

As of April 16, 2023, we had no outstanding indebtedness, and $105.0 million of undrawn availability, under our Credit Facility (as defined below), including the Delayed Draw Facility (as defined below).

We may incur substantial indebtedness under our Credit Facility or other debt instruments in the future, and, if we do so, the risks related to our level of indebtedness could increase. Our future borrowings will require interest payments and in the case of the Delayed Draw Facility, quarterly principal payments, and will need to be repaid or refinanced, which could require us to divert funds identified for other purposes to debt service and could create additional cash demands or impair our liquidity position and add financial risk. We may also sell additional debt or equity securities to help repay or refinance our borrowings. However, we do not know whether we would be able to take any of these actions on a timely basis, on terms satisfactory to us or at all.

Our future level of indebtedness could affect our operations in several ways, including but not limited to the following:

• increase our vulnerability to changes in general economic, industry, and competitive conditions;
• require us to dedicate a portion of our cash flow from operations to make payments on our indebtedness, thereby reducing the availability of our cash flow to fund working capital, capital expenditures, and other general corporate purposes;
• place us at a competitive disadvantage compared to our competitors that are less leveraged and therefore potentially more able to take advantage of opportunities that our level of indebtedness would prevent us from pursuing; and
• impair our ability to obtain additional financing in the future for working capital, capital expenditures, debt service requirements, acquisitions, or other purposes.

In addition, the Credit Facility contains, and agreements governing future indebtedness may contain, restrictive covenants that limit our ability to engage in activities that may be in our long-term best interests. Our failure to comply with those covenants could result in an event of default that, if not cured or waived, could result in the acceleration of all of our indebtedness. See “—Risks Related to Our Indebtedness—The Credit Facility contains restrictions on our ability to operate our business and to pursue our business strategies.”

Borrowings under the Credit Facility bear interest at variable rates based on prevailing conditions in the financial markets, and changes to such variable market rates may affect both the amount of cash we must pay for interest as well as our reported interest expense. Assuming our Credit Facility (including the Delayed Draw Term Loans (as defined below) were to be fully drawn, a 100-basis point increase to the applicable variable rate of interest would increase the amount of interest expense by $1.05 million per annum. If we are unable to generate sufficient cash flows to pay the interest expense on our debt, future working capital, borrowings, or equity financing may not be available from which to pay or refinance such debt. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Indebtedness.”

In addition, if any of the financial institutions that provide loan commitments to us were to fail, our liquidity could be adversely impacted and we may not be able to obtain financing for working capital, capital expenditures, acquisitions, and other purposes. In such event, our ability to operate and compete effectively, and our ability to
execute on our growth strategies, could be adversely affected, which in turn would have an adverse impact on our business, results of operations and financial condition.

*The Credit Facility contains restrictions on our ability to operate our business and to pursue our business strategies.*

The Credit Facility restricts, subject to certain exceptions, among other things, our ability and the ability of our subsidiaries to:

- incur additional indebtedness and guarantee indebtedness;
- prepay, redeem, or repurchase certain debt;
- create or incur liens;
- make investments and loans;
- pay dividends or make other distributions, in respect of, or repurchase or redeem, capital stock;
- engage in mergers, consolidations, or sales of all or substantially all of our assets;
- sell or otherwise dispose of assets;
- amend, modify, waive, or supplement certain subordinated indebtedness to the extent such amendments would be materially adverse to the interests of the lenders; and
- engage in certain transactions with affiliates.

In addition, we are required to maintain specified financial covenant ratios and satisfy other financial condition tests. Any future financing arrangements entered into by us or any of our subsidiaries may contain similar restrictions or maintenance covenants. As a result of these covenants and restrictions, we and our subsidiaries are, and will be, limited in how we conduct our business, and we may be unable to raise additional debt or equity financing to compete effectively or to take advantage of new business opportunities. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations —Liquidity and Capital Resources—Indebtedness.” The terms of any future indebtedness we or our subsidiaries may incur could include more restrictive covenants. We cannot guarantee that we will be able to maintain compliance with these covenants in the future and, if we fail to do so, that we will be able to obtain waivers from the lenders and/or amend the covenants.

Our or our subsidiaries’ failure to comply with the restrictive covenants described above as well as other covenants contained in our or our subsidiaries’ future debt instruments from time to time could result in an event of default, which, if not cured or waived, could require us to repay these borrowings before their maturity. If we are forced to refinance these borrowings on less favorable terms or cannot refinance these borrowings, our results of operations, and financial condition could be adversely affected.

*Our failure to comply with the Credit Facility, including as a result of events beyond our control, could result in an event of default that could materially adversely affect our business, financial condition, and results of operations.*

If there were an event of default under the Credit Facility, the lenders under the Credit Facility could cause all amounts outstanding with respect to that debt to be due and payable immediately. Our assets or cash flow may not be sufficient to fully repay borrowing under the Credit Facility if accelerated upon an event of default. Furthermore, if we are unable to repay, refinance, or restructure our Credit Facility, the lenders under the Credit Facility could proceed against the collateral granted to them to secure such indebtedness, which could force us into bankruptcy or liquidation. As a result, any default by us on our debt could have a materially adverse effect on our business, financial condition, and results of operations.
Risks Related to this Offering and Ownership of our Common Stock

We are an “emerging growth company” and we cannot be certain if the reduced disclosure requirements applicable to “emerging growth companies” will make our common stock less attractive to investors.

We are an “emerging growth company,” as defined in Section 2(a)(19) of the Securities Act, and we may take advantage of certain exemptions and relief from various reporting requirements that are applicable to other public companies that are not “emerging growth companies.” In particular, while we are an “emerging growth company,” among other exemptions, we will:

- not be required to engage an independent registered public accounting firm to report on our internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act;
- not be required to comply with the requirement in Public Company Accounting Oversight Board Auditing Standard 3101, The Auditor’s Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, to communicate critical audit matters in the auditor’s report;
- be permitted 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” in our periodic reports and registration statements, including in this prospectus;
- not be required to disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of the chief executive officer’s compensation to median employee compensation; or
- not be required to submit certain executive compensation matters to stockholder advisory votes, such as “say-on-pay,” “say-on-frequency,” and “say-on-golden parachutes.”

In addition, the JOBS Act also permits an emerging growth company such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies, meaning that we can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to use this extended transition period and, as a result, our financial statements may not be comparable with similarly situated public companies.

We will remain an “emerging growth company” until the earliest to occur of (1) our reporting of $1.24 billion or more in annual gross revenue; (2) our becoming a “large accelerated filer,” with at least $700 million of equity securities held by non-affiliates; (3) our issuance, in any three year period, of more than $1.0 billion in non-convertible debt; and (4) the fiscal year end following the fifth anniversary of the completion of this initial public offering.

We cannot predict if investors may find our common stock less attractive if we rely on the exemptions and relief granted by the JOBS Act. For example, if we do not adopt a new or revised accounting standard, our future results of operations may not be as comparable to the results of operations of certain other companies in our industry that adopted such standards. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may decline and/or become more volatile.

We will incur significant increased costs and become subject to additional regulations and requirements as a result of becoming a public company, and our management will be required to devote substantial time to new compliance matters, which could lower our profits or make it more difficult to run our business.

As a public company, we will incur significant legal, regulatory, finance, accounting, investor relations, insurance and other expenses that we have not incurred as a private company, including costs associated with public company reporting requirements and costs of recruiting and retaining non-executive directors. We also have incurred and will continue to incur costs associated with the Sarbanes-Oxley Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, and related rules implemented by the SEC, and the NYSE. The expenses incurred by public companies for reporting and corporate governance purposes have been increasing. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more difficult.
time-consuming and costly, although we are currently unable to estimate these costs with any degree of certainty. Our management will need to devote a substantial amount of time to ensure that we comply with all of these requirements, diverting the attention of management away from revenue-producing activities. These laws and regulations also could make it more difficult or costly for us to obtain certain types of insurance, including director and officer liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. These laws and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our Board of Directors, our board committees or as our executive officers. Furthermore, if we are unable to satisfy our obligations as a public company, we could be subject to delisting of our common stock, fines, sanctions, and other regulatory action and potentially civil litigation.

**Failure to comply with requirements to design, implement and maintain effective internal controls could have a material adverse effect on our business and stock price.**

As a privately held company, we were not required to evaluate our internal control over financial reporting in a manner that meets the standards of publicly traded companies required by Section 404(a) of the Sarbanes-Oxley Act (“Section 404”). As a public company, we will be subject to significant requirements for enhanced financial reporting and internal controls. The process of designing and implementing effective internal controls is a continuous effort that requires us to anticipate and react to changes in our business and the economic and regulatory environment, and to expend significant resources to maintain a system of internal controls that is adequate to satisfy our reporting obligations as a public company. If we are unable to establish or maintain appropriate internal financial reporting controls and procedures, it could cause us to fail to meet our reporting obligations on a timely basis, result in material misstatements in our consolidated financial statements and harm our results of operations. In addition, we will be required, pursuant to Section 404, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting in the second annual report following the completion of this offering. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. The rules governing the standards that must be met for our management to assess our internal control over financial reporting are complex and require significant documentation, testing, and possible remediation. Testing and maintaining internal controls may divert our management’s attention from other matters that are important to our business. Once we are no longer an “emerging growth company,” our auditors will be required to issue an attestation report on the effectiveness of our internal controls on an annual basis.

In connection with the implementation of the necessary procedures and practices related to internal control over financial reporting, we may identify deficiencies that we may not be able to remediate in time to meet the deadline imposed by the Sarbanes-Oxley Act for compliance with the requirements of Section 404. In addition, we may encounter problems or delays in completing the remediation of any deficiencies identified by us or our independent registered public accounting firm in connection with the issuance of their attestation report. Our testing, or the subsequent testing (if required) by our independent registered public accounting firm, may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses. Any material weaknesses could result in a material misstatement of our annual or quarterly financial statements or disclosures that may not be prevented or detected.

We may not be able to conclude on an ongoing basis that we have effective internal control over financial reporting in accordance with Section 404 or our independent registered public accounting firm may not issue an unqualified opinion. If either we are unable to conclude that we have effective internal control over financial reporting or our independent registered public accounting firm is unable to provide us with an unqualified report (to the extent it is required to issue a report), investors could lose confidence in our reported financial information, which could have a material adverse effect on the trading price of our common stock.
No market currently exists for our common stock, and an active, liquid trading market for shares of our common stock may not develop or be sustained, which may cause shares of our common stock to trade at a discount from the initial public offering price and make it difficult to sell the shares of common stock you purchase.

Prior to this offering, there has not been a public trading market for shares of our common stock. We cannot predict the extent to which investor interest in us will lead to the development of a trading market or how active and liquid that market may become. If an active and liquid trading market does not develop or continue, you may have difficulty selling your shares of our common stock at an attractive price or at all. The initial public offering price per share of common stock will be determined by agreement among us and the representatives of the underwriters, and may not be indicative of the price at which shares of our common stock will trade in the public market after this offering. The market price of our common stock may decline below the initial public offering price and you may not be able to sell your shares of our common stock at or above the price you paid in this offering, or at all.

Our stock price may be volatile or may decline regardless of our operating performance, and you may not be able to resell your shares of our common stock at or above the price you paid or at all, and you could lose all or part of your investment as a result.

Even if a trading market develops, the market price of our common stock may be highly volatile and could be subject to wide fluctuations. You may not be able to resell your shares at or above the initial public offering price due to a number of factors, including those listed in “—Risks Related to Our Business and Our Industry.”

Furthermore, the stock markets in general have experienced extreme volatility that, in some cases, may be unrelated or disproportionate to the operating performance of particular companies. These broad market and industry fluctuations may adversely affect the market price of our common stock, regardless of our actual operating performance. In addition, price volatility may be greater if the public float and trading volume of our common stock is low.

In the past, following periods of market volatility, stockholders have instituted securities class action litigation. If we were to become involved in securities litigation, it could have a substantial cost and divert resources and the attention of executive management from our business regardless of the outcome of such litigation.

Investors in this offering will incur immediate and substantial dilution.

The initial public offering price per share of common stock will be substantially higher than the as adjusted net tangible book value (deficit) per share immediately after this offering. As a result, you will pay a price per share of common stock that substantially exceeds the per share book value of our tangible assets after subtracting our liabilities. In addition, you will pay more for your shares of common stock than the amounts paid by our existing stockholders. Assuming an initial public offering price of $ per share of common stock, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, you will incur immediate and substantial dilution in an amount of $ per share of common stock. If the underwriters exercise their option to purchase additional shares, you will experience additional dilution. See “Dilution.”

Your percentage ownership in our Company may be diluted by future issuances of our common stock, which could reduce your influence over matters on which stockholders vote.

After this offering we will have approximately shares of common stock authorized but unissued. Our amended and restated certificate of incorporation to become effective immediately prior to the consummation of this offering will authorize us to issue these shares of common stock, other equity or equity-linked securities, options, and other equity awards relating to our common stock for the consideration and on the terms and conditions established by our Board of Directors in its sole discretion, whether in connection with acquisitions or otherwise. Issuances of common stock or voting preferred stock would reduce your influence over matters on which our stockholders vote, and, in the case of issuances of preferred stock, would likely result in your interest in us being subject to the prior rights of holders of that preferred stock, if any.

We have reserved, or will reserve in the future, shares for issuance under the 2015 Equity Incentive Plan, and for grants under the 2023 Equity Incentive Plan and the ESPP. See “Management—Executive Compensation—
Compensation Arrangements to be Adopted in Connection with this Offering—Employee Stock Purchase Plan.” Any common stock that we issue, including under the 2015 Equity Incentive Plan, the 2023 Equity Incentive Plan, the ESPP, or other equity incentive plans that we may adopt in the future, would dilute the percentage ownership held by the investors who purchase common stock in this offering. In the future, we may also issue our common stock in connection with investments or acquisitions. The amount of shares of our common stock issued in connection with an investment or acquisition could constitute a material portion of our then-outstanding shares of our common stock. Any issuance of additional securities in connection with investments or acquisitions may result in additional dilution to you.

Because we have no current plans to pay cash dividends on our common stock, you may not receive any return on investment unless you sell your shares of common stock for a price greater than that which you paid for it.

We have no current plans to pay cash dividends on our common stock. The declaration, amount, and payment of any future dividends will be at the sole discretion of our Board of Directors, and will depend on, among other things, general and economic conditions, our results of operations and financial condition, our available cash and current and anticipated cash needs, capital requirements, contractual, legal, tax and regulatory restrictions and implications on the payment of dividends by us to our stockholders or by our subsidiaries to us, including restrictions under our credit agreements and other indebtedness we may incur, and such other factors as our Board of Directors may deem relevant. See “Dividend Policy.”

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 your purchase price.

Future sales, or the perception of future sales, by us or our existing stockholders in the public market following the completion of this offering could cause the market price for our common stock to decline.

The sale of substantial amounts of shares of our common stock in the public market after this offering, or the perception that such sales could occur, including sales by our founders, could harm the prevailing market price of shares of our common stock. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

Upon completion of this offering, we will have a total of shares of our common stock outstanding (or shares if the underwriters exercise their option to purchase additional shares). Of the outstanding shares, the shares sold in this offering (or shares if the underwriters exercise their option to purchase additional shares) will be freely tradable without restriction or further registration under the Securities Act, except that any shares held by our affiliates, as that term is defined under Rule 144 of the Securities Act (“Rule 144”), including our directors, executive officers, and other affiliates, may be sold only in compliance with the limitations described in “Shares Eligible for Future Sale.”

The remaining outstanding shares of common stock held by our existing stockholders after this offering will be deemed restricted securities under the meaning of Rule 144 and may be sold in the public market only if registered or if they qualify for an exemption from registration, including the exemptions pursuant to Rule 144 and Rule 701 under the Securities Act. In addition, we, our executive officers, directors, and all of our significant stockholders will sign lock-up agreements with the underwriters that will, subject to certain customary exceptions, restrict the sale of the shares of our common stock and certain other securities held by them for 180 days following the date of this prospectus. J.P. Morgan Securities LLC and Jefferies LLC may, in their sole discretion and at any time without notice, release all or any portion of the shares or securities subject to any such lock-up agreements. See “Underwriting” for a description of these lock-up agreements.

Upon the expiration of the lock-up agreements described above, all of such shares will be eligible for resale in a public market, subject, in the case of shares held by our affiliates, to volume, manner of sale and other limitations under Rule 144.

In addition, pursuant to the Fifth Amended and Restated Investors’ Rights Agreement, dated as of March 26, 2021, by and among CAVA Group, Inc. and the other parties named therein (as amended, the “Investors’ Rights Agreement”), certain of our existing stockholders have the right, subject to certain conditions, to require us to
register the sale of their shares of our common stock under the Securities Act. See “Certain Relationships and Related Party Transactions—Investors’ Rights Agreement.” By exercising their registration rights and selling a large number of shares, such existing stockholders could cause the prevailing market price of our common stock to decline. Following completion of this offering, the shares covered by registration rights would represent approximately % of common stock outstanding (or % if the underwriters exercise their option to purchase additional shares in full). Registration of any of these outstanding shares of our common stock would result in such shares becoming freely tradable without compliance with Rule 144 upon effectiveness of the registration statement. See “Shares Eligible for Future Sale.”

We intend to file one or more registration statements on Form S-8 under the Securities Act to register shares of our common stock or securities convertible into or exchangeable for shares of our common stock issued pursuant to the 2015 Equity Incentive Plan, the 2023 Equity Incentive Plan, and the ESPP. Any such Form S-8 registration statements will automatically become effective upon filing. Accordingly, shares registered under such registration statements will be available for sale in the open market. We expect that the initial registration statement on Form S-8 will cover shares of common stock.

As restrictions on resale end, or if the existing stockholders exercise their registration rights, the market price of our shares of common stock could drop significantly if the holders of these restricted shares sell them or are perceived by the market as intending to sell them. These factors could also make it more difficult for us to raise additional funds through future offerings of our shares of common stock or other securities.

If securities analysts do not publish research or reports about our business or if they downgrade our stock or our sector, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that industry or financial analysts publish about us or our business. We do not control these analysts. Furthermore, if one or more of the analysts who do cover us downgrade our stock or our industry, or the stock of any of our competitors, or publish inaccurate or unfavorable research about our business, the price of our stock could decline. If one or more of these analysts ceases coverage of the Company or fails to publish reports on us regularly, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.

Anti-takeover provisions in our organizational documents and under Delaware law could delay or prevent a change of control.

Certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws may have an anti-takeover effect and may delay, defer, or prevent a merger, acquisition, tender offer, takeover attempt, or other change of control transaction that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders. These provisions will provide for, among other things:

• a classified board of directors, as a result of which our Board of Directors will be divided into three classes, with each class serving for staggered three-year terms;

• the ability of our Board of Directors to issue one or more series of preferred stock;

• advance notice requirements for nominations of directors by stockholders and for stockholders to include matters to be considered at our annual meetings;

• certain limitations on convening special stockholder meetings;

• the removal of directors only for cause and only upon the affirmative vote of the holders of at least 66\(^\frac{2}{3}\)\% of the shares of common stock entitled to vote generally in the election of directors; and

• the required approval of at least 66\(^\frac{2}{3}\)\% of the voting power of the outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class, to adopt, amend, or repeal certain provisions of our amended and restated certificate of incorporation.
Further, we are subject to Section 203 of the Delaware General Corporation Law ("DGCL"), which prohibits persons deemed to be “interested stockholders” from engaging in a “business combination” with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. This provision will make it more difficult for a person who would be an “interested stockholder” to effect various business combinations with the Company for a three-year period.

These anti-takeover provisions could make it more difficult for a third party to acquire us, even if the third party’s offer may be considered beneficial by many of our stockholders. These provisions also may have the effect of preventing changes in our Board of Directors and may make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests. As a result, our stockholders may be limited in their ability to obtain a premium for their shares. See “Description of Capital Stock.”

Our Board of Directors will be authorized to issue and designate shares of our preferred stock in additional series without stockholder approval.

Our amended and restated certificate of incorporation will authorize our Board of Directors, without the approval of our stockholders, to issue shares of our preferred stock, subject to limitations prescribed by applicable law, rules and regulations and the provisions of our amended and restated certificate of incorporation, as shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series and to fix the designation, powers, preferences and rights of the shares of each such series, and the qualifications, limitations, or restrictions thereof. The powers, preferences and rights of these additional series of preferred stock may be senior to or on parity with our common stock, which may reduce its value.

Our amended and restated certificate of incorporation will provide that the Court of Chancery of the State of Delaware (or if such court does not have jurisdiction, another state or the federal courts (as appropriate) located within the State of Delaware) will be the sole and exclusive forum for certain stockholder litigation matters, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees, or stockholders.

Our amended and restated certificate of incorporation will provide that unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or if such court does not have jurisdiction, another state or the federal courts (as appropriate) located within 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 behalf of the Company, (ii) action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, or other employee, or stockholder of the Company to the Company or our stockholders, (iii) action asserting a claim against the Company or any current or former director or officer of the Company arising pursuant to any provision of the DGCL, or 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 State of Delaware. Our amended and restated certificate of incorporation further will provide that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the federal securities laws of the United States, including any claims under the Securities Act and the Exchange Act of 1934, as amended (the “Exchange Act”). However, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce a duty or liability created by the Securities Act or the rules and regulations thereunder and accordingly, we cannot be certain that a court would enforce such provision. See “Description of Capital Stock—Exclusive Forum.”

Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our amended and restated certificate of incorporation, except our stockholders will not be deemed to have waived (and cannot waive) compliance with the federal securities laws and the rules and regulations thereunder. This choice of forum provision may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our
current or former directors, officers, other employees, or stockholders which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision contained 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 harm our business, results of operations, and financial condition.

*Our management may use the proceeds of this offering in ways with which you may disagree or that may not be profitable.*

Although we anticipate using the net proceeds from this offering as described under “Use of Proceeds,” we will have broad discretion as to the application of the net proceeds and could use them for purposes other than those contemplated by this offering. At this time, we have not specifically identified a large single use for which we intend to use the net proceeds and, accordingly, we are not able to allocate the net proceeds for specific uses due to a variety of factors. You may not agree with the manner in which our management chooses to allocate and use the net proceeds. Our management may use the proceeds for corporate purposes that may not increase our profitability or otherwise result in the creation of stockholder value. In addition, pending our use of the proceeds, we may invest the proceeds primarily in instruments that do not produce significant income or that may lose value.
Forward-Looking Statements
FORWARD-LOOKING STATEMENTS

This prospectus includes forward-looking statements that reflect our current views with respect to, among other things, our operations and financial performance. Forward-looking statements include all statements that are not historical facts. These forward-looking statements are included throughout this prospectus, including in the sections entitled “Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and “Business” and relate to matters such as our industry, business strategy, goals, and expectations concerning our market position, future operations, margins, profitability, capital expenditures, liquidity and capital resources, and other financial and operating information. We have used the words “anticipate,” “assume,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “future,” “will,” “seek,” “foreseeable,” the negative version of these words or similar terms and phrases to identify forward-looking statements in this prospectus.

The forward-looking statements contained in this prospectus are based on management’s current expectations and are not guarantees of future performance. The forward-looking statements are subject to various risks, uncertainties, assumptions, or changes in circumstances that are difficult to predict or quantify. Our expectations, beliefs, and projections are expressed in good faith, and we believe there is a reasonable basis for them. However, there can be no assurance that management’s expectations, beliefs, and projections will result or be achieved. Actual results may differ materially from these expectations due to changes in global, regional, or local economic, business, competitive, market, regulatory, and other factors, many of which are beyond our control. We believe that these factors include but are not limited to those described under “Risk Factors” and the following:

- our operation in a highly competitive industry;
- our ability to open new restaurants while managing our growth effectively and maintaining our culture;
- our historical growth may not be indicative of our future growth;
- our ability to successfully identify appropriate locations and develop and expand our operations in existing and new markets;
- the profitability of new restaurants, and any impact to sales at our existing locations;
- the impact of changes in guest perception of our brand;
- our ability to successfully market our restaurants and brand;
- the impact of food safety and food-borne illness concerns;
- our ability to maintain or increase prices;
- our ability to accurately predict guest trends and demand and successfully introduce new menu offerings and improve our existing menu offerings;
- the risks associated with leasing property;
- our ability to successfully expand our digital and delivery business;
- our ability to utilize, recognize, respond to, and effectively manage the immediacy of social media;
- our ability to achieve or maintain profitability in the future, especially if we continue to grow at an accelerated rate;
- our ability to realize the anticipated benefits from past and potential future acquisitions, investments or other strategic initiatives;
- our ability to manage our manufacturing and supply chain effectively;
the impact of shortages, delays, or interruptions in the delivery of food items and other products;

our ability to successfully optimize, operate, and manage our production facilities;

the risks associated with our reliance on third parties;

the impact of increases in food, commodity, energy, and other costs;

the impact of increases in labor costs, labor shortages, and our ability to identify, hire, train, motivate and retain the right Team Members;

our ability to attract, develop, and retain our management team and key Team Members;

the impact of any cybersecurity breaches;

the impact of failures, or interruptions in, or our inability to effectively scale and adapt, our information technology systems;

our ability to comply with, or changes in, the extensive laws or regulations requirements to which we are subject;

the impact of economic factors and guest behavior trends;

the impact of evolving rules and regulations with respect to ESG matters;

the impact of climate change and volatile adverse weather conditions; and

the other factors discussed under “Risk Factors.”

These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included in this prospectus. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, our actual results may vary in material respects from those projected in these forward-looking statements.

Any forward-looking statement made by us in this prospectus speaks only as of the date of this prospectus and are expressly qualified in their entirety by the cautionary statements included in this prospectus. 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 may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, investments, or other strategic transactions we may make. 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 any applicable securities laws.
Use of Proceeds
USE OF PROCEEDS

We estimate that we will receive net proceeds of approximately $\text{[blank]}$ million from the sale of \text{[blank]} shares of our common stock in this offering, assuming an initial public offering price of $\text{[blank]}$ per share, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters exercise their option to purchase additional shares in full, the net proceeds to us will be approximately $\text{[blank]}$ million.

We intend to use the net proceeds to us from this offering for new restaurant openings and for general corporate purposes.

An increase (decrease) of 1,000,000 shares from the expected number of shares of common stock to be sold by us in this offering, assuming no change in the assumed initial public offering price per share, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) our net proceeds from this offering by $\text{[blank]}$ million. A $1.00 increase (decrease) in the assumed initial public offering price of $\text{[blank]}$ per share, based on the mid-point of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by $\text{[blank]}$ million, assuming the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.
Dividend Policy
DIVIDEND POLICY

We currently expect to retain all future earnings for use in the operation and expansion of our business and have no current plans to pay dividends on our common stock. The declaration, amount and payment of any future dividends will be at the sole discretion of our Board of Directors, and will depend on, among other things, general and economic conditions, our results of operations and financial condition, our available cash and current and anticipated cash needs, capital requirements, contractual, legal, tax, and regulatory restrictions and implications on the payment of dividends by us to our stockholders or by our subsidiaries to us, including restrictions under our credit agreements and other indebtedness we may incur, and such other factors as our Board of Directors may deem relevant. If we elect to pay such dividends in the future, we may reduce or discontinue entirely the payment of such dividends at any time.
Capitalization
The following table sets forth our cash and cash equivalents and capitalization as of April 16, 2023:

- on an actual basis;
- on a pro forma basis after giving effect to the automatic conversion of shares of preferred stock into shares of our common stock at the consummation of this offering; and
- on a pro forma as adjusted basis after giving effect to (i) the automatic conversion of shares of preferred stock into shares of our common stock at the consummation of this offering, and (ii) the issuance and sale of shares of our common stock offered by us in this offering at an assumed initial public offering price of $\_\_\_ per share, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, and the application of the net proceeds to us therefrom as described under “Use of Proceeds.”

You should read this table in conjunction with the information contained in “Use of Proceeds,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Description of Certain Indebtedness” as well as our financial statements included elsewhere in this prospectus.

### CAPITALIZATION

<table>
<thead>
<tr>
<th>($ in thousands, other than share and par value)</th>
<th>As of April 16, 2023</th>
<th>Actual</th>
<th>Pro Forma</th>
<th>Pro Forma As Adjusted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$22,716</td>
<td>$22,716</td>
<td>$22,716</td>
<td>$22,716</td>
</tr>
<tr>
<td>Debt:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit Facility(^{(2)})</td>
<td>$</td>
<td>—</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Preferred stock, $0.0001 par value, 37,291,370 shares authorized, actual; 31,734,518 shares issued and outstanding, no shares issued and outstanding, as adjusted</td>
<td>$662,308</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Stockholders’ equity:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common stock, $0.0001 par value per share, 50,000,000 shares authorized, actual; 567,745 shares issued and outstanding, as adjusted; shares issued and outstanding, as adjusted</td>
<td>(7,987)</td>
<td>(7,987)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treasury stock, at cost; 343,500 shares</td>
<td>(463,084)</td>
<td>(463,084)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>20,030</td>
<td>20,030</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(451,041)</td>
<td>(451,041)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Total stockholders’ equity</td>
<td>$661,857</td>
<td>$</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{(1)}\) To the extent we change the number of shares of common stock sold by us in this offering from the shares we expect to sell or we change the initial public offering price from the assumed initial public offering price of $\_\_\_ per share, the mid-point of the estimated price range set forth on the cover page of this prospectus, or any combination of these events occurs, the net proceeds to us from this offering and each of additional paid-in capital, total stockholders’ equity and total capitalization may increase or decrease. A $1.00 increase (decrease) in the assumed initial public offering price of $\_\_\_ per share, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds that we receive in this offering and each of additional paid-in capital, total stockholders’ equity and total capitalization by approximately $\_\_\_ \_\_, assuming the number of shares offered by us remains the same as set forth on the cover page of this prospectus and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of 1,000,000 shares in the expected number of shares to be sold by us in this offering, assuming no change in the assumed initial public offering price of $\_\_\_ per share, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) our net proceeds from this offering and each of additional paid-in capital, total stockholders’ equity and total capitalization by approximately $\_\_\_ \_\_ after deducting the underwriting discount and commissions and estimated offering expenses payable by us.

\(^{(2)}\) For a further description of our Credit Facility, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources” and “Description of Certain Indebtedness.”
Dilution
DILUTION

If you invest in our common stock in this offering, your ownership interest in us will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the as adjusted net tangible book value (deficit) per share of our common stock after giving effect to this offering. Dilution results from the fact that the per share offering price of the common stock is substantially in excess of the book value per share attributable to the shares of our common stock held by existing stockholders.

Our net tangible book value (deficit) as of April 16, 2023, was approximately $\text{[value]}$ million, or $\text{[value]}$ per share of our common stock. We calculate net tangible book value (deficit) per share by taking the amount of our total tangible assets, reduced by the amount of our total liabilities and preferred stock, and then dividing that amount by the total number of shares of common stock outstanding.

After giving effect to the automatic conversion of $\text{[number]}$ shares of preferred stock into $\text{[number]}$ shares of common stock at the consummation of this offering, which will result in the issuance of $\text{[number]}$ shares of common stock immediately prior to the consummation of this offering, our net tangible book value would have been $\text{[value]}$ million, or $\text{[value]}$ per share.

After giving further effect to (i) our sale of $\text{[number]}$ shares of common stock in this offering at an assumed initial public offering price of $\text{[value]}$ per share, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, and (ii) the application of the net proceeds to us from this offering as set forth under “Use of Proceeds,” our as adjusted net tangible book value (deficit) as of April 16, 2023 would have been $\text{[value]}$ million, or $\text{[value]}$ per share of our common stock. This amount represents an immediate increase in net tangible book value (or a decrease in net tangible book deficit) of $\text{[value]}$ per share to existing stockholders and an immediate and substantial dilution in net tangible book value (deficit) of $\text{[value]}$ per share to new investors purchasing shares of common stock in this offering at the assumed initial public offering price.

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

<table>
<thead>
<tr>
<th><strong>Assumed initial public offering price per share of our common stock</strong></th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net tangible book value (deficit) per share of our common stock as of April 16, 2023</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Increase in net tangible book value per share attributable to conversion of outstanding preferred stock</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Increase in tangible book value per share attributable to new investors purchasing shares of our common stock in this offering</strong></td>
<td></td>
</tr>
<tr>
<td><strong>As adjusted net tangible book value per share of our common stock after giving effect to this offering</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Dilution per share of our common stock to new investors in this offering</strong></td>
<td>$</td>
</tr>
</tbody>
</table>

Dilution is determined by subtracting as adjusted net tangible book value (deficit) per share of common stock after this offering from the initial public offering price per share of common stock.

If the underwriters exercise their option to purchase additional shares of our common stock in full, the as adjusted net tangible book value (deficit) per share after giving effect to this offering and the use of proceeds therefrom would be $\text{[value]}$ per share. This represents an increase in as adjusted net tangible book value (or a decrease in as adjusted net tangible book deficit) of $\text{[value]}$ per share to the existing stockholders and results in dilution in as adjusted net tangible book value (deficit) of $\text{[value]}$ per share to new investors.

Assuming the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, remains the same, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, a $\text{[value]}$ increase (decrease) in the assumed initial public offering price of $\text{[value]}$ per share, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) the tangible book value attributable to new investors purchasing shares in this offering by $\text{[value]}$ per share.
share and the dilution to new investors by $\text{per share} and increase (decrease) the as adjusted net tangible book value (deficit) per share after giving effect to this offering by $\text{per share}.

The following table summarizes the differences between the number of shares purchased from us, the total consideration paid to us, and the average price per share paid by existing stockholders and by new investors. As the table shows, new investors purchasing shares of our common stock in this offering will pay an average price per share substantially higher than our existing stockholders paid. The table below assumes an initial public offering price of $\text{per share}, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, for shares purchased in this offering and excludes underwriting discounts and commissions and estimated offering expenses payable by us:

<table>
<thead>
<tr>
<th>Shares Purchased</th>
<th>Total Consideration</th>
<th>Average Price Per Share</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
</tr>
<tr>
<td>Existing stockholders</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>New investors</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

If the underwriters were to exercise their option to purchase additional shares of our common stock from us in full, the percentage of shares of our common stock held by existing stockholders who are directors, officers or affiliated persons as of April 16, 2023 would be % and the percentage of shares of our common stock held by new investors would be %.

Assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, a $1.00 increase (decrease) in the assumed initial public offering price of $\text{per share}, which is the mid-point of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) total consideration paid by new investors, total consideration paid by all stockholders and average price per share paid by all stockholders by $\text{million}, $\text{million} and $\text{per share}, respectively.

To the extent that we grant options to our employees in the future and those options are exercised or other issuances of common stock are made, there will be further dilution to new investors.
Management’s Discussion and Analysis
MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION
AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with “Summary—Summary Historical Financial and Other Data” and the accompanying financial statements included elsewhere in this prospectus. In addition to historical information, this discussion and analysis contains forward-looking statements based on current expectations that involve risks, uncertainties, and assumptions, such as our plans, objectives, expectations, and intentions. Our actual results may differ materially from those expressed or implied in the forward-looking statements as a result of various factors, including those described under the sections entitled “Risk Factors” and “Forward-Looking Statements.”

Overview

CAVA is the category-defining Mediterranean fast-casual restaurant brand, bringing together healthful food and bold, satisfying flavors at scale. Our brand and our opportunity transcend the Mediterranean category to compete in the large and growing limited-service restaurant sector as well as the health and wellness food category. CAVA serves guests across gender lines, age groups, and income levels and benefits from generational tailwinds created by consumer demand for healthy living and a demographic shift towards greater ethnic diversity. We meet consumers’ desires to engage with convenient, authentic, purpose-driven brands that view food as a source of self-expression. The broad appeal of our food combined with these favorable industry trends drive our vast opportunity for continued growth.

Our co-founders first opened CAVA Mezze, a full-service restaurant, in 2006. Encouraged by the popularity of CAVA Mezze, they started selling dips and spreads in grocery stores in 2008. Taking everything our co-founders learned from CAVA Mezze, we introduced our fast-casual concept in 2011, leveraging the format’s potential to bring high-quality Mediterranean food to a large market, with the speed that guests increasingly desired. We saw that our cuisine and brand resonated with consumers and we rapidly expanded our presence, growing from four restaurants as of the end of 2012 to 72 restaurants by the end of 2018. In 2018, we saw an attractive opportunity to accelerate our growth and acquired Zoes Kitchen, which provided us with significant scale and access to a large portfolio of quality real estate in target markets. As of April 16, 2023, we owned and operated 263 CAVA restaurants in 22 states and Washington, D.C., having successfully converted 145 Zoes Kitchen locations into CAVA restaurants and opened 51 new CAVA restaurants since our acquisition of Zoes Kitchen. We anticipate having 34 to 44 Net New CAVA Restaurant Openings in the remainder of fiscal 2023, which includes opening the remaining 8 conversions of Zoes Kitchen locations that we expect to complete by the fall of 2023.
Below are some of the most important milestones in our journey:

- **2006**: Co-founders open their first restaurant, CAVA Meze
- **2008**: Dips and spreads begin to be sold in local grocery stores
- **2010**: Brett officially joins as partner, and the group co-founds CAVA’s fast-casual concept
- **2011**: CAVA opens first fast-casual restaurant
- **2013**: CAVA Rewards launches
- **2016**: Nationwide distribution of CPG
- **2019**: Laying the foundation for conversions of Zoes Kitchen
- **2021-2022**: Drive organic growth and execute on the conversion path
- **2022**: Second production facility breaks ground in Virginia

Note: The bars in the chart above represent the number of CAVA Restaurants. The end of each of fiscal 2019, fiscal 2020, fiscal 2021, fiscal 2022, and the sixteen weeks ended April 16, 2023 include 1, 8, 62, 125, and 145 CAVA restaurants, respectively, that were converted from Zoes Kitchen locations as of such date.

To efficiently produce our food at scale, achieve consistency across all locations and enable our restaurants to focus on all other aspects of food preparation, we opened our first production facility in 2016. In October 2022, we broke ground at our state-of-the-art production facility and expect to commence operations at this second facility by the first fiscal quarter of 2024. Our new production facility will add further scale and consistency to fuel our rapid growth, while further simplifying our in-restaurant operations. We expect that our production facilities will support at least 750 restaurants, as well as our CPG business, with the potential to add additional capacity over time.

We believe that we are still in the early innings of reaching our full potential and intend to increase density within our existing markets and continue to enter and scale new markets. In fiscal 2022, we achieved strong AUV of at least $2.0 million across geographies and formats in suburban, urban, and specialty locations. Our proven portability and powerful unit economics, combined with the infrastructure that we have built for scale, position us well for the next stage of our growth.

For fiscal 2022, we generated $564.1 million of total revenue, a 12.8% increase from $500.1 million of total revenue for fiscal 2021. For fiscal 2022, CAVA Revenue was $448.6 million, a 61.2% increase from $278.2 million of CAVA Revenue for fiscal 2021. The increase in CAVA Revenue was primarily due to 132 Net New CAVA Restaurant Openings in fiscal 2022 and fiscal 2021, of which 117 were conversions of Zoes Kitchen locations that occurred in fiscal 2022 and fiscal 2021, which accounted for $118.3 million of the increase. The increase in CAVA Revenue was also driven by CAVA Same Restaurant Sales Growth of 14.2% for fiscal 2022. For fiscal 2022, we had $59.0 million of net loss, compared to $37.4 million of net loss for fiscal 2021. In addition, for fiscal 2022, we generated $12.6 million of Adjusted EBITDA, compared to $14.6 million of Adjusted EBITDA for fiscal 2021, the decrease of which was primarily due to higher pre-opening costs as we increased Net New CAVA Restaurant Openings in fiscal 2022.
For the first quarter of 2023, we generated $203.1 million of total revenue, a 27.7% increase from $159.0 million of total revenue for the first quarter of 2022. For the first quarter of 2023, CAVA Revenue was $196.8 million, a 75.7% increase from $112.0 million of CAVA Revenue for the first quarter of 2022. The increase in CAVA Revenue was primarily due to a $52.0 million increase from the 99 Net New CAVA Restaurant Openings during or subsequent to the sixteen weeks ended April 17, 2022, of which the significant majority was attributable to the 83 CAVA restaurants that were converted from Zoes Kitchen locations during or subsequent to the sixteen weeks ended April 17, 2022. The increase in CAVA Revenue was also driven by CAVA Same Restaurant Sales Growth of 28.4% for the first quarter of 2023.

For the first quarter of 2023, we had $2.1 million of net loss, compared to $20.0 million of net loss for the first quarter of 2022. In addition, for the first quarter of 2023, we generated $16.7 million of Adjusted EBITDA, compared to $(1.6) million of Adjusted EBITDA for the first quarter of 2022. The increase in Adjusted EBITDA was primarily driven by CAVA Same Restaurant Sales Growth, improved CAVA Restaurant-Level Profit Margin, and the continued conversions of Zoes Kitchen locations, which have achieved significantly stronger post-conversion financial results as compared to pre-conversion results, which was partially offset by increased general and administrative expenses and pre-opening costs due to increased Net New CAVA Restaurant Openings in the first quarter of 2023 compared to the first quarter of 2022. We have achieved very strong results of operations for the first quarter of 2023 and expect to continue to drive the growth of our business through the expansion of our base of CAVA Restaurants and CAVA Same Restaurant Sales Growth. Due to our very strong business performance in the first quarter of 2023, we expect that our growth in future quarters may moderate in comparison to the first quarter of 2023. For a reconciliation of Adjusted EBITDA to net loss, see “—Non-GAAP Financial Measures” below.

Segments

We have two reportable segments: CAVA and Zoes Kitchen. CAVA reflects the financial results of all CAVA restaurants we operate. Zoes Kitchen reflects the financial results of all Zoes Kitchen locations we operate. As of April 16, 2023, we operated 263 CAVA restaurants. We are currently in the process of converting the remaining 8 Zoes Kitchen locations, which we expect to be complete by the fall of 2023. As of March 2, 2023, we no longer operate any Zoes Kitchen locations. Our CPG operations are included in Other.

Key Factors Affecting Our Performance

We believe CAVA is well-positioned to benefit from evolving consumer trends focused on health and wellness demographic trends towards greater ethnic diversity, as well as the increased emphasis on combined quality and convenience by modern consumers. These favorable trends, combined with the broad appeal of our food, provide us with a significant opportunity to drive the growth of our business.

Our future performance will also be driven by our ability to:

• **Grow our Restaurant Base** - We have rapidly grown our base of CAVA restaurants in the last few years, expanding from 22 restaurants as of the end of 2016 to 263 as of April 16, 2023. While this rapid expansion was aided by our Zoes Kitchen acquisition, which provided us with access to a large portfolio of quality real estate and allowed us to convert 145 Zoes Kitchen locations into CAVA restaurants, as of April 16, 2023, the future growth of the number of our CAVA restaurant base will be primarily driven by new CAVA restaurant openings. We currently have a strong new restaurant pipeline with 100 new sites for which we have signed letters of intent as of April 16, 2023, which is well in excess of our planned new restaurant openings in 2023 and 2024.

We have demonstrated the ability to drive strong unit economics in conjunction with rapid growth of the number of CAVA Restaurants. In fiscal 2022, we achieved CAVA AUV of $2.4 million with CAVA Restaurant-Level Profit Margin of 20.3%. We have achieved these strong unit economics for CAVA restaurants across geographies and market types, whether for new CAVA restaurant openings or CAVA restaurants converted from Zoes Kitchen locations. For example, the 54 CAVA restaurants converted in fiscal 2021 from Zoes Kitchen locations achieved post-conversion CAVA AUV of $2.0 million during fiscal 2022, compared to pre-conversion AUV of $1.4 million during fiscal 2019.
We believe there is an opportunity to increase density in our existing markets with continued AUV growth. In addition, we expect the 59 and 73 restaurants that we opened in fiscal 2021 and 2022, respectively, will continue to grow and generate higher AUV as they mature, which is consistent with our historical results. When a new CAVA restaurant is opened, we generally observe significant organic sales growth over time, driven by the excitement around newness of our brand and sustained by the broad appeal of our offering.

Furthermore, we aim to enter and successfully scale new markets, driven by our brand strength, well-developed pipeline of talent across key functional and operating areas, corporate infrastructure, new restaurant opening playbook, and attractive unit economic model. We plan to target year 2 AUV of $2.3 million, year 2 CAVA Restaurant-Level Profit Margins of 20%, net capital expenditures (representing capital expenditures incurred to open a restaurant, net of tenant allowances) of $1.3 million and year 2 Cash on Cash Returns of 35%. Our target new unit economics are substantiated by our strong track record of AUV growth and our aggregate Cash on Cash Returns of approximately 40%, which is calculated on a combined basis for all CAVA restaurants opened prior to fiscal 2018 to exclude the impact of the COVID-19 pandemic.

- **Drive Culinary Innovation** - We focus on menu innovation to continue offering our guests vibrant Mediterranean flavors and healthful food, which builds excitement around our menu and attracts more traffic to our restaurants and increases demand through our digital channels. For example, the introduction of our curated pita sandwich allowed us to capture guest demand for sandwiches and has doubled the incidence rate of our pitas.

- **Leverage our Digitally Enabled Multi-Channel Offering** - We leverage our interconnected physical and digital ecosystem to continue to increase convenience and access to our brand and drive frequency. We expect to introduce new and improved formats and convenience channels tailored to our guest preferences, continue to improve and personalize ways for guests to engage with CAVA, enhance our loyalty offering, broaden our catering program, and grow our CPG business. Digital orders have a 27% higher average guest check compared to in-restaurant orders.

- **Increase Brand Awareness** - We focus on creating, capturing, and retaining new demand by increasing our brand awareness while also increasing our value proposition to our existing guests. We aim to continue to increase our brand awareness through opening new CAVA restaurants, as well as continued local community engagement, brand collaborations with genuine CAVA fans, growing our social community and leveraging our CPG offerings. We believe that an increase in our brand awareness will drive increased guest traffic.

Our business will also be impacted by our ability to successfully navigate challenges and uncertainties, such as:

- **Macroeconomic Conditions and Inflationary Environment** - We demonstrated our ability to navigate adverse macroeconomic conditions and an inflationary environment throughout fiscal 2021 and fiscal 2022. In those two years, we instituted proactive initiatives to moderate the effects of rising inflation and commodity costs while gaining scale. Our initiatives created efficiencies in our in-bound logistics and other supply chain costs that offset the mid- to high-single digit inflation we experienced related to food and packaging costs.

In addition, consistent with the CAVA culture of investing in our Team Members, we implemented a $13 per hour starting wage across the country in 2016, which was higher than minimum wage requirements at that time. As a result, this reduced our need for significant wage increases during the past few years compared to many others in our industry. These factors allowed us to only increase our in-restaurant menu price by less than 5% in fiscal 2022, while still expanding CAVA Restaurant-Level Profit Margin.

- **Hybrid and Remote Work Arrangements** - With the increase in remote and hybrid working arrangements, restaurants and food services catering to office workers or located within business districts may be adversely affected. Thus far, we have not been significantly impacted by these trends, due in part to our mix of restaurant locations, with a 82% suburban, 14% urban, and 4% specialty location mix as of April 16, 2023, as well as our balanced daypart split, which was 55% / 45% between lunch and dinner for fiscal
2022. In addition, while we have restaurants located within business districts, many of our urban locations are not substantially dependent on the office crowd. Our ability to successfully weather these potential challenges further demonstrates our differentiated, broad guest appeal.

**Fiscal Calendar and Seasonality**

We operate on a 52-week or 53-week fiscal year that ends on the last Sunday of the calendar year. In a 52-week fiscal year, the first fiscal quarter contains sixteen weeks and the second, third and fourth fiscal quarters each contain twelve weeks. In a 53-week fiscal year, the first fiscal quarter contains sixteen weeks, the second and third fiscal quarters each contain twelve weeks, and the fourth fiscal quarter contains thirteen weeks.

Historically, seasonal factors have caused our revenue to fluctuate from quarter to quarter. Our revenue per restaurant is typically lower in the first and fourth fiscal quarters due to reduced traffic as a result of colder temperatures and the holiday season.

As a result of these factors and the differences among our fiscal quarters, our quarterly operating results and comparable restaurant sales, as well as our key performance measures, may fluctuate significantly from quarter to quarter and our results for any one quarter are not indicative of any other quarter.

**Key Performance Measures**

In assessing the performance of our business, in addition to considering a variety of measures in accordance with GAAP, our management team also considers a variety of non-GAAP measures. The key non-GAAP measures used by our management for determining how our business is performing are: CAVA Revenue, CAVA Same Restaurant Sales Growth, CAVA AUV, CAVA Restaurant-Level Profit, CAVA Restaurant-Level Profit Margin, CAVA Restaurants, Net New CAVA Restaurant Openings, CAVA Digital Revenue Mix, Adjusted EBITDA, and Adjusted EBITDA Margin.

We believe that these non-GAAP financial measures provide useful information to users of our financial statements in understanding and evaluating our results of operations in the same manner as our management team. The presentation of non-GAAP financial measures is not intended to be considered in isolation or as a substitute for, or superior to, the financial information prepared and presented in accordance with GAAP. See “—Non-GAAP Financial Measures” below.

The following table sets forth our key performance measures for the periods presented:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>Sixteen Weeks Ended</th>
<th>Fiscal</th>
<th>Change</th>
<th>2022</th>
<th>2021</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CAVA Revenue</strong></td>
<td>$196,761</td>
<td>$112,006</td>
<td>$84,755</td>
<td>$448,594</td>
<td>$278,219</td>
<td>$170,375</td>
</tr>
<tr>
<td><strong>CAVA Same Restaurant Sales Growth</strong></td>
<td>28.4%</td>
<td>19.9%</td>
<td>8.5%</td>
<td>14.2%</td>
<td>45.2%</td>
<td>(31.0)%</td>
</tr>
<tr>
<td><strong>CAVA AUV</strong></td>
<td>$2,547</td>
<td>$2,375</td>
<td>$172</td>
<td>$2,398</td>
<td>$2,305</td>
<td>$93</td>
</tr>
<tr>
<td><strong>CAVA Restaurant-Level Profit</strong></td>
<td>$49,983</td>
<td>$19,592</td>
<td>$30,391</td>
<td>$91,093</td>
<td>$50,884</td>
<td>$40,209</td>
</tr>
<tr>
<td><strong>CAVA Restaurant-Level Profit Margin</strong></td>
<td>25.4%</td>
<td>17.5%</td>
<td>7.9%</td>
<td>20.3%</td>
<td>18.3%</td>
<td>2.0%</td>
</tr>
<tr>
<td><strong>CAVA Restaurants</strong></td>
<td>263</td>
<td>177</td>
<td>86</td>
<td>237</td>
<td>164</td>
<td>73</td>
</tr>
<tr>
<td><strong>Net New CAVA Restaurant Openings</strong></td>
<td>26</td>
<td>13</td>
<td>13</td>
<td>73</td>
<td>59</td>
<td>14</td>
</tr>
<tr>
<td><strong>CAVA Digital Revenue Mix</strong></td>
<td>36.6%</td>
<td>35.3%</td>
<td>1.3%</td>
<td>34.5%</td>
<td>37.4%</td>
<td>(2.9)%</td>
</tr>
<tr>
<td><strong>Net Loss</strong></td>
<td>$(2,141)</td>
<td>$(20,018)</td>
<td>$17,877</td>
<td>$(58,987)</td>
<td>$(37,391)</td>
<td>$(21,596)</td>
</tr>
<tr>
<td><strong>Adjusted EBITDA</strong></td>
<td>$16,746</td>
<td>$(1,576)</td>
<td>$18,322</td>
<td>$12,615</td>
<td>$14,642</td>
<td>$(2,027)</td>
</tr>
<tr>
<td><strong>Net Loss Margin</strong></td>
<td>(1.1)%</td>
<td>(12.6)%</td>
<td>11.5%</td>
<td>(10.5)%</td>
<td>(7.5)%</td>
<td>(3.0)%</td>
</tr>
<tr>
<td><strong>Adjusted EBITDA Margin</strong></td>
<td>8.2%</td>
<td>(1.0)%</td>
<td>9.2%</td>
<td>2.2%</td>
<td>2.9%</td>
<td>(0.7)%</td>
</tr>
</tbody>
</table>
CAVA Same Restaurant Sales Growth was materially impacted in fiscal 2021 due to the temporary impacts of the COVID-19 pandemic on CAVA Revenue during fiscal 2020. CAVA Same Restaurant Sales Growth for fiscal 2021, as compared to fiscal 2019, would have been 23.6%. For purposes of calculating CAVA Same Restaurant Sales Growth compared to fiscal 2019, we only include CAVA restaurants that were open as of the beginning or during fiscal 2019.

For purposes of calculating CAVA AUV for the sixteen weeks ended April 16, 2023 and April 17, 2022, the applicable measurement period is the entire trailing thirteen periods ended April 16, 2023 and April 17, 2022, respectively.

As of the end of the specified period.

See "—Non-GAAP Financial Measures" below for a discussion of Adjusted EBITDA and Adjusted EBITDA Margin and a reconciliation of Adjusted EBITDA to net loss, the most directly comparable GAAP measure to Adjusted EBITDA. Adjusted EBITDA Margin is Adjusted EBITDA as a percentage of revenue.

CAVA Revenue

CAVA Revenue represents all revenue attributable to CAVA restaurants in the specified period, excluding one restaurant operating under a license agreement. We use CAVA Revenue to evaluate and track the aggregate sales of food and beverages in CAVA restaurants. Several factors affect CAVA Revenue in any given period, including the number of CAVA restaurants in operation, guest traffic, menu prices, and product mix.

CAVA Same Restaurant Sales Growth

CAVA Same Restaurant Sales Growth is defined as the period-over-period sales comparison for CAVA restaurants that have been open for 365 days or longer (including converted Zoes Kitchen locations that have been open for 365 days or longer after the completion of the conversion to a CAVA restaurant). We use CAVA Same Restaurant Sales Growth to assess the performance of existing CAVA restaurants that have been open for 365 days or longer, as the impact of new restaurant openings is excluded.

As of April 16, 2023 and April 17, 2022, there were 176 CAVA restaurants (including 75 CAVA restaurants converted from a Zoes Kitchen location prior to April 17, 2022) and 111 CAVA restaurants (including 13 CAVA restaurants converted from a Zoes Kitchen location prior to April 18, 2021), respectively, in such restaurant base. As of December 25, 2022 and December 26, 2021, there were 163 CAVA restaurants (including 62 CAVA restaurants converted from a Zoes Kitchen location prior to December 25, 2021) and 104 CAVA restaurants (including 8 CAVA restaurants converted from a Zoes Kitchen location prior to December 27, 2020), respectively, in such restaurant base. CAVA Same Restaurant Sales Growth includes CAVA digital kitchen sales attributable to locations in the restaurant base.

CAVA Average Unit Volume (CAVA AUV)

CAVA AUV represents total revenue of operating CAVA Restaurants that were open for the entire trailing thirteen periods and includes sales from CAVA digital kitchens for such period, divided by the number of operating CAVA Restaurants that were open for the entire trailing thirteen periods. We use CAVA AUV to assess and understand changes in guest spending patterns and the overall performance of operating restaurants opened for the entire period. CAVA AUV is impacted by changes in guest traffic, menu prices and product mix. We gather daily sales data and regularly analyze our guest traffic and the mix of menu items sold to aid in developing menu pricing, food offerings, and promotional strategies designed to grow CAVA AUV. CAVA AUV may also be impacted by the number of newer CAVA restaurants that are included in calculating CAVA AUV, as such restaurants typically achieve lower sales when they first open, which then increases as they mature.

CAVA Restaurant-Level Profit and CAVA Restaurant-Level Profit Margin

CAVA Restaurant-Level Profit represents CAVA Revenue in the specified period less food, beverage, and packaging, labor, occupancy, and other operating expenses, excluding depreciation and amortization, in the period. CAVA Restaurant-Level Profit excludes pre-opening costs. We use CAVA Restaurant-Level Profit as a segment measure of profit and loss.

CAVA Restaurant-Level Profit Margin represents CAVA Restaurant-Level Profit as a percentage of CAVA Revenue. We use CAVA Restaurant-Level Profit and CAVA Restaurant-Level Profit Margin as measures of CAVA restaurants’ profitability.
CAVA Restaurant-Level Profit and CAVA Restaurant-Level Profit Margin are not indicative of the overall results of the Company and do not accrue directly to the benefit of our shareholders, as corporate-level expenses are excluded from such measures.

**CAVA Restaurants and Net New CAVA Restaurant Openings**

We define CAVA Restaurants to include all CAVA restaurants, including converted Zoes Kitchen locations and CAVA hybrid kitchens, that are open as of the end of the specified period. CAVA Restaurants exclude restaurants operating under license agreements and CAVA digital kitchens. As of April 16, 2023, we had one CAVA restaurant operating under a license agreement and ten CAVA digital kitchens.

We define Net New CAVA Restaurant Openings as new CAVA restaurant openings (including CAVA restaurants converted from a Zoes Kitchen location) during a specified reporting period, net of any permanent CAVA restaurant closures during the same period.

We use CAVA Restaurants and Net New CAVA Restaurant Openings to assess and track the growth of our base of CAVA restaurants as it generally positively correlates to the growth of our business and CAVA revenue.

The following table details CAVA restaurant unit data for the periods indicated.

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Fiscal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td><strong>CAVA Restaurants</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beginning of period</td>
<td>237</td>
<td>164</td>
</tr>
<tr>
<td>New CAVA restaurant openings, including converted Zoes Kitchen locations</td>
<td>27</td>
<td>13</td>
</tr>
<tr>
<td>Re-opening from temporary closure due to COVID-19</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Permanent closure</td>
<td>(1)</td>
<td>—</td>
</tr>
<tr>
<td><strong>End of period</strong></td>
<td>263</td>
<td>177</td>
</tr>
</tbody>
</table>

**CAVA Digital Revenue Mix**

CAVA Digital Revenue Mix represents the portion of CAVA revenue related to digital orders as a percentage of total CAVA revenue. Digital orders include orders fulfilled through third-party marketplace and native delivery and digital order pick-up. We use CAVA Digital Revenue Mix to evaluate and track the effectiveness of our coordinated digital infrastructure and network of delivery partners. We charge increased prices for delivery orders to account for the delivery fees and commissions payable by us to our third-party delivery partners and therefore are generally agnostic between in-restaurant and digital sales, as it relates to profitability.

**Adjusted EBITDA and Adjusted EBITDA Margin**

Adjusted EBITDA is net income (loss) adjusted to exclude interest expense (income), net, provision for (benefit from) income taxes, and depreciation and amortization, further adjusted to exclude equity-based compensation, other income, net, impairment and asset disposal costs, and restructuring and other costs. Adjusted EBITDA Margin is Adjusted EBITDA as a percentage of revenue. We use Adjusted EBITDA and Adjusted EBITDA Margin to supplement GAAP measures of performance in the evaluation of the effectiveness of our business strategies, to make budgeting decisions, and to compare our performance against that of other peer companies using similar measures. See “—Non-GAAP Financial Measures” below for a reconciliation of Adjusted EBITDA to net loss.

**Components of Results of Operations**

Revenue includes sales of food and beverage in our owned CAVA and Zoes Kitchen locations and sales of consumer-packaged goods, net of promotional allowances. CAVA restaurants generally operate at higher revenue levels than the predecessor Zoes Kitchen locations prior to conversion.
**Food, beverage, and packaging** consists primarily of food, beverage, and packaging costs, including manufacturing costs and costs associated with our production facilities. The components of food, beverage, and packaging are variable in nature, increase as sales volumes increase and are influenced by sales mix, commodity costs, and inflation. As a percentage of CAVA food, beverage, and packaging in fiscal 2022, protein, produce, and grocery made up 26%, 24% and 23%, respectively. The other 27% includes our dips and spreads, beverages, packaging, and other miscellaneous items.

**Labor** includes all restaurant-level management and hourly labor costs, including salaries, wages, benefits, bonuses, payroll taxes, and other indirect labor costs. Factors that influence labor costs include the minimum wage in the jurisdictions in which we operate, payroll tax legislation, inflation, the strength of the labor market for hourly Team Members, benefit costs, health care costs, and the number, size, and location of our restaurants. As we open new restaurants, we typically incur higher labor for six to eight months following the initial opening of such restaurant due to increased training costs. We expect labor to increase in the aggregate as we continue to open new restaurants.

**Occupancy** consists of restaurant-level occupancy including rent, common area expenses, real estate, and other taxes, and disposal fees. Occupancy excludes expenses associated with unopened restaurants, which are recorded in pre-opening costs, expenses associated with closed restaurants, which are recorded in restructuring costs, and expenses related to support centers, which are recorded in general and administrative expenses. Occupancy varies from location to location and are impacted by macroeconomic conditions, including inflation. We expect occupancy to increase in the aggregate as we continue to open new restaurants but to decrease as a percentage of revenue in the long-term as we continue to leverage higher CAVA Same Restaurant Sales Growth.

**Other operating expenses** include all other restaurant-level operating expenses, such as kitchen supplies, utilities, repairs and maintenance, travel costs, credit card and bank fees, recruiting, third-party delivery service fees, marketing expenses, and costs associated with our distribution network.

**General and administrative expenses** include expenses associated with our corporate function that supports the development and operation of restaurants, including compensation and benefits, travel expenses, equity-based compensation, legal and professional fees, technology fees and rent, and other costs related to our support centers. We expect general and administrative expenses to increase in the aggregate as we continue to expand our business but to decrease as a percentage of revenue in the long-term as our business grows.

**Depreciation and amortization** consist of depreciation of fixed assets including all equipment and leasehold improvements, and amortization of intangible assets such as trademarks.

**Restructuring and other costs** consist mainly of expenses incurred in connection with closed Zoes Kitchen locations, public company readiness costs, and costs related to our collaboration center relocation.

**Pre-opening costs** consist of expenses incurred prior to opening a new restaurant (including a new restaurant that is converted from a Zoes Kitchen location) and are made up primarily of manager salaries, relocation costs, supplies, recruiting expenses, payroll and training costs, and travel costs. Pre-opening costs also include occupancy costs recorded during the period between the date of possession and the date we begin operations at a location. Pre-opening costs are expensed as incurred.

**Impairment and asset disposal costs** consist of losses recognized on the write-down of the carrying value of property and equipment, net and operating lease assets including the loss on disposal of assets primarily related to permanently closed restaurants, and restaurant conversions.

**Interest expense, net** includes cash and non-cash charges related to our Credit Facility, including the amortization of debt issuance costs, and interest income from our short-term investments.

**Other income, net** primarily consists of amounts received from forgiveness of PPP Loans.

**Provision for (benefit from) income taxes** represent federal, state and local, current, and deferred income tax expense.
Results of Operations

Our results of operations, on a consolidated basis and by segments, for the sixteen weeks ended April 16, 2023 and April 17, 2022 and for fiscal 2022 and fiscal 2021 are set forth below. We present our segment results before our consolidated results as we believe that our CAVA segment is more useful and meaningful in assessing the performance of our business, which is mainly driven by our CAVA segment as we continue to convert Zoes Kitchen locations into CAVA restaurants. As of March 2, 2023, we no longer operate any Zoes Kitchen locations. We are currently in the process of converting the remaining 8 Zoes Kitchen locations, which we expect to complete by the fall of 2023. As a result, we have limited our discussion of the Zoes Kitchen segment. In addition, because our consolidated results of operations include the results of our Zoes Kitchen segment, we believe that our consolidated results of operations are less indicative of our performance as compared to our CAVA segment.

Comparison of the sixteen weeks ended April 16, 2023 and April 17, 2022

The following table summarizes our segment results for the sixteen weeks ended April 16, 2023 and April 17, 2022:

<table>
<thead>
<tr>
<th>($ in thousands)</th>
<th>Sixteen Weeks Ended</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Revenue</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>$196,761</td>
<td>$112,006</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>3,867</td>
<td>44,741</td>
</tr>
<tr>
<td>Other</td>
<td>2,455</td>
<td>2,264</td>
</tr>
<tr>
<td>Total revenue</td>
<td>203,083</td>
<td>159,011</td>
</tr>
<tr>
<td>Restaurant-Level operating expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>146,778</td>
<td>92,414</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>4,044</td>
<td>42,632</td>
</tr>
<tr>
<td>Other</td>
<td>1,697</td>
<td>1,821</td>
</tr>
<tr>
<td>Total Restaurant-Level operating expenses</td>
<td>152,519</td>
<td>136,867</td>
</tr>
<tr>
<td>Restaurant-Level profit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>49,983</td>
<td>19,592</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>(177)</td>
<td>2,109</td>
</tr>
<tr>
<td>Other</td>
<td>758</td>
<td>443</td>
</tr>
<tr>
<td>Total Restaurant-Level profit</td>
<td>50,564</td>
<td>22,144</td>
</tr>
<tr>
<td>Reconciliation of Restaurant-Level profit to loss before income taxes:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>29,024</td>
<td>20,937</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>12,859</td>
<td>12,819</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>2,215</td>
<td>1,284</td>
</tr>
<tr>
<td>Pre-opening costs</td>
<td>5,999</td>
<td>3,566</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>2,719</td>
<td>3,431</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>25</td>
<td>343</td>
</tr>
<tr>
<td>Other income, net</td>
<td>(174)</td>
<td>(258)</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>$ (2,103)</td>
<td>$ (19,978)</td>
</tr>
</tbody>
</table>

(1) Restaurant-Level operating expenses consist of food, beverage, and packaging, labor, occupancy, and other operating expenses.
The following table summarizes our consolidated results of operations for the sixteen weeks ended April 16, 2023 and April 17, 2022:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
<th>Change</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$ 203,083</td>
<td>$ 159,011</td>
<td>$ 44,072</td>
<td>27.7%</td>
</tr>
<tr>
<td>Restaurant operating costs (excluding depreciation and amortization)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food, beverage, and packaging</td>
<td>59,118</td>
<td>29.1</td>
<td>50,904</td>
<td>32.0</td>
</tr>
<tr>
<td>Labor</td>
<td>52,154</td>
<td>25.7</td>
<td>47,022</td>
<td>29.6</td>
</tr>
<tr>
<td>Occupancy</td>
<td>16,599</td>
<td>8.2</td>
<td>16,740</td>
<td>10.5</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>24,648</td>
<td>12.1</td>
<td>22,201</td>
<td>14.0</td>
</tr>
<tr>
<td>Total restaurant operating expenses</td>
<td>152,519</td>
<td>75.1</td>
<td>136,867</td>
<td>86.1</td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>29,024</td>
<td>14.3</td>
<td>20,937</td>
<td>13.2</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>12,859</td>
<td>6.3</td>
<td>12,819</td>
<td>8.1</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>2,215</td>
<td>1.1</td>
<td>1,284</td>
<td>0.8</td>
</tr>
<tr>
<td>Pre-opening costs</td>
<td>5,999</td>
<td>3.0</td>
<td>3,566</td>
<td>2.2</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>2,719</td>
<td>1.3</td>
<td>3,431</td>
<td>2.2</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>205,335</td>
<td>101.1</td>
<td>178,904</td>
<td>112.5</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(2,252)</td>
<td>(1.1)</td>
<td>(19,893)</td>
<td>(12.5)</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>25</td>
<td>—</td>
<td>343</td>
<td>0.2</td>
</tr>
<tr>
<td>Other income, net</td>
<td>(174)</td>
<td>(0.1)</td>
<td>(258)</td>
<td>(0.2)</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>(2,103)</td>
<td>(1.0)</td>
<td>(19,978)</td>
<td>(12.6)</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>38</td>
<td>0.0</td>
<td>40</td>
<td>0.0</td>
</tr>
<tr>
<td>Net loss</td>
<td>(2,141)</td>
<td>(1.1)%</td>
<td>(20,018)</td>
<td>(12.6)%</td>
</tr>
</tbody>
</table>
CAVA Segment Results

The following table summarizes the results of the CAVA segment for the sixteen weeks ended April 16, 2023 and April 17, 2022:

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>% of Revenue</th>
<th>April 17, 2022</th>
<th>% of Revenue</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurant revenue</td>
<td>$196,761</td>
<td>100.0 %</td>
<td>$112,006</td>
<td>100.0 %</td>
<td>$84,755</td>
<td>75.7 %</td>
</tr>
<tr>
<td>Restaurant operating expenses</td>
<td>$146,778</td>
<td>74.6%</td>
<td>$92,414</td>
<td>82.5%</td>
<td>$54,364</td>
<td>58.8%</td>
</tr>
<tr>
<td>Food, beverage, and packaging</td>
<td>$56,454</td>
<td>28.7%</td>
<td>$35,587</td>
<td>31.8%</td>
<td>$20,867</td>
<td>58.6%</td>
</tr>
<tr>
<td>Labor</td>
<td>50,648</td>
<td>25.7%</td>
<td>31,429</td>
<td>28.1%</td>
<td>19,219</td>
<td>61.2%</td>
</tr>
<tr>
<td>Occupancy</td>
<td>16,091</td>
<td>8.2%</td>
<td>11,436</td>
<td>10.2%</td>
<td>4,655</td>
<td>40.7%</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>23,585</td>
<td>12.0%</td>
<td>13,962</td>
<td>12.5%</td>
<td>9,623</td>
<td>68.9%</td>
</tr>
<tr>
<td>Restaurant-Level profit</td>
<td>$49,983</td>
<td>25.4%</td>
<td>$19,592</td>
<td>17.5%</td>
<td>$30,391</td>
<td>155.1%</td>
</tr>
</tbody>
</table>

CAVA Revenue:

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>% of Revenue</th>
<th>April 17, 2022</th>
<th>% of Revenue</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurant revenue</td>
<td>$196,761</td>
<td>100.0 %</td>
<td>$112,006</td>
<td>100.0 %</td>
<td>$84,755</td>
<td>75.7 %</td>
</tr>
</tbody>
</table>

The increase in CAVA Revenue was primarily due to a $52.0 million increase from the 99 Net New CAVA Restaurant Openings during or subsequent to the sixteen weeks ended April 17, 2022, of which the significant majority was attributable to the 83 CAVA restaurants that were converted from Zoes Kitchen locations during or subsequent to the sixteen weeks ended April 17, 2022. The remainder of the increase in CAVA Revenue was driven by CAVA Same Restaurant Sales Growth of 28.4%, which consists of 18.4% from guest traffic increases and 10.0% from menu price increases and product mix.

CAVA Food, beverage, and packaging:

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>% of CAVA Revenue</th>
<th>April 17, 2022</th>
<th>% of CAVA Revenue</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food, beverage, and packaging</td>
<td>$56,454</td>
<td>28.7%</td>
<td>$35,587</td>
<td>31.8%</td>
<td>$20,867</td>
<td>58.6%</td>
</tr>
</tbody>
</table>

The increase in CAVA food, beverage, and packaging was primarily due to a $15.8 million increase from the 99 Net New CAVA Restaurant Openings during or subsequent to the sixteen weeks ended April 17, 2022, of which the significant majority was attributable to the 83 CAVA restaurants that were converted from Zoes Kitchen locations. The remainder of the increase was primarily due to CAVA Same Restaurant Sales Growth of 28.4%.

As a percentage of CAVA Revenue, CAVA food, beverage, and packaging decreased primarily due to greater economies of scale as we continued to expand our restaurant footprint and higher incidence of premium menu items driving favorable product mix.
CAVA Labor:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Labor</td>
<td>$ 50,648</td>
<td>$ 31,429</td>
</tr>
<tr>
<td>As a percentage of CAVA Revenue</td>
<td>25.7%</td>
<td>28.1%</td>
</tr>
</tbody>
</table>

The increase in CAVA labor was primarily due to a $14.6 million increase from the 99 Net New CAVA Restaurant Openings during or subsequent to the sixteen weeks ended April 17, 2022, of which the significant majority was attributable to the 83 CAVA restaurants that were converted from Zoes Kitchen locations. The remainder of the increase was primarily due to CAVA Same Restaurant Sales Growth of 28.4%. These increases include the impact of higher average hourly wages.

As a percentage of CAVA Revenue, CAVA labor decreased due to strong sales, partially offset by an increase in average hourly wages and an increased mix of new restaurants, which have a higher labor investments for six to eight months following the initial opening of a restaurant.

CAVA Occupancy:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Occupancy</td>
<td>$ 16,091</td>
<td>$ 11,436</td>
</tr>
<tr>
<td>As a percentage of CAVA Revenue</td>
<td>8.2%</td>
<td>10.2%</td>
</tr>
</tbody>
</table>

The increase in CAVA occupancy was primarily due to an $4.2 million increase from the 99 Net New CAVA Restaurant Openings during or subsequent to the sixteen weeks ended April 17, 2022, of which the significant majority was attributable to the 83 CAVA restaurants that were converted from Zoes Kitchen locations.

As a percentage of CAVA Revenue, CAVA occupancy decreased largely due to the addition of CAVA restaurants that were converted from Zoes Kitchen locations, as these restaurants generally have lower occupancy expenses than restaurants in the pre-existing CAVA Restaurants due to geographic mix, as well as improved leverage associated with CAVA Same Restaurant Sales Growth.

CAVA Other operating expenses:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>$ 23,585</td>
<td>$ 13,962</td>
</tr>
<tr>
<td>As a percentage of CAVA Revenue</td>
<td>12.0%</td>
<td>12.5%</td>
</tr>
</tbody>
</table>

The increase in CAVA other operating expenses was primarily due to a $6.3 million increase from the 99 Net New CAVA Restaurant Openings during or subsequent to the sixteen weeks ended April 17, 2022, of the significant majority was attributable to the 83 CAVA restaurants that were converted from Zoes Kitchen locations. The remainder of the increase was primarily due to CAVA Same Restaurant Sales Growth of 28.4%.

As a percentage of CAVA Revenue, CAVA other operating expenses improved as a result of operating leverage associated with CAVA Same Restaurant Sales Growth.
### Zoes Kitchen Segment Results

The following table summarizes the results of the Zoes Kitchen segment for the sixteen weeks ended April 16, 2023 and April 17, 2022:

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>% of Revenue</td>
<td>$</td>
</tr>
<tr>
<td>Revenue</td>
<td>$3,867</td>
<td>100.0%</td>
<td>$44,741</td>
</tr>
<tr>
<td>Restaurant operating expenses, excluding depreciation and amortization:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food, beverage, and packaging</td>
<td>1,141</td>
<td>29.5%</td>
<td>13,647</td>
</tr>
<tr>
<td>Labor</td>
<td>1,506</td>
<td>38.9%</td>
<td>15,593</td>
</tr>
<tr>
<td>Occupancy</td>
<td>508</td>
<td>13.1%</td>
<td>5,304</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>889</td>
<td>23.0%</td>
<td>8,088</td>
</tr>
<tr>
<td>Total restaurant operating expenses</td>
<td>4,044</td>
<td>104.6%</td>
<td>42,632</td>
</tr>
<tr>
<td>Restaurant-Level profit</td>
<td>(177)</td>
<td>(4.6)%</td>
<td>2,109</td>
</tr>
</tbody>
</table>

**Zoes Kitchen Revenue:**

The decrease in Zoes Kitchen revenue was primarily due to the 125 Zoes Kitchen locations closed or converted during or subsequent to the sixteen weeks ended April 17, 2022.

**Zoes Kitchen Food, beverage, and packaging:**

The decrease in Zoes Kitchen food, beverage, and packaging was primarily due to the 125 Zoes Kitchen locations closed or converted during or subsequent to the sixteen weeks ended April 17, 2022.

As a percentage of Zoes Kitchen revenue, Zoes Kitchen food, beverage, and packaging decreased slightly due to lower input costs.

**Zoes Kitchen Labor:**

The decrease in Zoes Kitchen labor was primarily due to the 125 Zoes Kitchen locations closed or converted during or subsequent to the sixteen weeks ended April 17, 2022.

As a percentage of Zoes Kitchen revenue, Zoes Kitchen labor increased primarily due to higher average hourly wages and lower same restaurant sales.

**Zoes Kitchen Occupancy:**

The decrease in Zoes Kitchen occupancy was primarily due to the 125 Zoes Kitchen locations closed or converted during or subsequent to the sixteen weeks ended April 17, 2022.

As a percentage of Zoes Kitchen revenue, Zoes Kitchen occupancy expenses increased primarily due to lower same restaurant sales.

**Zoes Kitchen Other operating expenses:**

The decrease in Zoes Kitchen other operating expenses was primarily due to the 125 Zoes Kitchen locations closed or converted during or subsequent to the sixteen weeks ended April 17, 2022.

As a percentage of Zoes Kitchen revenue, Zoes Kitchen other operating expenses increased primarily due to increased third-party delivery fees and commissions and lower same restaurant sales.
Other Results

The following table summarizes remaining activity related to our CPG operations for the sixteen weeks ended April 16, 2023 and April 17, 2022 the impact of which is not material.

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>April 16, 2023</th>
<th>% of Revenue</th>
<th>April 17, 2022</th>
<th>% of Revenue</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$2,455</td>
<td>100.0%</td>
<td>$2,264</td>
<td>100.0%</td>
<td>$191</td>
<td>8.4%</td>
</tr>
<tr>
<td>Food, beverage, and packaging</td>
<td>$1,523</td>
<td>62.0%</td>
<td>$1,670</td>
<td>73.8%</td>
<td>$(147)</td>
<td>(8.8)%</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>$174</td>
<td>7.1%</td>
<td>$151</td>
<td>6.7%</td>
<td>$23</td>
<td>15.2%</td>
</tr>
</tbody>
</table>

Consolidated Results

Revenue:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$203,083</td>
<td>$159,011</td>
<td>$44,072</td>
<td>27.7%</td>
</tr>
</tbody>
</table>

The increase in consolidated revenue was primarily driven by a $84.8 million increase in CAVA Revenue as a result of the continued expansion of the number of CAVA Restaurants, partially offset by a $40.9 million decrease in our Zoes Kitchen revenue as we continue to convert Zoes Kitchen locations into CAVA restaurants.

Food, beverage, and packaging:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food, beverage, and packaging</td>
<td>$59,118</td>
<td>$50,904</td>
<td>$8,214</td>
<td>16.1%</td>
</tr>
</tbody>
</table>

The increase in consolidated food, beverage, and packaging was primarily driven by a $20.9 million increase in food, beverage, and packaging within our CAVA segment as we continue to expand CAVA Restaurants, partially offset by a $12.5 million decrease in our Zoes Kitchen food, beverage, and packaging as we continue to convert Zoes Kitchen locations into CAVA restaurants.

Labor:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor</td>
<td>$52,154</td>
<td>$47,022</td>
<td>$5,132</td>
<td>10.9%</td>
</tr>
</tbody>
</table>

The increase in consolidated labor was primarily driven by a $19.2 million increase in labor for our CAVA segment as a result of the continued expansion of the number of CAVA Restaurants, partially offset by a $14.1 million decrease in our Zoes Kitchen labor as we continue to convert Zoes Kitchen locations into CAVA restaurants.
**Occupancy:**

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Occupancy</td>
<td>$16,599</td>
<td>$16,740</td>
</tr>
</tbody>
</table>

Consolidated occupancy was relatively flat as the $4.7 million increase from 99 Net New CAVA Restaurant Openings and increased variable rent from strong performance was offset by the $4.8 million decrease from 125 closed or converted Zoes Kitchen restaurants.

**Other operating expenses:**

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>$24,648</td>
<td>$22,201</td>
</tr>
</tbody>
</table>

The increase in consolidated other operating expenses was primarily driven by a $9.6 million increase in other operating expenses for our CAVA segment as a result of the continued expansion of CAVA Restaurants, partially offset by a $7.2 million decrease in our Zoes Kitchen other operating expenses as we continue to convert Zoes Kitchen locations into CAVA restaurants.

**General and administrative expenses:**

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>$29,024</td>
<td>$20,937</td>
</tr>
</tbody>
</table>

The increase in general and administrative expenses was primarily due to investments in our corporate functions, including headcount, to support future growth. In addition, in the sixteen weeks ended April 16, 2023, we had higher performance-based accruals associated with strong results.

**Depreciation and amortization:**

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>$12,859</td>
<td>$12,819</td>
</tr>
</tbody>
</table>

Depreciation and amortization was relatively flat as the increase from 99 Net New CAVA Restaurant Openings and technology improvements was offset by the decrease from 125 closed or converted Zoes Kitchen restaurants.

**Restructuring and other costs:**

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>$2,215</td>
<td>$1,284</td>
</tr>
</tbody>
</table>

The increase in restructuring and other costs was primarily due to public company readiness costs and costs associated with the wind down of Zoes Kitchen operations.
Pre-opening costs:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
<td></td>
</tr>
<tr>
<td>Pre-opening costs</td>
<td>$5,999</td>
<td>$3,566</td>
<td>$2,433 68.2%</td>
</tr>
</tbody>
</table>

The increase in pre-opening costs was primarily due to the timing of 27 new CAVA restaurant openings in the sixteen weeks ended April 16, 2023, as compared to 13 new CAVA restaurant openings in the sixteen weeks ended April 17, 2022, as well as higher travel costs and construction delays.

Impairment and asset disposal costs:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>$2,719</td>
<td>$3,431</td>
</tr>
</tbody>
</table>

The decrease in impairment and asset disposal costs was primarily due to decreases in disposal costs of Zoes Kitchen assets as we near the completion of the conversions of all Zoes Kitchens locations.

Interest expense, net:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>$25</td>
<td>$343</td>
</tr>
</tbody>
</table>

The decrease in interest expense, net, was primarily due to the write off of deferred loan costs in the sixteen weeks ended April 17, 2022 associated with the termination of our previous revolving credit facility with SunTrust.

Other income, net:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Other income, net</td>
<td>$(174)</td>
<td>$(258) 84 (32.6)%</td>
</tr>
</tbody>
</table>

Other income, net had an immaterial decrease.

Loss before income taxes:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>$(2,103)</td>
<td>$(19,978) 17,875 (89.5)%</td>
</tr>
</tbody>
</table>

The increase in loss before income taxes was due to the factors described above.

Provision for income taxes:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>$38</td>
<td>$40 (2) (5.0)%</td>
</tr>
</tbody>
</table>
Provision for income taxes was an immaterial amount for each of the sixteen weeks ended April 16, 2023 and April 17, 2022.

Net loss:

<table>
<thead>
<tr>
<th>(S in thousands)</th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (2,141)</td>
<td>$ (20,018)</td>
</tr>
</tbody>
</table>

Our net loss increased as a result of the factors described above.

Comparison of Fiscal 2022 and Fiscal 2021

The following table summarizes our segment results for fiscal 2022 and fiscal 2021:

<table>
<thead>
<tr>
<th>(S in thousands)</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>$448,594</td>
<td>$278,219</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>108,392</td>
<td>215,816</td>
</tr>
<tr>
<td>Other</td>
<td>7,133</td>
<td>6,037</td>
</tr>
<tr>
<td>Total revenue</td>
<td>564,119</td>
<td>500,072</td>
</tr>
<tr>
<td>Restaurant-Level operating expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>357,501</td>
<td>227,335</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>102,292</td>
<td>186,237</td>
</tr>
<tr>
<td>Other</td>
<td>6,342</td>
<td>4,347</td>
</tr>
<tr>
<td>Total Restaurant-Level operating expenses</td>
<td>466,135</td>
<td>417,919</td>
</tr>
<tr>
<td>Restaurant-Level profit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>91,093</td>
<td>50,884</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>6,100</td>
<td>29,579</td>
</tr>
<tr>
<td>Other</td>
<td>791</td>
<td>1,690</td>
</tr>
<tr>
<td>Total Restaurant-Level profit</td>
<td>97,984</td>
<td>82,153</td>
</tr>
<tr>
<td>Reconciliation of Restaurant-Level profit to loss before income taxes:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>70,037</td>
<td>64,792</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>42,724</td>
<td>44,538</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>5,923</td>
<td>6,839</td>
</tr>
<tr>
<td>Pre-opening costs</td>
<td>19,313</td>
<td>8,194</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>19,753</td>
<td>10,542</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>47</td>
<td>4,810</td>
</tr>
<tr>
<td>Other income, net</td>
<td>(919)</td>
<td>(20,288)</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>$ (58,894)</td>
<td>$ (37,274)</td>
</tr>
</tbody>
</table>

(1) Restaurant-Level operating expenses consist of food, beverage, and packaging, labor, occupancy, and other operating expenses.
The following table summarizes our consolidated results of operations for fiscal 2022 and fiscal 2021:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>2022</th>
<th>2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$564,119</td>
<td>100.0%</td>
<td>$500,072</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Operating expenses:

**Restaurant operating costs (excluding depreciation and amortization)**

<table>
<thead>
<tr>
<th></th>
<th>2022</th>
<th>2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food, beverage, and packaging</td>
<td>$179,988</td>
<td>31.9%</td>
<td>$154,772</td>
<td>30.9%</td>
</tr>
<tr>
<td>Labor</td>
<td>$157,891</td>
<td>28.0%</td>
<td>$143,395</td>
<td>28.7%</td>
</tr>
<tr>
<td>Occupancy</td>
<td>$53,669</td>
<td>9.5%</td>
<td>$49,299</td>
<td>9.9%</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>$74,587</td>
<td>13.2%</td>
<td>$70,453</td>
<td>14.1%</td>
</tr>
<tr>
<td><strong>Total restaurant operating expenses</strong></td>
<td>$466,135</td>
<td>82.6%</td>
<td>$417,919</td>
<td>83.6%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2022</th>
<th>2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>General and administrative expenses</td>
<td>$70,037</td>
<td>12.4%</td>
<td>$64,792</td>
<td>13.0%</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>$42,724</td>
<td>7.6%</td>
<td>$44,538</td>
<td>8.9%</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>$5,923</td>
<td>1.0%</td>
<td>$6,839</td>
<td>1.4%</td>
</tr>
<tr>
<td>Pre-opening costs</td>
<td>$19,313</td>
<td>3.4%</td>
<td>$10,542</td>
<td>2.1%</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>$19,753</td>
<td>3.5%</td>
<td>$10,542</td>
<td>2.1%</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>$623,885</td>
<td>110.6%</td>
<td>$552,824</td>
<td>110.5%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2022</th>
<th>2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss from operations</td>
<td>($59,766)</td>
<td>(10.6)%</td>
<td>($52,752)</td>
<td>(10.5)%</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>$47</td>
<td>-</td>
<td>$4,810</td>
<td>1.0%</td>
</tr>
<tr>
<td>Other income, net</td>
<td>($919)</td>
<td>(0.2)%</td>
<td>($20,288)</td>
<td>(4.1)%</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>($58,894)</td>
<td>(10.4)%</td>
<td>($37,274)</td>
<td>(7.5)%</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>$93</td>
<td>0.0%</td>
<td>$117</td>
<td>0.0%</td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>($58,987)</td>
<td>(10.5)%</td>
<td>($37,391)</td>
<td>(7.5)%</td>
</tr>
</tbody>
</table>

**CAVA Segment Results**

The following table summarizes the results of the CAVA segment for fiscal 2022 and fiscal 2021:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>2022</th>
<th>2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurant revenue</td>
<td>$448,594</td>
<td>100.0%</td>
<td>$278,219</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Restaurant operating expenses, excluding depreciation and amortization:

<table>
<thead>
<tr>
<th></th>
<th>2022</th>
<th>2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food, beverage, and packaging</td>
<td>$140,760</td>
<td>31.4%</td>
<td>$90,035</td>
<td>32.4%</td>
</tr>
<tr>
<td>Labor</td>
<td>$121,318</td>
<td>27.0%</td>
<td>$74,636</td>
<td>26.8%</td>
</tr>
<tr>
<td>Occupancy</td>
<td>$40,855</td>
<td>9.1%</td>
<td>$28,490</td>
<td>10.2%</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>$54,568</td>
<td>12.2%</td>
<td>$34,174</td>
<td>12.3%</td>
</tr>
<tr>
<td><strong>Total restaurant operating expenses</strong></td>
<td>$357,501</td>
<td>79.7%</td>
<td>$227,335</td>
<td>81.7%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2022</th>
<th>2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurant-Level profit</td>
<td>$91,093</td>
<td>20.3%</td>
<td>$50,884</td>
<td>18.3%</td>
</tr>
</tbody>
</table>

85
CAVA Revenue:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurant revenue</td>
<td>$448,594</td>
<td>$278,219</td>
<td>$170,375</td>
<td>61.2%</td>
</tr>
</tbody>
</table>

The increase in CAVA Revenue was primarily due to a $131.3 million increase from the 132 Net New CAVA Restaurant Openings in fiscal 2022 and fiscal 2021, of which $118.3 million was attributable to the 117 CAVA restaurants that were converted from Zoes Kitchen locations. The remainder of the increase in CAVA Revenue was driven by CAVA Same Restaurant Sales Growth of 14.2%, which consists of 10.1% from menu price increases and product mix and 4.1% from guest traffic increases.

CAVA Food, beverage, and packaging:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food, beverage, and packaging</td>
<td>$140,760</td>
<td>$90,035</td>
<td>$50,725</td>
<td>56.3%</td>
</tr>
</tbody>
</table>

As a percentage of CAVA Revenue

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>As a percentage of CAVA Revenue</td>
<td>31.4 %</td>
<td>32.4 %</td>
<td>n/a</td>
<td>(1.0)%</td>
</tr>
</tbody>
</table>

The increase in CAVA food, beverage, and packaging was primarily due to a $42.9 million increase from the 132 Net New CAVA Restaurant Openings in fiscal 2022 and fiscal 2021, of which $38.9 million was attributable to the 117 CAVA restaurants that were converted from Zoes Kitchen locations. The remainder of the increase was primarily due to CAVA Same Restaurant Sales Growth of 14.2%.

As a percentage of CAVA Revenue, CAVA food, beverage, and packaging decreased primarily due to lower inbound logistics costs driven by greater economies of scale as we continue to expand our restaurant footprint and adherence to waste management protocols in restaurants, partially offset by increases in input costs.

CAVA Labor:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor</td>
<td>$121,318</td>
<td>$74,636</td>
<td>$46,682</td>
<td>62.5%</td>
</tr>
</tbody>
</table>

As a percentage of CAVA Revenue

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>As a percentage of CAVA Revenue</td>
<td>27.0 %</td>
<td>26.8 %</td>
<td>n/a</td>
<td>0.2 %</td>
</tr>
</tbody>
</table>

The increase in CAVA labor was primarily due to a $39.0 million increase from the 132 Net New CAVA Restaurant Openings in fiscal 2022 and fiscal 2021, of which $35.2 million was attributable to the 117 CAVA restaurants that were converted from Zoes Kitchen locations. The remainder of the increase was primarily due to CAVA Same Restaurant Sales Growth of 14.2%. These increases include the impact of higher average hourly wages.

As a percentage of CAVA Revenue, CAVA labor increased due to an increase in average hourly wages and an increased mix of new restaurants, which have a higher labor investment for six to eight months following the initial opening of a restaurant.

CAVA Occupancy:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupancy</td>
<td>$40,855</td>
<td>$28,490</td>
<td>$12,365</td>
<td>43.4%</td>
</tr>
</tbody>
</table>

As a percentage of CAVA Revenue

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>As a percentage of CAVA Revenue</td>
<td>9.1 %</td>
<td>10.2 %</td>
<td>n/a</td>
<td>(1.1)%</td>
</tr>
</tbody>
</table>

The increase in CAVA occupancy was primarily due to an $11.5 million increase from 132 Net New CAVA Restaurant Openings in fiscal 2022 and fiscal 2021, of which $10.6 million was attributable to the 117 CAVA
restaurants that were converted from Zoes Kitchen locations. This increase includes the impact of the reclassification of certain build-to-suit leases as operating leases effective at the beginning of fiscal 2022 in connection with the adoption of ASU 2016-02, Leases (Topic 842), or ASC 842, which resulted in an increase to occupancy expense of $2.0 million.

As a percentage of CAVA Revenue, CAVA occupancy decreased largely due to the addition of CAVA restaurants that were converted from Zoes Kitchen locations, as these restaurants generally have lower occupancy expenses than restaurants in the pre-existing CAVA Restaurants due to geographic mix, as well as improved leverage associated with CAVA Same Restaurant Sales Growth. Such decrease is partially offset by the increase relating to the adoption of ASC 842 as described above.

CAVA Other operating expenses:

<table>
<thead>
<tr>
<th>($ in thousands)</th>
<th>Fiscal</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other operating expenses</td>
<td>$54,568</td>
<td>$34,174</td>
<td>$20,394</td>
</tr>
<tr>
<td>As a percentage of CAVA Revenue</td>
<td>12.2%</td>
<td>12.3%</td>
<td>n/a</td>
</tr>
</tbody>
</table>

The increase in CAVA other operating expenses was primarily due to a $16.9 million increase from 132 Net New CAVA Restaurant Openings in fiscal 2022 and fiscal 2021, of which $15.2 million was attributable to the 117 CAVA restaurants that were converted from Zoes Kitchen locations. The remainder of the increase was primarily due to CAVA Same Restaurant Sales Growth of 14.2%. As a percentage of CAVA Revenue, CAVA other operating expenses was relatively flat.

Zoes Kitchen Segment Results

The following table summarizes the results of the Zoes Kitchen segment for fiscal 2022 and fiscal 2021:

<table>
<thead>
<tr>
<th>($ in thousands)</th>
<th>Fiscal</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$108,392</td>
<td>$215,816</td>
<td>$(107,424)</td>
</tr>
<tr>
<td>Restaurant operating expenses, excluding depreciation and amortization:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food, beverage, and packaging</td>
<td>33,367</td>
<td>60,955</td>
<td>(27,588)</td>
</tr>
<tr>
<td>Labor</td>
<td>36,573</td>
<td>68,759</td>
<td>(32,186)</td>
</tr>
<tr>
<td>Occupancy</td>
<td>12,814</td>
<td>20,809</td>
<td>(7,995)</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>19,538</td>
<td>35,714</td>
<td>(16,176)</td>
</tr>
<tr>
<td>Total restaurant operating expenses</td>
<td>102,292</td>
<td>186,237</td>
<td>(83,945)</td>
</tr>
<tr>
<td>Restaurant-Level profit</td>
<td>$6,100</td>
<td>$29,579</td>
<td>$(23,479)</td>
</tr>
</tbody>
</table>

Zoes Kitchen Revenue:

The decrease in Zoes Kitchen revenue was primarily due to the 91 Zoes Kitchen locations closed or converted subsequent to December 26, 2021.

Zoes Kitchen Food, beverage, and packaging:

Zoes Kitchen food, beverage, and packaging decreased primarily due to the 91 Zoes Kitchen locations closed or converted subsequent to December 26, 2021.

As a percentage of Zoes Kitchen revenue, Zoes Kitchen food, beverage, and packaging increased primarily due to increased input costs.
Zoes Kitchen Labor:
The decrease in Zoes Kitchen labor was primarily due to the 91 Zoes Kitchen locations closed or converted subsequent to December 26, 2021.
As a percentage of Zoes Kitchen revenue, Zoes Kitchen labor increased due to higher average hourly wages.

Zoes Kitchen Occupancy:
The decrease in Zoes Kitchen occupancy was primarily due to the 91 Zoes Kitchen locations closed or converted subsequent to December 26, 2021, partially offset by the reclassification of certain build-to-suit leases to operating leases effective at the beginning of fiscal 2022 in connection with the adoption of ASC 842, which resulted in an increase to occupancy expense of $1.9 million.
As a percentage of Zoes Kitchen revenue, Zoes Kitchen occupancy increased primarily due to the impact of the adoption of ASC 842 as described above.

Zoes Kitchen Other operating expenses:
The decrease in Zoes Kitchen other operating expenses was primarily due to the 91 Zoes Kitchen locations closed or converted subsequent to December 26, 2021.
As a percentage of Zoes Kitchen revenue, Zoes Kitchen other operating expenses increased primarily due to increased third-party delivery fees and commissions and lower same restaurant sales.

Other Results
The following table summarizes remaining activity related to our CPG operations for fiscal 2022 and fiscal 2021 were as follows:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>Fiscal 2022</th>
<th>% of Revenue</th>
<th>Fiscal 2021</th>
<th>% of Revenue</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$7,133</td>
<td>100.0 %</td>
<td>$6,037</td>
<td>100.0 %</td>
<td>$1,096</td>
<td>18.2 %</td>
</tr>
<tr>
<td>Food, beverage, and packaging</td>
<td>5,861</td>
<td>82.2</td>
<td>3,782</td>
<td>62.6</td>
<td>2,079</td>
<td>55.0</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>$481</td>
<td>6.7 %</td>
<td>$565</td>
<td>9.4 %</td>
<td>($84)</td>
<td>(14.9)%</td>
</tr>
</tbody>
</table>

The increase in Other revenue was primarily as a result of increased sales of dips, spreads, and dressings. The increase in food, beverage, and packaging was primarily due to higher input costs and the impact of increased sales.
As a percentage of Other revenue, food, beverage, and packaging increased primarily due to higher input costs as a result of inflationary impacts on commodity prices, including yogurt, feta, and tahini.

Consolidated Results
Revenue:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$564,119</td>
<td>$500,072</td>
<td>$64,047</td>
<td>12.8%</td>
</tr>
</tbody>
</table>

The increase in consolidated revenue was primarily driven by a $170.4 million increase in CAVA Revenue as a result of the continued expansion of the number of CAVA Restaurants, partially offset by a $107.4 million decrease in our Zoes Kitchen revenue as we continue to convert Zoes Kitchen locations into CAVA restaurants.
Food, beverage, and packaging:

<table>
<thead>
<tr>
<th>Fiscal</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>$179,988</td>
<td>$154,772</td>
</tr>
<tr>
<td>$25,216</td>
<td>16.3%</td>
</tr>
</tbody>
</table>

The increase in consolidated food, beverage, and packaging was primarily driven by a $50.7 million increase in food, beverage, and packaging within our CAVA segment as we continue to expand CAVA Restaurants, partially offset by a $27.6 million decrease in our Zoes Kitchen food, beverage, and packaging as we continue to convert Zoes Kitchen locations into CAVA restaurants.

Labor:

<table>
<thead>
<tr>
<th>Fiscal</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>$157,891</td>
<td>$143,395</td>
</tr>
<tr>
<td>$14,496</td>
<td>10.1%</td>
</tr>
</tbody>
</table>

The increase in consolidated labor was primarily driven by a $46.7 million increase in labor for our CAVA segment as a result of the continued expansion of the number of CAVA Restaurants, partially offset by a $32.2 million decrease in our Zoes Kitchen labor as we continue to convert Zoes Kitchen locations into CAVA restaurants.

Occupancy:

<table>
<thead>
<tr>
<th>Fiscal</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>$53,669</td>
<td>$49,299</td>
</tr>
<tr>
<td>$4,370</td>
<td>8.9%</td>
</tr>
</tbody>
</table>

The increase in consolidated occupancy was primarily driven by the reclassification of certain build-to-suit leases as operating leases effective at the beginning of fiscal 2022 in connection with the adoption of ASC 842 as described above, which resulted in an increase to occupancy of $4.0 million.

Other operating expenses:

<table>
<thead>
<tr>
<th>Fiscal</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>$74,587</td>
<td>$70,453</td>
</tr>
<tr>
<td>$4,134</td>
<td>5.9%</td>
</tr>
</tbody>
</table>

The increase in consolidated other operating expenses was primarily driven by a $20.4 million increase in other operating expenses for our CAVA segment as a result of the continued expansion of CAVA Restaurants, partially offset by a $16.2 million decrease in our Zoes Kitchen other operating expenses as we continue to convert Zoes Kitchen locations into CAVA restaurants.

General and administrative expenses:

<table>
<thead>
<tr>
<th>Fiscal</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>$70,037</td>
<td>$64,792</td>
</tr>
<tr>
<td>$5,245</td>
<td>8.1%</td>
</tr>
</tbody>
</table>

The increase in general and administrative expenses was primarily due to investments in our corporate functions, including headcount, to support future growth.
### Depreciation and amortization:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depreciation and amortization</td>
<td>$42,724</td>
<td>$44,538</td>
<td>$(1,814)</td>
</tr>
</tbody>
</table>

The decrease in depreciation and amortization was primarily due to the reclassification of certain build-to-suit leases to operating leases effective at the beginning of fiscal 2022 in connection with the adoption of ASC 842, which resulted in a reduction to depreciation expense of $1.4 million. In addition, impairment losses on property and equipment subsequent to December 26, 2021 contributed $1.1 million to the decrease. Such decrease was partially offset by the addition of assets related to 73 Net New CAVA Restaurant Openings and capitalized technology improvements subsequent to December 26, 2021.

### Restructuring and other costs:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restructuring and other costs</td>
<td>$5,923</td>
<td>$6,839</td>
<td>$(916)</td>
</tr>
</tbody>
</table>

The decrease in restructuring and other costs was primarily due to fewer closed restaurants as we have either converted those restaurants from Zoes Kitchen locations to CAVA restaurants or terminated the lease agreement prior to December 25, 2022.

### Pre-opening costs:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-opening costs</td>
<td>$19,313</td>
<td>$8,194</td>
<td>$11,119</td>
</tr>
</tbody>
</table>

The increase in pre-opening costs was primarily due to the timing of 74 new CAVA restaurant openings in fiscal 2022, as compared to 59 new CAVA restaurant openings in fiscal 2021 as well as higher travel costs and construction delays.

### Impairment and asset disposal costs:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impairment and asset disposal costs</td>
<td>$19,753</td>
<td>$10,542</td>
<td>$9,211</td>
</tr>
</tbody>
</table>

The increase in impairment and asset disposal costs was primarily due to the impact of closing and converting Zoes Kitchen locations.

### Interest expense, net:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal</th>
<th>Change</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest expense, net</td>
<td>$47</td>
<td>$4,810</td>
<td>$(4,763)</td>
</tr>
</tbody>
</table>

The decrease in interest expense, net, was primarily due to the reclassification of certain build-to-suit leases to operating leases effective at the beginning of fiscal 2022 in connection with the adoption of ASC 842, which resulted in a reduction to interest expense of $4.0 million.
Other income, net:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other income, net</td>
<td>$ (919)</td>
<td>$ (20,288)</td>
<td>$ 19,369</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(95.5)%</td>
</tr>
</tbody>
</table>

The decrease in other income net, was primarily due to the recognition of $20.0 million of other income related to forgiveness of PPP Loans during fiscal 2021. $10.0 million of such loans had been incurred for the CAVA business, with the remaining $10.0 million incurred for the Zoes Kitchen business.

Loss before income taxes:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss before income taxes</td>
<td>$ (58,894)</td>
<td>$ (37,274)</td>
<td>$ (21,620)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>58.0%</td>
</tr>
</tbody>
</table>

The increase in loss before income taxes was due to the factors described above.

Provision for income taxes:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provision for income taxes</td>
<td>$ 93</td>
<td>$ 117</td>
<td>$ (24)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(20.5)%</td>
</tr>
</tbody>
</table>

Provision for income taxes was an immaterial amount for each of fiscal 2022 and fiscal 2021.

Net loss:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal 2022</th>
<th>Fiscal 2021</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net loss</td>
<td>$ (58,987)</td>
<td>$ (37,391)</td>
<td>$ (21,596)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>57.8%</td>
</tr>
</tbody>
</table>

Our net loss increased as a result of the factors described above.

Selected Quarterly Financial Data

The following table presents unaudited quarterly historical consolidated financial and other data for each of the periods indicated. The unaudited quarterly historical consolidated financial data have been derived from the unaudited consolidated financial statements of CAVA Group and its subsidiaries. This information should be read in conjunction with our financial statements included elsewhere in this prospectus. The results of historical periods are not necessarily indicative of the results in any future period and the results of a particular quarter or other interim period are not necessarily indicative of the results for a full year.
In addition to our consolidated financial statements, which are prepared in accordance with GAAP, we present Adjusted EBITDA and Adjusted EBITDA Margin in this prospectus as supplemental measures of financial performance that are not required by, or presented in accordance with, GAAP. We believe they assist investors and analysts in comparing our operating performance across reporting periods on a consistent basis by excluding items.
that we do not believe are indicative of our operating performance. Management believes Adjusted EBITDA and Adjusted EBITDA Margin are useful to investors in highlighting trends in our operating performance, while other measures can differ significantly depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which we operate and capital investments. Management uses Adjusted EBITDA and Adjusted EBITDA Margin to supplement GAAP measures of performance in the evaluation of the effectiveness of our business strategies, to make budgeting decisions and to compare our performance against that of other peer companies using similar measures. Management supplements GAAP results with non-GAAP financial measures to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone provide.

Adjusted EBITDA and Adjusted EBITDA Margin are not recognized terms under GAAP and should not be considered as alternatives to net income (loss) or net income (loss) margin as measures of financial performance, or cash provided by operating activities as measures of liquidity, or any other performance measure derived in accordance with GAAP. Additionally, these measures are not intended to be measures of free cash flow available for management’s discretionary use, as they do not consider certain cash requirements such as interest payments, tax payments, and debt service requirements. Because not all companies use identical calculations, the presentation of these measures may not be comparable to other similarly titled measures of other companies and can differ significantly from company to company.

Our Adjusted EBITDA and Adjusted EBITDA Margin measures have 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 does not reflect our cash expenditures or future requirements for capital expenditures or contractual commitments;
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- Adjusted EBITDA does not reflect the interest expense, or the cash requirements necessary to service interest or principal payments, on our debts;
- Adjusted EBITDA does not reflect period to period changes in taxes, income tax expense or the cash necessary to pay income taxes;
- Adjusted EBITDA does not reflect the impact of earnings or cash charges resulting from matters we consider not to be indicative of our ongoing operations;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and Adjusted EBITDA does not reflect any cash requirements for such replacements; and
- other companies in our industry may calculate Adjusted EBITDA and Adjusted EBITDA Margin differently than we do, limiting their usefulness as comparative measures.

Because of these limitations, Adjusted EBITDA and Adjusted EBITDA Margin should not be considered as measures of discretionary cash available to invest in business growth or to reduce indebtedness.
The following tables provide a reconciliation of net loss to Adjusted EBITDA and net loss margin to Adjusted EBITDA Margin for the periods presented:

<table>
<thead>
<tr>
<th></th>
<th>June 16, 2023</th>
<th>April 17, 2022</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net loss</strong></td>
<td>$ (2,141)</td>
<td>$ (20,018)</td>
<td>$ (58,987)</td>
<td>$ (37,391)</td>
</tr>
<tr>
<td><strong>Non-GAAP Adjustments:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>25</td>
<td>343</td>
<td>47</td>
<td>4,810</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>38</td>
<td>40</td>
<td>93</td>
<td>117</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>12,859</td>
<td>12,819</td>
<td>42,724</td>
<td>44,538</td>
</tr>
<tr>
<td>Equity-based compensation</td>
<td>1,205</td>
<td>783</td>
<td>3,981</td>
<td>5,475</td>
</tr>
<tr>
<td>Other income, net</td>
<td>(174)</td>
<td>(258)</td>
<td>(919)</td>
<td>(20,288)</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>2,719</td>
<td>3,431</td>
<td>19,753</td>
<td>10,542</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>2,215</td>
<td>1,284</td>
<td>5,923</td>
<td>6,839</td>
</tr>
<tr>
<td><strong>Adjusted EBITDA</strong></td>
<td>$ 16,746</td>
<td>$ (1,576)</td>
<td>$ 12,615</td>
<td>$ 14,642</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>June 16, 2023</th>
<th>April 17, 2022</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td>$ 203,083</td>
<td>$ 159,011</td>
<td>$ 564,119</td>
<td>$ 500,072</td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>(2,141)</td>
<td>(20,018)</td>
<td>(58,987)</td>
<td>(37,391)</td>
</tr>
<tr>
<td><strong>Net loss margin</strong></td>
<td>(1.1)%</td>
<td>(12.6)%</td>
<td>(10.5)%</td>
<td>(7.5)%</td>
</tr>
<tr>
<td><strong>Adjusted EBITDA</strong></td>
<td>16,746</td>
<td>(1,576)</td>
<td>12,615</td>
<td>14,642</td>
</tr>
<tr>
<td><strong>Adjusted EBITDA Margin</strong></td>
<td>8.2%</td>
<td>(1.0)%</td>
<td>2.2%</td>
<td>2.9%</td>
</tr>
</tbody>
</table>

**Liquidity and Capital Resources**

We assess our liquidity in terms of our ability to generate adequate amounts of cash to meet current and future needs. Our expected primary uses on a short-term and long-term basis are for the expansion of our restaurant base and manufacturing capabilities, working capital, and other capital expenditures. We have historically funded our operations and acquisitions primarily through cash provided by operating activities, draws under our Credit Facility as well as issuances and sales of securities through private placements.

Our rapid expansion has been significantly aided by the Zoes Kitchen acquisition, which enabled us to expand our CAVA restaurant base in a capital-efficient manner. While conversions require initial capital investments, such costs are typically significantly lower for a conversion as compared to a new opening. Therefore, following the completion of conversions of the remaining Zoes Kitchen locations, which we expect to complete by the fall of 2023, we expect that the capital expenditure requirements to open a new restaurant will be significantly higher than we have experienced in the past few years.

In addition, we may require additional capital resources to execute strategic initiatives to grow our business in the future. We believe, however, that cash provided by operating activities and existing cash on hand, together with amounts available under our Credit Facility and the proceeds from this offering, will be sufficient to satisfy our anticipated cash requirements for the next twelve months, including our expected capital expenditures for expansion of our CAVA restaurant base and manufacturing capabilities, debt service requirements, operating lease obligations, and working capital obligations. See Note 7 (Debt) and Note 10 (Leases) to our unaudited condensed consolidated financial statements and Note 8 (Debt) and Note 11 (Leases) to our consolidated financial statements included elsewhere in this prospectus for more information. Our sources of liquidity could be affected by factors described under “Risk Factors.” Depending on the severity and direct impact of these factors on us, we may not be able to secure additional financing on acceptable terms, or at all.
**Cash Overview**

We had cash and cash equivalents of $22.7 million and $39.1 million as of April 16, 2023 and December 25, 2022, respectively.

For the sixteen weeks ended April 16, 2023 and fiscal 2022, our operations were primarily funded by cash flows from operations and from the sale and issuance of our Series F Preferred Stock, which occurred in fiscal 2021. Our principal uses of liquidity for the sixteen weeks ended April 16, 2023 and fiscal 2022 were to fund our conversion of Zoes Kitchen locations into CAVA restaurants, to fund our new restaurant openings, to fund construction of our new production facility, and to fund working capital needs.

**Cash Flows**

The following table summarizes our cash flows for the periods presented:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>Sixteen Weeks Ended</th>
<th>Change</th>
<th>Fiscal</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
<td>$</td>
<td>%</td>
</tr>
<tr>
<td>Net cash provided by (used in) operating activities</td>
<td>$25,679</td>
<td>$2,363</td>
<td>$28,042</td>
<td>(1186.7)%</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(39,097)</td>
<td>(22,291)</td>
<td>(16,806)</td>
<td>75.4</td>
</tr>
<tr>
<td>Net cash (used in) provided by financing activities</td>
<td>(2,991)</td>
<td>(1,355)</td>
<td>(1,636)</td>
<td>120.7</td>
</tr>
<tr>
<td>Net change in cash and cash equivalents</td>
<td>(16,409)</td>
<td>(26,009)</td>
<td>$9,600</td>
<td>(36.9)%</td>
</tr>
</tbody>
</table>

**Operating Activities:**

The increase in net cash provided by operating activities during the sixteen weeks ended April 16, 2023 was primarily driven by improved operating performance as well as the impact of working capital changes.

The increase in net cash provided by operating activities during fiscal 2022 was primarily due to increased CAVA Revenue from 73 Net New CAVA Restaurant Openings in fiscal 2022 and increased CAVA Same Restaurant Sales Growth, partially offset by higher pre-opening costs and the impact of working capital changes.

**Investing Activities:**

The increase in net cash used in investing activities during the sixteen weeks ended April 16, 2023 was primarily due to our investments in capital expenditures as a result of Net New CAVA Restaurant Openings and capitalized technology improvements, as well as investments in our new production facility.

The increase in net cash used in investing activities during fiscal 2022 was primarily due to our investments in capital expenditures as a result of Net New CAVA Restaurant Openings and capitalized technology improvements.

**Financing Activities:**

The increase in net cash used in financing activities during the sixteen weeks ended April 16, 2023 was primarily driven by payments of deferred offering costs.

The decrease in net cash provided by financing activities during fiscal 2022 was due to the Series F Preferred Stock capital raise, which closed in fiscal 2021, partially offset by payments on long-term debt and the redemption of Series A Preferred Stock, all of which took place during fiscal 2021.
Material Cash Commitments

The following table sets forth the Company’s material cash commitments as of December 25, 2022. Operating lease obligations are presented on a gross basis excluding the impact of applying the discount rate for measurement purposes on the Company’s consolidated balance sheet.

<table>
<thead>
<tr>
<th>Material Cash Commitment</th>
<th>Total</th>
<th>Less than 1 year</th>
<th>1-3 years</th>
<th>3-5 years</th>
<th>More than 5 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating lease obligations</td>
<td>$400,433</td>
<td>$44,930</td>
<td>$100,360</td>
<td>$93,884</td>
<td>$161,259</td>
</tr>
<tr>
<td>Minimum purchase obligations(1)</td>
<td>$6,401</td>
<td>$5,381</td>
<td>$751</td>
<td>$269</td>
<td>—</td>
</tr>
</tbody>
</table>

(1) Purchase obligations include agreements to purchase goods or services that are enforceable and legally binding on us and that specify all significant terms. We have excluded agreements that are cancellable without penalty. The majority of our purchase obligations relate to amounts owed for produce and other ingredients and supplies, including supplies and materials used for new restaurant openings.

Credit Facility

On March 11, 2022, we entered into a credit facility, as borrower, with JPMorgan Chase Bank, National Association, as the administrative agent, an issuing bank, the swingline lender and the lead arranger, and bookrunner, and certain other parties thereto (as amended on February 15, 2023, the “Credit Facility”), consisting of a revolving loan commitment in the aggregate amount of $75.0 million, an incremental revolving credit commitment up to an aggregate amount of $25.0 million and a delayed draw term loan in the aggregate amount of $30.0 million (the “Delayed Draw Term Loans”), each of which are due on March 11, 2027. As of April 16, 2023, we had no outstanding indebtedness under the Credit Facility.

Interest on loans under the Credit Facility are based on one, three or six months Adjusted Term Secured Overnight Financing Rate, as applicable, plus an applicable margin of 1.50% to 2.50% based on the Company’s Total Rent Adjusted Net Leverage Ratio (as defined in the Credit Facility). The Company also has the ability to draw overnight borrowings for which interest rates are calculated based on Alternate Base Rate (as defined in the Credit Facility). As of April 16, 2023, if there had been revolver borrowings outstanding under the Credit Facility, the interest rate would have been 6.99%.

The Credit Facility is unconditionally guaranteed by our wholly owned domestic restricted subsidiaries, other than immaterial subsidiaries and other excluded subsidiaries.

The Credit Facility includes specific financial covenants, including the following:

- on the last day of any Test Period (as defined in the Credit Facility), our Total Rent Adjusted Net Leverage Ratio shall be equal to or less than (i) 5.75:1.00 for the Test Period ending on December 31, 2023, and (ii) from the Test Period ending on April 21, 2024 and each Test Period ending thereafter, 5.00:1.00;
- on the last day of any Test Period, our Fixed Charge Coverage Ratio (as defined in the Credit Facility) shall be equal to or greater than 1.20:1.00; and
- on the last day of any Test Period, our Liquidity (as defined in the Credit Facility) shall be at least $15.0 million.

As of April 16, 2023, we were in compliance with these financial and other covenants. See Notes 7 (Debt) and 16 (Subsequent Events) to our unaudited condensed consolidated financial statements and “Description of Certain Indebtedness—Credit Facility” included elsewhere in this prospectus for more information.

Critical Accounting Estimates

Our management’s discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with GAAP. The preparation of financial statements in conformity with GAAP requires us to make certain estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent asset and liabilities as of the balance sheet date, as well as report
amounts of revenue and expenses during the period. We base our estimates on historical experience, known trends and events, as well as management’s judgment. Although management believes the judgment applied in preparing estimates is reasonable based on circumstances and information known at the time, actual results could vary materially from the estimates based on assumptions used in the preparation of our financial statements. We evaluate our judgments and estimates on an ongoing basis in light of changes in circumstances, facts, and experience. The effects of material revisions in estimates, if any, are reflected in the financial statements prospectively from the date of change in estimates. To the extent that there are differences between our estimates and actual results, our future financial statement presentation, financial condition, results of operations, and cash flows will be affected.

We believe that the following critical accounting policies involve a greater degree of judgment and complexity than our other significant accounting policies. Accordingly, these are the policies we believe are the most critical to understanding when evaluating our consolidated financial condition and results of operations. Our significant accounting policies are more fully described in Note 2 (Basis of Presentation and Significant Accounting Policies) to our consolidated financial statements included elsewhere in this prospectus.

**Revenue Recognition**

The Company recognizes in-restaurant and digital revenue when payment is tendered at the point of sale as the performance obligation has been satisfied, which is recognized net of discounts, incentives, and sales tax collected from guests.

Digital revenue includes orders made through online catering and digital channels, such as the CAVA app and the CAVA website. Digital orders include orders fulfilled through third-party marketplace and native delivery and digital order pick-up.

CPG revenue associated with dips, spreads and dressings is recognized upon transfer of control to customers in an amount that reflects the consideration the Company expects to be entitled to in exchange for those products. Transfer of control occurs at a point in time, typically upon delivery as this is when title and risk of loss passes to the guest. Allowances for sales returns, stale products, and discounts are recorded as reductions to CPG revenue. We use judgment in estimating sales returns, considering numerous factors such as historical sales return rates.

**Leases**

We adopted ASC 842 in the first quarter of fiscal 2022, the impact of which did not have a material impact on our consolidated statement of operations or consolidated statement of cash flows. The adoption of ASC 842 did have a material impact on our consolidated balance sheet resulting in the recognition of operating lease assets and liabilities. The disclosure below reflects the impact of our adoption of ASC 842.

We lease all of our restaurants, our production facility in Maryland, our collaboration center in Washington D.C., and our support centers in Brooklyn, New York, St. Louis, Missouri and Plano, Texas under various non-cancelable lease agreements that expire on various dates through 2039. At inception of a lease, we determine its classification as an operating or financing lease. All of our restaurant leases are classified as operating leases. Restaurants are located on sites leased from third parties. When determining the lease term, the Company includes reasonably certain option periods.

The Company makes judgments regarding the probable term for each lease, which can impact the classification and accounting for a lease as well as the amount of straight-line rent expense recognized in a period. Typically, restaurant leases have initial terms of 10 years and include five-year renewal options. Renewal options are typically not included in the lease term as it is not reasonably certain that we will exercise the options. Restaurant leases provide for fixed minimum rent payments and in some cases include contingent rent payments based upon sales in excess of specified breakpoints. When achievement of sales breakpoints is probable, contingent rent is accrued. Fixed minimum rent payments are recognized on a straight-line basis over the lease term starting on the date we take control of the leased space.

Operating lease assets and liabilities are recognized at the lease’s commencement date. We measure the lease liability at lease commencement by discounting the future minimum lease payments. Operating lease assets
represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments, initial direct costs, lease incentives, and impairment. As the rate implicit in the lease is not readily determinable in most of the Company’s leases, the Company uses its incremental borrowing rate based on the information available at a lease’s commencement date to determine the present value of lease payments. The Company’s incremental borrowing rate for a lease is the rate of interest it would have to pay on a collateralized basis to borrow an amount equal to the lease payments under similar terms.

**Income Taxes**

The Company is taxed as a C corporation under which income taxes are accounted for using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the financial statement and tax basis of assets and liabilities at the applicable enacted tax rates. A valuation allowance is provided when it is more likely than not that some portion or all of the deferred tax assets will not be realized. The factors used to assess the likelihood of realization include the Company’s forecast of future taxable income and available tax planning strategies that could be implemented to realize the net deferred tax assets.

The Company assesses the available positive and negative evidence to estimate whether sufficient future taxable income will be generated to permit use of the existing deferred tax assets. A significant piece of objective negative evidence evaluated is the cumulative loss incurred over the most recent three-year period. Such objective evidence limits the ability to consider other subjective evidence, such as our projections for future growth. On the basis of this evaluation, as of December 25, 2022 and December 26, 2021, a valuation allowance of $88.4 million and $74.9 million, respectively, has been recorded to recognize only the portion of the deferred tax assets that is more likely than not to be realized. The amount of the deferred tax assets considered realizable, however, could be adjusted if estimates of future taxable income during the carryforward period are reduced or increased or if objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as our projections for growth.

The Company has considered its income tax positions, including any positions that may be considered uncertain by the relevant tax authorities in the jurisdictions in which the Company operates. The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the tax authorities, based on the technical merits of the position. The tax benefit is measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Company did not have any uncertain tax positions as of December 25, 2022 and December 26, 2021.

The Company’s primary tax jurisdiction is in the United States. Generally, federal, state, and local authorities may examine the Company’s tax returns for three years from the date of filing and the current and prior three years remain subject to examination as of December 25, 2022.

**Equity-Based Compensation**

The Company has issued non-qualified stock options and restricted stock units (“RSUs”). Equity-based compensation expense is measured based on the grant date fair value of those awards and is recognized on a straight-line basis over the requisite service period. Equity-based compensation expense is based on awards outstanding, and forfeitures are recognized as they occur. Equity-based compensation expense is included in general and administrative expenses in the consolidated statements of operations.

During the period covered by the financial statements included in this prospectus, we were a privately held company with no active public market for our common stock. Therefore, the fair value of the Company’s common stock was estimated using a two-step process. First, the Company’s enterprise value was established using generally accepted valuation methodologies, including the utilization of an income approach (discounted cash flow method), a market approach (guideline public company method), and a probability-weighted expected return method. Second, the enterprise value was allocated among the securities that comprise the capital structure of the Company using the option-pricing method. The assumptions used to determine the fair value of the Company’s common stock represents management’s best estimates. These estimates involve inherent uncertainties and the application of

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management’s judgment. If factors change and different assumptions are used, our equity-based compensation expense could be materially different in the future.

The Company uses the Black-Scholes-Merton (“Black-Scholes”) option-pricing model to estimate the fair value of non-qualified stock options at the grant date. The use of the Black-Scholes option-pricing model requires the use of highly subjective assumptions, including the expected term, risk-free interest rate, expected volatility, and expected dividend yield of the underlying common stock. The fair value of RSUs is equal to the fair value of the underlying common stock at the date of grant.

Recent Accounting Pronouncements

We have reviewed all recently issued standards and have determined that, other than as disclosed in Note 2 (Basis of Presentation and Significant Accounting Policies) to our audited financial statements and Note 1 (Nature of Operations and Basis of Presentation) to our unaudited condensed consolidated financial statements included elsewhere in this prospectus, such standards will not have a material impact on our financial statements or do not otherwise apply to our operations.

JOBS Act Election

We are currently an “emerging growth company,” as defined in the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates.

Qualitative and Quantitative Disclosure About Market Risk

In the normal course of business, we are exposed to market risks, including commodity and food price risks, interest rate risk, effects of inflation, and labor costs. We currently do not enter into derivatives or other financial instruments for trading or speculative purposes. We currently have operations only in the United States and do not have material foreign currency exposure.

Commodity and Food Price Risks

We purchase certain products that are affected by commodity prices and are, therefore, subject to price volatility caused by market conditions, supply chain interruptions, weather, and other factors which are not within our control. In many cases, we believe we will be able to address material commodity cost increases through purchasing contracts, pricing arrangements, adjusting our menu pricing or other operational adjustments that increase productivity. However, we cannot assure you that these measures will be able to fully offset any increase in commodity prices, which could increase restaurant operating costs as a percentage of restaurant sales and impact our results from operations.

Interest Rate Risk

We are exposed to changes in interest rates because the indebtedness incurred under our Credit Facility is variable rate debt. We seek to manage exposure to adverse interest rate changes through our normal operating and financing activities. As of April 16, 2023, we had no debt outstanding under our Credit Facility. Assuming our Credit Facility (including the Delayed Draw Term Loans) were to be fully drawn, a 100-basis point increase to the applicable variable rate of interest would increase the amount of interest expense by $1.05 million for fiscal 2022.

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. 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 traffic frequency or purchasing patterns. In addition, there can be no assurance that we will generate CAVA Same Restaurant Sales Growth in an amount sufficient to offset inflationary or other cost pressures.

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

**Labor Costs**

Wages paid in our restaurants are impacted by, among other factors, 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. We currently pay all our Team Members more than the applicable minimum wage in the area where they work. Competition in these communities for qualified Team Members could require us to pay higher wages and provide greater benefits. In addition, the COVID-19 pandemic and recent macroeconomic conditions have resulted in aggressive competition for talent, wage inflation and pressure to improve benefits, and workplace conditions to remain competitive.

While we generally seek to offset any wage increases with operational efficiencies and by leveraging CAVA Same Restaurant Sales Growth, such measures may not fully offset any wage increases and we may seek to increase our menu prices. We cannot assure you that we will be able to fully offset wage increases through any of these measures.

**Controls and Procedures**

Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. We are currently in the process of reviewing, documenting, and testing our internal control over financial reporting.

We have not performed an evaluation of our internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act, nor have we engaged an independent registered public accounting firm to perform an audit of our internal control over financial reporting as of any balance sheet date or for any period reported in our financial statements. Our management is not presently required to perform an annual assessment of the effectiveness of our internal control over financial reporting. This requirement will first apply to our Annual Report on Form 10-K for the year ending December 29, 2024. For as long as we are an “emerging growth company,” our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting. When we lose our status as an “emerging growth company”, our independent registered public accounting firm will be required to attest to the effectiveness of our internal control over financial reporting.
Business
BUSINESS

Our Mission

To Bring Heart, Health, And Humanity To Food

CAVA: Defining A Category

CAVA is the category-defining Mediterranean fast-casual restaurant brand, bringing together healthful food and bold, satisfying flavors at scale. Rooted in our rich Mediterranean heritage, we bring a timeless approach to modern wellness through our authentic cuisine and vibrant brand experience. Guided by our mission, we believe food is a unifier for a more diverse and inclusive world for our guests, Team Members, and our grower and rancher partners, where all are welcome at our table. We believe that consumers should not have to choose between taste and health — our innovative cuisine appeals to a wide variety of preferences, satisfying the modern consumer’s desires for flavorful, craveable, and nutritious food without compromise.

Over the past 12 years, we have established ourselves as the only national player at scale in the fast-growing Mediterranean category, with more than twice the number of restaurants compared to our next largest competitor in the category. Our brand and our opportunity transcend the Mediterranean category to compete in the large and growing limited-service restaurant sector as well as the health and wellness food category. CAVA serves guests across gender lines, age groups, and income levels and benefits from generational tailwinds created by consumer demand for healthy living and a demographic shift towards greater ethnic diversity. We meet consumers’ desire to engage with convenient, authentic, purpose-driven brands that view food as a source of self-expression. The broad appeal of our food combined with these favorable industry trends drive our vast opportunity for continued growth.

We have assembled an experienced and passionate team and made significant investments in differentiated digital and manufacturing infrastructure to drive powerful national growth and unit economics. Our strong results reflect our broad appeal and are highlighted by having:

- Driven total revenue from $45.4 million in fiscal 2016 to $564.1 million in fiscal 2022, a 52.2% CAGR, and from $159.0 million in the first quarter of 2022 to $203.1 million in the first quarter of 2023, an increase of 27.7%;
- Driven CAVA Revenue from $41.2 million in fiscal 2016 to $448.6 million in fiscal 2022, a 49.0% CAGR, and from $112.0 million in the first quarter of 2022 to $196.8 million in the first quarter of 2023, an increase of 75.7%;
- Achieved CAVA Same Restaurant Sales Growth for fiscal 2022 of 14.2% (when compared to fiscal 2021) and 23.6% (when compared to fiscal 2019), and 28.4% for the first quarter of 2023 (when compared to the first quarter of 2022);
- Delivered net loss of $59.0 million in fiscal 2022 compared to $37.4 million in fiscal 2021, and $2.1 million in the first quarter of 2023 compared to $20.0 million in the first quarter of 2022, and delivered Adjusted EBITDA of $12.6 million in fiscal 2022 compared to $14.6 million in fiscal 2021, and $16.7 million in the first quarter of 2023 compared to $(1.6) million in the first quarter of 2022; and
- Proven portability across 22 states and Washington, D.C., with a 82% suburban, 14% urban, and 4% specialty location mix as of April 16, 2023.

Number of CAVA Restaurants

[Graph showing the growth of CAVA restaurants from 2016 to Q1 2023 with CAGR of 49%]

$2.4 Million CAVA AUV for Fiscal 2022

20.3% CAVA Restaurant-Level Profit Margin for Fiscal 2022
For fiscal 2019, fiscal 2020, fiscal 2021, fiscal 2022, first quarter 2022, and first quarter 2023, less than 1%, 1.1%, 9.1%, 30.8%, 23.0%, and 44.5%, respectively, of total revenue was attributable to CAVA Restaurants that were converted from a Zoes Kitchen location.

For fiscal 2019, fiscal 2020, fiscal 2021, fiscal 2022, first quarter 2022, and first quarter 2023, less than 1%, 2.4%, 16.4%, 38.7%, 32.7%, and 45.9%, respectively, of CAVA Revenue was attributable to CAVA Restaurants that were converted from a Zoes Kitchen location.

For fiscal 2019, fiscal 2020, fiscal 2021, fiscal 2022, first quarter 2022, and first quarter 2023, less than 1%, 2.4%, 16.4%, 38.7%, 32.7%, and 45.9%, respectively, of CAVA Revenue was attributable to CAVA Restaurants that were converted from a Zoes Kitchen location.
The CAVA Experience – What Makes Us Unique

We believe that our guests should not have to make sacrifices to eat better. With the variety and choice we provide, every order is built upon a unique combination of fresh flavors and textures, customized to suit our guests’ tastes and preferences, with no compromises in health, flavor, or satisfaction.

No Compromises – Where Taste and Health Unite

Vibrant Mediterranean Flavors to Discover and Crave

CAVA offers something for every palate and preference. Whether our guests are looking for indulgent and hearty or healthful and flavorful meals, our authentic Mediterranean cuisine delivers. Our offerings are well-suited for multiple dayparts and occasions, from an everyday option at lunch to a hearty dinner and to catered meals, all of which can be conveniently delivered as our food travels well. This drives a balanced daypart split of 55% / 45% between lunch and dinner and a diversified channel mix of 65% / 35% between in-restaurant and digital for fiscal 2022.

We source 85% of our ingredients (based on total spend for fiscal 2022) directly from growers, ranchers, and producers to provide our guests with high-quality ingredients while maintaining high standards for quality, sustainability, and transparency. Rooted in a sustainable sourcing ethos, we use ingredients that are clean label and in certain products, such as our CPG hummus, are certified organic. Our proprietary dips and spreads are centrally produced to provide our guests with a delicious and consistent offering.
We believe food is an outlet for self-expression, so we offer endless customization. With 38 thoughtfully curated, high-quality ingredients presented to guests in a walk-the-line format, approximately 80% of our guests opt for a custom meal option.

We also offer chef-curated selections for our guests. From our colorful Harissa Avocado Bowl to seasonal favorites like our Roasted White Sweet Potato + Feta Bowl, we meet our guests’ desire for an effortlessly delicious and nutritious meal while introducing them to new flavor experiences.

**Broad Appeal with Diversity at Our Core**

We believe the attractiveness and diversity of our food, flavors, and formats result in a differentiated, broad guest appeal. CAVA is a destination of choice across incomes, ages, geographies, and walks of life, from time-starved professionals to families enjoying a meal together. Our menu fulfills a broad range of dietary preferences,
from hearty and indulgent to vegan, vegetarian, gluten-free, dairy-free, paleo, keto, and nut-free diets. The attractive pricing of our food, when combined with generous portions, provides substantial value to our guests.

The broad appeal of the CAVA experience underpins the rich diversity of our guests. Our guests span gender lines and age groups, with a strong Millennial and a growing Gen Z contingent, as well as all income brackets:

<table>
<thead>
<tr>
<th>Gender Diversity⁴(1)</th>
<th>Age Diversity⁴(2)</th>
<th>Income Diversity⁴(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female 55%</td>
<td>55+ 23%</td>
<td>$150K+ 16%</td>
</tr>
<tr>
<td>Male 45%</td>
<td>19-24 9%</td>
<td>$50-75K 12%</td>
</tr>
<tr>
<td></td>
<td>45-54 19%</td>
<td>$75-100K 13%</td>
</tr>
<tr>
<td></td>
<td>35-44 21%</td>
<td>$100-150K 22%</td>
</tr>
</tbody>
</table>

(1) As measured from February 4, 2022 to February 3, 2023.
(2) The underlying survey excludes individuals 18 years and younger.

Scalable Multi-Channel and Digitally Connected Experience

Our multi-channel strategy is built around our guest experience and is continually evolving to meet guests where, when, and how they want CAVA. We have developed an extensive multi-channel experience that consists of in-restaurant dining, digital pick-up, drive-thru pick-up, delivery, catering, and CPG offerings fully supported by our robust digital infrastructure. The foundation of this infrastructure is a micro-services platform that is designed to easily scale with current and future growth. Our success across channels is reflected in our 51% growth in digital sales in fiscal 2022 and a 27% higher average guest check for digital orders compared to in-restaurant orders. Moreover, our digital guests typically engage with us in more than one channel.

Inviting And Efficient In-Restaurant Experience

We individually design our restaurants for their communities, while maintaining our brand essence. Our dining rooms are oriented to encourage community gathering, while the aesthetic of our open kitchens stimulates our guests’ senses, creating an inviting, transparent, and memorable culinary experience. Our restaurant operating model supports high volumes with speed through our labor-efficient walk-the-line production format. We are focused on continually enhancing our restaurant operations and reducing complexity to maximize efficiency while delivering an exceptional guest experience.
Established, Flexible Off-Premises Platform

Our robust digital platform supports our guest demand for convenience. We enable delivery, digital pick-up, drive-thru pick-up, and catering powered by dedicated, second “digital make lines” in all restaurants. We also operate CAVA digital kitchens to further optimize off-premises production in select markets and trade areas. Using the CAVA app or website, our guests can effortlessly customize their favorite dish and choose to either pick it up from their local CAVA restaurant or have it delivered. A scalable digital infrastructure and an extensive network of fully integrated delivery partners back our simple and intuitive guest experience.

Personalized In-App Experience

Our CAVA app, which includes our patented technology, merges our in-restaurant and digital experience to create a personalized guest experience. We have designed our interfaces to provide a feeling of “digital hospitality,” including a visual bowl and pita builder bridging the digital and physical experience. These tools create a highly visual experience with easy navigation, allowing users to utilize the walk-the-line ordering process they experience at our restaurants. From quick reordering of favorite meals to in-app delivery to streamlined payment options, the app enhances the on-the-go CAVA experience. In fiscal 2022, we increased the monthly active users on the CAVA app by 63%. In addition, between January 2022 and August 2022, the CAVA app was the third fastest year-over-year growing quick-service restaurant app by monthly active users according to an independent third-party publication.

Integrated Loyalty Program

Our loyalty program creates a value-added experience for guests both in-restaurant and through our digital channels, enabling them to earn rewards as they purchase. Our payment and loyalty pass is integrated, including the ability to use digital wallets such as Apple Pay, creating greater utility and convenience for our guests. As of April 16, 2023, we had approximately 3.7 million loyalty members, representing a 56% year over year increase in loyalty membership.

Scalable Data-Driven Growth Engine

Our flexible and scalable data architecture, together with our data analytics, position us to better understand guests’ preferences, connecting that insight to digital experiences to develop a personalized relationship, incentivize habituation, and drive growth. We have designed our guest user interfaces to leverage our data architecture for dynamic merchandising based on a wide range of variables to surface highly relevant and impactful content. Our significant investments in data infrastructure allow us to continuously improve the guest experience to drive deeper engagement.

Added Access with Consumer Packaged Goods

Our CPG offering acts as an extension of the CAVA brand, allowing our guests to take the essence of CAVA home with them. We offer a full line of dips and spreads, ranging from Crazy Feta to Traditional Hummus to Tzatziki, as well as dressings, such as Lemon Herb Tahini and Yogurt Dill. A range of our dips and spreads are sold nationally through grocery stores, including Whole Foods Markets, and our dressings are available at grocery stores in select markets.

Devoted Team Members Driving Culture and Hospitality

Inspired by the Mediterranean Way and defined by a genuine expression of hospitality and warmth, we want our Team Members – who carry on the CAVA culture every day – to build a career and not merely find employment. We continuously nurture our talent-rich pipeline by offering a clear promotional track for Team Members to become General Managers, with a goal of filling more than 75% of General Manager positions through internal promotions.

We invest in programs to support our Team Members personally and professionally, from our Employee Assistance Program and mental health benefits for all Team Members to our CAVAYou Continuing Education Program and our non-profit Goodness Fund, which we created to support our Team Members in times of need. The
results of these initiatives are evidenced by our eNPS score in the 71st percentile, which indicates a high level of commitment according to Denison Consulting, which conducted our 2022 Team Member engagement survey. In addition, on average, we rank in the top quintile within the diversity and inclusion category, based on our Team Members’ responses to our 2022 Team Member engagement survey. Embodying the CAVA ethos of hospitality, our devoted Team Members deliver positive guest experiences, as reflected in our Yext score, an analytical tool measuring customer reviews, of 4.3, which reflects 88% of our restaurants performing in the top quartile of similar Yext businesses.

**Experienced, Founder-Led Management Team**

Our highly experienced and passionate team is inspired by our Co-Founders, Ike Grigoropoulos, Chef Dimitri Moshovitis, and Ted Xenohristos, our Chief Concept Officer, and led by our Chief Executive Officer and Co-Founder Brett Schulman, in creating a powerful culture that serves as a strong foundation for our shared success, grounded in the Mediterranean Way. We have assembled an accomplished and talented senior management team with extensive experience, including Tricia Tolivar (Chief Financial Officer), Jennifer Somers (Chief Operations Officer), Chris Penny (Chief Manufacturing Officer), Kelly Costanza (Chief People Officer), and Rob Bertram (Chief Legal Counsel). Our senior team contributes deep industry insights and expertise from years of industry experience at leading restaurant and consumer companies such as Taco Bell, Mattel, AutoZone, and Ollie’s Bargain Outlet. Our Co-Founders and senior management team have transformed CAVA into a nationwide concept, seamlessly managing the integration of our Zoes Kitchen acquisition in 2018, and agilely growing the Company through the COVID-19 pandemic to where it is today.

**Strong Financial Results Driven By Powerful Unit Economics**

Our category-defining brand, authentic offering, and attractive business model are supported by powerful unit economics that drive our strong performance. We increased the number of CAVA Restaurants from 22 as of the end of fiscal 2016 to 263 as of April 16, 2023, representing a CAGR of 49%. We have steadily grown CAVA Revenue each year since 2016, except for a slight decline in fiscal 2020 as a result of the COVID-19 pandemic. Since the Zoes Kitchen acquisition, through April 16, 2023, we have successfully converted 145 Zoes Kitchen locations into CAVA restaurants, in addition to opening 51 new CAVA restaurants during such period. At the same time, we have successfully managed through the mid-to-high-single digit inflationary environment and were able to expand CAVA Restaurant-Level Profit Margin to 20.3% in fiscal 2022, despite only increasing our in-restaurant menu price by less than 5%.

We have meaningfully grown CAVA Same Restaurant Sales each fiscal quarter for the past nine fiscal quarters. We will continue to focus on maximizing the potential of our existing CAVA restaurants to drive CAVA Same Restaurant Sales Growth.

**CAVA Same Restaurant Sales Growth**

<table>
<thead>
<tr>
<th>Quarter</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1</td>
<td>-20.3%</td>
<td>22.1%</td>
<td>24.3%</td>
<td>28.4%</td>
</tr>
<tr>
<td>Q2</td>
<td>-50.1%</td>
<td>113.7%</td>
<td>25.1%</td>
<td>14.8%</td>
</tr>
<tr>
<td>Q3</td>
<td>-18.2%</td>
<td>10.2%</td>
<td>17.9%</td>
<td>9.2%</td>
</tr>
<tr>
<td>Q4</td>
<td>-12.7%</td>
<td>17.0%</td>
<td>32.8%</td>
<td>27.9%</td>
</tr>
</tbody>
</table>

Compared to corresponding period in prior fiscal year
Compared to corresponding period in fiscal 2019
CAVA Same Restaurant Sales Growth was materially impacted in fiscal 2021 due to the temporary impacts of the COVID-19 pandemic on CAVA Revenue during fiscal 2020.

For purposes of calculating CAVA Same Restaurant Sales Growth compared to the corresponding period in fiscal 2019, we only include CAVA restaurants that were open as of the beginning or during the corresponding period in fiscal 2019.

We have demonstrated the ability to drive strong unit economics alongside rapid growth. Over the course of hundreds of new restaurant openings and conversions, our team has worked continuously to refine every aspect of our restaurant opening playbook. We have developed a clear framework and significant operating expertise, enabling us to confidently expand in new and existing markets. We aim to grow AUVs and restaurant-level profit margins as we increase CAVA’s brand awareness. The following chart sets forth our target economics for new CAVA restaurant openings, excluding conversions of Zoes Kitchen locations:

<table>
<thead>
<tr>
<th>Target Average New Unit Economics ($ in millions)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>AUV(1)</td>
<td>$2.3</td>
</tr>
<tr>
<td>CAVA Restaurant-Level Profit Margin(1)</td>
<td>20%</td>
</tr>
<tr>
<td>Net Capital Expenditures(2)</td>
<td>$1.3</td>
</tr>
<tr>
<td>Cash On Cash Returns(1)</td>
<td>35%</td>
</tr>
</tbody>
</table>

(1) Reflects targets for the second full year of operations.
(2) Reflects capital expenditures incurred to open a restaurant, net of tenant allowances.

Our target new unit economics are substantiated by our strong track record of AUV growth and our aggregate Cash on Cash Returns of approximately 40%, which is calculated on a combined basis for all CAVA restaurants opened prior to fiscal 2018 to exclude the impact of the COVID-19 pandemic. In addition, in fiscal 2022 and the first quarter of 2023, we achieved CAVA AUV of $2.4 million and $2.5 million, respectively, with CAVA Restaurant-Level Profit Margin of 20.3% and 25.4%, respectively.

We have achieved success across 22 states and Washington, D.C. with strong AUV across regions and across formats in suburban, urban, and specialty locations. With proven portability across diverse market types and geographies, we see further opportunities to leverage our trade areas and further penetrate our existing markets.

<table>
<thead>
<tr>
<th>CAVA Restaurants by Geography(1)</th>
<th></th>
<th>CAVA Restaurants by Format(1)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(in millions)</td>
<td></td>
<td>(in millions)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Restaurants</td>
<td>Average Age(2)</td>
<td>CAVA AUV(3)</td>
</tr>
<tr>
<td>Mid-Atlantic</td>
<td>59</td>
<td>5.0</td>
<td>$2.6</td>
</tr>
<tr>
<td>West</td>
<td>15</td>
<td>4.8</td>
<td>$2.9</td>
</tr>
<tr>
<td>Northeast</td>
<td>24</td>
<td>4.3</td>
<td>$3.3</td>
</tr>
<tr>
<td>Southeast</td>
<td>35</td>
<td>2.3</td>
<td>$2.2</td>
</tr>
<tr>
<td>Southwest</td>
<td>42</td>
<td>2.0</td>
<td>$2.3</td>
</tr>
</tbody>
</table>

(1) For CAVA restaurants open for at least thirteen periods as of April 16, 2023.
(2) Average age represents, as of April 16, 2023, the period of years that CAVA restaurants have been open to guests.
(3) For the trailing thirteen periods ended April 16, 2023.
Our strong financial results, proven portability, and broad appeal of our brand are further evidenced by substantial diversity across geographies and formats and revenue diversity across dayparts and channels, as shown in the charts below.

<table>
<thead>
<tr>
<th>Daypart Diversity(1)</th>
<th>Geography Diversity(2)</th>
<th>Format Diversity(2)</th>
<th>Channel Diversity(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dinner 45%</td>
<td>Northeast 11%</td>
<td>Urban 4%</td>
<td>Delivery 16%</td>
</tr>
<tr>
<td>Lunch 55%</td>
<td>West 6%</td>
<td>Suburban 82%</td>
<td>In-Restaurant 65%</td>
</tr>
<tr>
<td></td>
<td>Mid-Atlantic 25%</td>
<td>Specialty 4%</td>
<td>Pick Up 19%</td>
</tr>
<tr>
<td></td>
<td>Southeast 31%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Southwest 27%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Based on CAVA Revenue for fiscal 2022.
(2) Based on CAVA Restaurant count as of April 16, 2023.

Significant Market Opportunity Supported By Accelerating Consumer Trends

We compete in the large and growing U.S. limited service restaurant industry, which was estimated to be more than $325 billion in 2021. We believe that our differentiated offerings and broad appeal provides us with significant whitespace opportunity in the Mediterranean and health and wellness food category, and we also expect to benefit from several strong and emerging trends:

Evolving Consumer Preferences for Authentic and Ethnic Cuisine

The ethnic diversity of the U.S. population continues to increase with approximately 48% of Gen Z consumers identifying as members of a minority group, as compared to 39% of Millennials. This melting pot of cultures fuels the ever-growing consumer interest in exploring new and exciting cuisines, and we believe CAVA is optimally positioned to capitalize on this generational shift. The Mediterranean category, which was estimated to be almost $40 billion in 2021, is a notable growth area within the restaurant industry as the American palate becomes more drawn to unique and exciting flavors while still focusing on health. As the first and only Mediterranean brand at scale, CAVA shapes and defines the category; we believe Mediterranean cuisine is growing significantly as consumers become more familiar with our brand and our strong, authentic, craveable, on-trend flavors.

Increased Focus on Health and Wellness

Consumers across various age groups are focused on improving their health and wellness, with 70% wanting to be healthier and approximately 50% placing healthy eating as a top priority according to an independent third-party survey. This focus on health and wellness has allowed the global health and wellness food category to grow to approximately $840 billion in 2022.

The Mediterranean diet has been ranked the #1 best diet overall by U.S. News & World Report for six years in a row. We believe that the health and nutrition of our food, together with our walk-the-line model, enables our guests to customize and optimize their well-being and meet their specific health and dietary needs while enjoying the flavors they crave, and allows us to compete effectively in the health and wellness food category, where we believe we have significant whitespace opportunity.

Emphasis on Combined Quality and Convenience

Modern consumers expect to be able to customize where, when, and how they enjoy their food, without compromising the quality of their food or experience. Whether it is an in-restaurant order, an order picked up in-restaurant, a drive-thru pick-up order or a delivery order, CAVA’s easy and quick access has been key to our success and is expected to strengthen as we further enhance channels of access for our guests. The rise and focus on digital channels have been reinforced by the impact of COVID-19 on the restaurant industry. For example, CAVA Digital Revenue Mix was 35% in fiscal 2022, compared to 13% pre-pandemic.
Our Growth Opportunities

We intend to expand our business and passion for the Mediterranean Way by executing the following growth strategies:

**New Restaurants – A Substantial Whitespace Opportunity**

We are in the early stages of fulfilling our total restaurant potential. We have driven strong and consistent performance across our diverse base of restaurants, with more than 80% of our restaurants in suburban locations and the remainder in high-footfall city center and specialty locations throughout the continental United States – from Lancaster, PA, to Los Angeles, CA, and from Back Bay in Boston, MA to Birmingham, AL.

As of April 16, 2023, we had 263 restaurants across 22 states and Washington, D.C. We anticipate having 34 to 44 Net New CAVA Restaurant Openings in the remainder of fiscal 2023, which includes opening the remaining 8 conversions of Zoes Kitchen locations that we expect to complete by the fall of 2023. Based on our internal analysis and third-party research, we believe there is potential to have more than 1,000 CAVA restaurants in the United States by 2032. We currently have a strong new restaurant pipeline with 100 new sites for which we have signed letters of intent as of April 16, 2023, which is well in excess of our planned new restaurant openings in 2023 and 2024. These new openings are expected to be in both existing markets where there is unfulfilled consumer demand and new markets waiting to experience CAVA. For example, in 2024, we intend to enter and develop attractive new geographies, such as the Midwest.

**Grow Within Existing Markets**

The lines at our restaurants, the continued increase in digital adoption, and the historical and recent research we have obtained through the CAVA Brand Health Survey confirm the significant demand for CAVA in existing markets. We believe there is an opportunity to increase density within our existing markets while continuing to grow AUV in those markets. Historically in certain markets, the restaurants we subsequently open after the fourth restaurant opening achieve higher starting AUV as compared to the initial restaurants opened in those markets. Furthermore, we expect the 59 and 73 restaurants that we opened in fiscal 2021 and 2022, respectively, will continue to grow and generate higher AUV as they mature. When a new CAVA restaurant is opened, we generally observe significant organic sales growth over time, driven by the excitement around the novelty of our brand and sustained by the broad appeal of our offering.

**Enter and Scale New Markets**

We have demonstrated the relevance and portability of the CAVA brand as evidenced by success in 22 states and Washington, D.C. as of April 16, 2023. We believe the whitespace for CAVA extends nationwide, underpinned by our brand strength, well-developed pipeline of talent across key functional and operating areas, corporate infrastructure, new restaurant opening playbook, and attractive unit economic model supporting the execution of our new market growth strategy. Before entering new markets, we develop a comprehensive market plan that plots a clear path for future development. In addition, when determining new locations, we use a data-driven approach to heat-map demographic and psychographic data and identify trends that historically correlate with a trade area’s revenue potential to meet our unit-level returns criteria.

**Drive Culinary Innovation**

We believe the excitement we build around our menu will attract more traffic to our restaurants and across our digital channels. We are focused on menu innovation to continue delighting our guests with vibrant Mediterranean flavors and healthful food. We intend to introduce new and unique items to our core staples like Harissa Honey Chicken, while also offering limited-time menu items through seasonal innovation such as our White Sweet Potato + Feta Bowl. Our culinary innovation engine will continue to keep our passionate fans engaged and constantly excited to experience CAVA.
Leverage our Digitally Enabled Multi-Channel Offering

Our digital platform has been an important contributor to our growth. We will continue to enhance our channel offerings in order to maximize our value proposition to our guests while making it easy to engage with CAVA. We intend to leverage our interconnected physical and digital ecosystem to continue to increase convenience and access to our brand while enhancing our adaptability across trade areas.

Format Flexibility to Drive Growth

We are introducing new formats, such as CAVA digital kitchens, CAVA hybrid kitchens and drive-thru pick-up lanes, to better suit evolving consumer demands and to tailor to our guests’ preferred channels. We are currently piloting CAVA digital kitchens in select markets to serve as centralized production hubs, and we are also currently piloting CAVA hybrid kitchens in select markets where we believe there is strong demand for our catering services. In addition, we have seen success since our initial launch of restaurants with drive-thru pick-up locations in 2019. Restaurants with drive-thru pick-up capabilities generally achieve higher sales compared to other restaurants. We currently expect that a significant portion of our new restaurants opening in fiscal 2023 and beyond will have drive-thru pick-up capabilities. We plan to continue driving growth with new and improved formats and convenience channels tailored to our guest preferences.

Improved Digital Customization

Our digital strategy is a key element to our future growth as consumers evolve and look for more convenient and personalized ways to engage with CAVA. Our ability to dynamically surface content across various modes of engagement, whether through the CAVA app, website, or in-restaurant, has allowed effortless navigation and personalized experiences. For example, leveraging our in-restaurant digital menu boards and CAVA app, we plan to highlight top trending mixes and provide our guests with loyalty program rewards when they select those combinations. We continue to make targeted digital investments that provide a personalized end-to-end guest experience guided by data. We also have several initiatives, such as in-restaurant one-tap loyalty and pay, loyalty program enhancements, and catering CRM, in development.

Enhanced Loyalty Offering

Our approximately 3.7 million loyalty members represented 25% of our sales for the first quarter of 2023. We see a large growth opportunity in driving new and existing guests to join our loyalty program. We intend to leverage our in-house data architecture to engage with our guests in effective ways as we continue to refine and evolve our loyalty program, including introducing menu exclusives to drive adoption, enhancing targeting capabilities to amplify conversion, and instituting engagement challenges to motivate frequency and rekindle lapsing guest relationships. In addition, we plan to adopt a more tailored approach to our loyalty program by providing unique personalized digital content in the CAVA app powered by our digital ecosystem, offering physical items such as merchandise, and making cross-channel offers to develop a richer emotional connection with our guests.

Broaden our Catering Offering

We are currently in the early stages of our catering program and plan to expand our catering capabilities to more CAVA locations around the country by leveraging our kitchen production. We believe this will help to drive CAVA Same Restaurant Sales across our restaurant base.

Grow Consumer Packaged Goods

We have built a well-established CPG business consisting of CAVA dips, spreads, and dressings. Our CPG offerings are currently sold in more than 650 grocery stores nationwide, including Whole Foods Markets across the country. We will continue to innovate in this highly attractive category by increasing our SKUs as well as channels of distribution.

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Increase Brand Awareness

Each new restaurant we open increases our brand awareness and allows us to introduce the Mediterranean Way to, and reach, more guests. With our focus on hospitality and our ability to execute at a high-level, the expansion of our restaurant base is an effective and cost-efficient way of marketing our purpose-driven, authentic brand, in addition to being an important growth driver. Our aided brand awareness has grown from 41% in the first half of fiscal 2021 to 44% in the second half of fiscal 2022, with significant runway to further increase brand awareness and guest engagement in both our existing and new markets, which will allow us to create, capture, and retain new demand.

To further increase brand awareness, we will also focus on the following:

Local Community Engagement

As we enter into new markets, we tailor our marketing, media, and outreach to engage each local market. For example, we host Community Days when we open a new restaurant, where we provide free meals to all who come through our doors. We suggest and match donations received on Community Days to benefit local nonprofit partners that focus on underserved neighborhoods. This increases our brand awareness while simultaneously supporting our mission by bringing heart, health, and humanity to food in each new community we enter.

Amplify our Brand Expression Through Collaborations

We have recently tapped into a new mode of guest engagement through brand collaborations with genuine CAVA fans. Our first campaign with top influencer, Emma Chamberlain, in 2022 drove incremental traffic, increased brand awareness with the Gen Z audience, and helped CAVA be voted for the first time as one of upper income female Gen Z’s top five favorite restaurant brands in a third-party survey. We see opportunities to build upon this success and execute other brand collaborations to fortify our brand awareness across attractive demographics.

Grow our Social Community

A core strength of our brand is our passionate fan base that engages on social media. With hundreds of thousands of followers across our social communities and over 2.6 million engaged ‘likes’ on TikTok, these channels allow us a deeper way to engage our guests and reinforce our brand essence. We intend to continue to use dynamic content, relevant cultural moments, micro-influencer partnerships, and other partnerships to grow our community and drive brand awareness.

Leverage our CPG Offerings

Our Consumer Packaged Goods, sold in over 650 grocery stores nationwide, give us an opportunity to engage with consumers through multiple, high-value touchpoints that amplify brand awareness. Whether on a grocery store shelf or in a refrigerator in a guest’s home, this channel allows for increased awareness of the CAVA brand.

Capitalizing on our Significant Investments in Infrastructure

We have made significant investments in our infrastructure across critical areas of our business to support our future growth and provide operating leverage, including the following:

- **Technology Infrastructure**: Our robust infrastructure, including a unified data warehouse and master data management platform, allows for clean, consistent, and actionable data across the enterprise.
- **Digital Platform**: We have built a fully integrated digital platform based on an agile, flexible, and scalable micro-services architecture, including dynamic content management and order flow throttling capabilities.
- **Catering**: Our proprietary catering CRM supports our channel growth opportunity.
- **Manufacturing**: We currently operate a 30,000-square-foot production facility in Maryland and recently commenced building a state-of-the-art production facility in Virginia. Our proprietary dips and spreads are...
centrally produced to enable our restaurants to focus on all other aspects of food preparation. We expect that our production facilities will support at least 750 restaurants, as well as our CPG business, with the potential to add additional capacity over time.

- **Supply Chain:** We have established a direct sourcing model comprised of trusted grower, rancher, and producer partners who will enable us to maintain the quality and consistency of our ingredients as we scale.

- **People:** We have made significant hires across key functional and operational areas.

We believe these investments will continue to enable consistent, cost-effective production while deepening our competitive advantage and extending our leadership in the Mediterranean category.

### Our Menu

#### Culinary Philosophy

We have designed our menu to offer vibrant Mediterranean flavors for guests to discover and crave. Fresh, high-quality ingredients are the foundation for our food, inspired by our Mediterranean roots that unite taste and health. We make it deliciously simple to eat well and feel good every day.

#### Menu Overview

- **Build Your Own**

  - **BOWL**: $9.17
  - **PICTA**: $5.20

  1. Start with a bowl or pita
  2. Choose a base: greens, grains, or both
  3. Pick at least 3 toppings
  4. Select a main or a side of two
  5. Add toppings as many as you want!
  6. Choose a dressing, or top or set the side

- **Chef-Curated Bowls**

- **Chef-Curated Pitas**

  - **BALSAMIC DATE CHICKEN**
  - **HERB-SPICY CHICKEN**
  - **CRESTI PATALS**
  - **SPICY CHICKEN + AVOCADO**

#### Drinks

- **BLUERIDGE LAVENDER AICE**
- **ROSE LAVENDER AICE**
- **RED LAVENDER AICE**
- **NO KAY PEACE**
- **SMART & LEMON**
- **STILL SPRINKLING WATER**

#### Sides + Desserts

- **PICTA CHIPS**
- **GRELSTON BLONDE**
- **GRELSTON BROWNE**

#### Our quality ingredients and from-scratch recipes set us apart. Our carefully crafted offerings with fresh ingredients and bold flavors, combined with the Mediterranean spirit of generosity, provide us with differentiated, broad appeal across dayparts. Our guests can choose a chef-curated meal or customize a delectable meal from our myriad of options below:

- **Build-Your-Own-Bowl or Pita** – Our 38 ingredients offer near endless customization for our guests to build meals tailored to their personal preference without making compromises and allow them to experiment and explore new flavors and foods.
• **Chef-Curated Bowls and Pitas** – Introduced in 2020, our in-house chef-curated bowls and pitas are designed to maximize flavor pairings. For guests new to CAVA who are pressed for time or who would rather defer to our in-house chef’s expert culinary creations, these menu items help simplify the ordering process and offer complementary, bold flavors to discover and crave.

• **Drinks** – Our seasonal juices and refreshing iced teas are made in-house daily, blending the vibrant flavors of the Mediterranean with familiar favorites. We also offer multiple fountain sodas that use Fair Trade Certified ingredients, sparkling waters, and other beverage options.

• **Sides** – Our side pitas are made with seven wholesome sprouted grains, loaded with lentils and wheat berries to make our pitas bigger, fluffier, with an all-around amazing taste. The side pitas are offered warm, are complimentary with the purchase of each bowl, and were created for CAVA by a Brooklyn-based bakery supplier. Our irresistible pita chips are cooked in-house daily in small batches and pair well with our signature CAVA dips and spreads.

• **Desserts** – Our delicious dessert options are created in partnership with leading bakeries, such as our Salted Chocolate Oat Cookies made by Whisked, a woman-owned bakery.

• **Kid’s Meals** – Our Kid’s Meals make CAVA accessible for families with younger guests and include a mini version of our Build-Your-Own-Pita with a side of pita chips or carrots sticks, and a choice of milk or juice.

**Our Proprietary, Signature Dips and Spreads**

Our proprietary dips and spreads used in our restaurants are centrally produced, which helps us maintain high standards for quality, sustainability, and transparency, and provides our guests with a consistently delicious experience. In line with our culinary ethos, we use fresh, high-quality ingredients, such as fresh dill, garlic, cucumbers, and a yogurt blend used in our popular Tzatziki, to produce our dips and spreads. Our rigorous standards, combined with fresh ingredients in our dips and spreads at scale, provides a point of differentiation to our guests. We believe our ability to produce dips and spreads is difficult to replicate and serves as a competitive advantage.

Our proprietary, signature dips and spreads include:

• **Crazy Feta** – CAVA’s signature feta, whipped with jalapeño, onion, and olive oil for just that right level of spicy.

• **Harissa** – a Greek spin on a traditional North African spicy chili pepper paste with a vibrant tomato flavor.

• **Roasted Eggplant Dip** – roasted eggplant that is emulsified with olive oil and lemon juice, combined with parsley, onions, and garlic.

• **Roasted Red Pepper Hummus** – fresh roasted red peppers, puréed with chickpeas, tahini, and garlic.
• Traditional Hummus – a guest favorite and CAVA classic featuring organic chickpeas puréed with tahini, lemon juice, fresh garlic, salt. No oil here!

• Tzatziki – made with Greek yogurt, fresh shredded cucumber, and dill that is thick, creamy, and brightens everything.

We also centrally produce and offer a selection of our proprietary, signature dips, spreads, and dressings as consumer-packaged goods, which are available at Whole Foods Markets across the country, regional grocery chains, and local independent providers in select markets. We believe our CPG offerings amplify our brand awareness by providing guests with multiple touchpoints to engage with us outside the four walls of our restaurants. In addition to the dips and spreads described above, our CPG offerings include:

• Everything Bagel Labneh – thick, strained Greek yogurt with a Mediterranean-inspired everything bagel spice mix.

• Spicy Labneh – a thick and luscious extra-strained Greek yogurt with our own secret mix of spices.

• Organic Traditional Hummus – USDA certified organic version of the traditional hummus used in our restaurants.

• Spicy Hummus – a fan favorite featuring the smooth flavor from our traditional hummus, plus harissa.

Culinary Innovation and Seasonal Offerings

We fuel continuous discovery through a powerful culinary innovation engine with introductions to our quarterly seasonal menu and an ongoing evolution of our core menu. We strive to continuously engage our guests by providing a gateway to discover new and exciting flavors and ingredients from our Mediterranean pantry. We believe this enables our guests to feel more adventurous, builds excitement around our menu, and helps to grow our expanding base of loyal CAVA fans.

We have developed an extensive stage-gate culinary development process to assess the viability of new menu items, ingredients, and flavors. We use a phased approach, beginning with ideation, to development and testing, and ending with launch and review of a new menu item, ingredient, or flavor. We believe this process for culinary innovation provides several advantages, including early identification of any impediments to scalability and necessary refinements, and a reduction in complexity, enabling us to develop and launch successful new menu items, ingredients, and flavors. We utilize this process to innovate both our core menu and our seasonal offerings.

Core innovation helps guests continue to explore our menu, expanding from familiar staples to new, innovative flavors. For example, we offered seasonal balsamic date vinaigrette in our Fall 2022 menu, which was well-received by our guests. In addition, in our Fall 2022 menu, we highlighted a trending ingredient from our Mediterranean pantry: the deglet noor date. We created a touch of sweetness to add a new layer to our high-definition flavors. We also introduced our Sweet + Spicy Chicken Pita in October 2022, combining our highly popular Harissa Honey Chicken with our limited time only balsamic date vinaigrette for a sweet, fiery satisfaction. As part of our core innovation, we are focused on broadening our offerings to increase guest frequency and attract new guests. For example, our nine-grain sprouted customized pita and curated pita category was launched in the fall of 2021 with an aim to attract guests looking for sandwiches.

We utilize our seasonal menus to audition ingredients and bowls to add to the year-round menu and to highlight fresh ingredients available from our growers and ranchers. Our new seasonal menu offerings are informed by guest purchase and customization habits, and generally increase order frequency as guests sample our new offerings. Our top-selling seasonal offering in summer of 2022 was our Lemon Chicken Bowl, which was released in summer of 2021 to great reviews and brought back in summer of 2022. We also offer seasonal juices and teas that are made in-
house, such as our recently released seasonal pineapple apple mint juice. We seek to develop unique drink flavor profiles that pair well with our food.

**Our Values and Our People**

**Our Values**

Our values are foundational to how we operate all facets of our business. They are:

- **Generosity First, Always** - We lead with kindness. Our best work happens when we act in service of others.
- **Constant Curiosity** - We are eager to learn, grow, and explore beyond the obvious.
- **Act with Agility** - We welcome change; it’s the only constant. We embrace, adjust, adapt.
- **Passion for Positivity** - We greet each day with warmth and possibility.
- **Collective Ambition** - We have high aspirations that are achieved when we work together with a shared purpose.

Our values build upon our mission and set a clear foundation for expected behavior from all Team Members, which we believe allows us to maximize opportunities for growth and development.

**Our People**

From the very beginning, our founders were focused on ensuring CAVA treated all Team Members with generosity – we believe the health and well-being of our Team Members are just as important as the health of our food. Becoming a Team Member means joining a vibrant community with a service mindset that values individual voices and seeks to create equitable experiences for all. Our Team Members are the heart and engine of our company, the foundation upon which we continue to build as we grow across the country. We look to hire Team Members who are passionate about our mission and values and will strive to embody the Mediterranean Way, creating a welcoming environment for our guests and other Team Members.

We are committed to bringing heart, health, and humanity to food and believe our Team Members’ satisfaction is critical to delivering on that mission. As part of our strong culture that includes an open-door policy and opportunities for Team Members to have their voices heard, we survey our Team Members several times annually to assess our culture and receive recommendations for improvement. We are proud of the results we achieved in our
2022 employee engagement survey, in which our Team Members indicated that they would recommend working at CAVA and feel committed to the organization. This is also evidenced by our eNPS score in the 71st percentile, which indicates a high level of commitment according to Denison Consulting, which conducted our 2022 Team Member engagement survey.

Our support center Team Members regularly travel to our restaurants to gather feedback from our restaurant Team Members on how to improve our operations and incorporate the CAVA standards across all our restaurants. As part of our Collective Ambition value, we believe that each Team Member plays a role in the success of our brand. Our “Partners in Service” program exemplifies this value. Under this program, all our support center Team Members are encouraged to put on a CAVA uniform once per quarter and work “Shoulder to Shoulder” with our Team Members in our restaurants. In addition, certain top-performing restaurant Team Members are invited to our support center every quarter for a “Center at the Source” experience, where they learn about our support center functions and participate in sessions with our support center Team Members.

We believe that recognition and rewards are key to a healthy and vibrant culture. We offer competitive compensation and benefits, including medical, dental, and vision insurance, 401K matching, an Employee Assistance Program that covers paid mental health benefits and counseling for all Team Members and their household members, elder care services, alcohol and drug dependency programs, continuing education and college planning, marriage and relationship counseling, relocation guidance and family planning assistance. We offer short- and long-term incentive programs for Team Members holding a position above General Manager, as well as Team Members in our collaboration center and support centers. Our General Managers participate in our short-term incentive program.

As of April 16, 2023, we employed approximately 7,400 Team Members in our restaurants and 350 within our manufacturing and collaboration center organizations.

**Training and Development**

We pride ourselves on building an engaged, diverse workforce and providing a welcoming workplace that enables us to train, retain, and promote Team Members across all levels of our company. We believe our investment in training and developing our Team Members is a key driver of the success of our new restaurant openings and will enable us to create and maintain a robust pipeline of high-performing talent to support our continued growth.

A key component of our Team Member development pipeline includes a nationwide training network led by our Academy General Managers. The Academy General Managers are leaders that we have identified as achieving strong operational and financial results at the restaurant they are in charge of. Each Academy General Manager has been certified in three areas of excellence: business acumen, operational standards, and CAVA Culture. They supervise overall training and development, including for our new General Managers, within the specific geographical market they are responsible for.

We aim to identify new General Managers in advance of their new restaurant opening to help ensure they are trained and prepared with the tools necessary to be successful. Our goal is to internally promote 75% of our General Managers and 100% of our Academy General Managers. As of April 16, 2023, we had 34 Academy General Managers, all of whom were internally promoted, and we intend to have approximately 50 Academy General Managers by the end of 2023.
We provide our Team Members a clear path for advancement to grow from a Team Member into an Academy General Manager, as seen in the development path below:

Social Impact

Generosity is at the core of CAVA – to our guests, Team Members, and community. Grounded in the Mediterranean Way, we have always believed that food can be a force for good.

Utilizing food as a force for good, we cultivate relationships with our neighbors through local food-based non-profit groups. We have raised more than $0.5 million to support organizations, including Future Chefs, Grow to Learn NYC, the Maryland Food Bank, the Nashville Food Project, and Urban Roots. In addition, we host Community Days when we open a new restaurant, where we provide free meals to all who come through our doors. We suggest and match donations received on Community Days to benefit local nonprofit partners that focus on underserved neighborhoods.

In line with our mission of bringing heart, health, and humanity to food, we provide multiple days of paid leave for community service per year to all Team Members to encourage them to engage and give back to their respective communities. We have also created our non-profit Goodness Fund to support our Team Members in times of need.

Commitment to Diversity, Equity, and Inclusion

We are strongly committed to supporting and engaging all Team Members through our diversity, equity, and inclusion initiatives. Diversity Cultivation is one of the seven core competencies we use to evaluate a Team Member's performance on an ongoing basis. We have formed a Team Member resource group, Allies in Motion (AIM), which encourages our Team Members to celebrate and learn about underrepresented groups to build a better world for our guests, other Team Members, and community. In 2022, we launched our Reverse Mentor program, where Team Members in an underrepresented group act as a mentor to senior leaders, including our Chief Executive Officer, to help them become better allies. In addition, on average, we rank in the top quintile within the diversity and inclusion category, based on our Team Members’ responses to our 2022 Team Member engagement survey.

Our Restaurants

As of April 16, 2023, we had 263 restaurants across 22 states and Washington, D.C. We are in the early stages of fulfilling our total restaurant potential. Based on our internal analysis and third-party research, we believe there is potential to have more than 1,000 CAVA restaurants in the United States by 2032. We currently have a strong new
restaurant pipeline with 100 new sites for which we have signed letters of intent as of April 16, 2023, which is well in excess of our planned new restaurant openings in 2023 and 2024.

**New Restaurant Development**

**Development Strategy**

We take an intentional, measured approach to developing our restaurant base expansion. In 2016 we decided to pursue a “coastal smile” strategy. We believed there was unmet consumer demand for healthful and flavorful Mediterranean food in the coastal states and the Sun Belt, where we had identified a trend of positive net population migration as well as a movement from cities to suburbs. The Zoes Kitchen acquisition, in 2018, with its quality real estate locations, helped us accelerate that strategy, allowing us to rapidly expand in a capital-efficient way, particularly in the Sun Belt and the suburbs. With our current footprint spanning across almost all coastal states, we plan to build upon our “coastal smile” strategy and increase density in our existing markets, while expanding into new geographies, such as the Midwest.

In building and executing our pipeline, we take a balanced approach and qualify designated market areas (“DMA”) as established, growth, emerging, and greenfield before establishing targets for new restaurant openings in these different DMAs. We also consider diversity of locations across suburban and urban markets, as well as specialty locations. We will continue to focus on expanding our footprint in a variety of markets, including college campuses and transit hubs, with the majority of our growth expected in suburban markets.

**Market Evaluation and Site Selection**

Our market evaluation and site selection process is data-driven: we institute a series of decision guardrails and complete multiple desktop reviews and site visits before proposing potential sites to our Real Estate Committee for review. This committee follows a detailed process to help ensure quality, financial responsibility, and overall adherence to our goals. We leverage our internal and external capabilities to understand our existing and potential new markets and identify new sites by analyzing characteristics including geography, presence of peer brands, demographic and psychographic data, urban/suburban balance, foot- and vehicle-traffic, retail, and daily needs, employment and daytime activity, adjacent retailers, and volume potential. We continually refine our processes using data insights and other factors identified from successful openings. This stringent process and its series of checks and balances have enabled us to develop a strong pipeline for further growth and demonstrate proven portability across markets and geographies.
Restaurant Design and Format

The design of our restaurants is intended to feel both modern and down to earth, with a warmth that reflects the vibrancy of our food and our mission of bringing heart, health, and humanity to food. Our restaurants are living brand billboards, which serve as gathering places for our guests to experience the flavors and generosity of the Mediterranean Way.

Our restaurant designs are flexible and adaptable to fit any site, which allows us to enhance and tailor our format to our guests’ preferences, including their preferred channels. Each restaurant includes walk-the-line ordering (other than CAVA digital kitchens) and digital pick-up capabilities, as well as a separate digital make line to maximize throughput. Our restaurants generally range from approximately 2,000 to 3,000 square feet in size and seat approximately 35 to 55 guests indoors. As of April 16, 2023, we offered drive-thru pick-up at 20 locations and currently expect that a significant portion of our new restaurants opening in fiscal 2023 and beyond will have drive-thru pick-up capabilities.

We are currently piloting CAVA digital kitchens in select markets to serve as centralized production hubs, which will allow us to expand into the catering category while simultaneously serving individual guests through a digital-only fulfillment model that supports our market growth and removes operational complexity as compared to our traditional restaurants. We are also currently piloting CAVA hybrid kitchens to enhance our catering production capabilities in select markets where we believe there is, and will continue to be, strong demand for our catering services, which, in turn, will support our market growth.

New Restaurant Openings and Conversions

We have rapidly increased the number of CAVA Restaurants, growing from 22 CAVA restaurants at the end of 2016, to 72 CAVA restaurants at the end of 2018 and 263 as of April 16, 2023. Encouraged by positive results from initial conversions of Zoes Kitchen locations into CAVA restaurants, we decided to accelerate our conversions of Zoes Kitchen locations in 2020. In fiscal 2021 and 2022, we had 59 and 73 Net New CAVA Restaurant Openings (including conversions from Zoes Kitchen locations), respectively. As these restaurants continue to mature, we expect they will continue to grow and generate higher AUV. We anticipate having 34 to 44 Net New CAVA Restaurant Openings in the remainder of fiscal 2023, which includes opening the remaining 8 conversions of Zoes Kitchen locations that we expect to complete by the fall of 2023.
The following is a fiscal quarter-end summary of new CAVA openings since the beginning of fiscal 2021 and number of CAVA restaurants as of the end of each fiscal quarter:

<table>
<thead>
<tr>
<th></th>
<th>Q1 2021</th>
<th>Q2 2021</th>
<th>Q3 2021</th>
<th>Q4 2021</th>
<th>Q1 2022</th>
<th>Q2 2022(1)</th>
<th>Q3 2022</th>
<th>Q4 2022</th>
<th>Q1 2023(2)</th>
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<tr>
<td>Net New CAVA Restaurant Openings(2)</td>
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<td>9</td>
<td>24</td>
<td>20</td>
<td>13</td>
<td>18</td>
<td>19</td>
<td>23</td>
<td>26</td>
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<tr>
<td>CAVA Restaurants</td>
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<td>195</td>
<td>214</td>
<td>237</td>
<td>263</td>
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</table>

(1) Reflects one permanent closure.
(2) In Q1 2021, Q2 2021, Q3 2021, Q4 2021, Q1 2022, Q2 2022, Q3 2022, Q4 2022, and Q1 2023, there were 5, 9, 22, 18, 13, 17, 17, 16, and 20, respectively, new CAVA restaurants that were converted from Zoes Kitchen locations.

The following chart sets forth the fiscal 2022 CAVA AUV and CAVA Restaurant-Level Profit Margin for CAVA restaurants, excluding CAVA restaurants converted from a Zoes Kitchen location, categorized by the year in which such CAVA restaurants were opened.

### 2022 CAVA AUV and CAVA Restaurant-Level Profit Margin

<table>
<thead>
<tr>
<th>Vintage</th>
<th>Pre-2018</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
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<tbody>
<tr>
<td>New CAVA Restaurant Openings</td>
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<td>29</td>
<td>17</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>CAVA AUV ($ in millions)</td>
<td>$2.5</td>
<td>$2.8</td>
<td>$2.6</td>
<td>$2.7</td>
<td>$2.5</td>
</tr>
<tr>
<td>CAVA Restaurant-Level Profit Margin</td>
<td>22%</td>
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A typical CAVA restaurant, including a Zoes Kitchen conversion to a new CAVA restaurant, takes between 15 and 20 weeks from start of the build to opening of the restaurant. The average initial investment to build a new CAVA restaurant typically ranges from approximately $1.2 million to $1.3 million, excluding pre-opening costs and net of tenant allowances. The average initial investment to convert a Zoes Kitchen typically ranges from approximately $0.6 million to $0.7 million, excluding pre-opening costs and net of tenant allowances, and therefore represents a capital-efficient way to open new CAVA restaurants.

Our in-house design and construction team has been built for scale, as demonstrated by the rapid expansion of the number of CAVA Restaurants over the last two years. Our team has established a national network of regional general contractors, employing a mixed approach of bidding, direct purchasing, and strategic negotiation to help ensure the best value and high-quality construction. We lease all of our restaurant locations and often receive tenant allowances, and/or rent credits for leasehold improvements.

**Zoes Kitchen Location Conversions**

Our acquisition of Zoes Kitchen in 2018 allowed us to rapidly expand in new and existing markets by converting Zoes Kitchen locations to our CAVA brand. This has enabled us to accelerate our growth, drive brand awareness and create economies of scale. Since the Zoes Kitchen acquisition, through December 25, 2022, we have successfully converted 125 Zoes Kitchen locations into CAVA restaurants.

After the acquisition and through the end of fiscal 2020, we converted eight Zoes Kitchen locations, which achieved significantly stronger post-conversion financial results as compared to pre-conversion results. This guided us to accelerate our conversion timeline. In fiscal 2021, we converted 54 Zoes Kitchen locations, which achieved
post-conversion CAVA AUV of $2.0 million during fiscal 2022, compared to pre-conversion AUV of $1.4 million during fiscal 2019. We are further encouraged by the results of the 63 Zoes Kitchen locations that we converted in fiscal 2022, which are in line with the increase in sales that we have historically experienced following conversion, further highlighting the strength and broad appeal of the CAVA brand as well as our operational efficiencies.

Conversions are a capital-efficient way to open new CAVA restaurants. The average cost to convert a Zoes Kitchen location, excluding pre-opening costs and net of tenant allowances, was $0.7 million and $0.6 million for fiscal 2022 and fiscal 2021, respectively. We expect to complete the conversions of the remaining 28 Zoes Kitchen locations by the fall of 2023.

Sourcing, Manufacturing, and Distribution

Our Sourcing and Supply Chain

We have invested in vertically-integrated manufacturing capabilities and built a differentiated directly-sourced supply chain with more than 50 trusted grower, rancher, and producer partners. Our dynamic, resilient, and diverse supplier network enables consistency, scale, and mutual prosperity as we grow. We have successfully scaled our diverse supplier network as we have grown our restaurant footprint nationally, while assisting the mutual growth of our suppliers. We conduct site visits to our main suppliers to maintain our strong relationships and seek to ensure that they adhere to our high-quality standards. We continually evaluate the strength and diversity of our supply chain against our strategic growth plans to best identify and secure any potential sourcing needs well in advance of our growth. We source 85% of our ingredients (based on total spend for fiscal 2022) directly from growers, ranchers, and producers that serve as our dedicated partners.

We deeply value the robust relationships that we have established with our suppliers and believe the strength of our relationships has been a key factor in our ability to achieve mutual growth. These deeply rooted relationships embody our values while reflecting the diversity of our menu. Our unique sprouted pita is an example of the care we put into selecting and partnering with our suppliers. Sprouted grains are traditionally a difficult ingredient to work with, so we collaborated closely with our supplier in Brooklyn, New York to help ensure a final product for our guests that is consistently high-quality and differentiated from our competitors. Other examples include our partnership with a Montana-based farm to supply black beluga lentils for our tabbouleh, and the olive oil and kalamata olives we source from a family-owned business, who are our long-time partners based in the Peloponnesian region of Greece, the same region our founders’ families are from.
Based on total spend for fiscal 2022.

**Manufacturing and Distributing**

We currently operate a 30,000-square-foot production facility in Laurel, Maryland, and we recently commenced building a state-of-the-art production facility in Verona, Virginia, which is expected to commence operations by the first fiscal quarter of 2024. We expect that our production facilities will support at least 750 restaurants, as well as our CPG business, with the potential to add additional capacity over time.

These strategic investments in our in-house production capabilities have provided us with several key advantages:

- our centralized production process to create our proprietary, signature dips and spreads, together with our use of fresh ingredients, provides our guests with a consistent and higher quality offering in line with our culinary ethos;
- our centralized production also removes a labor-intensive process from the restaurants, increasing our operational efficiency and time spent with our guests; and
- our manufacturing facilities and capabilities are difficult to replicate at scale, serving as a competitive advantage.

We manage all in-bound freight for our directly sourced ingredients, and we directly transport our proprietary, signature dips and spreads from the production facility to our regional distribution partners who then distribute these ingredients and finished goods to our restaurants.

* Based on total spend for fiscal 2022.
Sustainability

We seek to build collective long-term value for our guests, partners, and communities. We believe that bringing heart, health, and humanity to food requires us to focus on our sustainability practices, which we periodically assess, review, and evaluate. These practices include:

• Sustainable ingredient sourcing. We hold ourselves to high standards for quality, safety, sustainability, transparency, and traceability. We use recognizable ingredients that are clean-label friendly. We strive to source meats from farmers that do not treat their animals with added hormones or antibiotics, as well as dairy products from farmers that do not treat their cows with rbST. Select ingredients, such as the chickpeas used in our CPG hummus, are from certified organic sources. We also offer multiple fountain sodas which use Fair Trade Certified sugar, sparkling waters, and other beverage options. Certain new suppliers are requested to verify their sustainability and sourcing credentials as part of our on-boarding process.

• Food waste. We are focused on managing food waste and have instituted practices and protocols to help us more accurately calibrate our food production volume and reduce waste. For example, we train certain Team Members in “thoughtful cooking,” our internal tool to help ensure we are prepping the right amount of food during different dayparts, as well as effectively managing our ordering and inventory. Our goal is for restaurants to account for food waste at the end of every day.

In addition to our focus on managing food waste, in certain locations, we have formed food donation and food resale partnerships to reduce the environmental and financial impact of unsold food. We also have a policy that aims for no “hard transitions” for seasonal menu and packaging changes throughout the supply chain, which helps us reduce waste of food and packaging, even as we launch new seasonal items.

• Plant-based offerings. We aim to provide more sustainable options for our guests by offering a variety of plant-based (vegetarian and vegan) mains, dips, toppings, and dressings. We seasonally promote our plant-based offerings, such as our White Sweet Potato offered in winter of 2021 and 2022, at least once per year to drive availability and awareness of our plant-based offerings.

• Food packaging. We strive to offer recyclable, reusable, and/or compostable materials in all of our food packaging. For example, we are committed to moving away from conventional plastic straws and only offer them upon request.

Our Guests
We believe the attractiveness and diversity of our food, flavors, and formats result in differentiated, broad guest appeal. We attract a diverse base of highly engaged and habitual guests who resonate with our mission and the Mediterranean Way. Our guests span gender lines and age groups with a strong Millennial and a growing Gen Z contingent as well as all income brackets:

![Gender Diversity](image1)

![Age Diversity](image2)

![Income Diversity](image3)

(1) As measured from February 4, 2022 to February 3, 2023.
(2) The underlying survey excludes individuals 18 years and younger.

We have experienced consistent success engaging with, and attracting, loyal guests across several markets and geographies. As we expand our footprint nationwide, we will continue to reach new guests and convert existing guests to loyalty members.

**Our Brand and Marketing**

Our marketing strategy is anchored in our growth mindset and centered on the needs of our guests. We are focused on creating, capturing, and retaining new demand by increasing our brand awareness while also building upon our existing value proposition to our guests.

Our brand experience is designed to be joyful and generous, in alignment with our mission. We recently introduced a warmer and more vibrant expression of the CAVA brand, with a new brand logo and a refresh of all brand touch points. This includes our new web and CAVA app experiences, our future restaurant prototype design, and an overhaul of our brand assets.
Brand Awareness

We leverage our large guest database to conduct organic and targeted marketing. We have strong and growing brand awareness levels in both existing and new markets and across multiple demographics, particularly with Gen Z and Millennials. Our aided brand awareness has grown from 41% in the first half of fiscal 2021 to 44% in the second half of fiscal 2022. We believe there is significant runway to further increase brand awareness and guest engagement among both new and existing guests, and across markets, and demographics.

Brand Marketing

Our diverse guest engagement touchpoints create an integrated guest experience ecosystem. We utilize brand campaigns across a variety of paid, owned, and earned channels to reinforce our mission and extend the reach of our brand. Our paid channels include Google, Instagram, TikTok, influencer and creator partnerships, and out-of-home advertising. Our owned channels include our restaurants, loyalty program, CPG offerings, CAVA website, CAVA app, and CAVA social media. We also use a seasonal framework to generate excitement around new menu offerings several times a year.
We have proven strength in our approach to community engagement and social listening, a key pillar of our marketing strategy. The results of our efforts are evident as we consistently outperform competitors across key social engagement measures, such as the following based on a 2022 Sprout Social report:

- 48.5% Instagram net follower growth in fiscal 2022, as compared to our competitors who averaged 2.6%; and
- 2.5x average social engagement per Instagram follower, as compared to our competitors who averaged 1.8x.

In addition, during the twelve months ended March 2023, we have had over 75 million total video views and 2.5 million total engagements on our TikTok channel. We have proven our strength in extending the reach of our brand through innovative partnerships with genuine CAVA fans. Our 2022 collaboration with Emma Chamberlain grew organically, after a tub of CAVA Spicy Hummus made an appearance in one of Emma’s popular YouTube videos. We partnered with Emma to bring her favorite Spicy Hummus to our restaurants and collaborated with her to design new culinary offerings, such as Emma’s Fire Bowl and Emma’s Spicy Snack, as well as custom merchandise, supported by a fully integrated marketing campaign. The CAVA x Emma Chamberlain partnership drove incremental traffic, increased brand awareness with the Gen Z audience, and helped CAVA be voted as one of upper income female Gen Z’s top five favorite restaurant brands in a third-party survey for the first time. We see opportunities to build upon this success and execute other brand collaborations to fortify our brand awareness across attractive demographics.

Restaurant Marketing

We strive to provide our guests with the warm and welcoming feeling of the Mediterranean with each visit to our restaurants. We host Community Days when we open a new restaurant, where we provide free meals to our guests and collect and match donations for local nonprofits, to better engage with our community and share the Mediterranean Way with new and existing guests. In addition, we have organized local marketing campaigns, such as sponsoring fundraiser events for high school and college organizations where attendees are provided with discounts on CAVA meals, and have donated proceeds from such meals to the fundraiser. Our authentic engagement with the communities we serve reinforces our mission and drives interest and excitement for our brand, which in turn helps to attract guests and support the strong performance of our restaurants.

We also leverage our large social media following and frequently advertise our restaurant openings on social media channels like Facebook, Instagram, and TikTok. We also from time to time deliver flyers and menus to the homes and offices in the neighborhood to drive awareness and excitement around new restaurant openings.
Our Digital Ecosystem

Guest-Facing Digital Platform

We are focused on executing our digital strategy to provide the convenience and personalized engagement that our guests deserve. We dynamically surface content on any mode of engagement, whether on the CAVA app, website or in the restaurant, as demonstrated by our digital menu board and other digital capabilities. This vibrant digital experience enables a seamless and personalized ordering experience for our guests across multiple sales channels. We plan to continue to improve and personalize ways for guests to engage with CAVA. For example, leveraging our in-restaurant digital menu boards and CAVA app, we plan to highlight top trending mixes and provide our guests with loyalty program rewards when they select such combinations.

Our digital experience provides a feeling of “digital hospitality” that removes friction from the guest experience, including a visual bowl and pita builder that mimics our in-restaurant experience. Our CAVA app has been downloaded more than 2.1 million times from the Apple Store and has a 4.9-star Apple Store app rating from over 65,000 reviews.

Our success across channels is reflected in our 51% growth in digital sales in fiscal 2022 and a 27% higher average guest check for digital orders compared to in-restaurant orders. Moreover, our digital guests typically engage with us in more than one channel.

Loyalty Program

We strive to build an emotional connection with our broad mix of guests through our hospitality, flavors, and unique brand. Our CAVA Rewards membership continues to rapidly grow, with approximately 3.7 million loyalty members as of April 16, 2023, representing a 56% year over year increase in loyalty membership and approximately 14,000 members per restaurant. Our loyalty members represented 24% of our sales for fiscal 2022.

We believe our loyalty program’s personalized guest experience, combined with our digital ecosystem, enables us to grow program membership and increase guest engagement by:

- engaging directly with our guests through personalized content, push, e-mail, and in-app notifications, which are more economical and efficient than engaging with guests via traditional digital ad-buying marketplaces;
- launching digital menu exclusives to drive adoption, provide tailored recommendations to increase average spend, and introduce engagement challenges to drive frequency with key guest segments; and
• providing fast, integrated guest support to efficiently address our guests’ concerns, which helps to carry our core brand ethos throughout our digital channels.

We are evolving our loyalty program and creating a more personalized experience by providing unique digital content in the CAVA app powered by our digital ecosystem, offering physical items such as merchandise, and making cross-channel offers to develop a richer emotional connection with our guests.

**In-House Technology Infrastructure to Support Operations at Scale**

We have made significant investments in our technology infrastructure to support our growth for the foreseeable future. Since 2016, we have significantly invested in expanding our technological capabilities. These investments include:

- a centralized master data management system which drives decision-making and insights across menu and inventory management, labor management, guest data, and third-party integration; and
- micro-services architecture which accelerates software development and provides horizontal scalability to support our growth.

These investments help improve integration of the service experience across multiple channels and allows us to quickly adapt to changes in channel demands.

**Operations**

Accountability is the foundation of our commitment to operational excellence. Our restaurant scorecards and incentive plans incorporate both financial and operational results, with a strong focus on food safety and training. This provides us with a clear method to consistently measure and evaluate our Team Members to hold them accountable to defined standards. We firmly believe that the successful execution of those programs leads to better operational and financial results.

**Restaurants**

Our restaurant-level operations are designed for scale without diminishing quality or performance. We have an established framework to maximize day-to-day operations, including labor scheduling and deployment and “thoughtful cooking” – our internal tool to help ensure we are prepping the right amount of food during different dayparts. Each restaurant also has a full cook suite and a dedicated make line, which enables us to continuously innovate our menu across our national footprint, while supporting current, and future growth.

As an example of our operational rigor, we have placed significant focus on simplifying and modernizing the experience of our guests and Team Members to capture efficiencies, including:

- incorporating select pre-sliced and pre-cut ingredients to provide consistent quality and simplify food preparation;
- simplifying the digital order system to enable better accuracy and increased throughput in digital ordering execution;
- enhancing the point-of-sale interface to streamline order capture and prompt incremental orders, driving increases to average spend per guest; and
- developing a fully integrated system that consolidates all digital orders (including third-party platforms) into one single display that prints out a standardized receipt regardless of platform.

We constantly evaluate potential initiatives to drive improvements across our operations, and we aim to continuously have a robust pipeline of future opportunities planned or in development.
Quality and Food Safety

We are deeply committed to food safety. Our independent food safety and quality assurance ("FSQA") team establishes and monitors our food safety programs and protocols and is responsible for reviewing and ensuring that our vendors and suppliers, our restaurants and restaurant Team Members, and our production facilities operate in compliance with our food safety standards and federal and state legal requirements.

Our approach to food safety is interdepartmental. Our FSQA, supply chain, culinary, and operations teams work together to implement our standards for food safety, restaurant cleanliness, and employee health protocols. For example, our culinary team coordinates with FSQA and evaluates potential food safety issues before we launch new product offerings. Together with the FSQA team, the culinary team creates proper food handling processes for each new ingredient as part of the development and testing phase of our stage-gate culinary development process.

We review the safety and quality records as well as general insurance coverage of new suppliers as part of their onboarding. We perform site visits to verify that the ingredients we source are consistent with our specifications and to evaluate our suppliers’ compliance with our food safety standards and requirements. Furthermore, we periodically review our main suppliers’ compliance with their own internal processes and review their third-party audits.

In addition, we periodically conduct reviews, educational training, and whiteboarding sessions for our FSQA team in an effort to confirm that our ongoing food safety practices across our restaurants, CAVA digital kitchens, CAVA hybrid kitchens, and CPG operations are robust and efficient.

Our Restaurants, CAVA Digital Kitchens and CAVA Hybrid Kitchens

To enhance our compliance with food safety and other regulatory requirements, our restaurants utilize technology that is customizable, providing flexibility to design and implement processes tailored to our specific needs. We contract with third-party auditing services to regularly monitor restaurant performance through unannounced and announced food safety assessments with program standards that are designed to meet the requirements of local health departments. We intend for these inspections to institute active managerial control in our restaurants to maintain our strong food safety culture. Furthermore, we conduct routine trend analysis of food safety issues to identify any potential non-compliance with our food safety standards. Our FSQA team reviews and evaluates the results of third-party inspections and coordinates responses and remediation where appropriate, with our operators and personnel responsible for facilities management.

In addition to the initial job training and onboarding, we conduct periodic food safety training modules that all restaurant Team Members are required to complete. To align incentives and increase accountability across our company, adherence to food safety standards at restaurants are taken into account in determining the compensation of our General Managers and Academy General Managers.

Our Production Facilities

The food safety processes and systems at our production facilities are designed to mitigate the risk of contamination and illness and to help ensure compliance with applicable food safety regulations and standards. As required by our food safety programs, we have developed and implemented comprehensive Good Manufacturing Practices and food safety plans.

We maintain third-party certifications for our production facility in Maryland. The third-party certifications provide an independent and external verification that our ingredients, food products and/or processes comply with applicable food safety regulations and third-party standards. We expect to apply for the same third-party certifications for our state-of-the-art production facility in Virginia once we commence operations at the facility, which we expect to do so by the first fiscal quarter of 2024. Our BRC certified production facility in Maryland is a federally inspected facility that complies with the FDA and the Maryland Department of Public Health requirements. In addition, for certain of our offerings, we comply with standards set forth by organic and kosher certifying agencies and the Gluten-Free Certification Organization, as we aim to share the Mediterranean Way with as broad an audience as possible.
We conduct periodic food safety audits at our production facilities and have instituted an extensive product and ingredient recall and withdrawal system. To prepare for contingencies, we have protocols that we believe will allow us to manage food safety incidents at our production facilities in a timely manner. As of the date of this prospectus, we have not encountered any material complaint concerning food safety at our production facility. However, despite our quality controls, there may from time to time be issues or concerns with respect to our ingredients and food at our production facilities. See “Risk Factors—Risks Related to Our Business and Industry—Food safety and food-borne illness concerns may harm our business.”

Our Properties

Our collaboration center is located in Washington, D.C., where we currently lease approximately 21,000 square feet pursuant to a lease agreement that expires in 2035. In addition, we have three support centers, all of which are leased. These support centers are located in Brooklyn, New York, which focuses on creative content, St. Louis, Missouri, which focuses on technology and Plano, Texas, which focuses on restaurant and general support functions. We do not currently own any real estate, other than our production facility in Verona, Virginia, which is under construction, and we lease all of our restaurant locations. We believe our facilities are adequate and suitable for our current needs, and that suitable additional or alternative space will be available to accommodate our operations when needed.

Competition

The restaurant industry is highly competitive with respect to, among other things, food quality, and presentation, taste preferences, price, brand reputation, digital engagement, service, value, and location. The food manufacturing industry is also highly competitive with respect to, among other things, food quality, taste, functional benefits, nutritional value, and ingredients, convenience, brand loyalty, and positioning, food variety, product packaging, shelf space, price, and promotional activities. We face significant competition from national, regional, and locally-owned restaurants, including limited service restaurants, particularly within the fast-casual dining and traditional fast-food categories, who offer in-restaurant, carry-out, delivery, and/or catering services. We also compete with grocery stores, meal subscription services, and delivery kitchens, especially those that target guests who seek high-quality food. Our CPG business also faces competition from other producers of dips and spreads and other pantry and food items.

As we expand our geographic presence and develop our digital channels, we anticipate we will face increased competition for channel access. In addition, our competitors will likely grow in number as the Mediterranean food category grows, and we may face the risk that new or existing competitors will mimic our business model, menu offerings, marketing strategies, and overall concept. See “Risk Factors—Risks Related to Our Business and Our Industry—We operate in a highly competitive industry.”

Intellectual Property

We rely on a combination of trademark, patent, trade secret, copyright and other intellectual property laws, as well as contractual provisions, including in employment, confidentiality, and inventions assignment agreements to protect our intellectual property, intangible assets, and associated proprietary rights. Our intellectual property, particularly our trademarks, is material to the conduct of our business and our marketing efforts as our brand recognition is one of our key differentiating factors from our competitors. The success of our business depends in part on our ability to use our trademarks, service marks, and other intellectual property, including our name and logos, and the unique character, atmosphere, and ambiance of our restaurants, to increase brand awareness and further develop our brand reputation in the market. In the United States, we have obtained trademark registrations for key trademarks including CAVA, CRAZY FETA, SPLENDIDGREENS, and CAVA DIGITAL KITCHEN. We have also acquired certain intellectual property in connection with our acquisition of Zoes Kitchen. We are currently pursuing additional trademark registrations in the United States and will continue to pursue additional trademark registrations to the extent we believe they would be beneficial and cost-effective. We also own one issued patent in the United States, which covers features relating to our sentence builder system and walk-the-line functionality used in the CAVA app. A continuation patent application has been filed that seeks to further broaden the scope of protection for features included in the CAVA app and it has recently received a Notice of Allowance. Multiple
patent applications are in progress that are intended to further broaden the scope of protection for features included in the CAVA app and to protect new features that may be included in the CAVA app in the future. In addition, we have registered the cava.com domain name, which we use in connection with our primary online platform.

We have procedures in place to monitor for potential infringement of our intellectual property, and it is our policy to take appropriate action to enforce our intellectual property, taking into account the strength of our claim, likelihood of success, cost, and overall business priorities. See “Risk Factors—Risks Related to Information Technology Systems, Cybersecurity, Data Privacy and Intellectual Property.”

Privacy, Data Protection, and Data Security

Because our business and platform involve the Processing of large volumes of personal information, we are subject to numerous laws, regulations, industry standards, and other obligations relating to privacy, data protection, and data security. Our compliance with our obligations related to privacy, data protection, and data security is important to, among other things, improving user experience on the platform and building user trust. Jurisdictions around the world have adopted or are proposing to adopt laws and regulations relating to privacy, data protection, and data security, and we may become subject to additional requirements and obligations as we expand our operations into new geographic markets. See “Risk Factors—Risks Related to Information Technology Systems, Cybersecurity, Data Privacy and Intellectual Property.”

Government Regulation and Environmental Matters

We are subject to various U.S. federal, state, and local regulations, including those relating to building and zoning requirements, public health and safety and the preparation and sale of food. Our license requirements include those relating to the preparation and sale of food and beverages as well as food safety requirements. In addition, the development and operation of our restaurants depends to a significant extent on the selection and acquisition of suitable locations, which are subject to zoning, land use, environmental, and other regulations and requirements. Difficulties or failure to maintain or obtain the required licenses and approvals could adversely affect our existing restaurants and delay or result in our decision to cancel the opening of new restaurants, which would adversely affect our business.

Our operations are subject to the U.S. Occupational Safety and Health Act, which governs worker health and safety, as well as rules and regulations relating to the COVID-19 pandemic, the U.S. Fair Labor Standards Act, which governs such matters as minimum wages and overtime, the FAST Act, which proposes to create a council to set, among other things, minimum wages and working condition standards in the broadly defined fast food industry, and a variety of similar federal, state and local laws (such as fair work week laws, various wage and hour laws, termination and discharge laws, and state occupational safety regulations) that govern these and other employment law matters. We may also be subject to lawsuits or investigations from our current or former employees, the U.S. Equal Employment Opportunity Commission, the Department of Labor, or others alleging violations of federal and state laws regarding workplace and employment matters, discrimination, and similar matters, and we have been a party to such matters in the past. These lawsuits and investigations require resources and attention from our senior management and can result in material fines, penalties and/or settlements, some or all of which may not be covered by insurance, as well as significant remediation efforts that may be costly and time consuming, and which we may not implement effectively.

We are also subject to the Americans with Disabilities Act of 1990 and similar state laws that give civil rights protections to individuals with disabilities in the context of employment, public accommodations, and other areas, including our restaurants, website, and smartphone applications.

For a discussion of the various risks, we face from regulation and compliance matters, see “Risk Factors—Risks Related to Legal and Governmental Regulation.”

Legal Proceedings

We are subject to various claims and legal actions that arise in the ordinary course of our business, including claims resulting from employment related matters. Except for the matters described below, we do not believe that
the ultimate resolution of any existing claim would have a material effect on our business, financial condition, results of operations or cash flows. However, a significant increase in the number of these claims or an increase in amounts owing under successful claims could materially and adversely affect our business, financial condition, results of operations, or cash flows.

In April 2022, CAVA was served with a purported class action complaint relating to organic fluorine and PFAS in the packaging of its grain and salad bowls. Hamman et al. v. Cava Group, Inc. was filed on April 27, 2022 in the U.S. District Court for the Southern District of California. An amended complaint was subsequently filed on August 18, 2022. After an initial round of motion to dismiss briefing, the court granted in part and denied in part our motion to dismiss on February 8, 2023. Thereafter, plaintiffs filed a second amended complaint on March 1, 2023 seeking, among other relief, compensatory damages in an unspecified amount and medical monitoring. The complaint alleges that certain of our products are unfit for human consumption due to the packaging containing allegedly heightened levels of organic fluorine and unsafe PFAS, and that consumers were misled by certain marketing claims asserted by us regarding the health and sustainability of our products. The complaint further alleges that our products caused bodily injuries to the putative class members who consumed our products. On April 14, 2023, we filed a motion to dismiss for failure to state a claim. This motion is pending.

In April 2023, CAVA was served with a demand letter alleging that we use unhealthy and unsustainable PFAS in our packaging, that our products contain synthetic biocides, and that our “healthy” and “sustainable” marketing claims constitute false and deceptive advertising. The letter demanded that CAVA take certain actions, including refraining from using or sourcing packaging containing PFAS and adding certain product warnings, and further threatened to file an action styled as GMO Free USA v. Cava Group, Inc. in the Superior Court of the District of Columbia Civil Division. As of the date hereof, we have not formally responded to the demand letter.

In connection with Hamman et al. v. Cava Group, Inc., in September 2022, Travelers Property Casualty Company of America sought a declaratory judgment that they are not liable in relation to matters related to PFAS and sought recoupment of CAVA’s legal costs in the Hamman action. Travelers Property Casualty Company of America et al v. Cava Group, Inc. was filed September 21, 2022 in the Superior Court of the State of California, County of Orange. On November 9, 2022, we removed the action to the U.S. District Court for the Central District of California. On December 16, 2022, we filed a motion to dismiss. This motion is pending, and, depending on its outcome, we may not be able to recover from our insurance the full amount of any damages we might incur in matters related to PFAS.

We are vigorously defending ourselves in these matters, which are still in their early stages, and the respective plaintiffs have not stated any specific amount of damages to be sought from the Company. As a result, an estimate of reasonably possible losses or range of losses (if any) cannot be made and the final outcomes are uncertain.
CAVA

Management
Executive Officers and Directors

Below is a list of our executive officers and current directors who are expected to continue to serve as directors following this offering, their respective ages as of April 16, 2023 and a brief account of the business experience of each of them.

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Position</th>
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<tbody>
<tr>
<td>Brett Schulman</td>
<td>51</td>
<td>Chief Executive Officer, President and Director</td>
</tr>
<tr>
<td>Tricia Tolivar</td>
<td>54</td>
<td>Chief Financial Officer</td>
</tr>
<tr>
<td>Jennifer Somers</td>
<td>42</td>
<td>Chief Operations Officer</td>
</tr>
<tr>
<td>Robert Bertram</td>
<td>54</td>
<td>Chief Legal Officer and Secretary</td>
</tr>
<tr>
<td>Ronald Shaich</td>
<td>69</td>
<td>Chair of the Board of Directors</td>
</tr>
<tr>
<td>Philippe Amouyal</td>
<td>64</td>
<td>Director</td>
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<tr>
<td>David Bosserman</td>
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<td>Director</td>
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<tr>
<td>Benjamin Felt</td>
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<td>Todd Klein</td>
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<td>Karen Kochevar</td>
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<td>James White</td>
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<tr>
<td>Theodoros Xenohristos</td>
<td>44</td>
<td>Director</td>
</tr>
<tr>
<td>Lauri Shanahan</td>
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<td>Director Nominee</td>
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</table>

Executive Officers

**Brett Schulman** has served as our Chief Executive Officer and President, and as a member of our Board of Directors since 2010. Mr. Schulman co-founded CAVA in 2010. Mr. Schulman was a Partner at Snikiddy Snacks, a nationally distributed snack food company, from 2006 to 2015 and served as its Chief Operating Officer from 2006 to 2010. Previously, he held various other financial positions, including Vice President, at Deutsche Bank Alex. Brown and its predecessor Alex. Brown. Mr. Schulman received his B.A. in Behavioral and Social Sciences from the University of Maryland.

Mr. Schulman was selected to serve as a director because of his deep knowledge of our business and his significant executive management and leadership experience.

**Tricia Tolivar** has served as our Chief Financial Officer since November 2020. Ms. Tolivar was the Chief Financial Officer for GNC from March 2015 to November 2020. On June 23, 2020, GNC Holdings, Inc. filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware. Ms. Tolivar served in leadership positions with Ernst & Young from October 2007 to February 2015. Ms. Tolivar was the Chief Financial Officer of the Greater Memphis Arts Council from January 2006 to December 2008 and she held a series of executive leadership positions with AutoZone from 1996 to 2005. Ms. Tolivar received her B.B.A. in Accounting from Emory University’s Goizueta Business School.

**Jennifer Somers** has served as our Chief Operations Officer since November 2021. Ms. Somers served in several leadership positions at Taco Bell, YUM Brands from November 2015 to October 2021, including Senior Vice President of U.S. Field Operations. Ms. Somers also held field operational roles at National Veterinary Associates from January 2015 to November 2015 and at Champion Home Builders from August 2013 to January 2015. Ms. Somers was part of the Operations Strategy team at Mattel from October 2011 to August 2013 and was a strategy consultant at McKinsey & Co. from August 2009 to October 2011. Ms. Somers began her career as an engineer at Lockheed Martin. Ms. Somers received her B.S. in Operations Research & Industrial Engineering from Cornell University and her M.B.A. from the Wharton School at the University of Pennsylvania.
Robert Bertram has served as our Chief Legal Officer and Secretary since September 2021. Prior to joining CAVA, Mr. Bertram was General Counsel and Assistant Secretary for Ollie’s Bargain Outlet Holdings from April 2014 to September 2021. Mr. Bertram was a practicing corporate attorney at McNees Wallace & Nurick LLC from June 2010 to April 2014, and was a corporate and securities industry regulatory attorney at the firm of Stevens & Lee from March 2001 to June 2010. Mr. Bertram has routinely mentored students through the College of the Liberal Arts at Penn State University. Mr. Bertram received his B.A. in Economics from Penn State University and his J.D. from Penn State Dickinson Law School.

Directors

Ronald Shaich has served as Chair of our Board of Directors since November 2018. Mr. Shaich is the Managing Partner and Chief Executive Officer of Act III Holdings, LLC (“Act III”), which he founded in January 2018. Mr. Shaich also founded Panera Bread Company, where he served as Chief Executive Officer from 1984 to 2010 and from March 2012 to December 2017, and as a member of its board of directors from 1981 to 2018, including as Chair between 1988 and 2018. Mr. Shaich serves in the capacity as Chair of Act III’s privately-held portfolio companies including Tatte Bakery and Café, Life Alive Organic Café, and Level99. In addition, Mr. Shaich serves on the board of directors of Cambridge Innovation Center and Farmer’s Business Network. Mr. Shaich has also served on the board of directors of Whole Foods Market and as Chair of the Board of Trustees of Clark University and is currently a Clark trustee. Mr. Shaich received his B.A. in Political Science and Government and D.H.L. from Clark University and his M.B.A. from Harvard Business School.

Mr. Shaich was selected to serve as a director because of his experience in corporate governance and leadership in the restaurant industry.

Philippe Amouyal has served as a member of our Board of Directors since November 2018. Mr. Amouyal has been a Managing Director of The Invus Group, LLC (“Invus”) since 1999. Previously, Mr. Amouyal worked at The Boston Consulting Group from 1984 to 1999, serving as a Vice President and Director and coordinated the global software and electronics practice from 1990 to 1999. Mr. Amouyal currently serves on the board of directors of Lexicon Pharmaceuticals (NASDAQ: LXRX) and a number of private Artal and Invus portfolio companies. Mr. Amouyal previously served on the board of directors of WW International and Blue Buffalo Pet Products. Mr. Amouyal received his M.S. in Engineering and his DEA in Technology Management from École Centrale Paris and was a Research Fellow at the Center for Policy Alternatives of the Massachusetts Institute of Technology.

Mr. Amouyal was selected to serve as a director because of his experience as a management consultant and private equity investor and his extensive knowledge and understanding of corporate strategy, information technology, research and development, and management operations and structures.

David Bosserman has served as a member of our Board of Directors since 2020, and he also served as our Interim Chief Financial Officer from August 2020 to November 2020. Mr. Bosserman has served as a Senior Advisor to SWaN & Legend Advisors (“SWaN”) since 2018, and was a Managing Director at SWaN from 2013 to 2018. Mr. Bosserman has held senior executive positions, including Senior Vice President, Chief Financial Officer, and Chief Operating Officer, at NEW Asurion Corporation, from February 2001 through March 2013. Mr. Bosserman served as Chief Financial Officer at worldweb.net from 2000 to its sale in 2001, and as Executive Vice President, Chief Financial Officer and Treasurer of Best Software from 1992 to its sale in 2000, and led its initial public offering in 1997. Mr. Bosserman currently serves on the board of directors of BigTeams and as an advisor to other SWaN portfolio companies, where he provides financial and operating guidance. Mr. Bosserman previously served on the board of directors and audit committee of Motionsoft. Mr. Bosserman received his B.S. in Accounting from Arizona State University. Mr. Bosserman was a licensed CPA.

Mr. Bosserman was selected to serve as a director because of his experience in accounting and auditing and his experience with audit committees and boards.

Benjamin Felt has served as a member of our Board of Directors since November 2018. Mr. Felt is a Managing Director of Invus, which he joined in 2009. Mr. Felt has served on the boards of a number of private Artal and Invus portfolio companies. Prior to joining Invus, Mr. Felt was a management consultant with The Boston Consulting Group.
Mr. Felt was selected to serve as a director because of his experience in private equity investing and knowledge and understanding of business and corporate strategy.

Todd Klein has served as a member of our Board of Directors since 2018. Mr. Klein was previously a member of our Board of Directors from 2015 to June 2017 and a board observer from June 2017 to 2018. Mr. Klein is a Partner at Revolution Growth, which he joined in June 2017. From 2012 to 2017, he was a Co-Founder, Managing Director, and Chief Investment Officer of SWaN. He also served in an advisory capacity at Anonymous Content, a talent management, film, television, and commercial production company, from 2014, later serving as the Interim Chief Operating Officer in 2017. Mr. Klein was a Founder and Managing Partner of Legend Ventures from 2005 to 2012, and a Managing Director and General Partner of Kinetic Ventures from 1994 to 2004. Mr. Klein serves on the board of trustees of The George Washington University, the board of advisors of the Mindshare Entrepreneurs Network, and as a special advisor to the investment committee of the Halcyon Fund for Social Entrepreneurship. Mr. Klein received his B.B.A., cum laude, in Business Honors from the University of Texas at Austin and his M.B.A. from Harvard Business School.

Mr. Klein was selected to serve as a director because of his extensive experience in private equity investing, financial matters, and knowledge and understanding of business and corporate strategy.

Karen Kochevar has served as a member of our Board of Directors since October 2016. Since 2015, Ms. Kochevar has served as an independent board director for private equity-owned growth companies in the United States, Europe, and the Middle East. Ms. Kochevar was a Partner and Chief Financial Officer of Union Square Hospitality Group (“USHG”), the parent company and creator of Shake Shack and several other hospitality businesses, from 2011 until her retirement from the company in 2014. Before that time, she served in finance and corporate development leadership roles at USHG from 2005 to 2011. Prior to her career in hospitality, Ms. Kochevar worked in financial services for more than a decade, including in private equity at Warburg Pincus and Three Cities Research (an affiliate of Quilvest), and in investment banking at Lehman Brothers. Ms. Kochevar currently serves as a trustee of the Brown Brothers Harriman U.S. mutual fund complex. Ms. Kochevar received her A.B. in international relations from Stanford University and her M.B.A., with distinction in finance, from the Wharton School at the University of Pennsylvania.

Ms. Kochevar was selected to serve as a director because of her particular knowledge and experience in financial and strategic planning and leadership of complex organizations, her extensive experience working with iconic restaurant brands and founder-led companies and her experience with audit committees and boards.

James D. White has served as a member of our Board of Directors since 2022. Mr. White currently serves on the board of directors of The Honest Company, Affirm Holdings, and Simply Good Foods. Mr. White was the former Chair, President and Chief Executive Officer of Jamba, from 2008 to 2016, and the Senior Vice President and General Manager of Consumer Brands at Safeway, a U.S. supermarket chain, from 2005 to 2008. Prior to Safeway, Mr. White held executive roles at Gillette and Nestlé Purina. Mr. White previously served on the board of directors of Panera Bread Company-JAB Holdings, Hillshire Brands Company and Medallia. Mr. White received his B.S., with a major in marketing, from The University of Missouri and his M.B.A. from Fontbonne University. He is also a graduate of the Cornell University Food Executive Program, and he was a Stanford University Distinguished Careers Institute Fellow in 2018.

Mr. White was selected to serve as a director because of his experience as a public company director and executive.

Theodore Xenohristos has served as our Chief Concept Officer since November 2020 and as a member of our Board of Directors since 2010. Mr. Xenohristos created the CAVA brand and co-founded CAVA Meze in 2006. Mr. Xenohristos co-founded CAVA in 2010 and has, since then, served as an advisor to CAVA's Chief Executive Officer and President, Brett Schulman, providing expertise on a broad range of matters, including culinary and brand.
Mr. Xenohristos was selected to serve as a director because of his deep knowledge of our business.

Director Nominee

Lauri Shanahan is expected to join our Board of Directors immediately prior to the effective time of the Form 8-A registration statement to be filed with the SEC to register our common stock under the Exchange Act. Ms. Shanahan currently serves on the board of directors of Deckers Brands (NYSE: DECK) and Treasury Wine Estates (ASX: TWE). Ms. Shanahan is also a principal of the consulting firm Maroon Peak Advisors, which she founded in 2009. Ms. Shanahan worked at Gap Inc. from October 1992 to March 2008, serving in numerous leadership roles including chief administrative officer, chief legal officer and corporate secretary. Ms. Shanahan previously served on the board of directors of Cedar Fair Entertainment, G Squared Ascend I, and Charlotte Russe Holdings. Ms. Shanahan received her B.S. in Finance from the University of Colorado Boulder and her J.D. from UCLA Law School.

Ms. Shanahan was selected to serve as a director because of her substantial public company leadership and board experience in the consumer goods, retail and hospitality industries, which includes strategic, operational, legal and risk oversight, governance and sustainability experience.

Composition of Our Board of Directors after this Offering

Our business and affairs are managed under the direction of our Board of Directors. Our amended and restated certificate of incorporation will provide for a classified board of directors, with four directors in Class I (expected to be Philippe Amouyal, David Bosserman, Todd Klein, and Lauri Shanahan), three directors in Class II (expected to be Benjamin Felt, Ronald Shaich, and Theodore Xenohristos) and three directors in Class III (expected to be Karen Kochevar, Brett Schulman, and James White). It is currently expected that Todd Klein will not stand for re-election at the first annual meeting of stockholders following the closing date of this offering, at which the directors in Class I will stand for re-election. See “Description of Capital Stock.” Each of Charles J. Chapman, III and David Strasser are currently members of our Board of Directors, but intend to resign from our Board of Directors, immediately following the pricing of this offering.

Board Leadership Structure and Our Board of Director’s Role in Risk Oversight

Committees of Our Board of Directors

After the completion of this offering, the standing committees of our Board of Directors will consist of an Audit Committee, a People, Culture and Compensation Committee, and a Nominating, Governance and Sustainability Committee. Our Board of Directors may also establish from time to time any other committees that it deems necessary or desirable.

Our Board of Directors has extensive involvement in the oversight of risk management related to us and our business. Our Chief Executive Officer and other executive officers will regularly report to the non-executive directors and the Audit Committee, the People, Culture and Compensation Committee and the Nominating, Governance and Sustainability Committee to ensure effective and efficient oversight of our activities and to assist in proper risk management and the ongoing evaluation of management controls. We believe that the leadership structure of our Board of Directors provides appropriate risk oversight of our activities.

Audit Committee

Upon the completion of this offering, we expect to have an Audit Committee, consisting of Todd Klein, who will serve as the chair, David Bosserman, and Karen Kochevar.

Each of Todd Klein and Karen Kochevar qualify as independent directors under the corporate governance standards of the NYSE and the independence requirements of Rule 10A-3(b)(1) of the Exchange Act. Our Board of Directors has determined that each of Todd Klein, David Bosserman, and Karen Kochevar qualifies as an “audit committee financial expert” as such term is defined in Item 407(d)(5) of Regulation S-K. The purpose of the Audit
Committee will be to prepare the audit committee report required by the SEC to be included in our proxy statement and to assist our Board of Directors in overseeing:

- the quality and integrity of our financial statements, as well as oversight of our accounting and financial reporting processes;
- the effectiveness of our control environment, including internal controls over financial reporting;
- our compliance with legal and regulatory requirements, as well as compliance with ethical standards that we adopt;
- our independent registered public accounting firm’s qualifications, performance, and independence;
- our overall risk management profile and the effectiveness of our risk management processes;
- the performance of our internal audit function, as well as oversight of our financial statement audits;
- our technology security and data privacy programs; and
- approving related party transactions.

Our Board of Directors will adopt a written charter for the Audit Committee, which will be available on our website upon the completion of this offering.

People, Culture and Compensation Committee

Upon the completion of this offering, we expect to have a People, Culture and Compensation Committee, consisting of Lauri Shanahan, who will serve as the chair, Benjamin Felt, Karen Kochevar, and Ronald Shaich.

The purpose of the People, Culture and Compensation Committee is to assist our Board of Directors in discharging its responsibilities relating to:

- reviewing and approving corporate goals and objectives relevant to the compensation of our Chief Executive Officer, evaluating our Chief Executive Officer’s performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by our Board of Directors), determining and approving our Chief Executive Officer’s compensation level based on such evaluation;
- reviewing and approving, or making recommendations to our Board of Directors with respect to, the compensation of our other executive officers, including any relevant corporate goals and objectives, annual performance objectives, annual salary, bonus, equity-based incentives, and other benefits;
- reviewing and recommending to our Board of Directors the compensation of our directors;
- reviewing and approving, or making recommendations to our Board of Directors with respect to, our long-term incentive plans, equity-based awards, and stock ownership guidelines for directors and executive officers and any “clawback” policy;
- the consideration of whether risks arising from our compensation policies and practices are reasonably likely to have a material adverse effect on us;
- the submission to a stockholder vote of matters relating to compensation;
- preparing the compensation committee report required by the SEC to be included in our annual proxy statement;
the oversight and approval of the management continuity planning process, and the review and evaluation of succession plans for our executive officers; and

our compliance with the compensation rules, regulations, and guidelines promulgated by the SEC and other law, as applicable.

Our Board of Directors will adopt a written charter for the People, Culture and Compensation Committee, which will be available on our website upon the completion of this offering.

Nominating, Governance and Sustainability Committee

Upon the completion of this offering, we expect to have a Nominating, Governance and Sustainability Committee, consisting of James White, who will serve as the chair, Philippe Amouyal, and Lauri Shanahan.

The purpose of the Nominating, Governance and Sustainability Committee is to:

- identify individuals qualified to become directors, consistent with the criteria approved by our Board of Directors;
- select, or recommend that our Board of Directors select, the director nominees for the next annual meeting of stockholders or to fill vacancies or newly created directorships that may occur between such meetings;
- develop and recommend to our Board of Directors a set of corporate governance guidelines and assist our Board of Directors in complying with them;
- oversee the evaluation of our Board of Directors and management;
- recommend members of our Board of Directors to serve on committees of our Board of Directors and evaluate the functions and performance of such committees;
- oversee sustainability and environmental, social, and governance strategies and initiatives; and
- otherwise take a leadership role in shaping our corporate governance.

Our Board of Directors will adopt a written charter for the Nominating, Governance and Sustainability Committee, which will be available on our website upon the completion of this offering.

People, Culture and Compensation Committee Interlocks and Insider Participation

None of the members of our People, Culture and Compensation Committee has at any time been one of our executive officers or employees. None of our executive officers currently serves, or has served during the last completed fiscal year, on the People, Culture and Compensation Committee or board of directors of any other entity that has one or more executive officers serving as a member of our Board of Directors or People, Culture and Compensation Committee.

We have entered into certain indemnification agreements with our directors and are party to certain transactions with principal stockholders described in “Certain Relationships and Related Party Transactions—Indemnification of Directors and Officers” and “Certain Relationships and Related Party Transactions—Investors’ Rights Agreement,” respectively.

Director Independence

Pursuant to the corporate governance listing standards of the NYSE, a director employed by us cannot be deemed to be an “independent director.” Each other director will qualify as “independent” only if our Board of Directors affirmatively determines that he has no material relationship with us, either directly or as a partner, stockholder or officer of an organization that has a relationship with us. Ownership of a significant amount of our stock, by itself, does not constitute a material relationship.
Our Board of Directors have affirmatively determined that each of Philippe Amouyal, David Bosserman, Benjamin Felt, Todd Klein, Karen Kochevar, James D. White, and Lauri Shanahan qualifies as “independent” in accordance with the NYSE rules. In making its independence determinations, our Board of Directors considered and reviewed all information known to it (including information identified through directors’ questionnaires).

**Background and Experience of Directors; Board Diversity**

When considering whether directors and nominees have the experience, qualifications, attributes, or skills, taken as a whole, to enable our Board of Directors to satisfy its oversight responsibilities effectively in light of our business and structure, our Board of Directors focused primarily on each person’s background and experience as reflected in the information discussed in each of the directors’ individual biographies set forth above. We believe that our directors provide an appropriate mix of experience and skills relevant to the size and nature of our business.

In evaluating director candidates, we consider, and will continue to consider in the future, factors including, personal and professional character, integrity, ethics and values, experience in corporate management, finance and other relevant industry experience, social policy concerns, judgment, potential conflicts of interest, including other commitments, practical and mature business judgment, and such factors as age, gender, race, orientation, experience, and any other relevant qualifications, attributes, or skills.

**Code of Business Conduct and Ethics**

We will adopt a new Code of Business Conduct and Ethics that applies to all of our directors, officers, and employees, including our chief executive officer and chief financial and accounting officer. Our Code of Business Conduct and Ethics will be available on our website upon the completion of this offering. Our Code of Business Conduct and Ethics is a “code of ethics,” as defined in Item 406(b) of Regulation S-K. We will make any legally required disclosures regarding amendments to, or waivers of, provisions of our code of ethics on our website.
## EXECUTIVE COMPENSATION

### SUMMARY COMPENSATION TABLE

The following table provides summary information concerning compensation earned by our principal executive officer and our two other most highly compensated executive officers as of December 25, 2022, for services rendered for fiscal 2022. These individuals are referred to as our named executive officers.

<table>
<thead>
<tr>
<th>Name and Principal Position</th>
<th>Fiscal Year</th>
<th>Salary ($)</th>
<th>Bonus ($)</th>
<th>Stock Awards ($)</th>
<th>Option Awards ($)</th>
<th>Non-Equity Incentive Plan Compensation ($)</th>
<th>Non-Qualified Deferred Compensation Earnings ($)</th>
<th>All Other Compensation ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brett Schulman</td>
<td>2022</td>
<td>618,000</td>
<td>69,525</td>
<td>1,158,746</td>
<td>385,959</td>
<td>365,006</td>
<td>—</td>
<td>5,692</td>
<td>2,602,928</td>
</tr>
<tr>
<td>Tricia Tolivar</td>
<td>2022</td>
<td>520,000</td>
<td>39,000</td>
<td>129,985</td>
<td>129,902</td>
<td>204,750</td>
<td>—</td>
<td>1,023,637</td>
<td></td>
</tr>
<tr>
<td>Jennifer Somers</td>
<td>2022</td>
<td>500,000</td>
<td>587,500</td>
<td>124,983</td>
<td>124,898</td>
<td>134,375</td>
<td>—</td>
<td>58,000</td>
<td>1,529,756</td>
</tr>
</tbody>
</table>

(1) The amounts reported represent the named executive officer’s base salary earned during the fiscal year covered.
(2) The amounts reported represent the discretionary portion of the annual cash incentive award earned under the CAVA Short-Term Incentive Plan. The terms of the CAVA Short-Term Incentive Plan are described more fully below under “Narrative Disclosure to Summary Compensation Table—Non-Equity Incentive Plan Compensation.” For Ms. Somers, the amounts reported also include the sign-on bonus ($300,000) and guaranteed annual bonus ($250,000) received pursuant to the terms of her employment agreement and paid in fiscal 2022. Pursuant to the terms of Ms. Somers’ employment agreement, if Ms. Somers voluntarily resigns from the Company prior to October 11, 2023, one-half of Ms. Somers sign-on bonus shall be immediately paid back to the Company.
(3) The amounts reported represent the aggregate grant-date fair value of the time-vesting RSUs awarded to the named executive officer in fiscal 2022, calculated in accordance with FASB ASC Topic 718 (“Topic 718”), utilizing the assumptions discussed in Note 14 (Equity-Based Compensation) to our consolidated financial statements included elsewhere in this prospectus. The award of RSUs represents the right to receive one share of our common stock upon the vesting date of the RSU. The RSUs are scheduled to vest in equal annual installments over four years on each anniversary of the vesting commencement date, subject to the executive officer’s continued employment. The grant-date fair values reflected in the table do not take into account estimated forfeitures related to service-vesting conditions.
(4) The amounts reported represent the aggregate grant-date fair value of the time-vesting Option awards awarded to the named executive officer in fiscal 2022, calculated in accordance with Topic 718, utilizing the assumptions discussed in Note 14 (Equity-Based Compensation) to our consolidated financial statements included elsewhere in this prospectus. The Options are scheduled to vest in equal annual installments over four years on each anniversary of the vesting commencement date, subject to the executive officer’s continued employment. The grant-date fair values reflected in the table do not take into account estimated forfeitures related to service-vesting conditions.
(5) Amounts included in this column reflect the named executive officer’s annual cash incentive awards earned under the CAVA Short-Term Incentive Plan. See “Narrative Disclosure to Summary Compensation Table—Non-Equity Incentive Plan Compensation.”
(6) The amounts reported in the “All Other Compensation” include the following:

<table>
<thead>
<tr>
<th>Name</th>
<th>Company 401(k) Match(a)</th>
<th>Life Insurance Premiums(b)</th>
<th>Relocation Reimbursement(c)</th>
<th>Car Allowance(d)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brett Schulman</td>
<td>$</td>
<td>$</td>
<td>—</td>
<td>$</td>
<td>5,692</td>
</tr>
<tr>
<td>Tricia Tolivar</td>
<td>$</td>
<td>—</td>
<td>—</td>
<td>$</td>
<td>—</td>
</tr>
<tr>
<td>Jennifer Somers</td>
<td>$</td>
<td>—</td>
<td>—</td>
<td>$</td>
<td>58,000</td>
</tr>
</tbody>
</table>

(a) Consists of matching contributions made by the Company to the Company’s 401(k) Plan for the benefit of the executive.
(b) Represents life insurance premiums paid on Mr. Schulman’s behalf pursuant to his employment agreement.
(c) Represents relocation reimbursement payments and an annual car allowance paid to Ms. Somers pursuant to the terms of her employment agreement.
NARRATIVE DISCLOSURE TO SUMMARY COMPENSATION TABLE

Employment Agreements

The Company entered into employment agreements with each of its named executive officers.

Schulman Employment Agreement

The Company entered into an employment agreement with Mr. Schulman effective as of November 22, 2021. Mr. Schulman’s employment agreement has an initial term of three years, which shall automatically be extended by successive one-year terms unless either party gives not less than 60 days prior written notice to the other prior that it does not wish to extend the agreement.

Mr. Schulman’s employment agreement provides that Mr. Schulman will serve as our Chief Executive Officer. Mr. Schulman’s employment agreement also provides for (i) an annual base salary, subject to periodic review on an at least annual basis for purposes of determining whether an increase is warranted, (ii) eligibility to receive a discretionary annual cash bonus with a target annual bonus opportunity of seventy-five percent of his base salary with a maximum of one-hundred and fifty percent of his base salary, and (iii) an annual long-term incentive award in the form of stock options and/or restricted stock units equal to 150% of his base salary. The terms of Mr. Schulman’s equity awards are governed by the 2015 Equity Incentive Plan and Mr. Schulman’s equity award agreements. Mr. Schulman’s entitlement to an annual equity grant under the employment agreement terminates upon the Company’s initial public offering. For additional details on such terms, see “—Outstanding Equity Awards at December 25, 2022—Equity Awards—Named Executive Officer Equity Awards” below. For additional details on Mr. Schulman’s base salary, see “—Base Salary” below.

Mr. Schulman’s employment agreement also entitles Mr. Schulman to (i) cash severance of 12 months’ continued salary upon a termination by the Company without “cause” or by Mr. Schulman for “good reason” (as such terms are defined in his employment agreement), (ii) up to 12 months’ COBRA premiums, and (iii) a pro-rated annual bonus for the year in which the termination occurs. Payment of severance is contingent upon Mr. Schulman’s execution and non-revocation of a general release of claims in favor of the Company and its affiliates.

Tolivar Employment Agreement

The Company entered into an employment agreement with Ms. Tolivar effective as of October 27, 2020. Ms. Tolivar’s employment agreement provides that Ms. Tolivar will serve as our Chief Financial Officer. Ms. Tolivar’s employment agreement also provides for (i) an annual base salary, subject to periodic review on an at least annual basis for purposes of determining whether an increase is warranted, (ii) eligibility to receive a discretionary annual cash bonus with a target annual bonus opportunity of $250,000 and a maximum annual bonus of $375,000, (iii) an initial equity grant of 107,067 RSUs, (iv) a relocation bonus of $100,000 (with eligibility to receive an additional $100,000 in reimbursement of customary and typical relocation expenses in excess of $100,000), and (v) an annual equity award under the 2015 Equity Incentive Plan with a grant date fair value equal to the amount of the annual bonus paid in respect of the prior year’s performance. The terms of Ms. Tolivar’s equity awards are governed by the 2015 Equity Incentive Plan and Ms. Tolivar’s equity award agreements. The equity award for 2021 was granted in 2022 with a grant date fair value equal to 50% of Ms. Tolivar’s initial annual base salary and it vests in four equal annual installments commencing on January 24, 2023. Ms. Tolivar’s entitlement to an annual equity grant under the employment agreement terminates upon the Company’s initial public offering. For additional details on such terms, see “—Outstanding Equity Awards at December 25, 2022—Equity Awards—Named Executive Officer Equity Awards” below. For additional details on Ms. Tolivar’s base salary, see “—Base Salary” below.

Ms. Tolivar’s employment agreement also entitles Ms. Tolivar to (i) cash severance of 12 months’ continued salary upon a termination by the Company without “cause” or by Ms. Tolivar for “good reason” (as such terms are defined in her employment agreement), (ii) up to 12 months’ COBRA premiums, and (iii) a pro-rated annual bonus for the year in which the termination occurs, based on her performance during such year, and paid on the date on which annual bonuses are paid to other senior executives of the Company for such year. Payment of severance is contingent upon Ms. Tolivar’s execution and non-revocation of a general release of claims in favor of the Company and its affiliates.
**Somers Employment Agreement**

The Company entered into an employment agreement with Ms. Somers effective as of October 11, 2021. Ms. Somers’ employment agreement provides that Ms. Somers will serve as our Chief Operations Officer. Ms. Somers’ employment agreement also provides for (i) an annual base salary, subject to periodic review on an at least annual basis for purposes of determining whether an increase is warranted, (ii) eligibility to receive a discretionary annual cash bonus with a target annual bonus opportunity with a maximum amount equal to fifty percent of annual base salary, (iii) relocation reimbursement of $4,000 per month for the first year of employment, (iv) an initial restricted stock unit grant in an amount equal to $750,000, (v) an annual car allowance of $10,000, and (vi) an annual equity award under the 2015 Equity Incentive Plan with a grant date fair value equal to fifty percent of annual base salary. The terms of Ms. Somers’s equity awards are governed by the 2015 Equity Incentive Plan and Ms. Somers’s equity award agreements. The equity award for 2021 was granted in 2022 with a grant date fair value equal to 50% of Ms. Somers’s initial annual base salary and it vests in four equal annual installments commencing on January 24, 2023. Ms. Somers’s entitlement to an annual equity grant under the employment agreement terminates upon the Company’s initial public offering. For additional details on such terms, see “—Outstanding Equity Awards at December 25, 2022—Equity Awards—Named Executive Officer Equity Awards” below. For additional details on Ms. Somers’s base salary, see “—Base Salary” below.

Ms. Somers’s employment agreement also entitles Ms. Somers to (i) cash severance of 12 months’ continued salary upon a termination by the Company without “cause” or by Ms. Somers for “good reason” (as such terms are defined in her employment agreement), (ii) up to 12 months’ COBRA premiums, and (iii) a pro-rated annual bonus for the year in which the termination occurs, based on her performance during such year, and paid on the date on which annual bonuses are paid to other senior executives of the Company for such year. Payment of severance is contingent upon Ms. Somers’s execution and non-revocation of a general release of claims in favor of the Company and its affiliates.

**Base Salary**

We provide each named executive officer with a base salary, reflective of the competitive marketplace, for the services that the named executive officer performs for us. Base salary serves as the primary form of fixed compensation for our named executive officers. Base salary can also impact other compensation and benefit opportunities, including annual bonuses, as such opportunities are expressed as a percentage of base salary. This compensation component constitutes a stable element of compensation while other compensation elements are variable. Base salaries are renewed at least annually and may be increased (but not reduced) based on the individual performance of the named executive officer, company performance, any change in the executive’s position within our business, the scope of his or her responsibilities, and any changes thereto. For fiscal 2022, Mr. Schulman’s, Ms. Tolivar’s, and Ms. Somers’ base salaries were $618,000, $520,000, and $500,000 respectively.

The base salaries for our named executive officers were adjusted for fiscal 2023 to: (i) $650,000 for Mr. Schulman, (ii) $540,800 for Ms. Tolivar, and (iii) $510,000 for Ms. Somers.

**Non-Equity Incentive Plan Compensation**

Each named executive officer was eligible to receive an annual bonus under the CAVA Short-Term Incentive Plan for 2022 (the “CAVA Short-Term Incentive Plan”) in accordance with the terms of their employment agreement. The target annual bonus opportunity for each named executive officer was equal to 50% of the executive’s base salary, except for Mr. Schulman, whose target annual bonus opportunity is 75% with a maximum opportunity of 150%. The Company financial performance impacts 75% of the CAVA Short-Term Incentive Plan payout while an individual’s performance impacts 25% of the payout. The Company performance is based on Adjusted EBITDA targets established at the beginning of the fiscal year and approved by our Board of Directors. During fiscal 2022, the Company achieved 77% of the Adjusted EBITDA target, resulting in a payout of the Company weighted portion of the annual bonus at 55% in accordance with the terms of the CAVA Short-Term Incentive Plan.

The People, Culture and Compensation Committee recommended that our Board of Directors exercise its discretion under the plan to increase by an additional 20% the Company weighted portion of the annual bonus based...
on the Committee’s determination that (i) the Company financial performance metrics established for the 2022 annual bonuses did not account for significant milestones achieved by the management team, and (ii) providing the recommended additional short-term incentive amount would properly reward and motivate the participants in the CAVA Short-Term Incentive Plan, including the named executive officers. Our Board of Directors accepted the People, Culture and Compensation Committee’s recommendation and exercised its discretion to approve the Company weighted portion of the annual bonus for 2022 for all participants at 75%.
OUTSTANDING EQUITY AWARDS AT DECEMBER 25, 2022

The following table provides information regarding outstanding equity awards made to our named executive officers as of December 25, 2022.

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Grant</th>
<th>Number of Securities Underlying Option(s) Exercisable</th>
<th>Number of Securities Underlying Option(s) Unexercisable</th>
<th>Equity Incentive Plan Awards: Number of Securities Underlying Unearned Options (a)</th>
<th>Option Exercise Price ($)</th>
<th>Option Expiration Date</th>
<th>Stock Awards</th>
<th>Market Value of Shares or Units of Stock That Have Not Vested (b)</th>
<th>Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (c)</th>
<th>Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (d)</th>
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<td>8/4/2015</td>
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<td>5.75</td>
<td>12/20/2026</td>
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<td>2/22/2018</td>
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<td>7.96</td>
<td>2/22/2028</td>
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<td></td>
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<td>12/20/2026</td>
<td>22.66</td>
<td>12/20/2026</td>
<td>22.66</td>
<td>12/20/2026</td>
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<td>2/22/2026</td>
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<tr>
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<td></td>
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<td></td>
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<td>5/10/2022</td>
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<td>1,275,715</td>
<td>204</td>
<td>1,275,715</td>
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<td></td>
<td>2/6/2019</td>
<td>204</td>
<td></td>
<td></td>
<td>8.81</td>
<td>5/10/2022</td>
<td>8.81</td>
<td>1,363,600</td>
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<td>Tricia Tolivar</td>
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<td>5/10/2022</td>
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<td>147,079</td>
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<td>Jennifer Somers</td>
<td>10/26/2021</td>
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<td>715,663</td>
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<td></td>
<td>5/10/2022</td>
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<td>147,079</td>
<td>5/10/2022</td>
<td>147,079</td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Reflects time-vesting Options pursuant to the 2015 Equity Incentive Plan, the vesting terms of which are described below under “—Equity Awards.”
(2) Reflects time-vesting RSUs pursuant to our 2015 Equity Incentive Plan, the vesting terms of which are described below under “—Equity Awards.”
(3) Amount reported reflect the fair value of the Company’s common stock as of the date of the most recent valuation prior to December 25, 2022, multiplied by the number of reported shares.

Equity Awards

2015 Equity Incentive Plan

The 2015 Equity Incentive Plan is administered by our Board of Directors, or the administrator of the plan as determined by our Board of Directors (the “Administrator”). Awards of Options (both nonqualified Options and incentive Options) to purchase shares of our common stock, stock appreciation rights, restricted stock awards, and RSUs (collectively, “Awards”) may be granted under the 2015 Equity Incentive Plan.

In the event of certain corporate transactions, such as a merger or sale of substantially all the Company’s assets, the Administrator generally may provide for, in addition to certain other actions, the continuation, assumption, substitution, or cancellation of the Awards. In addition, the 2015 Equity Incentive Plan provides that the Administrator will make proportionate adjustments to, including but not limited to, the numbers and class of shares or other stock or securities available for future awards and covered by each outstanding award, the price per share covered by each outstanding Award, and any repurchase price per share applicable to shares issued pursuant to any Award in the event of a merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend,
dividend in property other than cash, large nonrecurring cash dividend, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure, or any similar equity restructuring transaction or other similar occurrence.

The Administrator may at any time amend or terminate the 2015 Equity Incentive Plan, but no amendment or termination (other than an adjustment for, among others, changes in capitalization or corporate transactions, as described above) will be made that would materially and adversely affect the rights of any participant under any outstanding Award, without his or her consent.

**Named Executive Officer Equity Awards**

Each of our named executive officers were granted Options and RSUs under the 2015 Equity Incentive Plan and their Options and RSUs outstanding as of December 25, 2022 are reflected in the table immediately above.

Each of the named executive officers’ Option and RSU grants vest in four equal installments commencing on the vesting commencement date as described below. As set forth in the table immediately above, the Options were granted with an exercise price equal to the fair value of the stock on the date of grant.

Mr. Schulman was granted (i) 10,747 incentive Options and 7,790 non-qualified Options on December 20, 2016, which were fully vested as of December 1, 2020, (ii) 12,838 incentive Options and 4,279 non-qualified Options on February 22, 2018, which were fully vested as of December 1, 2021, (iii) 204 incentive Options and 4,669 non-qualified Options on February 6, 2019, 25% of which vested on February 6, 2020 and the remainder of which vest in equal monthly installments thereafter over three years, (iv) an equity grant in connection with the entry into his employment agreement of 9,380 incentive Options and 494,975 non-qualified Options on January 25, 2019, which were fully vested as of November 21, 2022. Additionally, Mr. Schulman received (x) a grant of 96,980 non-qualified Options on August 4, 2015, which were fully vested as of April 3, 2019, (y) a grant of 100,000 incentive Options on August 4, 2015, which were fully vested as of April 3, 2019, and (z) a grant of 43,269 non-qualified Options on May 10, 2022, which vests in equal annual installments over four years commencing on January 20, 2023. Mr. Schulman was granted (a) 13,895 RSUs on May 28, 2020, (b) 39,787 RSUs January 1, 2021, and (c) 57,222 RSUs on May 10, 2022, each of which grants vests in equal annual installments over four years from January 1, 2021, January 1, 2022, and January 20, 2023, respectively.

Ms. Tolivar was granted an initial equity grant of 107,067 RSUs on November 6, 2020 and an annual long-term incentive equity award of 6,419 RSUs on May 10, 2022. The initial equity grant time vests in four equal annual installments commencing on November 16, 2021. The annual long-term incentive equity award for 2022 time vests in four equal annual installments commencing on January 20, 2023. Additionally, Ms. Tolivar received a grant of 14,563 Options on May 10, 2022, which vests in four equal annual installments commencing on January 20, 2023.

Ms. Somers was granted an initial equity award of 40,042 RSUs on October 26, 2021 and an annual long-term incentive equity award of 6,172 RSUs on May 10, 2022. The initial equity grant time vests in four equal annual installments commencing on October 26, 2022. The annual long-term incentive award for 2022 time vests in four equal annual installments commencing on January 20, 2023. Additionally, Ms. Somers received a grant of 14,002 Options on May 10, 2022, which vests in four equal annual installments commencing on January 20, 2023.

Vesting is generally subject to the named executive officer’s continued employment through each applicable vesting date.

Vested Options are exercisable for a certain period following termination of each named executive officer’s employment, as follows: (i) three months following the termination of the named executive officer’s employment for any reason other than cause, disability or death, (ii) 12 months following termination of employment due to disability, or (iii) 18 months following termination due to death that occurs during the term of employment. In no event are the Options exercisable following the Option’s expiration date, which is ten years from the date of grant.

Under the 2015 Equity Incentive Plan, vested RSUs may be settled in shares of the Company’s common stock, the cash equivalent of the value of such common stock on the vesting date, any combination of common stock and cash, or in such other form of consideration as determined by our Board of Directors and contained in the RSU.
award agreement. The form of restricted stock unit award agreement pursuant to which our named executive officers have received their outstanding awards provides for the settlement of vested RSUs in shares of the Company’s common stock.
TERMINATION AND CHANGE IN CONTROL PROVISIONS

Severance Arrangements

As described in the “—Narrative Disclosure to Summary Compensation Table—Employment Agreements” section above, Mr. Schulman, Ms. Tolivar, and Ms. Somers are entitled to severance benefits upon certain qualifying terminations of employment pursuant to their employment agreements.

Restrictive Covenants

As a condition to employment, each named executive officer was also required to enter into the Company’s Confidential and Proprietary Information and Non-Competition Agreement. Such agreement includes the following restrictive covenants: (i) a perpetual confidentiality covenant, (ii) an assignment of intellectual property covenant, (iii) a non-competition covenant that applies during the executive’s employment and for one year thereafter, and (iv) an employee, consultant and customer non-solicitation covenant that applies during the executive’s employment and for two years thereafter.

Equity Awards

As described in the “—Outstanding Equity Awards at December 25, 2022—Equity Awards” section above, the Options and RSUs granted to our named executive officers are subject to certain vesting terms that apply in connection with a termination without cause. See “—Outstanding Equity Awards at December 25, 2022—Equity Awards” for additional details.

RETIREMENT PLAN

We have established a 401(k) retirement savings plan for our employees, including our named executive officers, who satisfy certain eligibility requirements. Under the 401(k) plan, eligible employees may elect to reduce their current compensation by up to the prescribed annual limit, and contribute these amounts to the 401(k) plan.

COMPENSATION ARRANGEMENTS TO BE ADOPTED IN CONNECTION WITH THIS OFFERING

2023 Equity Incentive Plan

Our Board of Directors expects to adopt, and we expect our stockholders to approve, the 2023 Equity Incentive Plan prior to the completion of this offering, in order to provide a means through which to attract, retain, and motivate key personnel. We anticipate that awards under the 2023 Equity Incentive Plan may be granted to any (i) individual employed by us or any of our subsidiaries (other than those U.S. employees covered by a collective bargaining agreement unless and to the extent that such eligibility is set forth in such collective bargaining agreement or similar agreement), (ii) director or officer of us, or any of our subsidiaries, or (iii) consultant or advisor to us, or any of our subsidiaries who may be offered securities registrable pursuant to a registration statement on Form S-8 under the Securities Act. The 2023 Equity Incentive Plan may be administered by our Board of Directors or such committee of our Board of Directors to which it has properly delegated power. For purposes of this disclosure, the administering entity is referred to as the compensation committee.

The 2023 Equity Incentive Plan initially reserves shares for issuance, which is subject to increase on the first day of each fiscal year beginning with fiscal 2024 in an amount equal to the lesser of (i) the positive difference, if any, between (x) 1% of the outstanding common stock on the last day of the immediately preceding fiscal year minus (y) the available plan reserve on the last day of the immediately preceding fiscal year and (ii) a lower number of shares of our common stock as determined by our Board of Directors.

All awards granted under the 2023 Equity Incentive Plan will vest and/or become exercisable in such manner and on such date or dates or upon such event or events as determined by the compensation committee. Awards available for grant under the 2023 Equity Incentive Plan include non-qualified stock options and incentive stock options, restricted shares of our common stock, restricted stock units, performance stock units and other equity-based awards tied to the value of our shares.
Awards are generally subject to adjustment in the event of (i) any dividend (other than regular cash dividends) or other distribution, recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, split-off, spin-off, combination, repurchase or exchange of shares of common stock or other securities, or other similar transactions or events, or (ii) unusual or nonrecurring events affecting the Company, including changes in applicable rules, rulings, regulations or other requirement. In addition, in connection with any change in control, the compensation committee may, in its sole discretion, provide for any one or more of the following: (i) a substitution or assumption of, acceleration of the vesting of, the exercisability of, or lapse of restrictions on, any one or more outstanding awards (including the substitute options) and (ii) cancellation of any one or more outstanding awards and payment to the holders of such awards that are vested as of such cancellation (including any awards that would vest as a result of the occurrence of such event but for such cancellation) the value of such awards, if any, as determined by the compensation committee.

Our Board of Directors may amend, alter, suspend, discontinue or terminate the 2023 Equity Incentive Plan or any portion thereof at any time, but no such amendment, alteration, suspension, discontinuance or termination may be made without stockholder approval if (i) such approval is required under applicable law, (ii) it would materially increase the number of securities which may be issued under the 2023 Equity Incentive Plan (except for adjustments in connection with certain corporate events), or (iii) it would materially modify the requirements for participation in the 2023 Equity Incentive Plan. Any such amendment, alteration, suspension, discontinuance or termination that would materially and adversely affect the rights of any participant or any holder or beneficiary of any award will not to that extent be effective without such individual’s consent.

All awards granted under the 2023 Equity Incentive Plan are subject to reduction, cancellation, forfeiture or recoupment to the extent necessary to comply with (i) any clawback, forfeiture or other similar policy adopted by our Board of Directors or the People, Culture and Compensation Committee and as in effect from time to time and (ii) applicable law.

Employee Stock Purchase Plan

Our Board of Directors expects to adopt, and we expect our stockholders to approve, the ESPP prior to the completion of this offering. Under the ESPP, our employees and those of any designated subsidiaries (other than employees who, immediately after grant of an option under the ESPP, would own 5% or more of the combined voting power or value of all of our issued and outstanding stock), may purchase shares of our common stock, during pre-specified offering periods determined by our Board of Directors or a designated committee thereof. Our named executive officers will be eligible to participate in the ESPP on the same terms and conditions as all other participating employees.

The ESPP will be administered by a committee of our Board of Directors, which will have full authority to administer the ESPP and make and interpret rules and regulations regarding administration of the ESPP as it may deem necessary or appropriate.

The ESPP initially reserves 1.5% of the fully diluted shares of the Company as of this offering for issuance, which is subject to increase on the first day of each fiscal year to maintain a share reserve available under the ESPP equal to the lesser of (i) 1% of the outstanding common stock of the Company on the last day of the immediately preceding fiscal year and (ii) a lower number of shares of our common stock as determined by our Board of Directors. The number of shares available for issuance under the ESPP is subject to adjustment for certain changes in our capitalization.

Eligible employees may elect to participate in the ESPP by filing a subscription agreement with us prior to any offering period indicating the amount between 1% to 15% of such employees’ base compensation to be withheld from payroll during that offering period. Participants may not acquire rights to purchase more than $25,000 of our common stock under the ESPP for any calendar year. Termination of employment for any reason will terminate participation in the ESPP.

Shares of our common stock will be automatically purchased for the accounts of participants at the end of each offering period with their elected payroll deductions accumulated during the offering period at a discounted per-
share purchase price equal to 85% of the per-share closing price of our common stock on the last day of the applicable offering period.

Upon a future change in control of the Company, the administrator may, in its sole discretion, (i) shorten an offering period to provide for a purchase date on or prior to the change in control date or (ii) provide for the assumption of the purchase rights under the ESPP and substitution of rights to purchase shares of the successor company in accordance with Section 424 of the Code.

Our Board of Directors or the Committee may amend or terminate the Employee Stock Purchase Plan at any time, although no amendment may be made (i) that adversely affects the rights of any participant participating in an offering period or (ii) without approval of our stockholders to the extent such approval would be required under Section 423 of the Code.

Executive Severance Plan

In addition to the potential severance payments and benefits under the employment agreements described above, prior to the completion of this offering, our Board of Directors expects to adopt the CAVA Group, Inc. Executive Severance Plan, or the “executive severance plan”, for certain of our executives and other key employees at or above the Vice President level and any other key employee of the Company designated by the People, Culture and Compensation Committee, including our named executive officers, that provides for severance pay and benefits under certain circumstances.

In the event a covered employee is terminated by the Company without Cause (as defined in the executive severance plan), or a covered employee terminates his or her employment for Good Reason (as defined in the executive severance plan), then such participant will be entitled to receive:

- For the duration of such participant’s severance period (from 6 months to 12 months, depending upon job level) (the “Severance Period”), an amount equal to the participant’s base salary rate in effect immediately prior to his or her termination (the “Base Salary Rate”), payable in accordance with the Company’s customary payroll practices;
- A lump sum cash payment equal to the cash bonus with respect to the fiscal year in which such participant’s termination of employment occurs, based on actual achievement of any applicable performance goals or objectives and any applicable individual performance goals or objectives, prorated for the number of days the participant was employed during that fiscal year; and
- Payment or reimbursement of the employer portion of such participant’s and his or her covered eligible dependents’ health insurance coverage premiums under COBRA until the earlier of the completion of such participant’s Severance Period and such time as the participant becomes eligible to receive health insurance coverage from a subsequent employer.

Receipt of severance benefits under the executive severance plan is subject to: (a) the covered employee’s compliance with certain restrictive covenants, including (i) post-termination non-competition and non-solicitation of customers and employees covenants, (ii) a perpetual confidentiality covenant and (iii) a perpetual non-disparagement covenant in favor of the Company; and (b) the covered employee’s execution of a general release of claims.

In order to receive severance benefits under the executive severance plan, a participant must timely execute and not revoke a release of claims in favor of us. In addition, the executive severance plan provides that, if any payment or benefits to a participant, including the payments and benefits under the officer severance plan, would constitute an “excess parachute payment” within the meaning of Section 280G of the Internal Revenue Code and would therefore be subject to an excise tax under Section 4999 of the Internal Revenue Code, then such payments and benefits (1) will be reduced to the extent necessary so that no amount is subject to the excise tax, or (2) not reduced, whichever, after taking into account all applicable federal, state and local employment and income taxes and the excise tax, results in the participant’s receipt, on an after-tax basis, of the greater payments and benefits.
DIRECTOR COMPENSATION

All directors are reimbursed for reasonable travel and related expenses associated with attendance at board or committee meetings. For fiscal 2022, with the exception of retainers for Mr. White and Ms. Kochevar, we did not pay compensation or grant equity awards to directors for their service on our Board of Directors, including Messrs. Schulman and Xenohristos, our employee directors. See the section titled “Executive Compensation” for more information on the compensation paid to or earned by Mr. Schulman as an employee for fiscal 2022. Pursuant to non-employee director agreements with the Company, Ms. Kochevar, and Mr. White are each entitled to receive cash compensation of $30,000 annually in connection with their board service and an annual grant of 2,500 Options that will vest in four equal annual installments commencing on the first anniversary of each respective grant date. Pursuant to the terms of her agreement, Ms. Kochevar is also entitled to annual cash retainers of $2,500 for her service on each of the Audit Committee and People, Culture and Compensation Committee of our Board of Directors.

The following table provides summary information concerning compensation paid or accrued by us, to or on behalf of our non-employee directors for services rendered to us during the last fiscal year.

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<thead>
<tr>
<th>Name</th>
<th>Fees Earned or Paid in Cash ($)</th>
<th>Stock Awards ($)(6)</th>
<th>Option Awards ($)(6)</th>
<th>Non-Equity Incentive Compensation ($)</th>
<th>All Other Compensation ($)</th>
<th>Total ($)</th>
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<tr>
<td>Ronald Shaich</td>
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<td>Philippe Amouyal</td>
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<td>Charles J. Chapman, III</td>
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<td>506,973</td>
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<td>Lauri Shanahan</td>
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</tbody>
</table>

(1) Fees for Mr. White reflect his pro-rated retainer for his service on our Board of Directors commencing May 11, 2022.
(2) Reflects the $257,000 base salary earned by Mr. Xenohristos for his service as the Company’s Chief Concept Officer during fiscal 2022 and the $19,313 discretionary portion of his annual cash incentive award earned under the CAVA Short-Term Incentive Plan.
(3) As of December 25, 2022, Ms. Kochevar, Mr. White, and Mr. Xenohristos held 30,126, 2,469 and 40,041 outstanding Option awards, respectively. As of December 25, 2022, Ms. Kochevar and Mr. Xenohristos held 1,133 and 3,179 outstanding RSU awards, respectively.
(4) The amount reported for Mr. Xenohristos represents the aggregate grant-date fair value of the time-vesting RSUs awarded to Mr. Xenohristos in fiscal 2022 for his service as the Company’s Chief Concept Officer, calculated in accordance with Topic 718, utilizing the assumptions discussed in Note 14 (Equity-Based Compensation) to our consolidated financial statements included elsewhere in this prospectus. The award of RSUs represents the right to receive one share of common stock upon the vesting date of the RSU. The RSUs are scheduled to vest in four equal annual installments commencing on January 20, 2023, subject to Mr. Xenohristos’s continued employment. The grant-date fair values reflected in the table do not take into account estimated forfeitures related to service-vesting conditions.
(5) The amounts reported represent the aggregate grant-date fair value of the time-vesting Option awards awarded to Ms. Kochevar, Mr. White, and Mr. Xenohristos in fiscal 2022, calculated in accordance with Topic 718, utilizing the assumptions discussed in Note 14 (Equity-Based Compensation) to our consolidated financial statements included elsewhere in this prospectus. The Options are scheduled to vest in four equal annual installments commencing on January 20, 2023, subject to the director’s continued service on our Board of Directors or, in the case of Mr. Xenohristos, his continued employment with the Company. The grant-date fair values reflected in the table do not take into account estimated forfeitures related to service-vesting conditions.
(6) Reflects the annual cash incentive award earned by Mr. Xenohristos under the CAVA Short-Term Incentive Plan in respect of fiscal 2022. See “Narrative Disclosure to Summary Compensation Table—Non-Equity Incentive Plan Compensation” for a description of the terms of the CAVA Short-Term Incentive Plan.

Prior to the completion of this offering, we did not have a formal policy with respect to compensation payable to our non-employee directors for service as directors. From time to time, we have granted equity awards to certain non-employee directors to entice them to join our Board of Directors or for their continued service on our Board of Directors or committees of our Board of Directors. Our Board of Directors is expected to adopt a policy with respect to the compensation payable to our non-employee directors upon consummation of this offering. Under this policy,
each non-employee director is expected to be eligible to receive compensation for his or her service consisting of annual cash retainers and equity awards.
CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Series F Preferred Stock Offering

On March 26, 2021, the Company, certain of its significant stockholders beneficially owning more than 5% of our common stock and other investors entered into the Series F Preferred Stock Purchase Agreement (the “Series F SPA”). Pursuant to the Series F SPA, such significant stockholders purchased shares of our Series F Preferred Stock as set forth in the table below.

<table>
<thead>
<tr>
<th>Name</th>
<th>Shares of Series F Preferred Stock</th>
<th>Aggregate Purchase Price ($ in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Artal International S.C.A.(1)(2)</td>
<td>664,364</td>
<td>$ 25.0</td>
</tr>
<tr>
<td>Revolution Growth III, LP(3)</td>
<td>66,436</td>
<td>$ 2.5</td>
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<tr>
<td>SWaN Hospitality 4, LLC(3)(4)</td>
<td>398,618</td>
<td>$ 15.0</td>
</tr>
<tr>
<td>T. Rowe(1)</td>
<td>2,524,581</td>
<td>$ 95.0</td>
</tr>
</tbody>
</table>

(1) Each of Artal International S.C.A., Revolution Growth III, LP, SWaN Hospitality 4, LLC, and T. Rowe, or entities affiliated with such entities, is a principal stockholder of CAVA Group, Inc. See the section titled “Principal Stockholders” for more information.
(2) Philippe Amouyal and Benjamin Felt, members of our Board of Directors, are each affiliated with Artal International S.C.A.
(3) Todd Klein, a member of our Board of Directors, is affiliated with Revolution Growth III, LP.
(4) David Bosserman and David Strasser, current members of our Board of Directors, are each affiliated with SWaN Hospitality 4, LLC.

Share Repurchase and Promissory Note

On March 26, 2021, we repurchased from our Chief Executive Officer, Brett Schulman, 213,400 shares of common stock at $34.81 per share for an aggregate repurchase price of $7.4 million. In connection with such repurchase, a promissory note for $6.4 million was issued in favor of the Company by Mr. Schulman. The note had a maturity date of March 26, 2025 and accrued interest at the applicable federal funds rate. The purpose of the note was to facilitate the exercise of the Company’s stock options held by Mr. Schulman. The full amount of the note was repaid by Mr. Schulman on March 26, 2021, as a partial offset to the $7.4 million aggregate repurchase price.

As of December 25, 2022, Mr. Schulman had no outstanding indebtedness related to the promissory note, which was fully repaid on March 26, 2021. See Notes 9 (Redeemable Preferred Stock and Stockholders’ Equity) and 13 (Related Party Transaction) to our audited consolidated financial statements included elsewhere in this prospectus.

Investors’ Rights Agreement

Upon the completion of this offering, certain holders of our common stock will be entitled to rights with respect to the registration of their shares under the Securities Act. These registration rights are contained in the Investors’ Rights Agreement. Following completion of this offering, the shares covered by registration rights would represent approximately % of our common stock outstanding (or % if the underwriters exercise their option to purchase additional shares in full).

The registration rights set forth in the Investors’ Rights Agreement terminate upon the earlier to occur of (i) the closing of a merger or consolidation in which (A) we are a constituent party or (B) a subsidiary of ours is a constituent party and we issue shares of our capital stock pursuant to such merger or consolidation, subject to certain exceptions (including any such merger or consolidation in which the shares of our capital stock outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, a majority, by voting power, of the capital stock of (I) the surviving or resulting corporation or (II) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation), (ii) the closing of the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by us or any of our subsidiaries of all or substantially all the assets of ours and our subsidiaries taken as a whole, (iii) with respect to any particular stockholder, when all of the shares held by such stockholder can be sold in any three-month period without

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registration in compliance with Rule 144 or another similar exemption under the Securities Act, and (iv) the five year anniversary of the completion of this offering.

We will pay the registration expenses (other than any underwriting discounts, selling commissions, and stock transfer taxes) of the holders of the shares registered for sale pursuant to the registrations described below, including the reasonable fees and disbursements of one counsel for the selling holders not to exceed $20,000. In an underwritten public offering, the underwriters have the right, subject to specified conditions, to limit the number of shares such holders may include. The Investors’ Rights Agreement also requires us to indemnify certain of our stockholders and their affiliates in connection with any registrations of our securities.

S-3 Registration Rights

Upon the completion of this offering, the holders of up to shares of our common stock will be entitled to certain Form S-3 registration rights. The holders of at least 20% of these shares then outstanding may make a written request that we register the offer and sale of their shares on a registration statement on Form S-3 if we are eligible to file a registration statement on Form S-3 so long as the request covers at least that number of shares with an anticipated aggregate offering price, net of expenses, of at least $25 million. These stockholders may make an unlimited number of requests for registration on Form S-3; however, we will not be required to effect a registration on Form S-3 if we have effected two such registrations within the 12-month period immediately preceding the date of the request. In addition, if we determine that it would be materially detrimental to us and our stockholders to effect such a registration, we have the right to defer such registration, not more than once in any 12-month period, for a period of up to 90 days. Lastly, we will not be required to effect a demand registration during the period beginning 30 days prior to our good faith estimate of the date of the filing of, and ending on a date that is 90 days following the effective date of, a registration statement initiated by us.

Piggyback Registration Rights

Upon the completion of this offering, the holders of up to shares of our common stock will be entitled to certain “piggyback” registration rights allowing the holders to include their shares if we propose to register the offer and sale of our common stock under the Securities Act, subject to certain exceptions and limitations. Solely in connection with this offering, such “piggyback” registration rights were waived by the holders representing a majority of the registrable securities under the Investors’ Rights Agreement.

Consulting Agreement

We were party to a consulting agreement (the “Consulting Agreement”) with CMRG, Inc. (“CMRG”), which is primarily owned by certain of the founders of the Company, including Theodoros Xenohristos who serves on our Board of Directors. Under the terms of the Consulting Agreement, the founders provided culinary, branding, food products, and restaurant operation services to one of our subsidiaries, CAVA Mezze Grill, in exchange for an annual consulting fee. During each of fiscal 2022 and fiscal 2021, $0.2 million was paid to CMRG under the Consulting Agreement. The Consulting Agreement was effectively terminated as of December 25, 2022.

Management Services Agreement

We were party to a management services agreement (“MSA”) with Act III Management, LLC (“Act III Management”), which is one of our stockholders and is controlled by Ronald Shaich, who is Chair of our Board of Directors. Act III Management provided consulting in the areas of information technology, strategy, finance, off-premises sales, and restaurant operations. During fiscal 2022 and fiscal 2021, approximately $0.8 million and $1.0 million, respectively, was paid to Act III Management under the MSA. The MSA was terminated in accordance with its terms on December 31, 2022.

Directed Share Program

At our request, the underwriters have reserved % of the shares of common stock offered by this prospectus for sale, at the initial public offering price, to certain tiers of eligible CAVA Rewards members, certain suppliers, certain individuals identified by our executive team and other certain individuals affiliated with us. The
number of shares of our common stock available for sale to the general public will be reduced to the extent these individuals purchase such reserved shares. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same basis as the other shares offered by this prospectus. Any shares sold under the directed share program, other than to our directors, officers, and existing significant stockholders, will not be subject to the terms of any lock-up agreement. See “Underwriting.”

Agreements with Officers

We have entered into agreements with certain of our executive officers which are described in the section entitled “Management—Executive Compensation.”

Indemnification of Directors and Officers

We have entered, or will enter, into an indemnification agreement with each of our directors and executive officers. The indemnification agreements, together with our amended and restated bylaws, will provide that we will jointly and severally indemnify each indemnitee to the fullest extent permitted by the DGCL from and against all loss and liability suffered and expenses, judgments, fines, and amounts paid in settlement actually and reasonably incurred by or on behalf of the indemnitee in connection with any threatened, pending, or completed action, suit or proceeding. Additionally, we will agree to advance to the indemnitee all out-of-pocket costs of any type or nature whatsoever incurred in connection therewith. See “Description of Capital Stock—Limitations on Liability and Indemnification of Officers and Directors.”

Statement of Policy Regarding Transactions with Related Persons

Our Board of Directors recognizes the fact that transactions with related persons present a heightened risk of conflicts of interests and/or improper valuation (or the perception thereof). Prior to the completion of this offering, our Board of Directors will adopt a written statement of policy regarding transactions with related persons, which we refer to as our “related person policy,” that is in conformity with the requirements upon issuers having publicly-held common stock that is listed on the NYSE.

Our related person policy will require that a “related person” (as defined as in paragraph (a) of Item 404 of Regulation S-K) must promptly disclose to our Chief Legal Counsel, or such other person designated by our Board of Directors, any “related person transaction” (defined as any transaction that we anticipate would be reportable by us under Item 404(a) of Regulation S-K in which we were or are to be a participant and the amount involved exceeds $120,000 and in which any related person had or will have a direct or indirect material interest) and all material facts with respect thereto. The Chief Legal Counsel, or such other person, will then promptly communicate that information to our Board of Directors. No related person transaction entered into following the completion of this offering will be executed without the approval or ratification of our Board of Directors or a duly authorized committee of our Board of Directors. It is our policy that directors interested in a related person transaction will recuse themselves from any vote on a related person transaction in which they have an interest.
The following table contains information about the beneficial ownership of our common stock as of , 2023, (i) immediately prior to the consummation of this offering and (ii) as adjusted to reflect the sale of shares of our common stock offered by this prospectus by:

- each individual or entity known by us to beneficially own more than 5% of our outstanding common stock;
- each named executive officer;
- each of our directors; and
- all of our directors and executive officers as a group.

Our calculation of the percentage of beneficial ownership prior to and after this offering is based on shares of our outstanding common stock as of , 2023, after giving effect to the automatic conversion of shares of preferred stock into shares of our common stock at the consummation of this offering, which will result in the issuance of shares of our common stock immediately prior to the consummation of this offering.

Beneficial ownership and percentage ownership are determined in accordance with the rules and regulations of the SEC. Under SEC rules, a person is deemed to be a “beneficial owner” of a security if that person has or shares voting power or investment power, which includes the power to dispose of or to direct the disposition of such security. A person is also deemed to be a beneficial owner of any securities of which that person has a right to acquire beneficial ownership within 60 days. Securities that can be so acquired are deemed to be outstanding for purposes of computing such person’s ownership percentage, but not for purposes of computing any other person’s percentage. Under these rules, more than one person may be deemed to be a beneficial owner of the same securities and a person may be deemed to be a beneficial owner of securities as to which such person has no economic interest. Except as indicated in the footnotes to the following table or pursuant to applicable community property laws, we believe, based on information furnished to us, that each stockholder named in the table has sole voting and investment power with respect to the shares set forth opposite such stockholder’s name.

For further information regarding material transactions between us and certain of our stockholders, see “Certain Relationships and Related Party Transactions.”
The table below excludes any purchases that may be made through our directed share program or otherwise in this offering. See “Underwriting.” Unless otherwise indicated in the footnotes, the address of each of the individuals named below is: c/o CAVA Group, Inc., 14 Ridge Square NW, Suite 500, Washington, D.C. 20016.

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<th>Name of Beneficial Owner</th>
<th>Shares of our common stock beneficially owned prior to the offering</th>
<th>% of voting power prior to this offering</th>
<th>Shares of our common stock to be sold in the offering</th>
<th>Excluding exercise of the underwriters' option to purchase additional shares</th>
<th>Including exercise of the underwriters' option to purchase additional shares</th>
<th>Shares beneficially owned after the offering</th>
<th>Excluding exercise of the underwriters' option to purchase additional shares</th>
<th>Including exercise of the underwriters' option to purchase additional shares</th>
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<td>Charles J. Chapman, III</td>
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<td>All executive officers and directors as a group (15 persons)</td>
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* Less than 1%

(1) Consists of an aggregate of shares of common stock issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series F Preferred Stock, in each case, held by Artal International S.C.A. Artal International Management S.A., as the managing partner of Artal International S.C.A., controls Artal International Management S.A. and, accordingly, may be deemed to beneficially own the shares of common stock that Artal International S.C.A. may be deemed to beneficially own. Artal Group S.A., as the sole stockholder of Artal International Management S.A., controls Artal International Management S.A. and, accordingly, may be deemed to beneficially own the shares of common stock that Artal International Management S.A. may be deemed to beneficially own. Westend S.A., as the parent company of Artal Group S.A., controls Artal Group S.A. and, accordingly, may be deemed to beneficially own the shares of common stock that Artal Group S.A. may be deemed to beneficially own. Stichting Administratiekantoor Westend (the “Stichting”), as the majority stockholder of Westend S.A., controls Westend S.A. and, accordingly, may be deemed to beneficially own the shares of common stock that Westend S.A. may be deemed to beneficially own. Mr. Amaury Wittouck, as the sole member of the board of the Stichting, controls the Stichting and, accordingly, may be deemed to beneficially own the shares of common stock that the Stichting may be deemed to beneficially own. The address of Artal International S.C.A., Artal International Management S.A., Artal Group S.A., Westend S.A. and Mr. Wittouck is 44, Rue De La Vallée, L-2661 Luxembourg, Luxembourg. The address of the Stichting is Claude Debussylaan, 46, 1082 MD Amsterdam, The Netherlands.

T. Rowe Price Associates, Inc. (“TRPA”) or T. Rowe Price Investment Management, Inc. (“TRPIM”) serves as investment adviser or subadvisor, as applicable, with power to direct investments and/or sole power to vote the securities owned by the T. Rowe Entities. Therefore, TRPA or TRPIM may be deemed to be the beneficial owner of all of the shares held by the T. Rowe Entities but each disclaims beneficial ownership of such shares. TRPIM is a wholly owned subsidiary of TRPA. TRPA is a wholly owned subsidiary of T. Rowe Price Group, Inc., which is a publicly traded financial services holding company. The address of each T. Rowe Entity is c/o T. Rowe Price Associates, Inc. or T. Rowe Price Investment Management, Inc., 100 East Pratt Street, Baltimore, Maryland 21202.

(3) Consists of an aggregate of (i) shares of common stock issuable upon conversion of the Series A Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, held by Cava Act III, LLC and Cava Act III Trust, LLC and (ii) shares of common stock issuable upon conversion of the Series E Preferred Stock, held by certain of the T. Rowe Entities, over which Ronald M. Shaich 2000 Revocable Trust and CAVA Act III, LLC have an irrevocable voting proxy (the “T. Rowe Shares”). Mr. Shaich serves as Chief Executive Officer of each of Cava Act III, LLC and Cava Act III Trust, LLC. Mr. Shaich is the sole trustee of the Ronald M. Shaich 2000 Revocable Trust and has voting power over the T. Rowe Shares. Mr. Shaich makes all investment and voting decisions for each of CAVA Act III, LLC, CAVA Act III Trust, LLC, and the Ronald M Shaich 2000 Revocable Trust. The address for each of CAVA Act III, LLC, CAVA Act III Trust, LLC, and the Ronald M Shaich 2000 Revocable Trust is 23 Prescott Street, Brookline, Massachusetts 02446.

(4) Consists of an aggregate of shares of common stock issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, which is comprised of shares held by SWaN & Legend Fund 3, LP, shares held by SWaN & Legend Fund 4, LP, shares held by SWaN Hospitality 2, LLC, shares held by SWaN Hospitality 3, LLC, shares held by SWaN Hospitality 4, LLC, and shares held by SWaN Hospitality, LLC (together with SWaN & Legend Fund 3, LP, SWaN & Legend Fund 4, LP, SWaN Hospitality, LLC, SWaN Hospitality 2, LLC and SWaN Hospitality 3, LLC, collectively, the “SWaN Entities”). The general partner for SWaN & Legend Fund 3, LP is SWaN & Legend Fund 3, GP. The general partner for SWaN & Legend Fund 4, LP is SWaN & Legend Fund 4, GP. Each of SWaN & Legend Fund 3, GP and SWaN & Legend Fund 4, GP is managed by Fred Schaufeld, Anthony P. Nader III, and David Strasser. SWaN Hospitality 2, LLC is managed by Mr. Schaufeld, Mr. Nader, and Rodney R. Brown. The manager for each of SWaN Hospitality 3, LLC and SWaN Hospitality 4, LLC is SWaN Hospitality 3 GP LLC. SWaN Hospitality 3 GP LLC is managed by Mr. Schaufeld, Mr. Nader, and Mr. Brown. SWaN Hospitality, LLC is managed by Mr. Schaufeld, the sole managing manager. The business address for each of the SWaN Entities and persons listed above in this footnote is PO Box 6266, Leesburg, Virginia 20175.

(5) Consists of an aggregate of shares of common stock issuable upon conversion of the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series F Preferred Stock held by Revolution Growth III, LP (“Revolution Growth”) and shares of common stock issuable upon conversion of the Series A Preferred Stock held by TF Group Holdings LLC (“TF”). Steven J. Murray is the operating manager of the ultimate general partner of Revolution Growth and has the power to vote the shares held by Revolution Growth. Mr. Murray, Theodore J. Leonsis, and Stephen M. Case, as members of the investment committee of the ultimate general partner of Revolution Growth, may be deemed to share dispositive power over the shares held by Revolution Growth. Mr. Case, the Chairman, Chief Executive Officer and President of TF, is the sole trustee of his revocable trust that is the ultimate parent of TF, and Mr. Case, as the ultimate beneficial owner, has voting and dispositive power over the shares held by TF. The address for each of Revolution Growth, TF and the persons listed above in this footnote is 1717 Rhode Island Ave., NW, 10th Floor, Washington, D.C. 20036.
DESCRIPTION OF CAPITAL STOCK

The following is a description of the material terms of, and is qualified in its entirety by, our amended and restated certificate of incorporation and amended and restated bylaws, each of which will be in effect at or prior to the consummation of this offering, the forms of which are filed as exhibits to the registration statement of which this prospectus is a part.

Our purpose is to engage in any lawful act or activity for which corporations may be organized under the DGCL. Upon the consummation of this offering, our authorized capital stock will consist of          shares of our common stock, $0.0001 par value per share; and          shares of preferred stock, par value $0.0001 per share. No shares of preferred stock will be issued or outstanding immediately after the offering contemplated by this prospectus. Unless our Board of Directors determines otherwise, we will issue all shares of our capital stock in uncertificated form.

Common Stock

Voting Rights

Each holder of our common stock is entitled to one vote per share on all matters submitted to a vote of the stockholders generally.

Dividend Rights

Subject to the rights of the holders of any outstanding series of our preferred stock, the holders of our common stock are entitled to receive dividends as may be declared from time to time by our Board of Directors out of legally available funds. See the section titled “Dividend Policy” for additional information.

Liquidation

In the event of our liquidation, dissolution, or winding up, after the payment of all of our debts and other liabilities and subject to the rights of the holders of any outstanding series of our preferred stock, holders of our common stock will be entitled to share ratably in the remaining assets legally available for distribution to stockholders.

Rights and Preferences

Holders of our common stock have no preemptive or subscription rights, and there are no redemption or sinking fund provisions applicable to our common stock.

Fully Paid and Non-Assessable

All shares of our common stock that will be outstanding at the time of the completion of the offering will be fully paid and non-assessable.

The rights, powers, and privileges of holders of our common stock will be subject to the rights, powers, preferences, and privileges of the holders of shares of any series of our preferred stock we may authorize and issue in the future.

Preferred Stock

Our amended and restated certificate of incorporation will authorize our Board of Directors to establish one or more series of preferred stock (including convertible preferred stock). Unless required by law or by the NYSE rules, the authorized shares of preferred stock will be available for issuance without further action by our stockholders. Our Board of Directors will be able to determine, with respect to any series of preferred stock, the terms, rights, powers, and preferences (and the qualifications, limitations and restrictions thereof) of that series, including, without limitation:

• the designation of the series;
• the number of shares of the series, which our Board of Directors may, except where otherwise provided in the preferred stock designation, increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of such series then outstanding);

• whether dividends, if any, payable on such series will be cumulative or non-cumulative and the dividend rate of the series;

• the date or dates on which dividends, if any, will be payable;

• the redemption rights and price or prices, if any, for shares of the series;

• the terms and amounts of any sinking fund provided for the purchase or redemption of shares of the series;

• the amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Company or upon any other event;

• whether the shares of the series will be convertible into or exchangeable for shares of any other class or series of stock of the Company or any other security and, if so, the specification of the other class or series or other security, the conversion price or prices or rate or rates, any rate adjustments, the terms of any exchange, the date or dates as of which the shares will be convertible or exchangeable and all other terms and conditions upon which the conversion or exchange may be made;

• restrictions on the issuance of shares of the same series or of any other class or series of our stock; and

• the voting rights, if any, of the holders of the series.

We will be able to issue a series of preferred stock that could, depending on the terms of the series, impede or discourage an acquisition attempt or other transaction that some, or a majority, of the holders of our common stock might believe to be in their best interests or in which the holders of our common stock might receive a premium for their common stock over the market price of the common stock. In addition, the issuance of preferred stock may adversely affect the holders of our common stock by restricting the payment of dividends on the common stock, diluting the voting power of the common stock or subordinating the rights of the common stock to any payment upon a liquidation, dissolution or winding up of the Company or other event. The issuance of preferred stock could have the effect of delaying, deferring, impeding or preventing a change of control, or other corporate action. As a result of these or other factors, the issuance of shares of one or more series of our preferred stock may have an adverse impact on the market price of our common stock.

Dividends

The DGCL permits a corporation to declare and pay dividends out of “surplus” or, if there is no “surplus,” out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. “Surplus” is defined as the excess of the net assets of the corporation over the amount determined to be the capital of the corporation by our Board of Directors. The capital of the corporation is typically calculated to be (and cannot be less than) the aggregate par value of all issued shares of capital stock having a par value. Net assets are equal to the fair value of the total assets of the corporation minus its total liabilities. The DGCL also provides that dividends may not be paid out of net profits if, after the payment of the dividend, the capital of the corporation is less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

Declaration and payment of any dividend will be subject to the discretion of our Board of Directors. The time and amount of dividends will be dependent upon our financial condition, operations, cash requirements and availability, debt repayment obligations, capital expenditure needs and restrictions in our debt instruments, industry trends, the provisions of Delaware law affecting the payment of dividends to stockholders and any other factors our Board of Directors may consider relevant.
Anti-Takeover Effects of Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws and Certain Provisions of Delaware Law

Our amended and restated certificate of incorporation, amended and restated bylaws and the DGCL, which are summarized in the following paragraphs, contain provisions that are intended to enhance the likelihood of continuity and stability in the composition of our Board of Directors. These provisions are intended to avoid costly takeover battles, reduce our vulnerability to a hostile change of control and enhance the ability of our Board of Directors to maximize stockholder value in connection with any unsolicited offer to acquire us. However, these provisions may have an anti-takeover effect and may delay, deter or prevent a merger or acquisition of the Company by means of a tender offer, a proxy contest or other takeover attempt that a stockholder might consider is in its best interest, including those attempts that might result in a premium over the prevailing market price for the shares of common stock held by stockholders.

Authorized but Unissued Capital Stock

Delaware law does not require stockholder approval for any issuance of authorized shares. However, the listing requirements of the NYSE, which would apply if and so long as our common stock remains listed on the NYSE, require stockholder approval of certain issuances equal to or exceeding 20% of the then-outstanding voting power or then-outstanding number of shares of common stock. These additional shares may be used for a variety of corporate purposes, including future public offerings to raise additional capital or to facilitate acquisitions.

Our Board of Directors may issue shares of preferred stock on terms calculated to discourage, delay or prevent a change of control of the Company or the removal of our management. Moreover, our authorized but unissued shares of preferred stock will be available for future issuances without stockholder approval and could be utilized for a variety of corporate purposes, including future offerings to raise additional capital, acquisitions or employee benefit plans.

One of the effects of the existence of unissued and unreserved common stock or preferred stock may be to enable our Board of Directors to issue shares to persons friendly to current management, which issuance could render more difficult or discourage an attempt to obtain control of the Company by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of our management and possibly deprive our stockholders of opportunities to sell their shares of common stock at prices higher than prevailing market prices.

Classified Board of Directors

Our amended and restated certificate of incorporation will provide that our Board of Directors will be divided into three classes of directors, with the classes to be as nearly equal in number as possible, and with the directors serving staggered three-year terms. As a result, approximately one-third of our Board of Directors will be elected each year. The classification of directors will have the effect of making it more difficult for stockholders to change the composition of our Board of Directors. Our amended and restated certificate of incorporation and amended and restated bylaws will provide that, subject to any rights of holders of preferred stock to elect additional directors under specified circumstances, the total number of directors constituting the Board of Directors will be fixed from time to time exclusively pursuant to a resolution adopted by our Board of Directors.

Business Combinations

We are subject to Section 203 of the DGCL, which restricts persons deemed to be “interested stockholders” from engaging in a “business combination” with a publicly held Delaware corporation for three years following the time these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies.

Generally, a “business combination” includes a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. Subject to certain exceptions, an “interested stockholder” is a person who, together with that person’s affiliates and associates, owns, or within the previous three years owned, 15% or
more of our outstanding voting stock. For purposes of this section only, “voting stock” has the meaning given to it in Section 203 of the DGCL.

This provision will make it more difficult for a person who would be an “interested stockholder” to effect various business combinations with the Company for a three-year period after the time at which they became an interested stockholder subject to the restrictions on business combinations. This provision may encourage companies interested in acquiring the Company to negotiate in advance with our Board of Directors because the restrictions on business combinations would not apply to an interested stockholder if our Board of Directors, prior to the time a person becomes an interested stockholder, approves either the business combination or the transaction which results in the stockholder becoming an interested stockholder. By discouraging persons from becoming interested stockholders, these provisions may have the effect of preventing changes in our Board of Directors. In addition, these provisions may make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

**Removal of Directors; Vacancies**

Under the DGCL, unless otherwise provided in our amended and restated certificate of incorporation, directors serving on a classified board may be removed by the stockholders only for cause. Our amended and restated certificate of incorporation will provide that directors (other than the directors elected by the holders of one or more series of our preferred stock, voting separately or together with one or more other series) may only be removed for cause and only by the affirmative vote of holders of at least 66²/³% in voting power of all the then-outstanding shares of stock entitled to vote thereon, voting together as a single class. Our amended and restated certificate of incorporation will also provide that, subject to the rights granted to one or more series of preferred stock then outstanding, any newly created directorship on our Board of Directors that results from an increase in the number of directors and any vacancy occurring on our Board of Directors may only be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director (and not by the stockholders).

**No Cumulative Voting**

Under Delaware law, the right to vote cumulatively does not exist unless the certificate of incorporation specifically authorizes cumulative voting. Our amended and restated certificate of incorporation will not authorize cumulative voting. Therefore, stockholders holding a majority in voting power of the shares of our stock entitled to vote generally in the election of directors will be able to elect all of our directors who are elected by a vote of our stockholders generally.

**Plurality Voting**

Our amended and restated bylaws will provide that directors are elected by a plurality voting standard. Under a plurality voting standard, the nominees for election as directors receiving the greatest number of votes for their election at any meeting for the election of directors, up to the number of directors to be elected, will be elected.

**Special Stockholder Meetings**

Our amended and restated certificate of incorporation will provide that special meetings of our stockholders may be called at any time only by or at the direction of our Board of Directors or the Chair of our Board of Directors. Our amended and restated bylaws will prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers, or changes in control or management of the Company.

**Requirements for Advance Notification of Director Nominations and Stockholder Proposals**

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 of Directors or a committee of our Board of Directors. In order for any matter to be “properly brought” before a meeting, a stockholder will have to comply with advance notice requirements and provide us with certain information. Generally, to be timely, a stockholder’s notice must be received at our principal executive
offices not later than 90 days nor earlier than 120 days prior to the first anniversary date of the immediately preceding annual meeting of stockholders. Our amended and restated bylaws will also specify requirements as to the form and content of a stockholder’s notice. Our amended and restated bylaws will allow the chair of the meeting 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 defer, delay or discourage a potential acquiror from conducting a solicitation of proxies to elect the acquiror’s own slate of directors or otherwise attempting to influence or obtain control of the Company.

**Stockholder Action by Written Consent**

Pursuant to Section 228 of the DGCL, unless the certificate of incorporation otherwise provides, any action required to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of our stock entitled to vote thereon were present and voted shall be delivered to the corporation. Our amended and restated certificate of incorporation will prohibit stockholder action by consent in lieu of a meeting, except that any action required or permitted to be taken by the holders of our preferred stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to any such series of preferred stock. In addition, only our Board of Directors can (i) schedule the date of the annual meeting and (ii) provide written notice of the annual meeting.

**Supermajority Provisions**

Our amended and restated certificate of incorporation and amended and restated bylaws will provide that our Board of Directors is expressly authorized to make, repeal, alter, amend, and rescind, in whole or in part, our amended and restated bylaws without a stockholder vote in any matter not inconsistent with the laws of the State of Delaware or our amended and restated certificate of incorporation. Any alteration, amendment, repeal or rescission of our amended and restated bylaws by our stockholders will require the affirmative vote of the holders of at least 66\(\frac{2}{3}\)% in voting power of all the then-outstanding shares of stock entitled to vote thereon, voting together as a single class.

The DGCL provides generally that the affirmative vote of holders of a majority in voting power of the outstanding shares entitled to vote thereon, voting together as a single class, is required to amend a corporation’s certificate of incorporation, unless the certificate of incorporation requires a greater percentage.

Our amended and restated certificate of incorporation will provide that, in addition to any other vote required by law or our amended and restated certificate of incorporation, the amendment, alteration, repeal, or rescission of the following provisions in our amended and restated certificate of incorporation will also require the affirmative vote of the holders of at least 66\(\frac{2}{3}\)% in the voting power of all outstanding shares of stock entitled to vote thereon, voting together as a single class:

- the provision requiring a 66\(\frac{2}{3}\)% supermajority vote for stockholders to amend our amended and restated bylaws;
- the provisions providing for a classified board of directors (the election and term of our directors);
- the provisions regarding the total number of directors;
- the provisions regarding removal of directors;
- the provisions regarding competition and corporate opportunities;
- the provisions regarding stockholder action by written consent;
- the provisions regarding calling special meetings of stockholders;
• the provisions regarding filling vacancies on our Board of Directors and newly created directorships;
• the provisions eliminating monetary damages for breaches of fiduciary duty by a director or officer; and
• the amendment provision requiring that the above provisions be amended only with a 66\%/\% supermajority vote.

The combination of the classification of our Board of Directors, the lack of cumulative voting and the supermajority voting requirements will make it more difficult for our existing stockholders to replace our Board of Directors as well as for another party to obtain control of us by replacing our Board of Directors. Because our Board of Directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management.

These provisions may have the effect of deterring hostile takeovers, delaying or preventing changes in control of our management or the Company, such as a merger, reorganization or tender offer. These provisions are intended to enhance the likelihood of continued stability in the composition of our Board of Directors and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of the Company. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions are also intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts. Such provisions may also have the effect of preventing changes in management.

**Dissenters’ Rights of Appraisal and Payment**

Under the DGCL, with certain exceptions, our stockholders will have appraisal rights in connection with certain mergers or consolidations of us or certain transactions in which we convert to an other entity. Pursuant to the DGCL, stockholders who properly request and perfect appraisal rights in connection with such merger, consolidation or conversion will have the right to receive payment in cash of the fair value of their shares as determined by the Delaware Court of Chancery.

**Stockholders’ Derivative Actions**

Under the DGCL, any of our stockholders may bring an action in our name to procure a judgment in our favor, also known as a derivative action, provided that the stockholder bringing the action is a holder of our shares at the time of the act or transaction to which the action relates or such stockholder’s stock thereafter devolved by operation of law.

**Exclusive Forum**

Our amended and restated certificate of incorporation will provide, subject to limited exceptions, that unless we consent to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or if such court does not have subject matter jurisdiction another state or the federal court (as appropriate) located within the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for any (1) derivative action or proceeding brought on behalf of the Company, (2) action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee or stockholder of the Company to the Company or our stockholders, (3) action asserting a claim against the Company or any current or former director or officer of the Company arising pursuant to any provision of the DGCL or 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 (4) action asserting a claim governed by the internal affairs doctrine of the State of Delaware.

Our amended and restated certificate of incorporation will further provide that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the federal securities laws of the United States, including any claims under the Securities Act and the Exchange Act. However, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts.
over all suits brought to enforce a duty or liability created by the Securities Act or the rules and regulations thereunder and accordingly, we cannot be certain
that a court would enforce such provision. It is possible that a court could find our forum selection provisions to be inapplicable or unenforceable and,
accordingly, we could be required to litigate claims in multiple jurisdictions, incur additional costs or otherwise not receive the benefits that we expect our
forum selection provisions to provide.

Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Company shall be deemed to have notice of and
consented to the forum provisions in our amended and restated certificate of incorporation. Our exclusive forum provision shall not relieve the Company of its
duties to comply with the federal securities laws and the rules and regulations thereunder, and our stockholders will not be deemed to have waived our
compliance with these laws, rules and regulations.

Conflicts of Interest

Delaware law permits corporations to adopt provisions renouncing any interest or expectancy in certain opportunities that are presented to the corporation
or its officers, directors or stockholders. Our amended and restated certificate of incorporation will, to the maximum extent permitted from time to time by
Delaware law, renounce any interest or expectancy that we have in, or right to be offered an opportunity to participate in, specified business opportunities that
are from time to time presented to our officers, directors or stockholders or their respective affiliates, other than those officers, directors, stockholders or
affiliates who are our or our subsidiaries’ employees. Our amended and restated certificate of incorporation will provide that, to the fullest extent permitted by
law, any director who is not employed by us (including any non-employee director who serves as one of our officers in both his or her director and officer
capacities) will not have any duty to refrain from (1) engaging in a corporate opportunity in the same or similar lines of business in which we or our affiliates now engage or propose to engage or (2) otherwise competing with us or our affiliates. In addition, to the fullest extent permitted by law, in
the event that any non-employee director acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for
itself or himself or its or his affiliates or for us or our affiliates, such person will have no duty to communicate or offer such transaction or business opportunity
us or any of our affiliates and they may take any such opportunity for themselves or offer it to another person or entity. Our amended and restated certificate
of incorporation will not renounce our interest in any business opportunity that is expressly offered to a non-employee director solely in his or her capacity as a
director or officer of the Company. To the fullest extent permitted by law, no business opportunity will be deemed to be a potential corporate opportunity for us
unless we would be permitted to undertake the opportunity under our amended and restated certificate of incorporation, we have sufficient financial resources
to undertake the opportunity and the opportunity would be in line with our business.

Limitations on Liability and Indemnification of Officers and Directors

The DGCL authorizes corporations to limit or eliminate the personal liability of directors and certain officers to corporations and their stockholders for
monetary damages for breaches of directors’ fiduciary duties, subject to certain exceptions. Our amended and restated certificate of incorporation will include a
 provision that eliminates the personal liability of directors and officers for monetary damages for any breach of fiduciary duty as a director or officer, except to
the extent such exemption from liability or limitation thereof is not permitted under the DGCL. The effect of these provisions will be to eliminate the rights of
us and our stockholders, through stockholders’ derivative suits on our behalf, to recover monetary damages from a director for breach of fiduciary duty as a
director, including breaches resulting from grossly negligent behavior. This provision will not limit or eliminate the liability of any officer in any action by or in
the right of the Company, including any derivative claims. Further, the exculpation will not apply to any director or officer if the director or officer has
breached the duty of loyalty to the corporation and its stockholders, acted in bad faith, knowingly or intentionally violated the law, or derived an improper
benefit from his or her actions as a director or officer. In addition, exculpation will not apply to any director in connection with the authorization of illegal
dividends, redemptions or stock repurchases.

Our amended and restated bylaws will provide that we must generally indemnify, and advance expenses to, our directors and officers to the fullest extent
authorized by the DGCL. We also are expressly authorized to carry directors’ and officers’ liability insurance providing indemnification for our directors,
officers and certain employees
for some liabilities. We also intend to enter into indemnification agreements with our directors, which agreements will require us to indemnify these individuals
to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result
of any proceeding against them as to which they could be indemnified. We believe that these indemnification and advancement provisions, and insurance will
be useful to attract and retain qualified directors and officers.

The limitation of liability, indemnification and advancement provisions in our amended and restated certificate of incorporation and amended and restated
bylaws may discourage stockholders from bringing a lawsuit against directors or officers for breach of their fiduciary duty. These provisions also may have the
effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and
our stockholders. In addition, your investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and
officers pursuant to these indemnification provisions.

There is currently no pending material litigation or proceeding involving any of our directors, officers or employees for which indemnification is sought.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Broadridge Corporate Issuer Solutions, LLC.

Listing

We intend to apply to have our common stock listed on the NYSE under the symbol “CAVA.”
DESCRIPTION OF CERTAIN INDEBTEDNESS

Credit Facility

On March 11, 2022, CAVA Group, Inc. entered into a credit facility, as borrower, with JPMorgan Chase Bank, National Association, as the administrative agent, an issuing bank, the swingline lender, and the lead arranger, and bookrunner, and certain other parties thereto (as amended, the “Credit Facility”), consisting of a revolving loan commitment in the aggregate amount of $75.0 million, an incremental revolving credit commitment up to an aggregate amount of $25.0 million and a delayed draw term loan facility (the “Delayed Draw Facility”) in the aggregate amount of $30.0 million, each of which are due on March 11, 2027. The Delayed Draw Term Loans may be used solely to finance construction and capital expenditures in respect of the production facility in Verona, Virginia. As of December 25, 2022, CAVA Group, Inc. had no indebtedness, and $75.0 million of undrawn availability, under the Credit Facility. As of May 19, 2023, no amounts have been drawn under the Delayed Draw Facility.

Interest on loans under the Credit Facility are based on one, three or six months Adjusted Term Secured Overnight Financing Rate, as applicable, plus an applicable margin of 1.50% to 2.50% based on the Company’s Total Rent Adjusted Net Leverage Ratio. The Company also has the ability to draw overnight borrowings for which interest rates are calculated based on the Alternate Base Rate. As of December 25, 2022, if there had been revolver borrowings outstanding under the Credit Facility, the interest rate would have been 6.7%. In addition, CAVA Group, Inc. is required to pay a commitment fee on any unutilized revolving commitments under the Credit Facility ranging between 0.20% and 0.35% per annum based on our Total Rent Adjusted Net Leverage Ratio. We are also required to pay customary letter of credit fees.

Amounts under the Delayed Draw Facility may be drawn until the earliest of (i) August 15, 2024, (ii) the date of the fifth funding of Delayed Draw Term Loans (immediately after giving effect to such funding) and (iii) the date the full $30.0 million is drawn under the Delayed Draw Facility. The Company is required to pay a ticking fee on the amount of available delayed draw term loan commitments. The ticking fee ranges from 0.20% to 0.35% based on Total Rent Adjusted Net Leverage Ratio.

The Credit Facility is unconditionally guaranteed by our domestic restricted subsidiaries, other than immaterial subsidiaries and other excluded subsidiaries. The Credit Facility is secured, subject to permitted liens and other exceptions, by a first-priority security interest in certain tangible and intangible assets of the borrower and the guarantors and a first-priority pledge of the capital stock of each domestic restricted subsidiary of the borrower and the guarantors, subject to certain exceptions.

Beginning the first full calendar quarter ending after the termination of all the delayed draw term loan commitments, the Company is obligated to make mandatory quarterly principal payments of Delayed Draw Term Loans in an amount equal to the product of (i) the original aggregate principal amount of all funded Delayed Draw Term Loans, multiplied by (ii) 1.25% for the first eight payments and 1.875% for all subsequent payments occurring prior to March 11, 2027. The revolving loans under the Credit Facility has no amortization. We may voluntarily repay outstanding loans under the Credit Facility without premium or penalty, other than customary “breakage” costs.

The Credit Facility includes specific financial covenants, including the following:

- on the last day of any Test Period, our Total Rent Adjusted Net Leverage Ratio shall be equal to or less than (i) 5.75:1.00 for the Test Period ending on December 31, 2023, and (ii) from the Test Period ending on April 21, 2024 and each Test Period ending thereafter, 5.00:1.00;
- on the last day of any Test Period, our Fixed Charge Coverage Ratio shall be equal to or greater than 1.20:1.00; and
- on the last day of any Test Period, our Liquidity shall be at least $15.0 million.

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The Credit Facility includes customary restrictive covenants, including limitations on additional indebtedness, creation of liens, dividend payments, investments and certain transactions with affiliates. The Credit Facility also includes covenants that require compliance with certain leverage ratios. The availability of certain baskets and the ability to enter into certain transactions may be subject to compliance with such leverage ratios. In addition, the Credit Facility contains other customary covenants, representations and events of default. As of April 16, 2023, we were in compliance with these financial and other covenants. See Note 7 (Debt) to our unaudited condensed consolidated financial statements included elsewhere in this prospectus.
SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for shares of common stock. We cannot predict the effect, if any, future sales of shares of common stock, or the availability for future sale of shares of common stock, will have on the market price of shares of our common stock prevailing from time to time. Future sales of substantial amounts of our common stock in the public market or the perception that such sales might occur may adversely affect market prices of our common stock prevailing from time to time and could impair our future ability to raise capital through the sale of our equity or equity-related securities at a time and price that we deem appropriate. Furthermore, there may be sales of substantial amounts of our common stock in the public market after the existing legal and contractual restrictions lapse. This may adversely affect the prevailing market price and our ability to raise equity capital in the future. See “Risk Factors—Risks Related to this Offering and Ownership of our Common Stock—Future sales, or the perception of future sales, by us or our existing stockholders in the public market following the completion of this offering could cause the market price of our common stock to decline.”

Upon completion of this offering, we will have a total of shares of our common stock outstanding, assuming the automatic conversion of shares of preferred stock into shares of common stock immediately prior to the consummation of this offering, which will result in the issuance of shares of common stock immediately prior to the consummation of this offering. The shares of common stock sold in this offering (or shares if the underwriters exercise their option to purchase additional shares in full) will be freely tradable without restriction or further registration under the Securities Act, except that any shares held by our affiliates, as that term is defined under Rule 144, including our directors, executive officers, and other affiliates, may be sold only in compliance with the limitations described below.

The remaining outstanding shares of common stock, representing % of the total outstanding shares of our common stock following the completion of this offering, will be deemed restricted securities under the meaning of Rule 144 and may be sold in the public market only if registered or if they qualify for an exemption from registration, including the exemptions pursuant to Rule 144 and Rule 701 under the Securities Act, which we summarize below.

Lock-up and Market Standoff Agreements

In connection with this offering, we, our executive officers, directors, and all of our significant stockholders that together represent greater than % of our outstanding common stock and securities directly or indirectly convertible into or exchangeable or exercisable for our common stock, will agree, subject to certain exceptions, not to sell, dispose of, hedge, or make any demand for, or exercise any right with respect to, the registration of any shares of our common stock or securities convertible into or exchangeable for shares of our common stock, without, in each case, the prior written consent of J.P. Morgan Securities LLC and Jefferies LLC, for a period of 180 days after the date of this prospectus (such period, the “restricted period”). See “Underwriting” for a description of the lock-up agreements applicable to our shares.

In addition, certain other record holders that together represent greater than % of our outstanding common stock and securities directly or indirectly convertible into or exchangeable or exercisable for common stock are subject to market standoff agreements with us for the benefit of the underwriters agreeing that, without the prior written consent of J.P. Morgan Securities LLC and Jefferies LLC on behalf of the underwriters, we and they will not, in accordance with the terms of such agreements, during the restricted period:

(1) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right, or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for common stock; or

(2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described these clauses (1) or (2) is to be settled by delivery of common stock or other securities, in cash, or otherwise.
In addition, substantially all of the remaining shares of our outstanding common stock and securities directly or indirectly convertible into or exchangeable or exercisable for our common stock, including stock options issued under our equity incentive plans, are subject to market standoff agreements with us that restrict certain transfers of such shares of common stock and such securities during the restricted period. As a result of the foregoing, substantially all of our outstanding common stock and securities directly or indirectly convertible into or exchangeable or exercisable for our common stock are subject to a lock-up agreement or market standoff provisions during the restricted period.

Notwithstanding the foregoing, for each of our employees (but excluding (i) our directors and executive officers and (ii) any employee who beneficially holds, together with such employee’s direct or indirect affiliates, more than 1% of our common stock as calculated as of the date of this prospectus and rounded down to the nearest whole share) (each, an “Employee Stockholder”),

(A) up to 20% of the shares of our outstanding common stock and securities directly or indirectly convertible into or exchangeable or exercisable for our common stock held by each such Employee Stockholder may be sold beginning at the commencement of trading on the first trading day on which our common stock is traded on the NYSE; and

(B) up to an additional 20% of the shares of our outstanding common stock and securities directly or indirectly convertible into or exchangeable or exercisable for our common stock held by such Employee Stockholder, may be sold beginning at the opening of trading on the second trading day after we publicly announce earnings by filing with the SEC a Form 8-K (which for this purpose shall not include “flash” numbers or preliminary, partial earnings) for the first completed quarterly period following the most recent period for which financial statements are included in this prospectus (such release, our “first post-public earnings release”), provided that the last reported closing price of our common stock on the NYSE is at least 30% greater than the initial public offering price per share set forth on the cover page of this prospectus for any 10 trading days out of the 15-consecutive full trading day period ending on the closing of the first full trading day immediately following our first post-public offering earnings release.

Upon the expiration of the restricted period, all of the securities subject to such transfer restrictions will become eligible for sale, subject to the limitations discussed below.

Rule 144

In general, under Rule 144, once we have been subject to public company reporting requirements for at least 90 days, a person (or persons whose shares are aggregated) who is not deemed to be or have been one of our affiliates for purposes of the Securities Act at any time during 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than an affiliate, is entitled to sell such shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of a prior owner other than an affiliate, then such person is entitled to sell such shares without complying with any of the requirements of Rule 144.

In general, under Rule 144, our affiliates or persons selling shares of our common stock on behalf of our affiliates, who have met the six month holding period for beneficial ownership of “restricted shares” of our common stock, are entitled to sell upon the expiration of the lock-up agreements described above, within any three-month period beginning 90 days after the date of this prospectus, a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering; or
- the average reported weekly trading volume of our common stock on the NYSE during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

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Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements, and to the availability of current public information about us. The sale of these shares, or the perception that sales will be made, could adversely affect the price of our common stock after this offering because a great supply of shares would be, or would be perceived to be, available for sale in the public market.

We are unable to estimate the number of shares that will be sold under Rule 144 since this will depend on the market price for our common stock, the personal circumstances of the stockholder and other factors.

**Rule 701**

In general, under Rule 701, any of our employees, directors, officers, consultants, or advisors who received shares from us in connection with a compensatory stock or option plan or other written agreement before the effective date of this offering are entitled to resell such shares 90 days after the effective date of this offering in reliance on Rule 144, in the case of affiliates, without having to comply with the holding period requirements of Rule 144 and, in the case of non-affiliates, without having to comply with the public information, holding period, volume limitation, or notice filing requirements of Rule 144.

**Registration Statements on Form S-8**

We intend to file one or more registration statements on Form S-8 under the Securities Act to register all shares of common stock subject to issuance under the 2015 Equity Incentive Plan, the 2023 Equity Incentive Plan, and the ESPP to be adopted in connection with this offering. Any such Form S-8 registration statement will automatically become effective upon filing. Accordingly, shares of our common stock registered under such registration statements will be available for sale in the open market. We expect that the initial registration statement on Form S-8 will cover shares of our common stock.

**Registration Rights**

For a description of rights that certain of our stockholders will have to require us to register the shares of our common stock they own, see “Description of Capital Stock—Registration Rights.” Registration of these shares under the Securities Act would result in these shares becoming freely tradable immediately upon effectiveness of such registration.

Following completion of this offering, the shares of our common stock covered by registration rights would represent approximately % of our outstanding common stock (or %, if the underwriters exercise their option to purchase additional shares in full). These shares also may be sold under Rule 144, depending on their holding period and subject to restrictions in the case of shares held by persons deemed to be our affiliates.
CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following is a summary of certain United States federal income tax consequences of the ownership and disposition of our common stock as of the date hereof. This summary deals only with common stock that is held as a capital asset by a non-U.S. holder (as defined below).

A “non-U.S. holder” means a beneficial owner of our common stock (other than an entity or arrangement treated as a partnership for United States federal income tax purposes) that is not, for United States federal income tax purposes, any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation (or any other entity treated as a corporation for United States federal income tax purposes) created or organized in, or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to United States federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person.

This summary is based upon the Code, Treasury regulations, rulings, and judicial decisions as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in United States federal income tax consequences different from those summarized below. This summary does not address all of the United States federal income tax consequences that may be relevant to you in light of your particular circumstances, nor does it address the Medicare tax on net investment income, United States federal estate and gift taxes or the effects of any state, local, or non-United States tax laws. In addition, it does not represent a detailed description of the United States federal income tax consequences applicable to you if you are subject to special treatment under the United States federal income tax laws (including if you are a United States expatriate, foreign pension fund, “controlled foreign corporation,” “passive foreign investment company”, or a partnership or other pass-through entity for United States federal income tax purposes). We cannot assure you that a change in law will not alter significantly the tax considerations that we describe in this summary.

If a partnership (or other entity or arrangement treated as a partnership for United States federal income tax purposes) holds our common stock, the tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership. If you are a partnership or a partner of a partnership considering an investment in our common stock, you should consult your tax advisors.

If you are considering the purchase of our common stock, you should consult your own tax advisors concerning the particular United States federal income tax consequences to you of the ownership and disposition of our common stock, as well as the consequences to you arising under other United States federal tax laws and the laws of any other taxing jurisdiction.

Dividends

As discussed above under “Dividend Policy,” we do not currently anticipate paying cash dividends on shares of our common stock in the foreseeable future. If we make distributions of cash or other property (other than certain pro rata distributions of our stock) in respect of our common stock, the distribution generally will be treated as a dividend for United States federal income tax purposes to the extent it is paid from our current or accumulated earnings and profits, as determined under United States federal income tax principles. Any portion of a distribution that exceeds our current and accumulated earnings and profits generally will be treated first as a tax-free return of capital, causing a reduction in the adjusted tax basis of a non-U.S. holder’s common stock, and to the extent the amount of the distribution exceeds a non-U.S. holder’s adjusted tax basis in our common stock, the excess will be treated as gain from the disposition of our common stock (the tax treatment of which is described below under “—Gain on Disposition of Common Stock”).
Subject to the discussions below under “Information Reporting and Backup Withholding” and “Foreign Account Tax Compliance Act,” dividends paid to a non-U.S. holder generally will be subject to withholding of United States federal income tax at a 30% rate (or such lower rate as may be specified by an applicable income tax treaty). However, dividends that are effectively connected with the conduct of a trade or business by the non-U.S. holder within the United States (and, if required by an applicable income tax treaty, attributable to a United States permanent establishment of the non-U.S. holder) are not subject to such withholding tax, provided certain certification and disclosure requirements are satisfied. Instead, such dividends are subject to United States federal income tax on a net income basis generally in the same manner as if the non-U.S. holder were a United States person as defined under the Code. Any such effectively connected dividends received by a corporate non-U.S. holder may be subject to an additional “branch profits tax” at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

A non-U.S. holder who wishes to claim the benefit of an applicable treaty rate and avoid backup withholding, as discussed below, for dividends will be required (a) to provide the applicable withholding agent with a properly executed IRS Form W-8BEN or Form W-8BEN-E (or other applicable form) certifying under penalty of perjury that such holder is not a United States person as defined under the Code and is eligible for treaty benefits or (b) if our common stock is held through certain foreign intermediaries, to satisfy the relevant certification requirements of applicable United States Treasury regulations. Special certification and other requirements apply to certain non-U.S. holders that are pass-through entities rather than corporations or individuals.

A non-U.S. holder eligible for a reduced rate of United States federal withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

Gain on Disposition of Common Stock

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

- the gain is effectively connected with a trade or business of the non-U.S. holder in the United States (and, if required by an applicable income tax treaty, attributable to a United States permanent establishment of the non-U.S. holder);
- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met; or
- we are or have been a “United States real property holding corporation” for United States federal income tax purposes and certain other conditions are met.

A non-U.S. holder described in the first bullet point immediately above will be subject to tax on the gain derived from the sale or other disposition in the same manner as if the non-U.S. holder were a United States person as defined under the Code. In addition, if any non-U.S. holder described in the first bullet point immediately above is a foreign corporation, the gain realized by such non-U.S. holder may be subject to an additional “branch profits tax” at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. An individual non-U.S. holder described in the second bullet point immediately above will be subject to a 30% (or such lower rate as may be specified by an applicable income tax treaty) tax on the gain derived from the sale or other disposition, which gain may be offset by United States source capital losses, even though the individual is not considered a resident of the United States.

Generally, a corporation is a “United States real property holding corporation” if the fair market value of its United States real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business (all as determined for United States federal income tax purposes). We believe we are not and do not anticipate becoming a “United States real property holding corporation” for United States federal income tax purposes. Even if we become a United States real property holding corporation, however, as long as our common stock is regularly traded on an established securities market, such common stock will be treated as United States real property interests only if you actually or constructively hold.
more than 5% of such regularly traded common stock at any time during the shorter of the five-year period preceding your disposition of, or your holding period for, our common stock. No assurance can be provided that our common stock will be regularly traded on an established securities market at all times for purposes of the rules described above.

Information Reporting and Backup Withholding

Distributions paid to a non-U.S. holder and the amount of any tax withheld with respect to such distributions generally will be reported to the IRS. Copies of the information returns reporting such distributions and any withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides under the provisions of an applicable income tax treaty.

A non-U.S. holder will not be subject to backup withholding on distributions received if such holder certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that such holder is a United States person as defined under the Code), or such holder otherwise establishes an exemption.

Information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of a sale or other disposition of our common stock within the United States or conducted through certain United States-related financial intermediaries, unless the beneficial owner certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that the beneficial owner is a United States person as defined under the Code), or such owner otherwise establishes an exemption.

Backup withholding is not an additional tax and any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a non-U.S. holder’s United States federal income tax liability provided the required information is timely furnished to the IRS.

Foreign Account Tax Compliance Act

Under Sections 1471 through 1474 of the Code (such Sections commonly referred to as “FATCA”), a 30% United States federal withholding tax may apply to any dividends paid on our common stock to (i) a “foreign financial institution” (as specifically defined in the Code and whether such foreign financial institution is the beneficial owner or an intermediary) which does not provide sufficient documentation, typically on IRS Form W-8BEN-E, evidencing either (x) an exemption from FATCA, or (y) its compliance (or deemed compliance) with FATCA (which may alternatively be in the form of compliance with an intergovernmental agreement with the United States) in a manner which avoids withholding, or (ii) a “non-financial foreign entity” (as specifically defined in the Code and whether such non-financial foreign entity is the beneficial owner or an intermediary) which does not provide sufficient documentation, typically on IRS Form W-8BEN-E, evidencing either (x) an exemption from FATCA, or (y) adequate information regarding certain substantial United States beneficial owners of such entity (if any). If a dividend payment is both subject to withholding under FATCA and subject to the withholding tax discussed above under “—Dividends,” an applicable withholding agent may credit the withholding under FATCA against, and therefore reduce, such other withholding tax. We will not pay any additional amounts to holders in respect of any amounts withheld. While withholding under FATCA would also have applied to payments of gross proceeds from the sale or other taxable disposition of our common stock, proposed United States Treasury regulations (upon which taxpayers may rely until final regulations are issued) eliminate FATCA withholding on payments of gross proceeds entirely. You should consult your own tax advisors regarding these requirements and whether they may be relevant to your ownership and disposition of our common stock.
We are offering the shares of common stock described in this prospectus through a number of underwriters. J.P. Morgan Securities LLC and Jefferies LLC are acting as joint book-running managers of the offering and J.P. Morgan Securities LLC, Jefferies LLC and Citigroup Global Markets Inc. are acting as representatives of the underwriters. We have entered into an underwriting agreement with the underwriters. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to the underwriters, and each underwriter has severally agreed to purchase, at the public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus, the number of shares of common stock listed next to its name in the following table:

<table>
<thead>
<tr>
<th>Name</th>
<th>Number of Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>J.P. Morgan Securities LLC</td>
<td></td>
</tr>
<tr>
<td>Jefferies LLC</td>
<td></td>
</tr>
<tr>
<td>Citigroup Global Markets Inc.</td>
<td></td>
</tr>
<tr>
<td>Morgan Stanley &amp; Co. LLC</td>
<td></td>
</tr>
<tr>
<td>Piper Sandler &amp; Co.</td>
<td></td>
</tr>
<tr>
<td>Robert W. Baird &amp; Co. Incorporated</td>
<td></td>
</tr>
<tr>
<td>Stifel, Nicolaus &amp; Company, Incorporated</td>
<td></td>
</tr>
<tr>
<td>William Blair &amp; Company, L.L.C.</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

The underwriters are committed to purchase all the common shares offered by us if they purchase any shares. The underwriting agreement also provides that if an underwriter defaults, the purchase commitments of non-defaulting underwriters may also be increased or the offering may be terminated.

The underwriters propose to offer the common shares directly to the public at the initial public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession not in excess of $ per share. Any such dealers may resell shares to certain other brokers or dealers at a discount of up to $ per share from the initial public offering price. After the initial offering of the shares to the public, if all of the common shares are not sold at the initial public offering price, the underwriters may change the offering price and the other selling terms. Sales of any shares made outside of the United States may be made by affiliates of the underwriters.

The underwriters have an option to buy up to additional shares of common stock from us to cover sales of shares by the underwriters which exceed the number of shares specified in the table above. The underwriters have 30 days from the date of this prospectus to exercise this option to purchase additional shares. If any shares are purchased with this option to purchase additional shares, the underwriters will purchase shares in approximately the same proportion as shown in the table above. If any additional shares of common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the shares are being offered.

The underwriting fee is equal to the public offering price per share of common stock less the amount paid by the underwriters to us per share of common stock. The underwriting fee is $ per share. The following table shows...
the per share and total underwriting discounts and commissions to be paid to the underwriters assuming both no exercise and full exercise of the underwriters’ option to purchase additional shares from us.

<table>
<thead>
<tr>
<th>Public offering price</th>
<th>Per Share</th>
<th>Total without option to purchase additional shares</th>
<th>Total with full option to purchase additional shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Underwriting discount</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds, before expenses, to us</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

We estimate that the total expenses of this offering, including registration, filing and listing fees, printing fees, and legal and accounting expenses, but excluding the underwriting discounts and commissions, will be approximately $. We have agreed to reimburse the underwriters for expenses of up to $40,000 relating to the clearance of this offering with the Financial Industry Regulatory Authority and blue sky fees. The underwriters have agreed to reimburse us for certain expenses in connection with this offering.

A prospectus in electronic format may be made available on the web sites maintained by one or more underwriters, or selling group members, if any, participating in the offering. The underwriters may agree to allocate a number of shares to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters and selling group members that may make internet distributions on the same basis as other allocations.

We have agreed that we will not (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right, or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, or submit to, or file with, the Securities and Exchange Commission a registration statement under the Securities Act relating to, any shares of our common stock or securities convertible into or exercisable or exchangeable for any shares of our common stock, or publicly disclose the intention to make any offer, sale, pledge, loan, disposition, or filing, or (ii) enter into any swap or other arrangement that transfers all or a portion of the economic consequences associated with the ownership of any shares of common stock or any such other securities (regardless of whether any of these transactions are to be settled by the delivery of shares of common stock or such other securities, in cash or otherwise), in each case without the prior written consent of J.P. Morgan Securities LLC and Jefferies LLC for the restricted period, other than the shares of our common stock to be sold in this offering, subject to certain exceptions.

We have agreed that we will not (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right, or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for our common stock (including, without limitation, common stock or such other securities which may be deemed to be beneficially owned by such lock-up parties in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant (collectively with the common stock, the “lock-up securities”)), (2) enter into any hedging, swap, or other agreement or transaction that transfers, in whole or in part, any of the economic consequences of ownership of the lock-up securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of lock-up securities, in cash or otherwise, (3) make any demand for, or exercise any right with respect to, the registration of any Lock-Up Securities, or (4) publicly disclose the intention to do any of the foregoing. Such persons or entities have further acknowledged that these undertakings preclude them from engaging, during the restricted period, in any hedging or other transactions or arrangements (including, without limitation, any short sale or the purchase or sale of, or entry into, any put or call option, or combination thereof, forward, swap, or any other derivative transaction or instrument, however described or defined), designed, or
intended, or which could reasonably be expected to lead to or result in, a sale or disposition or transfer (by any person or entity, whether or not a signatory to 
such agreement) of any economic consequences of ownership, in whole or in part, directly or indirectly, of any lock-up securities, whether any such transaction 
or arrangement (or instrument provided for thereunder) would be settled by delivery of lock-up securities, in cash or otherwise.

The restrictions described in the immediately preceding paragraph and contained in the lock-up agreements between the underwriters and the lock-up 
parties do not apply, subject in certain cases to various conditions, to certain transactions, including .

J.P. Morgan Securities LLC and Jefferies LLC, in their sole discretion, may release the securities subject to any of the lock-up agreements with the 
underwriters described above, in whole or in part at any time.

We have a large number of shareholders and such shareholders have acquired their interests over an extended period of time and pursuant to a number of 
different agreements containing a variety of terms governing restrictions on the sale, short sale, transfer, hedging, pledging, loan or other disposition of their 
interests in our equity. Record holders of our outstanding shares of common stock and securities convertible into or exercisable or exchangeable for shares of 
our common stock are subject to restrictions on their ability to sell or transfer their equity during the restricted period. During the post-pricing period (and 
before giving effect to the shares sold in the offering), (i) greater than % of our outstanding registered equity interests are subject to restrictions imposed 
by lock-up agreements with the underwriters, (ii) greater than % are subject to the market standoff provisions in our Investors’ Rights Agreement, which 
imposes restrictions on lending, offering, pledging, selling, contracting to sell, selling any option or contracting to purchase, purchasing any option or 
contracting to sell, granting any option, right or warrant to purchase or otherwise transferring or disposing of, directly or indirectly, any shares of our common 
stock, or entering into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such 
securities, and (iii) substantially all of the remaining shares are subject to transfer restrictions contained in option exercise agreements with us which include 
restrictions on selling, disposing of, transferring, making any short sale of, granting any option for the purchase of, or entering into any hedging or similar 
transaction with the same economic effect as a sale of, our common stock. The forms and specific restrictive provisions within these market standoff provisions 
varied between shareholders. For example, some of these market standoff agreements do not specifically restrict hedging transactions and others may be subject 

Notwithstanding the foregoing:

(A) up to 20% of the shares of our outstanding common stock and securities directly or indirectly convertible into or exchangeable or exercisable for our 
common stock held by each Employee Stockholder may be sold beginning at the commencement of trading on the first trading day on which our 
common stock is traded on the NYSE; and

(B) up to an additional 20% of the shares of our outstanding common stock and securities directly or indirectly convertible into or exchangeable or 
exercisable for our common stock held by such Employee Stockholder, may be sold beginning at the opening of trading on the second trading day 
after our “first post-public earnings release, provided that the last reported closing price of our common stock on the NYSE is at least 30% greater 
than the initial public offering price per share set forth on the cover page of this prospectus for any 10 trading days out of the 15-consecutive full 
trading day period ending on the closing of the first full trading day immediately following our first post-public offering earnings release. See “Shares Eligible for Future Sale.”

We have agreed to enforce all such market standoff restrictions on behalf of the underwriters and not to amend or waive any such market standoff 
provisions during the restricted period other than as set forth above without the prior consent of J.P. Morgan Securities LLC and Jefferies LLC.

Record holders of our securities are typically the parties to the lock-up agreements with the underwriters and the market standoff agreements with us 
referred to above, while holders of beneficial interests in our shares who are not also record holders in respect of such shares are not typically subject to any 
such agreements or other similar restrictions. Accordingly, we believe that certain holders of beneficial interests who are not record holders and are
not bound by market standoff or lock-up agreements could enter into transactions with respect to those beneficial interests that negatively impact our stock price. In addition, a shareholder who is neither subject to a market standoff agreement with us nor a lock-up agreement with the underwriters may be able to sell, short sell, transfer, hedge, pledge, lend or otherwise dispose of or attempt to sell short sell, transfer, hedge, pledge, lend or otherwise dispose of, their equity interests at any time.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act.

We will apply to have our common stock approved for listing/quotation on the NYSE under the symbol “CAVA.”

In connection with this offering, the underwriters may engage in stabilizing transactions, which involves making bids for, purchasing, and selling shares of common stock in the open market for the purpose of preventing or retarding a decline in the market price of the common stock while this offering is in progress. These stabilizing transactions may include making short sales of common stock, which involves the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering and purchasing shares of common stock on the open market to cover positions created by short sales. Short sales may be “covered” shorts, which are short positions in an amount not greater than the underwriters’ option to purchase additional shares referred to above, or may be “naked” shorts, which are short positions in excess of that amount. The underwriters may close out any covered short position either by exercising their option to purchase additional shares, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market compared to the price at which the underwriters may purchase shares through the option to purchase additional shares. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market that could adversely affect investors who purchase in this offering. To the extent that the underwriters create a naked short position, they will purchase shares in the open market to cover the position.

The underwriters have advised us that, pursuant to Regulation M of the Securities Act, they may also engage in other activities that stabilize, maintain, or otherwise affect the price of the common stock, including the imposition of penalty bids. This means that if the representatives of the underwriters purchase common stock in the open market in stabilizing transactions or to cover short sales, the representatives can require the underwriters that sold those shares as part of this offering to repay the underwriting discount received by them.

These activities may have the effect of raising or maintaining the market price of the common stock or preventing or retarding a decline in the market price of the common stock, and, as a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any time. The underwriters may carry out these transactions on the NYSE, in the over-the-counter market or otherwise.

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. In determining the initial public offering price, we and the representatives of the underwriters expect to consider a number of factors including:

• the information set forth in this prospectus and otherwise available to the representatives;
• our prospects and the history and prospects for the industry in which we compete;
• an assessment of our management;
• our prospects for future earnings;
• the general condition of the securities markets at the time of this offering;
the recent market prices of, and demand for, publicly traded common stock of generally comparable companies; and

other factors deemed relevant by the underwriters and us.

Neither we nor the underwriters can assure investors that an active trading market will develop for our common shares, or that the shares will trade in the public market at or above the initial public offering price.

At our request, the underwriters have reserved % of the shares of common stock offered by this prospectus for sale, at the initial public offering price, to:

- certain tiers of eligible CAVA Rewards members;
- certain suppliers;
- certain individuals identified by our executive team; and
- other certain individuals affiliated with us.

The number of shares of our common stock available for sale to the general public will be reduced to the extent these individuals purchase such reserved shares. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same basis as the other shares offered by this prospectus. Any shares sold under the directed share program, other than to our directors, officers, and existing significant stockholders, will not be subject to the terms of any lock-up agreement.

Certain of the underwriters and their affiliates have provided in the past to us and our affiliates and may provide from time to time in the future certain commercial banking, financial advisory, investment banking, and other services for us and such affiliates in the ordinary course of their business, for which they have received and may continue to receive customary fees and commissions. In addition, from time to time, certain of the underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future. In particular, an affiliate of J.P. Morgan Securities LLC acts as administrative agent, issuing bank, swingline lender and lead arranger and bookrunner under the Credit Facility and affiliates of certain of the underwriters act as lenders under the Credit Facility. In addition, from time to time, certain of the underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future.

Selling Restrictions Outside the United States

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 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.

Notice to Prospective Investors in the European Economic Area and the UK

In relation to each Member State of the European Economic Area and the United Kingdom (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 underwriters; or

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

provided that no such offer of shares shall require us 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 and each person who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged, and agreed to and with each of the underwriters and the Company that it is a “qualified investor” within the meaning of Article 2(e) of the Prospectus Regulation. In the case of any shares being offered to a financial intermediary as that term is used in 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 of any shares to the public other than their offer or resale in a Relevant State to qualified investors as so defined or in circumstances in which the prior consent of the underwriters have been obtained to each such proposed offer or resale.

For the purposes of this provision, the expression an “offer to the public” in relation to 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.

Notice to Prospective Investors in the United Kingdom

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are “qualified investors” (as defined in the Prospectus Regulation) (i) who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the “Order”), and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as “relevant persons”) or otherwise in circumstances which have not resulted and will not result in an offer to the public of the shares in the United Kingdom within the meaning of the Financial Services and Markets Act 2000.
Any person in the United Kingdom that is not a relevant person should not act or rely on the information included in this document or use it as basis for taking any action. In the United Kingdom, any investment or investment activity that this document relates to may be made or taken exclusively by 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 does not constitute a prospectus within the meaning of, and 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 FINMA (FINMA), and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

Notice to Prospective Investors in Australia

This prospectus:
• does not constitute a disclosure document or a prospectus under Chapter 6D.2 of the Corporations Act 2001 (Cth) (the “Corporations Act”);
• has not been, and will not be, lodged with the Australian Securities and Investments Commission (“ASIC”), as a disclosure document for the purposes of the Corporations Act and does not purport to include the information required of a disclosure document for the purposes of the Corporations Act; and
• may only be provided in Australia to select investors who are able to demonstrate that they fall within one or more of the categories of investors, available under section 708 of the Corporations Act (“Exempt Investors”).

The shares may not be directly or indirectly offered for subscription or purchased or sold, and no invitations to subscribe for or buy the shares may be issued, and no draft or definitive offering memorandum, advertisement, or other offering material relating to any shares may be distributed in Australia, except where disclosure to investors is not required under Chapter 6D of the Corporations Act or is otherwise in compliance with all applicable Australian laws and regulations. By submitting an application for the shares, you represent and warrant to us that you are an Exempt Investor.

As any offer of shares under this document will be made without disclosure in Australia under Chapter 6D.2 of the Corporations Act, the offer of those securities for resale in Australia within 12 months may, under section 707 of the Corporations Act, require disclosure to investors under Chapter 6D.2 if none of the exemptions in section 708 applies to that resale. By applying for the shares you undertake to us that you will not, for a period of 12 months from the date of issue of the shares, offer, transfer, assign, or otherwise alienate those shares to investors in Australia except in circumstances where disclosure to investors is not required under Chapter 6D.2 of the Corporations Act or where a compliant disclosure document is prepared and lodged with ASIC.

Notice to Prospective Investors in Japan

The shares have not been and will not be registered pursuant to Article 4, Paragraph 1 of the Financial Instruments and Exchange Act. Accordingly, none of the shares nor any interest therein may be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any “resident” of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to
others for re-offering or resale, directly or indirectly, in Japan or to or for the benefit of a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Act and any other applicable laws, regulations, and ministerial guidelines of Japan in effect at the relevant time.

**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 the Laws of Hong Kong) (the “SFO”) of Hong Kong and any rules made thereunder; or (b) in other circumstances which do not result in the document being a “prospectus” as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong (the “CO”) or which do not constitute an offer to the public within the meaning of the CO. 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 SFO and any rules made thereunder.

**Notice to Prospective Investors in Singapore**

Each joint book-running manager has acknowledged that this prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, each joint book-running manager has represented and agreed that it has not offered or sold any shares or caused the shares to be made the subject of an invitation for subscription or purchase and will not offer or sell any shares or cause the shares to be made the subject of an invitation for subscription or purchase, and has not circulated or distributed, nor will it circulate or distribute, this prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares, whether directly or indirectly, to any person in Singapore other than:

(a) 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;

(b) 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

(c) 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:

(i) 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;

(ii) where no consideration is or will be given for the transfer;
(iii) where the transfer is by operation of law;

(iv) as specified in Section 276(7) of the SFA; or

(v) as specified in Regulation 37A of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018.

Singapore SFA Product Classification—In connection with Section 309B of the SFA and the CMP Regulations 2018, unless otherwise specified before an offer of Notes, the Issuer has determined, and hereby notifies all relevant persons (as defined in Section 309A(1) of the SFA), that the Notes are “prescribed capital markets products” (as defined in the CMP Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

Notice to Prospective Investors in the Dubai International Financial Centre (“DIFC”)

This document relates to an Exempt Offer in accordance with the Markets Rules 2012 of the Dubai Financial Services Authority (“DFSA”). This document is intended for distribution only to persons of a type specified in the Markets Rules 2012 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 supplement nor taken steps to verify the information set forth herein and has no responsibility for this document. The securities to which this document relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this document you should consult an authorized financial advisor.

In relation to its use in the DIFC, this document is strictly private and confidential and is being distributed to a limited number of investors and must not be provided to any person other than the original recipient, and may not be reproduced or used for any other purpose. The interests in the securities may not be offered or sold directly or indirectly to the public in the DIFC.
LEGAL MATTERS

The validity of the shares of common stock offered by this prospectus will be passed upon for us by Simpson Thacher & Bartlett LLP, New York, New York. The underwriters are being represented by Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York.

EXPERTS

The financial statements of CAVA Group, Inc. as of and for the fiscal years ended December 25, 2022 and December 26, 2021, included in this prospectus, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as set forth in their report. Such financial statements are included in reliance upon the report of such firm given their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed a registration statement on Form S-1 under the Securities Act with respect to the common stock offered by this prospectus with the SEC. This prospectus is a part of the registration statement and does not contain all of the information set forth in the registration statement and its exhibits and schedules, portions of which have been omitted 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 and its exhibits and schedules. Statements contained in this prospectus regarding the contents of any contract or other document referred to in those documents are not necessarily complete, and in each instance we refer you to the copy of the contract or other document filed as an exhibit to the registration statement or other document. Each of these statements is qualified in all respects by this reference.

Following the completion of this offering, we will be subject to the informational reporting requirements of the Exchange Act and, in accordance with the Exchange Act, we will file annual, quarterly and current reports, proxy statements and other information with the SEC. Our filings with the SEC will be available to the public on the SEC’s website at http://www.sec.gov. Those filings will also be available to the public on, or accessible through, our website (www.cava.com) under the heading “.” The information we file with the SEC or contained on or accessible through our corporate website or any other website that we may maintain is not part of this prospectus or the registration statement of which this prospectus is a part.

We intend to make available to our common stockholders annual reports containing financial statements audited by an independent registered public accounting firm.
# INDEX TO FINANCIAL STATEMENTS

## Audited Financial Statements:
- **Independent Registered Public Accounting Firm**
- **Consolidated Financial Statements as of and for the Fiscal Years Ended December 25, 2022 and December 26, 2021**
  - Consolidated Balance Sheets
  - Consolidated Statements of Operations
  - Consolidated Statements of Preferred Stock and Stockholders’ Equity
  - Consolidated Statements of Cash Flows
  - Notes to Consolidated Financial Statements

## Unaudited Condensed Consolidated Financial Statements:
- **Unaudited Condensed Consolidated Financial Statements as of and for the Sixteen Weeks Ended April 16, 2023 and April 17, 2022**
  - Unaudited Condensed Consolidated Balance Sheets
  - Unaudited Condensed Consolidated Statements of Operations
  - Unaudited Condensed Consolidated Statements of Preferred Stock and Stockholders’ Equity
  - Unaudited Condensed Consolidated Statements of Cash Flows
  - Notes to Unaudited Condensed Consolidated Financial Statements
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of CAVA Group, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of CAVA Group, Inc. and subsidiaries (the "Company") as of December 25, 2022 and December 26, 2021, the related consolidated statements of operations, preferred stock and stockholders' equity, and cash flows, for each of the two years in the period ended December 25, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 25, 2022 and December 26, 2021, and the results of its operations and its cash flows for each of the two fiscal years in the period ended December 25, 2022, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

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

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

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

McLean, Virginia

March 17, 2023

We have served as the Company's auditor since 2018.
CAVA GROUP, INC.
CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share amounts)

<table>
<thead>
<tr>
<th>ASSETS</th>
<th>December 25, 2022</th>
<th>December 26, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 39,125</td>
<td>$ 140,332</td>
</tr>
<tr>
<td>Trade accounts receivable, net</td>
<td>2,827</td>
<td>2,778</td>
</tr>
<tr>
<td>Other accounts receivable</td>
<td>4,908</td>
<td>3,282</td>
</tr>
<tr>
<td>Inventories</td>
<td>5,139</td>
<td>3,643</td>
</tr>
<tr>
<td>Prepaid expenses and other</td>
<td>6,151</td>
<td>4,359</td>
</tr>
<tr>
<td>Total current assets</td>
<td>58,150</td>
<td>154,394</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>242,983</td>
<td>194,941</td>
</tr>
<tr>
<td>Operating lease assets</td>
<td>273,876</td>
<td>—</td>
</tr>
<tr>
<td>Goodwill</td>
<td>1,944</td>
<td>1,944</td>
</tr>
<tr>
<td>Intangible assets, net</td>
<td>1,382</td>
<td>7,304</td>
</tr>
<tr>
<td>Other long-term assets</td>
<td>5,548</td>
<td>3,612</td>
</tr>
<tr>
<td>Total assets</td>
<td>$ 583,883</td>
<td>$ 362,195</td>
</tr>
</tbody>
</table>

| LIABILITIES, PREFERRED STOCK AND STOCKHOLDERS' EQUITY | | |
| Current liabilities: | | |
| Accounts payable | $ 14,311 | $ 13,975 |
| Accrued expenses and other | 40,468 | 37,750 |
| Operating lease liabilities - current | 29,539 | — |
| Total current liabilities | 84,318 | 51,725 |
| Deemed landlord financing | — | 15,344 |
| Deferred rent | — | 24,948 |
| Deferred income taxes | 28 | 23 |
| Operating lease liabilities | 285,194 | — |
| Other long-term liabilities | 538 | 868 |
| Total liabilities | 370,078 | 92,908 |
| Commitments and Contingencies (Note 12) | | |
| Preferred stock: | | |
| Redeemable preferred stock, par value $0.0001 per share; 37,291,370 shares authorized; 31,734,518 shares issued and outstanding | 662,308 | 662,308 |
| Stockholders' equity: | | |
| Common stock, par value $0.0001 per share; 50,000,000 shares authorized; 469,820 and 374,844 issued and outstanding, respectively | — | — |
| Treasury stock, at cost; 295,426 shares and 249,016 shares, respectively | (6,619) | (5,708) |
| Additional paid-in capital | 19,059 | 15,219 |
| Accumulated deficit | (460,943) | (402,532) |
| Total stockholders’ equity | (448,503) | (393,021) |
| Total liabilities, preferred stock and stockholders' equity | $ 583,883 | $ 362,195 |

The accompanying notes are an integral part of these consolidated financial statements.
CAVA GROUP, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except share and per share amounts)

<table>
<thead>
<tr>
<th></th>
<th>December 25, 2022</th>
<th>December 26, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$ 564,119</td>
<td>$ 500,072</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restaurant operating costs (excluding depreciation and amortization)</td>
<td>179,988</td>
<td>154,772</td>
</tr>
<tr>
<td>Food, beverage, and packaging</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labor</td>
<td>157,891</td>
<td>143,395</td>
</tr>
<tr>
<td>Occupancy</td>
<td>53,669</td>
<td>49,299</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>74,587</td>
<td>70,453</td>
</tr>
<tr>
<td>Total restaurant operating expenses</td>
<td>466,135</td>
<td>417,919</td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>70,037</td>
<td>64,792</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>42,724</td>
<td>44,538</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>5,923</td>
<td>6,839</td>
</tr>
<tr>
<td>Pre-opening costs</td>
<td>19,313</td>
<td>8,194</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>19,753</td>
<td>10,542</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>623,885</td>
<td>552,824</td>
</tr>
<tr>
<td>Loss from operations</td>
<td>(59,766)</td>
<td>(52,752)</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>47</td>
<td>4,810</td>
</tr>
<tr>
<td>Other income, net</td>
<td>(919)</td>
<td>(20,288)</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>(58,894)</td>
<td>(37,274)</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>93</td>
<td>117</td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (58,987)</td>
<td>$ (37,391)</td>
</tr>
<tr>
<td>Loss per common share:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss per share, basic and diluted</td>
<td>$ (133.23)</td>
<td>$ (153.18)</td>
</tr>
<tr>
<td>Weighted average shares outstanding, basic and diluted</td>
<td>442,753</td>
<td>244,100</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
CAVA GROUP, INC.
CONSOLIDATED STATEMENTS OF PREFERRED STOCK AND STOCKHOLDERS’ EQUITY

Redeemable Preferred Stock | Common Stock | Treasury Stock | Additional Paid in Capital | Accumulated Deficit | Total Stockholders’ Equity
---|---|---|---|---|---
Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | Amount
Balance—December 27, 2020 | 26,695,388 | $ 478,941 | 105,804 | $ — | 13,680 | $ (128) | 4,841 | $ (365,141) | $ (360,428)
Equity-based compensation | — | — | — | — | — | — | 2,108 | 3,243 | — | 5,351
Stock options exercised | — | — | 408,020 | — | — | — | 7,135 | — | — | 7,135
RSU vesting | — | — | 96,356 | — | — | — | — | — | — | —
Repurchase of common stock upon RSU vesting | — | — | (21,936) | — | 21,936 | (260) | — | — | — | (260)
Issuance of Series F convertible Preferred Stock, net of issuance costs of $7,933 | 5,633,803 | 204,068 | — | — | — | — | — | — | — | —
Repurchase of common stock and redemption of preferred stock | (594,673) | (20,701) | (213,400) | — | 213,400 | (7,428) | — | — | — | (7,428)
Net loss | — | — | — | — | — | — | — | — | — | (37,391) | (37,391)
Balance—December 26, 2021 | 31,734,518 | $ 662,308 | 374,844 | $ — | 249,016 | $ (5,708) | 15,219 | $ (402,532) | $ (393,021)
Equity-based compensation | — | — | — | — | — | — | 3,803 | — | — | 3,803
Stock options exercised | — | — | 5,067 | — | — | — | 37 | — | — | 37
RSU vesting | — | — | 136,319 | — | — | — | — | — | — | —
Repurchase of common stock upon RSU vesting | — | — | (46,410) | — | 46,410 | (911) | — | — | — | (911)
Cumulative effect of ASC 842 adoption | — | — | — | — | — | — | — | — | 576 | 576
Net loss | — | — | — | — | — | — | — | — | — | (58,987) | (58,987)
Balance—December 25, 2022 | 31,734,518 | $ 662,308 | 469,820 | $ — | 295,426 | $ (6,619) | 19,059 | $ (460,943) | $ (448,503)

The accompanying notes are an integral part of these consolidated financial statements.
CAVA GROUP, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

<table>
<thead>
<tr>
<th>Fiscal Year Ended</th>
<th>December 25, 2022</th>
<th>December 26, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cash flows from operating activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$(58,987)</td>
<td>$(37,391)</td>
</tr>
<tr>
<td>Adjustments to reconcile net loss to net cash provided by operating activities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>37,086</td>
<td>38,269</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td>5,638</td>
<td>6,176</td>
</tr>
<tr>
<td>Amortization of loan costs</td>
<td>429</td>
<td>93</td>
</tr>
<tr>
<td>Equity-based compensation</td>
<td>3,803</td>
<td>5,351</td>
</tr>
<tr>
<td>Deferred income taxes</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Bad debt expense</td>
<td>89</td>
<td>74</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>19,753</td>
<td>10,542</td>
</tr>
<tr>
<td>Gain on extinguishment of debt</td>
<td>—</td>
<td>(20,000)</td>
</tr>
<tr>
<td>Changes in operating assets and liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trade accounts receivable</td>
<td>(139)</td>
<td>379</td>
</tr>
<tr>
<td>Other accounts receivable</td>
<td>(1,626)</td>
<td>(1,356)</td>
</tr>
<tr>
<td>Inventories</td>
<td>(1,496)</td>
<td>(1,157)</td>
</tr>
<tr>
<td>Prepaid expenses and other</td>
<td>(747)</td>
<td>(1,495)</td>
</tr>
<tr>
<td>Operating lease assets</td>
<td>(34,187)</td>
<td>—</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>336</td>
<td>(555)</td>
</tr>
<tr>
<td>Accrued expenses and other</td>
<td>(2,906)</td>
<td>1,169</td>
</tr>
<tr>
<td>Deferred rent</td>
<td>—</td>
<td>3,291</td>
</tr>
<tr>
<td>Operating lease liabilities</td>
<td>38,987</td>
<td>—</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>6,038</td>
<td>3,393</td>
</tr>
<tr>
<td><strong>Cash flows from investing activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchase of property and equipment</td>
<td>(104,323)</td>
<td>(56,411)</td>
</tr>
<tr>
<td>Proceeds from sale of property and equipment</td>
<td>162</td>
<td>102</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(104,161)</td>
<td>(56,309)</td>
</tr>
<tr>
<td><strong>Cash flows from financing activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds from issuance of Series F Preferred Stock - net of issuance costs of $7,933</td>
<td>—</td>
<td>204,068</td>
</tr>
<tr>
<td>Purchase of treasury stock</td>
<td>(911)</td>
<td>(7,688)</td>
</tr>
<tr>
<td>Redemption of Series A Preferred Stock</td>
<td>—</td>
<td>(19,692)</td>
</tr>
<tr>
<td>Redemption of Series C Preferred Stock</td>
<td>—</td>
<td>(514)</td>
</tr>
<tr>
<td>Redemption of Series D Preferred Stock</td>
<td>—</td>
<td>(495)</td>
</tr>
<tr>
<td>Stock options exercised</td>
<td>37</td>
<td>7,135</td>
</tr>
<tr>
<td>Deferred offering costs paid</td>
<td>(1,109)</td>
<td>—</td>
</tr>
<tr>
<td>Payments on long-term debt</td>
<td>—</td>
<td>(40,000)</td>
</tr>
<tr>
<td>Payment of loan acquisition fees</td>
<td>(986)</td>
<td>—</td>
</tr>
<tr>
<td>Proceeds from deemed landlord financing, net of capital lease payments</td>
<td>(115)</td>
<td>338</td>
</tr>
<tr>
<td>Net cash (used in) provided by financing activities</td>
<td>(3,084)</td>
<td>143,152</td>
</tr>
<tr>
<td><strong>Net change in cash and cash equivalents</strong></td>
<td>(101,207)</td>
<td>90,236</td>
</tr>
<tr>
<td>Cash and cash equivalents - beginning of year</td>
<td>140,332</td>
<td>50,096</td>
</tr>
<tr>
<td>Cash and cash equivalents - end of year</td>
<td>$39,125</td>
<td>$140,332</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
CAVA GROUP, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

<table>
<thead>
<tr>
<th>Fiscal Year Ended</th>
<th>December 25, 2022</th>
<th>December 26, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred offering costs not yet paid</td>
<td>$542</td>
<td>$—</td>
</tr>
<tr>
<td>Cash paid for interest related to deemed landlord financing</td>
<td>$—</td>
<td>$4,023</td>
</tr>
<tr>
<td>Cash paid for interest related to long-term debt</td>
<td>$161</td>
<td>$768</td>
</tr>
<tr>
<td>Cash paid for income taxes</td>
<td>$523</td>
<td>$212</td>
</tr>
<tr>
<td>Accrued property and equipment purchases</td>
<td>$5,083</td>
<td>$1,770</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
CAVA GROUP, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. NATURE OF OPERATIONS

CAVA Group, Inc. (together with its wholly owned subsidiaries, referred to as the “Company”, “we”, “us”, and “our” unless specified otherwise) was formed as a Delaware corporation on February 27, 2015, as a holding company. On April 3, 2015, the Company acquired all of the outstanding membership interests in CAVA Foods, LLC, which includes the Consumer Packaged Goods (“CPG”) business consisting of the Company’s proprietary dips, spreads and dressings. On November 21, 2018, the Company acquired all of the outstanding common stock of Zoes Kitchen, Inc. as part of the Company’s strategic expansion initiative.

The Company is headquartered in Washington D.C. and, as of December 25, 2022, the Company operated 237 fast-casual CAVA restaurants in 21 states and Washington D.C., and 34 fast-casual Zoes Kitchen restaurants in 12 states. The number of CAVA restaurants excludes one location operating under a licensing arrangement and digital kitchens. The Company’s restaurants serve healthful, fast-casual Mediterranean fare. The Company’s dips and spreads, which are centrally produced, are sold nationally through grocery stores, including Whole Foods Markets, while its dressings are available at grocery stores in select markets.

The Company’s operations are conducted as two reportable segments: CAVA and Zoes Kitchen. These segments were determined on the same basis that the Company’s Chief Executive Officer (“CEO”), who is the chief operating decision maker (“CODM”), manages, evaluates, and makes key decisions regarding the business.

The Company is currently focused on a strategy of converting Zoes Kitchen restaurants into CAVA restaurants, in addition to opening new CAVA restaurants. The first conversion restaurant opened on November 8, 2019. As of December 25, 2022, the Company has opened 125 conversion restaurants, and plans to close or convert the remaining 34 Zoes Kitchen locations in 2023. As of March 17, 2023, the Company has closed all Zoes Kitchen locations and plans to convert 28 Zoes Kitchen restaurants to CAVA restaurants in 2023.

2. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation—The accompanying consolidated financial statements include the accounts of CAVA Group, Inc. and its wholly owned subsidiaries after elimination of all intercompany accounts and transactions.

Fiscal Year—The Company operates on a 52-week or 53-week fiscal year that ends on the last Sunday of the calendar year. The fiscal years ended December 25, 2022 (“fiscal 2022”) and December 26, 2021 (“fiscal 2021”) had 52 weeks. In a 52-week fiscal year, the first fiscal quarter contains sixteen weeks and the second, third, and fourth fiscal quarters each contain twelve weeks. In a 53-week fiscal year, the first fiscal quarter contains sixteen weeks, the second and third fiscal quarters each contain twelve weeks, and the fourth fiscal quarter contains thirteen weeks.

Use of Estimates—The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”). The preparation of financial statements in conformity with US GAAP requires management to make certain estimates and assumptions that affect reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Significant accounting estimates made by the Company include valuation of long-lived, definite and indefinite-lived assets, impairment of long-lived, definite and indefinite-lived assets, estimated useful lives of assets, the Company’s incremental borrowing rate, allowance for doubtful accounts, the fair value of equity-based compensation and common stock, and deferred tax valuation allowances. These estimates are based on information available as of the date of the consolidated financial statements; therefore actual results could differ from those estimates.

Cash and Cash Equivalents—The Company considers all highly liquid investments with an original maturity of three months or less at the date of purchase to be cash equivalents. Cash and cash equivalents are maintained with
financial institutions and, at times, the amount on deposit may exceed the amount of insurance provided on such deposits.

**Accounts Receivable**—Trade accounts receivable primarily relates to revenues from CPG sales, third-party delivery and catering. Other accounts receivable primarily relates to amounts due from landlords. The determination of the allowance for doubtful accounts is based on management’s estimate of uncollectible accounts receivable. Management records a general reserve based on analysis of historical data and aging of accounts receivable. In addition, management records specific reserves for receivable balances that are considered at higher risk due to known facts regarding the customer. The assumptions for this determination are reviewed periodically to ensure that business conditions or other circumstances are consistent with the assumptions. The Company recorded a $0.2 million allowance for doubtful accounts as of December 25, 2022 and December 26, 2021.

**Inventories**—Inventories consist of food, beverage, paper goods, finished goods, raw materials and packaging, and supplies, and are stated at the lower of cost, as determined on a first-in, first-out method, or market.

The Company allows certain customers to return products under agreed upon circumstances. The Company records a returns allowance for damaged products and other products not sold by the expiration date on the product label. This allowance is estimated based on a percentage of historical sales returns and current market information.

**Property and Equipment**—Property and equipment are stated at cost, less accumulated depreciation. Depreciation on property and equipment is calculated using the straight-line method based on the following estimated lives:

<table>
<thead>
<tr>
<th>Property and Equipment</th>
<th>Useful life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leasehold improvements</td>
<td>Shorter of lease term or estimated asset life</td>
</tr>
<tr>
<td>Equipment</td>
<td>5-7 years</td>
</tr>
<tr>
<td>Furniture and fixtures</td>
<td>7 years</td>
</tr>
<tr>
<td>Computer hardware and software</td>
<td>3-5 years</td>
</tr>
<tr>
<td>Vehicles</td>
<td>5-7 years</td>
</tr>
</tbody>
</table>

Expenditures for improvements and renewals that extend the useful life of an asset are capitalized. Upon sale, retirement, or other disposition of these assets, the costs and related accumulated depreciation are removed from the respective accounts and any gain or loss on the disposition is included in the accompanying consolidated statements of operations. Maintenance and repair costs are expensed as incurred.

The Company capitalizes certain internal costs, including payroll and payroll-related costs for employees directly associated with development and construction of future restaurants, after the restaurant has been approved and it is considered probable to open. The Company also capitalizes payroll and payroll-related costs directly associated with the development and implementation of technology. These costs are included in property and equipment and amortized over the shorter of the life of the related buildings and leasehold improvements or the lease term or in the case of technology, 3 to 5 years. The Company capitalized internal payroll costs related to new restaurant construction and technology activities of $5.1 million and $3.0 million during fiscal 2022 and fiscal 2021, respectively.

**Goodwill**—Goodwill is tested for impairment at least annually, or when impairment indicators are present. Impairment is measured as the excess of the carrying value over the fair value of the goodwill.

**Intangible Assets, net**—Intangible assets are classified in two categories: (i) intangible assets with definite lives subject to amortization, and (ii) intangible assets with indefinite lives not subject to amortization. For intangible assets with definite lives, tests for impairment must be performed if conditions exist that indicate the carrying value may not be recoverable. For intangible assets with indefinite lives, tests for impairment must be performed at least annually or more frequently if events or circumstances indicate that assets might be impaired.

Intangible assets subject to amortization consist of customer relationships and a tradename. The Company calculates amortization of those assets that are subject to amortization on a straight-line basis over the estimated
useful lives of the related assets. The useful life for customer relationships and the tradename is eight years and four years, respectively. The tradename was fully amortized as of December 25, 2022. Intangible assets with indefinite lives consist of trademarks, domain names, and a purchase option.

**Impairment of Long-lived Assets**—Whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable, the Company evaluates its long-lived assets for impairment at the lowest level in which there are identifiable cash flows (“asset group”). The asset group is at the restaurant-level for restaurant assets. If the estimated future cash flows (undiscounted) from the use of an asset are less than the carrying value, impairment would be indicated. The Company uses an income approach (discounted cash flow method) to measure the fair value of an asset group. An impairment charge will be recognized in the amount by which the carrying amount of an asset group exceeds its fair value. A significant number of estimates, which are largely unobservable and classified as Level 3 inputs in the fair value hierarchy, are involved in the application of the discounted cash flow method. Estimates and assumptions used in the model are consistent with internal planning and include sales, growth rates, gross margins, operating expenses in relation to the current economic conditions and the Company’s future expectations, market competition, inflation, consumer trends and other relevant economic factors.

Projecting undiscounted future cash flows requires the use of estimates and assumptions. If actual performance does not achieve such projections, the Company may be required to recognize impairment charges in future periods and such charges could be material.

The Company recorded impairment charges of $9.0 million and $3.2 million during fiscal 2022 and fiscal 2021, respectively, as further described in Note 5 (Property and Equipment).

**Loan Costs**—Loan costs are amortized on a straight-line basis over the remaining life of the debt as a component of interest expense in the accompanying consolidated statements of operations. Loan costs are contained in other long-term assets in the accompanying consolidated balance sheets. The balance of loan costs related to long-term debt, net of accumulated amortization was $0.8 million and $0.3 million as of December 25, 2022 and December 26, 2021, respectively.

**Sales Tax**—Sales tax collected from customers and remitted to governmental authorities is accounted for on a net basis and, therefore, is excluded from revenues in the accompanying consolidated statements of operations. This obligation is included in accrued expenses and other on the accompanying consolidated balance sheets until the taxes are remitted to the appropriate taxing authorities.

**Insurance Reserves**—The Company primarily self-insures a portion of its expected losses under its workers’ compensation and general liability insurance programs. To limit its exposure to losses, the Company maintains stop-loss coverage through third-party insurers. Insurance liabilities representing estimated costs to settle reported claims incurred but not reported are included in accrued expenses and other on the accompanying consolidated balance sheets. The Company recorded reserves of $2.1 million and $2.0 million as of December 25, 2022 and December 26, 2021, respectively.

**Revenue Recognition**—The Company recognizes in-restaurant and digital revenue when payment is tendered at the point of sale as the performance obligation has been satisfied, which is recognized net of discounts, incentives and sales tax collected from customers. Digital revenue includes orders made through catering, digital channels, such as the CAVA app and the CAVA website. Digital orders include orders fulfilled through third-party marketplace and native delivery and digital order pick-up.

CPG revenue associated with dips, spreads and dressings is recognized upon transfer of control to customers in an amount that reflects the consideration the Company expects to be entitled to in exchange for those products. Transfer of control occurs at a point in time, typically upon delivery as this is when title and risk of loss passes to the customer. Allowances for sales returns, stale products, and discounts are recorded as reductions to CPG revenue. The Company uses judgment in estimating sales returns, considering numerous factors such as historical sales return rates.

**Gift Cards**—Revenue related to the sale of gift cards is deferred until the gift card is redeemed. Deferred gift card revenue is included in accrued expenses and other in the accompanying consolidated balance sheets. Gift cards

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do not carry an expiration date; therefore, customers can redeem their gift cards for products indefinitely and the Company does not deduct non-usage fees from outstanding gift card balances. A portion of gift cards that are not expected to be redeemed exclusive of amounts that are subject to state unclaimed property laws are recognized as breakage over time in proportion to gift card redemptions. The Company recognized gift card breakage of $0.2 million in each of fiscal 2022 and fiscal 2021.

**Loyalty Program**—The Company has established a promotional program to encourage repeat business from customers. Loyalty program members earn rewards based on the amount spent, which are redeemable for free goods or future discounts. The loyalty points represent a material right. Accordingly, the Company records a liability and a corresponding reduction in revenue in periods when loyalty program rewards are earned by members. The Company recognizes revenue and a corresponding reduction to the liability in periods when loyalty program rewards are redeemed by members or when loyalty program rewards expire. The amount of revenue recognized or deferred is based on the stand-alone selling price of the loyalty points multiplied by the historical redemption rate. The Company determines the stand-alone selling price of loyalty points by dividing the value of a reward by the amount of spend required to earn the reward.

**Advertising and Marketing Costs**—Advertising and marketing costs are expensed as incurred. Advertising and marketing costs totaled $5.0 million and $5.5 million, respectively, which are included in general and administrative expenses in the accompanying consolidated statements of operations.

**Restructuring and Other Costs**—Restructuring and other costs consist mainly of expenses related to closed Zoes Kitchen locations in connection with the Company’s conversion strategy as described above, public company readiness costs, and costs related to our collaboration center relocation. The liability relating to restructuring costs as of December 25, 2022 and December 26, 2021 was not material.

**Pre-opening Costs**—Pre-opening costs consist of expenses incurred prior to opening a new restaurant (including a new restaurant that is converted from a Zoes Kitchen location) and are made up primarily of manager salaries, relocation costs, supplies, recruiting expenses, payroll and training costs, and travel costs. Pre-opening costs also include occupancy costs recorded during the period between the date of possession and the date we begin operations at a location. Pre-opening costs are expensed as incurred.

**Income Taxes**—The Company is taxed as a C corporation under which income taxes are accounted for using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the financial statement and tax basis of assets and liabilities at the applicable enacted tax rates. A valuation allowance is provided when it is more likely than not that some portion or all of the deferred tax assets will not be realized. The factors used to assess the likelihood of realization include the Company’s forecast of future taxable income and available tax planning strategies that could be implemented to realize the net deferred tax assets.

The Company has considered its income tax positions, including any positions that may be considered uncertain by the relevant tax authorities in the jurisdictions in which the Company operates. The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the tax authorities, based on the technical merits of the position. The tax benefit is measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. The Company did not have any uncertain tax positions as of December 25, 2022 and December 26, 2021.

The Company’s primary tax jurisdiction is in the United States. Generally, federal, state, and local authorities may examine the Company’s tax returns for three years from the date of filing and the current and prior three years remain subject to examination as of December 25, 2022.

**Equity-Based Compensation**—The Company has issued non-qualified stock options and restricted stock units. Equity-Based compensation expense is measured based on the grant date fair value of those awards and is recognized on a straight-line basis over the requisite service period. Equity-Based compensation expense is based on awards outstanding, and forfeitures are recognized as they occur. Equity-Based compensation expense is included in general and administrative expenses in the accompanying consolidated statements of operations.
Because the Company is privately held with no active public market for its common stock, the fair value of the Company’s common stock was estimated using a two-step process. First, the Company’s enterprise value was established using generally accepted valuation methodologies, including the utilization of an income approach (discounted cash flow method), a market approach (guideline public company method), and a probability-weighted expected return method. Second, the enterprise value was allocated among the securities that comprise the capital structure of the Company using the option-pricing method. The assumptions used to determine the fair value of the Company’s common stock represents management’s best estimates. These estimates involve inherent uncertainties and the application of management’s judgment. If factors change and different assumptions are used, our equity-based compensation expense could be materially different in the future.

The Company uses the Black-Scholes-Merton (“Black-Scholes”) option-pricing model to estimate the fair value of non-qualified stock options at the grant date. The use of the Black-Scholes option-pricing model requires the use of highly subjective assumptions, including the expected term, risk-free interest rate, expected volatility, and expected dividend yield of the underlying common stock. The fair value of restricted stock units is equal to the fair value of the underlying common stock at the date of grant.

Net loss per share—Basic and diluted net loss per share is calculated using the two-class method required for companies with participating securities. The two-class method is an earnings allocation formula under which the Company treats participating securities as having rights to earnings that otherwise would have been available to common shareholders. The Company considers preferred stock to be participating securities as the holders are entitled to receive non-cumulative dividends on an as-if converted basis equal to common stock. Diluted net income for common stock is calculated utilizing the if-converted method, which assumes the conversion of all shares of preferred stock to common stock on a share-for-share basis. As the dividend rights are the same among common and preferred shareholders, the undistributed earnings (in a period the Company reports earnings) are allocated on a proportionate basis and the resulting net income per share would therefore be the same for common and preferred shareholders on an individual or combined basis.

Under the two-class method, basic net loss per share available to common shareholders is calculated by dividing the net loss available to common shareholders by the weighted-average number of shares of common stock outstanding during the period. The net loss available to common shareholders is not allocated to the preferred stock as the holders of preferred stock did not have a contractual obligation to share losses. Diluted net loss per share available to common shareholders is computed by giving effect to all potentially dilutive common stock equivalents outstanding for the period. For purposes of this calculation, preferred stock, stock options, and non-vested restricted stock units are considered common stock equivalents but have been excluded from the calculation of diluted net loss per share as their effect was anti-dilutive. In periods in which the Company reports a net loss, diluted net loss per share is the same as basic net loss per share. The Company reported a net loss in fiscal 2022 and fiscal 2021.

Fair Value of Financial Instruments—The fair value measurement accounting guidance creates a fair value hierarchy to prioritize the inputs used to measure value into three categories. A financial instrument’s level within the fair value hierarchy is based on the lowest level of input significant to the fair value measurement, where Level 1 is the highest category (observable inputs) and Level 3 is the lowest category (unobservable inputs). The three levels are defined as follows:

- **Level 1**—Quoted prices for identical instruments in active markets.
- **Level 2**—Quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active and model-derived valuations in which significant value drivers are observable.
- **Level 3**—Unobservable inputs for the asset or liability. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

Due to the short-term nature and/or variable rates associated with these financial instruments, the carrying value of the Company’s cash and cash equivalents, including money market securities, accounts receivable and accounts payable approximates fair market value.
The Company may be required, from time to time, to measure certain assets at fair value on a nonrecurring basis when events or circumstances indicate that the carrying amount of an asset may not be recoverable. These adjustments to fair value usually result from the application of lower of cost or fair value accounting or write downs of individual assets. See Note 4 (Fair Value) for more information.

**Contingencies**—The Company is subject to various claims, lawsuits, governmental investigations, and administrative proceedings that arise in the ordinary course of business. The Company accrues a liability and recognizes an expense for such matters when it is probable that a liability has been incurred and the amount can be reasonably estimated. Estimating liabilities and costs associated with these matters require significant judgment based upon the professional knowledge and experience of management and its legal counsel.

**Deferred Offering Costs**—Deferred offering costs, which consist of direct incremental legal, consulting, accounting, and other fees relating to the anticipated sale of the Company’s common stock in the initial public offering (“IPO”), are capitalized and will be recorded as a reduction of proceeds from the IPO upon the consummation of the IPO. There were $1.7 million of deferred offering costs included in other current assets on the accompanying consolidated balance sheet as of December 25, 2022.

**Recently Adopted Accounting Standards**—On December 27, 2021, the Company adopted Accounting Standards Update (“ASU”) 2016-02, *Leases (Topic 842)*, along with related clarifications and improvements. ASU 2016-02 requires lessees to recognize a liability for lease obligations and a corresponding right-of-use asset on the balance sheet. The guidance under Accounting Standards Codification (“ASC”) 842 requires expanding disclosures of key information about leasing arrangements which gives financial statement users the ability to assess the amount, timing, and uncertainty of cash flows related to leases. We elected the optional transition method to apply the standard as of the effective date and therefore we have not applied the standard to comparative periods presented within this report. Practical expedients were as follows:

- **Practical expedient package**—We have not reassessed whether any expired or existing contracts are or contain leases, we have not reassessed the lease classification for any expired or existing leases, we have not reassessed initial direct costs for any expired or existing leases.
- **Hindsight**—We have elected the hindsight practical expedient, which permits the use of hindsight when determining lease term and assessing impairment of right-of-use assets.
- **Short-term leases**—As an accounting policy, we have elected not to apply the balance sheet recognition requirements for short-term leases (less than 12 months).

We lease all of our restaurants, our production facility in Maryland, our collaboration center in Washington D.C., and our support centers in Brooklyn, New York, St. Louis, Missouri and Plano, Texas under various non-cancelable lease agreements that expire on various dates through 2039. At inception of a lease, we determine its classification as an operating or financing lease. All of our restaurant leases are classified as operating leases. Restaurants are located on sites leased from third parties. When determining the lease term, the Company includes reasonably certain option periods.

The Company makes judgments regarding the probable term for each lease, which can impact the classification and accounting for a lease as well as the amount of straight-line rent expense recognized in a period. Typically, restaurant leases have initial terms of ten years and include five-year renewal options. Renewal options are typically not included in the lease term as it is not reasonably certain at commencement that we will exercise the options. Restaurant leases provide for fixed minimum rent payments and in some cases include contingent rent payments based upon sales in excess of specified breakpoints. When achievement of sales breakpoints is probable, contingent rent is accrued. Fixed minimum rent payments are recognized on a straight-line basis over the lease term starting on the date we take control of the leased space.

Operating lease assets and liabilities are recognized at the lease’s commencement date. We measure the lease liability at lease commencement by discounting the future minimum lease payments. Operating lease assets represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments, initial direct costs, lease incentives, and impairment. As the rate implicit in the lease is not readily
determinable in most of the Company’s leases, the Company uses its incremental borrowing rate based on the information available at a lease’s commencement date to determine the present value of lease payments. The Company’s incremental borrowing rate for a lease is the rate of interest it would have to pay on a collateralized basis to borrow an amount equal to the lease payments under similar terms.

For periods prior to the adoption of ASC 842, leases are accounted for under ASC 840. Under ASC 840, rent expense, including rent free periods if applicable, is recognized on a straight-line basis over the lease term. The difference between the average rental amount charged to expense and the amount payable under the lease is recorded as deferred rent. Lease term is determined at lease inception and includes the initial term of the lease plus any renewal periods that are reasonably assured to occur. The lease term begins when we have the right to control the use of the property. Tenant improvement allowances are recorded as deferred rent in the accompanying consolidated balance sheet and amortized on a straight-line basis as a reduction to rent expense over the applicable lease terms.

We adopted ASC 842 in the first quarter of fiscal 2022, which did not have a material impact on our consolidated statement of operations or consolidated statement of cash flows. The adoption of ASC 842 did have a material impact on our consolidated balance sheet resulting in the recognition of operating lease assets and liabilities. The disclosure below reflects the impact of our adoption of ASC 842.
The impact of adopting ASC 842 on the consolidated balance sheet is as follows:

(\$ in thousands)

<table>
<thead>
<tr>
<th>ASSETS</th>
<th>December 26, 2021</th>
<th>ASC 842 Transition Adjustments</th>
<th>December 27, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current assets:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$140,332</td>
<td>$—</td>
<td>$140,332</td>
</tr>
<tr>
<td>Trade accounts receivable, net</td>
<td>2,778</td>
<td>—</td>
<td>2,778</td>
</tr>
<tr>
<td>Other accounts receivable</td>
<td>3,282</td>
<td>—</td>
<td>3,282</td>
</tr>
<tr>
<td>Inventories</td>
<td>3,643</td>
<td>—</td>
<td>3,643</td>
</tr>
<tr>
<td>Prepaid expenses and other</td>
<td>4,359</td>
<td>(606)</td>
<td>3,753</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td>154,394</td>
<td>(606)</td>
<td>153,788</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>194,941</td>
<td>(8,635)</td>
<td>186,306</td>
</tr>
<tr>
<td>Operating lease assets</td>
<td>—</td>
<td>256,915</td>
<td>256,915</td>
</tr>
<tr>
<td>Goodwill</td>
<td>1,944</td>
<td>—</td>
<td>1,944</td>
</tr>
<tr>
<td>Intangibles, net</td>
<td>7,304</td>
<td>(284)</td>
<td>7,020</td>
</tr>
<tr>
<td>Other long-term assets</td>
<td>3,612</td>
<td>—</td>
<td>3,612</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>$362,195</td>
<td>$247,390</td>
<td>$609,585</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LIABILITIES, PREFERRED STOCK, AND STOCKHOLDERS’ EQUITY</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current liabilities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$13,975</td>
<td>$—</td>
<td>$13,975</td>
</tr>
<tr>
<td>Accrued expenses and other</td>
<td>37,750</td>
<td>—</td>
<td>37,750</td>
</tr>
<tr>
<td><strong>Total current liabilities (excluding current portion of operating lease liabilities)</strong></td>
<td>51,725</td>
<td>—</td>
<td>51,725</td>
</tr>
<tr>
<td>Deemed landlord financing</td>
<td>15,344</td>
<td>(15,344)</td>
<td>—</td>
</tr>
<tr>
<td>Deferred rent</td>
<td>24,948</td>
<td>(24,948)</td>
<td>—</td>
</tr>
<tr>
<td><strong>Current and long-term operating lease liabilities</strong></td>
<td>—</td>
<td>287,608</td>
<td>287,608</td>
</tr>
<tr>
<td>Deferred income taxes</td>
<td>23</td>
<td>—</td>
<td>23</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td>868</td>
<td>(502)</td>
<td>366</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>92,908</td>
<td>246,814</td>
<td>339,722</td>
</tr>
<tr>
<td><strong>Preferred stock:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Redeemable preferred stock</td>
<td>662,308</td>
<td>—</td>
<td>662,308</td>
</tr>
<tr>
<td><strong>Stockholders’ equity:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common stock</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Treasury stock</td>
<td>(5,708)</td>
<td>—</td>
<td>(5,708)</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>15,219</td>
<td>—</td>
<td>15,219</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(402,532)</td>
<td>576</td>
<td>(401,956)</td>
</tr>
<tr>
<td><strong>Total stockholders’ equity</strong></td>
<td>(393,021)</td>
<td>576</td>
<td>(392,445)</td>
</tr>
<tr>
<td><strong>Total liabilities, preferred stock, and stockholders’ equity</strong></td>
<td>$362,195</td>
<td>$247,390</td>
<td>$609,585</td>
</tr>
</tbody>
</table>

Recently Issued Accounting Standards—In June 2016, the FASB issued ASU 2016-13, Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. The amendments in ASU 2016-13 provide amended guidance for estimating credit losses on certain types of financial instruments based on expected losses and the timing of the recognition of such losses. Expanded disclosures related to the methods used to estimate the losses are also required. The standard is effective for fiscal years beginning after...
December 15, 2022. The adoption of ASU 2016-13 is not expected to have a material impact on the Company’s consolidated financial statements and related disclosures.

The Company reviewed all other recently issued accounting standards and determined they were either not applicable or not expected to have a material impact on our financial position or results from operations.

**JOBS Act Election**—In April 2012, the JOBS Act was enacted. Section 107(b) of the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. Thus, an emerging growth company can delay adoption of certain accounting standards until those standards would apply to private companies. The Company has elected to take advantage of the extended transition period to comply with new or revised accounting standards and to adopt certain of the reduced disclosure requirements available to emerging growth companies. As a result of the accounting standards election, the Company will not be subject to the same implementation timing for new or revised accounting standards as other public companies that are not emerging growth companies and, as a result, the Company’s financial statements may not be comparable with similarly situated public companies.

### 3. REVENUE

The Company’s revenue was as follows for the fiscal years indicated:

<table>
<thead>
<tr>
<th></th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restaurant revenue</td>
<td>$556,986</td>
<td>$493,938</td>
</tr>
<tr>
<td>CPG revenue and other</td>
<td>7,133</td>
<td>6,134</td>
</tr>
<tr>
<td>Revenue</td>
<td>$564,119</td>
<td>$500,072</td>
</tr>
</tbody>
</table>

Revenue from the sale of the Company’s gift cards and loyalty program is included in restaurant revenue. Refer to Note 7 (Accrued Expenses and Other) for the Company’s gift card and loyalty liabilities balances. Revenue recognized from gift card breakage and the redemption of gift cards that were included in the gift card liability at the beginning of the year was $0.6 million and $0.7 million during fiscal 2022 and fiscal 2021, respectively. The full amount of the outstanding loyalty liability as of December 25, 2022 is expected to be recognized within one year due to the expiration of loyalty rewards being less than one year.

### 4. FAIR VALUE

**Assets and Liabilities Measured at Fair Value on a Recurring Basis**—The carrying amounts of our financial instruments, which include cash and cash equivalents, accounts receivable, accounts payable, and other accrued expenses, approximate their fair values due to their short maturities.

**Assets and Liabilities Measured at Fair Value on a Non-recurring Basis**—Assets recognized or disclosed at fair value in the accompanying consolidated financial statements on a nonrecurring basis include items such as property and equipment, net, operating lease assets, goodwill, and intangible assets, net. These assets are measured at fair value whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable.

The following non-financial instruments reflecting certain operating lease assets and property and equipment for which an impairment loss was recognized, were measured at fair value, on a non-recurring basis. The fair value of these assets was measured using an income approach (discounted cash flow method), which relies on Level 3 inputs (unobservable inputs). Unobservable inputs include the discount rate and projected restaurant revenues and expenses. Refer to Note 5 (Property and Equipment) for description of impairment charges.

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>2022</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certain operating lease assets</td>
<td>$7,518</td>
<td>$ —</td>
<td>$ —</td>
<td>$ —</td>
<td>$7,518</td>
</tr>
<tr>
<td>Certain property and equipment, net</td>
<td>631</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>631</td>
</tr>
</tbody>
</table>

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5. PROPERTY AND EQUIPMENT

The following table presents the Company’s property and equipment, net as of the periods indicated:

($ in thousands)

<table>
<thead>
<tr>
<th></th>
<th>December 25, 2022</th>
<th>December 26, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$600</td>
<td>$—</td>
</tr>
<tr>
<td>Buildings under deemed landlord financing</td>
<td>—</td>
<td>12,701</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>206,849</td>
<td>183,735</td>
</tr>
<tr>
<td>Equipment</td>
<td>58,430</td>
<td>46,594</td>
</tr>
<tr>
<td>Furniture and fixtures</td>
<td>18,472</td>
<td>18,264</td>
</tr>
<tr>
<td>Computer hardware and software</td>
<td>35,190</td>
<td>24,345</td>
</tr>
<tr>
<td>Vehicles</td>
<td>565</td>
<td>763</td>
</tr>
<tr>
<td>Construction in progress</td>
<td>36,269</td>
<td>16,571</td>
</tr>
<tr>
<td><strong>Total property and equipment, gross</strong></td>
<td><strong>356,375</strong></td>
<td><strong>302,973</strong></td>
</tr>
<tr>
<td><strong>Less accumulated depreciation</strong></td>
<td><strong>(113,392)</strong></td>
<td><strong>(108,032)</strong></td>
</tr>
<tr>
<td><strong>Total property and equipment, net</strong></td>
<td><strong>242,983</strong></td>
<td><strong>194,941</strong></td>
</tr>
</tbody>
</table>

Construction in progress relates to CAVA new restaurant openings, including conversion of Zoes Kitchen restaurants in connection with the Company’s conversion strategy, as well as technology improvements.

In connection with the Company’s conversion strategy described in Note 1 (Nature of Operations), certain Zoes Kitchen restaurants were identified to be permanently closed, which was an indicator for impairment. Based on the review of applicable asset groups, the Company recognized impairment losses, primarily related to leasehold improvements, of $2.6 million and $3.1 million within the Zoes Kitchen segment during fiscal 2022 and fiscal 2021, respectively. Those, together with impairment charges of $0.9 million and $0.1 million recorded in fiscal 2022 and fiscal 2021, respectively, within the CAVA segment relating to certain underperforming locations and within Other relating to the collaboration center relocation, resulted in $3.5 million and $3.2 million of total impairment charges recorded as a reduction to property and equipment recorded during fiscal 2022 and fiscal 2021, respectively.

As part of the impairment analysis described above, the Company recognized an impairment loss related to operating lease assets of $3.5 million within the Zoes Kitchen segment during fiscal 2022. Additionally in fiscal 2022, the Company recognized impairment charges related to operating lease assets of $2.0 million within the CAVA segment relating to certain underperforming restaurants and within Other relating to the collaboration center relocation. Together with the property and equipment impairment charges described above, impairments recorded as a reduction to operating lease assets resulted in total asset impairment charges of $9.0 million and $3.2 million in fiscal 2022 and fiscal 2021, respectively. Impairment charges are recorded within asset impairment and disposal costs in the accompanying consolidated statements of operations. The Company’s conversion strategy may result in future impairment charges within the Zoes Kitchen segment.

As a result of the application of build-to-suit lease guidance contained in ASC 840, Leases, the Company had determined that it was the accounting owner of a total of 31 landlord shell buildings under deemed landlord financing as of December 26, 2021. As part of adopting ASC 842, the Company derecognized the landlord’s estimated construction cost of the building as of December 27, 2021. See Note 2 (Basis of Presentation and Significant Accounting Policies), and Note 11 (Leases) for more information on the Company’s adoption of ASC 842.
6. GOODWILL AND INTANGIBLE ASSETS, NET

During fiscal 2022 and fiscal 2021, there were no changes in the carrying amount of goodwill of $1.9 million.

The following tables present the Company’s intangible assets, net as of the periods indicated:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>December 25, 2022</th>
<th>December 26, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Carrying Value</strong></td>
<td><strong>Accumulated Amortization</strong></td>
<td><strong>Net</strong></td>
</tr>
<tr>
<td>Total intangible assets subject to amortization - customer relationships</td>
<td>$1,207</td>
<td>$(1,180)</td>
</tr>
<tr>
<td>Trademark</td>
<td>750</td>
<td>—</td>
</tr>
<tr>
<td>Other</td>
<td>605</td>
<td>—</td>
</tr>
<tr>
<td>Total intangible assets not subject to amortization</td>
<td>1,355</td>
<td>—</td>
</tr>
<tr>
<td>Intangible assets, net</td>
<td>$2,562</td>
<td>$(1,180)</td>
</tr>
</tbody>
</table>

ASC 842 requires any favorable leases recorded as a result of a business combination to be recognized as an adjustment to the carrying amount of the operating lease asset. Accordingly, favorable leases have been reclassified from intangible assets, net to operating lease assets in 2022.

Future amortization expense for intangible assets as of December 25, 2022 is less than $0.1 million, all of which will be recognized in fiscal 2023.

7. ACCRUED EXPENSES AND OTHER

The following table presents the Company’s accrued expenses and other as of the periods indicated:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>December 25, 2022</th>
<th>December 26, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accrued payroll and payroll taxes</td>
<td>$13,413</td>
<td>$16,749</td>
</tr>
<tr>
<td>Accrued capital purchases</td>
<td>7,726</td>
<td>2,643</td>
</tr>
<tr>
<td>Sales tax payable</td>
<td>2,339</td>
<td>2,850</td>
</tr>
<tr>
<td>Gift card and loyalty liabilities</td>
<td>3,271</td>
<td>3,044</td>
</tr>
<tr>
<td>Other accrued expenses</td>
<td>13,719</td>
<td>12,464</td>
</tr>
<tr>
<td>Total accrued expenses and other</td>
<td>$40,468</td>
<td>$37,750</td>
</tr>
</tbody>
</table>

8. DEBT

**JPMorgan Chase Bank Revolving Line of Credit**—On March 11, 2022, the Company terminated the 2020 Credit Facility (defined below) with SunTrust Bank and entered into a new credit facility with JPMorgan Chase.
Bank, National Association, as administrative agent (the “2022 Credit Facility”). Refer to Note 17 (Subsequent Events) for information on the Second Amendment (as defined below) to the 2022 Credit Facility.

As of December 25, 2022, the 2022 Credit Facility consisted of a revolving loan commitment in the aggregate amount of $75.0 million, together with an incremental revolving credit commitment up to an aggregate amount of $25.0 million. The 2022 Credit Facility has a five-year term and matures on March 11, 2027. As of December 25, 2022, the Company had unamortized loan origination fees of $0.8 million related to the 2022 Credit Facility recorded within other long-term assets on the accompanying consolidated balance sheet.

Interest on loans under the Credit Facility are based on one, three or six months Adjusted Term Secured Overnight Financing Rate, as applicable, plus an applicable margin of 1.50% to 2.50% based on the Company’s Total Rent Adjusted Net Leverage Ratio (as defined in the 2022 Credit Facility). The Company also has the ability to draw overnight borrowings for which interest rates are calculated based on the Alternative Base Rate (as defined in the 2022 Credit Facility). The Company had no borrowings under 2022 Credit Facility as of December 25, 2022.

The 2022 Credit Facility is unconditionally guaranteed by our domestic restricted subsidiaries, other than immaterial subsidiaries and other excluded subsidiaries. The 2022 Credit Facility is secured, subject to permitted liens and other exceptions, by a first-priority security interest in certain tangible and intangible assets of the borrower and the guarantors and a first-priority pledge of the capital stock of each domestic restricted subsidiary of the borrower and the guarantors, subject to certain exceptions.

The 2022 Credit Facility includes customary restrictive covenants, including limitations on additional indebtedness, creation of liens, dividend payments, investments and certain transactions with affiliates. The 2022 Credit Facility also includes covenants that require compliance with certain leverage ratios. The availability of certain baskets and the ability to enter into certain transactions may be subject to compliance with such leverage ratios. In addition, the 2022 Credit Facility contains other customary covenants, representations and events of default. As of December 25, 2022, the Company was in compliance with these financial and other covenants.

**Previous SunTrust Revolving Line of Credit**—On November 21, 2018, the Company entered into a revolving credit agreement with SunTrust Bank (as amended, the “2020 Credit Facility”). The 2020 Credit Facility provided for aggregate borrowings outstanding of up to $38.7 million.

On May 5, 2021 the Company paid the $5.0 million current portion of the line of credit outstanding under the 2020 Credit Facility. On May 20, 2021, the Company repaid in full all indebtedness then outstanding under the 2020 Credit Facility of $35.0 million. On March 11, 2022, the Company terminated the 2020 Credit Facility.

**Paycheck Protection Program Notes**—On April 15, 2020, as part of the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”), the Company entered into a note with JPMorgan Chase Bank, N.A. for $10.0 million (the “ZK PPP Loan”) for its Zoes Kitchen business. The ZK PPP Loan had a maturity date of April 15, 2022 and bore interest at a rate of 0.98%. Payments of principal and interest were deferred for the six months beginning on the date the note was executed.

On April 16, 2020, as part of the CARES Act, the Company entered into a note with Truist Bank for $10.0 million (the “CAVA PPP Loan”) for its CAVA business. The CAVA PPP Loan had a maturity date of April 16, 2022 and bore interest at a rate of 1.00%. Payments of principal and interest were deferred for the seven months beginning on the date the note was executed.

Funds from both loans were used for payroll, payroll tax, and benefit payments, which included retaining team members. The Company applied for forgiveness which was granted on June 10, 2021 for the ZK PPP Loan and June 14, 2021 for the CAVA PPP Loan. Amounts forgiven resulted in a $20.0 million gain recorded within other income for fiscal 2021 in the accompanying consolidated statement of operations.
9. REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS’ EQUITY

The Company has reserved shares of common stock for issuance as follows as of the periods indicated:

<table>
<thead>
<tr>
<th>Conversion of outstanding shares of preferred stock</th>
<th>December 25, 2022</th>
<th>December 26, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awards outstanding under the 2015 Equity Incentive Plan</td>
<td>31,734,518</td>
<td>31,734,518</td>
</tr>
<tr>
<td>Shares available for future issuance under the 2015 Equity Incentive Plan</td>
<td>1,213,029</td>
<td>972,923</td>
</tr>
<tr>
<td>Total reserved shares of common stock</td>
<td>557,808</td>
<td>939,300</td>
</tr>
<tr>
<td>Total reserved shares of common stock</td>
<td>33,505,355</td>
<td>33,646,741</td>
</tr>
</tbody>
</table>

Preferred stock consisted of the following as of December 25, 2022 and December 26, 2021:

<table>
<thead>
<tr>
<th>(in thousands, except share data)</th>
<th>Shares Authorized</th>
<th>Shares Issued &amp; Outstanding</th>
<th>Liquidation Preference</th>
<th>Carrying Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Series A</td>
<td>5,334,183</td>
<td>4,434,746</td>
<td>$38,161</td>
<td>$(12,912)</td>
</tr>
<tr>
<td>Series B</td>
<td>2,577,005</td>
<td>2,571,195</td>
<td>$44,250</td>
<td>$44,024</td>
</tr>
<tr>
<td>Series C</td>
<td>1,735,111</td>
<td>1,720,343</td>
<td>$34,950</td>
<td>$34,609</td>
</tr>
<tr>
<td>Series D</td>
<td>1,487,696</td>
<td>1,473,484</td>
<td>$33,389</td>
<td>$32,999</td>
</tr>
<tr>
<td>Series E</td>
<td>20,523,572</td>
<td>15,900,947</td>
<td>$360,315</td>
<td>$359,520</td>
</tr>
<tr>
<td>Series F</td>
<td>5,633,803</td>
<td>5,633,803</td>
<td>$212,000</td>
<td>$204,068</td>
</tr>
<tr>
<td>Total</td>
<td>37,291,370</td>
<td>31,734,518</td>
<td>$723,065</td>
<td>$662,308</td>
</tr>
</tbody>
</table>

**Series F Capital Raise**—On March 26, 2021, the Company and certain existing significant stockholders and new investors, including T.Rowe and certain of its affiliates (collectively, the “Investors”), entered into the Series F Preferred Stock Purchase Agreement (the “Series F SPA”), pursuant to which the Investors purchased from the Company an aggregate of 5,633,803 shares of Series F Preferred Stock at $37.63 per share for an aggregate purchase price of $204.1 million, net of issuance costs of $7.9 million, which has been recorded in the accompanying consolidated balance sheet and statement of preferred stock and stockholders’ equity in fiscal 2021.

Concurrently with the closing of the Series F SPA, (i) the Company and certain current Company stockholders entered into Share Repurchase Agreements, pursuant to which the Company purchased from such stockholders an aggregate of 594,673 shares of preferred stock at $34.81 per share for an aggregate purchase price of $20.7 million, and (ii) the Company, certain selling founders of the Company consisting of its CEO and Chief Concept Officer (collectively, the “Sellers”), and certain of the Investors entered into Share Transfer Agreements, pursuant to which such Investors purchased from such Sellers 70,299 shares of common stock and 159,520 shares of preferred stock at $34.81 per share for an aggregate purchase price of $8.0 million. The Company also repurchased from its CEO 213,400 shares of common stock at $34.81 per share for a net payment of proceeds of $1.0 million to the CEO (after offsetting the payment of the exercise price of $6.4 million pursuant to a promissory note issued in favor of the Company from the aggregate purchase price of $7.4 million). The Company recognized compensation expense on the repurchase of common stock from the CEO and on the sale of common stock by the CEO to such Investors. Refer to Note 14 (Equity-Based Compensation) for further discussion. Under the Company’s amended and restated certificate of incorporation, any shares of preferred stock that are redeemed or acquired by the Company or any of its subsidiaries are automatically and immediately cancelled and retired, and cannot be reissued, sold, or transferred. Simultaneously in connection with the closing of the Series F SPA, the Company amended its 2015 Equity Incentive Plan (the “Plan”) to increase the authorized shares of common stock thereunder in the amount of 631,518, with an aggregate amount of common stock reserved for issuance under the Plan, as amended, of 2,702,663. In addition, in April 2021, the Company amended its amended and restated certificate of incorporation to increase the number of authorized shares of common stock to 50,000,000.

As of March 26, 2021, the Company’s Board of Directors (our “Board of Directors”) may designate one director, subject to the approval of T. Rowe provided that T. Rowe continues to own shares of Series F Preferred
Stock. In addition, T. Rowe entered into a proxy agreement with certain stockholders by which such stockholders received an irrevocable voting proxy with respect to an aggregate of 797,236 shares of Series E Preferred Stock.

Rights, Preferences, Privileges, and Restrictions of the Preferred Stock—The holders of the Company’s preferred stock have the following rights, preferences, privileges, and restrictions:

Voting—Each holder of preferred stock will have the same voting rights as the holders of common stock, and the holders of common stock and preferred stock will vote together as a single class on all matters except as discussed below and for certain actions that solely require the consent of the holders of preferred stock as set forth in the Company’s amended and restated certificate of incorporation. Each holder of preferred stock has voting rights equal to the number of shares of common stock into which the shares of preferred stock held by such holder are then convertible. All stockholders are required to vote their shares and maintain a Board of Directors comprised of twelve directors and to elect the Company’s chief executive officer and certain persons designated by certain stockholders to the Company’s Board of Directors. Certain stockholders, so long as certain significant holders of Series E Preferred Stock hold at least 50% of the shares of common stock as of a certain date (including shares of common stock issued or issuable upon conversion of preferred stock) and meet certain other requirements set forth in the applicable Voting Agreement, as amended, shall have the right to designate in the aggregate nine of the twelve seats of the Company’s Board of Directors.

Dividends—So long as any shares of preferred stock are outstanding, the Company shall not declare, pay, or set apart for payment any dividend on any shares of common stock, unless the holders of the then outstanding preferred stock first receive, or simultaneously receive, a dividend on each outstanding share of preferred stock in an amount at least equal to (i) in the case of a dividend on common stock or any class or series that is convertible into common stock, that dividend per share of preferred stock as would equal the product of (A) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into common stock and (B) the number of shares of common stock issuable upon conversion of a share of the applicable series of preferred stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (ii) in the case of a dividend on any class or series that is not convertible into common stock, at a rate per share of preferred stock determined by (A) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (B) multiplying such fraction by an amount equal to the applicable Original Issue Price (as defined below); provided that, if the Company declares, pays, or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Company, the dividend payable to the holders of preferred stock shall, for each series of preferred stock, be calculated based upon the dividend on the class or series of capital stock that would result in the highest dividend for such series. The “Original Issue Price” shall mean (1) for Series A Preferred Stock, $8.60 per share (the “Series A Original Issue Price”), (2) for Series B Preferred Stock, $17.21 per share (the “Series B Original Issue Price”), (3) for Series C Preferred Stock, $20.32 per share (the “Series C Original Issue Price”), (4) for Series D Preferred Stock, $22.66 per share (the “Series D Original Issue Price”), (5) for Series E Preferred Stock, $22.66 per share (the “Series E Original Issue Price”), and (6) for Series F Preferred Stock $37.63 per share (the “Series F Original Issue Price”), in each case subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization with respect to such series.

Liquidation—In the event of any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, the holders of each of Series B, C, D, E, and F Preferred Stock, respectively, shall be entitled to receive, prior to any distributions to the holders of Series A Preferred Stock or common stock, an amount per share equal to the greater of (i) the Series B Original Issue Price, Series C Original Issue Price, Series D Original Issue Price, Series E Original Issue Price, and Series F Original Issue Price, respectively, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of such Series B, C, D, E, and F Preferred Stock been converted into common stock.

In the event of any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, after the payment of all preferential payments required to be paid to the holders of Series B, C, D, E, and F Preferred Stock, the holders of Series A Preferred Stock shall be entitled to receive, prior to any distributions to the holders of
common stock, an amount per share equal to the greater of (i) the Series A Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series A Preferred Stock been converted into common stock.

Unless holders of a majority of outstanding shares of each series of preferred stock, each such series voting as a separate class, determines otherwise, any merger or consolidation or sale, lease, transfer, exclusive license, or other disposition, in a single transaction or series of related transactions, of all or substantially all of the Company’s assets will be considered a “deemed liquidation event”, which will trigger the liquidation preference further described above. Upon such deemed liquidation event, each share of Series B, C, D, E, and F Preferred Stock (unless deemed converted to common stock) shall be entitled to be paid the greater of (i) the Original Issue Price of the series, as applicable, plus any declared but unpaid dividends or (ii) the amount that would have been payable had all such shares of preferred stock been converted into common stock immediately prior to the deemed liquidation event pari passu with the Series F Preferred Stock, Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, and Series B Preferred Stock, but prior to payment on the Series A Preferred Stock or common stock of the Company. After the payment of all preferential amounts required to be paid to the holders of preferred stock, the Company’s remaining assets will be distributed among the holders of shares of Common Stock pro rata based on the number of shares held by each such holder.

**Conversion and Redemption**—Each share of preferred stock is convertible, at any time at the option of the holder, into shares of common stock, subject to certain anti-dilution adjustments, as determined by dividing the Original Issue Price for such preferred stock by the applicable conversion price in effect at the time of conversion. As of December 25, 2022, there have been no dilution adjustments for any series of preferred stock.

Preferred stock issued with redemption provisions that are outside of the control of the Company or that contain certain redemption rights in a deemed liquidation event is required to be classified as temporary equity in the mezzanine section of the accompanying consolidated balance sheets. The shares of preferred stock contain certain features, including a liquidation preference in the event of a deemed liquidation event that are not solely within the Company’s control. In addition, the number of shares of common stock potentially issuable upon conversion by the holder can vary upon triggering of certain anti-dilution adjustments. The Company, therefore, is not deemed to be solely in control of the number of shares potentially issuable to settle the exercise of the conversion option, and as such, the conversion options are deemed to be “uncapped.” Therefore, these shares are classified as temporary equity.

Upon either (i) the closing of a firmly underwritten public offering of common stock at a price per share that is at least one and half times the Series F Original Issue Price, that results in gross offering proceeds in excess of $50,000,000 or (ii) for a series of preferred stock, the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the shares of such series of preferred stock, (A) all outstanding shares of preferred stock, or, if pursuant to (ii), all outstanding shares of the applicable series of preferred stock shall be converted into shares of common stock, at the then effective conversion rate and (B) such shares may not be reissued by the Company.

10. **INCOME TAXES**

The Company assesses the available positive and negative evidence to estimate whether sufficient future taxable income will be generated to permit use of the existing deferred tax assets (“DTAs”). A significant piece of objective negative evidence evaluated was the cumulative losses incurred over the three-year period ended December 25, 2022. Such objective evidence limits the ability to consider other subjective evidence, such as our projections for future growth.

On the basis of this evaluation, as of December 25, 2022 and December 26, 2021, a valuation allowance of $88.4 million and $74.9 million, respectively, has been recorded to recognize only the portion of the DTA that is more likely than not to be realized. The amount of the DTA considered realizable, however, could be adjusted if estimates of future taxable income during the carryforward period are reduced or increased or if objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as our projections for growth.
As explained in Note 8 (Debt), the Company received $20.0 million in notes associated with the CARES Act, which were forgiven in June 2021. The forgiveness of the notes was treated as a permanent favorable adjustment to book income.

The Company generates all of its income before taxes in the United States. The provision for income taxes consists of the following for the fiscal years indicated:

($ in thousands)

<table>
<thead>
<tr>
<th></th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>State</td>
<td>88</td>
<td>114</td>
</tr>
<tr>
<td><strong>Subtotal current</strong></td>
<td>88</td>
<td>114</td>
</tr>
<tr>
<td><strong>Deferred:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>State</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td><strong>Subtotal deferred</strong></td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td><strong>Provision for income taxes</strong></td>
<td>$ 93</td>
<td>$ 117</td>
</tr>
</tbody>
</table>

The provision for income taxes differs from the amount computed by applying the U.S. federal statutory income tax rate to loss before income taxes for the reasons set forth below for the fiscal years indicated:

($ in thousands)

<table>
<thead>
<tr>
<th></th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income tax benefit at federal statutory rate</strong></td>
<td>$(12,323)</td>
<td>$(7,846)</td>
</tr>
<tr>
<td><strong>State income taxes</strong></td>
<td>(1,885)</td>
<td>(3,231)</td>
</tr>
<tr>
<td>Increase in valuation allowance</td>
<td>13,428</td>
<td>15,795</td>
</tr>
<tr>
<td><strong>Deferred taxes</strong></td>
<td>1,318</td>
<td>572</td>
</tr>
<tr>
<td><strong>Forgiveness of Paycheck Protection Program Notes</strong></td>
<td>—</td>
<td>(4,200)</td>
</tr>
<tr>
<td><strong>Other permanent adjustments</strong></td>
<td>(445)</td>
<td>(973)</td>
</tr>
<tr>
<td><strong>Provision for income taxes</strong></td>
<td>$ 93</td>
<td>$ 117</td>
</tr>
</tbody>
</table>

Deferred income taxes reflect the net effects of net operating loss carryforwards and the temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes.
The following table presents the Company’s deferred tax assets and liabilities as of the periods indicated:

<table>
<thead>
<tr>
<th></th>
<th>December 25, 2022</th>
<th>December 26, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Deferred tax assets:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net operating loss</td>
<td>$ 65,423</td>
<td>$ 56,868</td>
</tr>
<tr>
<td>Operating lease liabilities</td>
<td>81,204</td>
<td>—</td>
</tr>
<tr>
<td>Deferred rent</td>
<td>—</td>
<td>6,335</td>
</tr>
<tr>
<td>Deemed landlord financing</td>
<td>—</td>
<td>4,022</td>
</tr>
<tr>
<td>Property and equipment</td>
<td>5,230</td>
<td>623</td>
</tr>
<tr>
<td>Goodwill</td>
<td>955</td>
<td>1,399</td>
</tr>
<tr>
<td>Allowance for doubtful accounts</td>
<td>60</td>
<td>54</td>
</tr>
<tr>
<td>Accrued payroll</td>
<td>1,508</td>
<td>2,764</td>
</tr>
<tr>
<td>Intangible assets, net</td>
<td>447</td>
<td>—</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>139</td>
<td>181</td>
</tr>
<tr>
<td>Charitable contributions carryforward</td>
<td>184</td>
<td>172</td>
</tr>
<tr>
<td>Interest expense</td>
<td>1,602</td>
<td>1,659</td>
</tr>
<tr>
<td>Equity-based compensation</td>
<td>2,161</td>
<td>1,493</td>
</tr>
<tr>
<td><strong>Gross deferred tax assets</strong></td>
<td>158,913</td>
<td>75,570</td>
</tr>
<tr>
<td><strong>Valuation allowance</strong></td>
<td>(88,361)</td>
<td>(74,933)</td>
</tr>
<tr>
<td><strong>Net deferred tax assets</strong></td>
<td>70,552</td>
<td>637</td>
</tr>
<tr>
<td><strong>Deferred tax liabilities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating lease assets</td>
<td>(70,580)</td>
<td>—</td>
</tr>
<tr>
<td>Intangible assets, net</td>
<td>—</td>
<td>(660)</td>
</tr>
<tr>
<td><strong>Total deferred tax liabilities</strong></td>
<td>(70,580)</td>
<td>(660)</td>
</tr>
<tr>
<td><strong>Total net deferred tax liabilities</strong></td>
<td>$ (28)</td>
<td>$ (23)</td>
</tr>
</tbody>
</table>

The Company had available as of December 25, 2022, $252.0 million and $247.8 million of unused federal and state net operating loss carryforwards, respectively. As mentioned above, a nearly full valuation allowance has been established for the Company’s deferred tax assets (net of the deferred tax liability associated with the Company’s operating lease assets), including those related to net operating loss carryforwards. Under the Tax Cuts and Jobs Act of 2017, net operating losses may be carried forward indefinitely. However, net operating losses arising in tax years that begin after December 31, 2017, will be limited to 80% of the respective future year’s taxable income. In addition, net operating loss carryforwards may be limited in situations where there is a change in the Company’s ownership. The Company’s federal net operating losses generated before December 31, 2017 of $53.6 million will start to expire if not utilized, beginning in 2027, and state net operating losses expire over varying intervals in the future. As of December 25, 2022, the Company did not have any uncertain tax positions in any jurisdictions.

11. LEASES

We adopted ASC 842 in the first quarter of fiscal 2022, as described in Note 2 (Basis of Presentation and Significant Accounting Policies).

The weighted average remaining lease term and discount rate were as follows as of the period indicated:

<table>
<thead>
<tr>
<th></th>
<th>December 25, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weighted average remaining lease term (years)</td>
<td>8.38</td>
</tr>
<tr>
<td>Weighted average discount rate</td>
<td>5.51%</td>
</tr>
</tbody>
</table>
The components of lease cost were as follows for the fiscal year indicated:

<table>
<thead>
<tr>
<th>Classification</th>
<th>2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating lease cost</td>
<td>$42,551</td>
</tr>
<tr>
<td>Pre-opening lease cost</td>
<td>3,823</td>
</tr>
<tr>
<td>Closed store lease cost</td>
<td>840</td>
</tr>
<tr>
<td>Short-Term lease costs</td>
<td>460</td>
</tr>
<tr>
<td>Variable lease cost</td>
<td>327</td>
</tr>
<tr>
<td>Sublease income</td>
<td>(659)</td>
</tr>
<tr>
<td>Total lease cost</td>
<td>$47,342</td>
</tr>
</tbody>
</table>

Supplemental disclosures of cash flow information related to leases were as follows for fiscal year indicated:

<table>
<thead>
<tr>
<th>Classification</th>
<th>2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash paid for operating lease liabilities</td>
<td>$49,984</td>
</tr>
<tr>
<td>Operating lease assets obtained in exchange for operating lease liabilities (*)</td>
<td>322,015</td>
</tr>
<tr>
<td>Derecognition of operating lease assets due to termination or impairment</td>
<td>17,041</td>
</tr>
</tbody>
</table>

* Amounts presented for fiscal 2022 include the transition adjustment for the adoption of ASC 842 discussed in Note 2 (Basis of Presentation and Significant Accounting Policies).

Refer to Note 5 (Property and Equipment) for a description of impairment charges that resulted in a reduction to operating lease assets.

Maturities of lease liabilities were as follows as of December 25, 2022:

<table>
<thead>
<tr>
<th>Operating leases</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>Thereafter</th>
<th>Total</th>
<th>Less: imputed interest</th>
<th>Operating lease liabilities (current and non-current)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$44,930</td>
<td>50,358</td>
<td>50,002</td>
<td>48,413</td>
<td>45,471</td>
<td>161,259</td>
<td>400,433</td>
<td>85,700</td>
<td>$314,733</td>
</tr>
</tbody>
</table>

As of December 25, 2022, operating lease payments excluded approximately $35.4 million of legally binding minimum lease payments for leases executed but not yet commenced.

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As previously disclosed in our annual financial statements for the fiscal year ended December 26, 2021, maturities of lease liabilities under the previous lease accounting (ASC 840) were as follows as of December 26, 2021:

<table>
<thead>
<tr>
<th></th>
<th>Deemed landlord financing</th>
<th>Operating leases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2022</strong></td>
<td>$3,999</td>
<td>$42,922</td>
</tr>
<tr>
<td><strong>2023</strong></td>
<td>3,654</td>
<td>42,103</td>
</tr>
<tr>
<td><strong>2024</strong></td>
<td>3,327</td>
<td>42,006</td>
</tr>
<tr>
<td><strong>2025</strong></td>
<td>3,207</td>
<td>40,567</td>
</tr>
<tr>
<td><strong>2026</strong></td>
<td>3,172</td>
<td>37,591</td>
</tr>
<tr>
<td><strong>Thereafter</strong></td>
<td>15,350</td>
<td>124,299</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$32,709</td>
<td>$329,488</td>
</tr>
</tbody>
</table>

12. COMMITMENTS AND CONTINGENCIES

**Purchase Obligations**—The Company enters into various purchase obligations in the ordinary course of business, generally of a short-term nature. Those that are binding primarily relate to amounts owed for produce and other ingredients and supplies, including supplies and materials used for new restaurant openings.

**Letters of Credit**—As of December 25, 2022, the Company had eight irrevocable letters of credit in favor of various landlords in the aggregate amount of $1.3 million. The letters of credit do not require a compensating balance and automatically renew in accordance with the terms of the underlying lease agreement.

**Litigation**—The Company is currently involved in various claims and legal actions that arise in the ordinary course of its business, including claims resulting from employment related matters. None of these claims, most of which are covered by insurance, are expected to have a material effect on the Company. As of the date hereof, the Company is not party to any material pending legal proceedings and is not aware of any claims that could have a material effect on our business, financial condition, results of operations, or cash flows. However, a significant increase in the number of these claims or an increase in amounts owed under successful claims could materially and adversely affect our business, financial condition, results of operations, or cash flows.

13. RELATED PARTY TRANSACTIONS

In March 2021, CAVA Group, Inc. entered into a promissory note for $6.4 million with the Company’s CEO, Brett Schulman. The purpose of this note was to facilitate the exercise and repurchase of stock options in connection with the Series F capital raise. The full amount of the note was repaid on March 26, 2021, and as a result, Mr. Schulman has no outstanding indebtedness related to the promissory note. Refer to Note 9 (Redeemable Preferred Stock and Stockholders’ Equity) for more information.

In September 2020, CAVA Group, Inc. entered into an arrangement whereby Ted Xenohristos joined the Company as its Chief Concept Officer. Mr. Xenohristos currently serves on our Board of Directors, was a founder of the Company, and has an ownership interest in CMRG, Inc. (“CMRG”).

CAVA Group, Inc. entered into a Consulting Agreement with CMRG, which is primarily owned by certain of the founders of the Company including Mr. Xenohristos. Under the terms of the Consulting Agreement, the founders provide culinary, branding, food products, and restaurant operation services to CAVA Mezze Grill in exchange for an annual consulting fee. During each of fiscal 2022 and fiscal 2021, $0.2 million was paid to CMRG for consulting services under the Consulting Agreement. This arrangement was effectively terminated in December 2022.

CAVA Group, Inc. entered into a Management Services Agreement (“MSA”) with Act III Management, LLC (“Act III”), which is one of the Company’s investors and is controlled by the Company’s Chair of our Board of Directors. Act III provided consulting in the areas of information technology, strategy, finance, off-premises sales, and restaurant operations. During fiscal 2022 and fiscal 2021, $0.8 million and $1.0 million, respectively, was paid to Act III under the MSA. This arrangement was terminated in December 2022.
During the third and fourth quarters of fiscal 2020, one of the members of our Board of Directors, served as Interim Chief Financial Officer of the Company. Pursuant to such member’s consulting agreement with the Company, he received a one-time grant of 30,000 restricted stock units under the Plan and payment of $0.1 million during the first quarter of fiscal 2021.

16. SEGMENT REPORTING

The CODM reviews segment performance and allocates resources based upon restaurant level profit, which is defined as segment revenues less food, beverage, and packaging expenses, labor, occupancy, and other operating expenses. All segment revenue is earned in the United States, and all intersegment revenues have been eliminated. Sales from external customers are derived principally from sales of food, beverage, and CPG. The Company does not rely on any major customers as sources of sales. As the CODM is not provided with asset information by segment, assets are reported only on a consolidated basis.

Financial information for the Company’s reportable segments was as follows for the fiscal years presented:

<table>
<thead>
<tr>
<th></th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>$448,594</td>
<td>$278,219</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>108,392</td>
<td>215,816</td>
</tr>
<tr>
<td>Other</td>
<td>7,133</td>
<td>6,037</td>
</tr>
<tr>
<td><strong>Total revenue</strong></td>
<td>564,119</td>
<td>500,072</td>
</tr>
<tr>
<td><strong>Restaurant-Level operating expenses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>357,501</td>
<td>227,335</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>102,292</td>
<td>186,237</td>
</tr>
<tr>
<td>Other</td>
<td>6,342</td>
<td>4,347</td>
</tr>
<tr>
<td><strong>Total Restaurant-Level operating expenses</strong></td>
<td>466,135</td>
<td>417,919</td>
</tr>
<tr>
<td><strong>Restaurant-Level profit</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>91,093</td>
<td>50,884</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>6,100</td>
<td>29,579</td>
</tr>
<tr>
<td>Other</td>
<td>791</td>
<td>1,690</td>
</tr>
<tr>
<td><strong>Total Restaurant-Level profit</strong></td>
<td>97,984</td>
<td>82,153</td>
</tr>
<tr>
<td><strong>Reconciliation of Restaurant-Level profit to loss before income taxes:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>70,037</td>
<td>64,792</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>42,724</td>
<td>44,538</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>5,923</td>
<td>6,839</td>
</tr>
<tr>
<td>Pre-opening costs</td>
<td>19,313</td>
<td>8,194</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>19,753</td>
<td>10,542</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>47</td>
<td>4,810</td>
</tr>
<tr>
<td>Other income, net</td>
<td>(919)</td>
<td>(20,288)</td>
</tr>
<tr>
<td><strong>Loss before income taxes</strong></td>
<td>$ (58,894)</td>
<td>$ (37,274)</td>
</tr>
</tbody>
</table>

Other includes the Company’s CPG sales from CAVA Foods.

14. EQUITY-BASED COMPENSATION

Stock-Based Plan—On March 16, 2015, the Company adopted the Plan. As of December 25, 2022, the Plan includes a total of 2,702,663 authorized shares of the Company’s common stock for issuance to employees, directors, and consultants through incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock awards, or restricted stock unit awards. During fiscal 2022 and fiscal 2021, the Company recognized compensation expense related to awards under the Plan of $3.8 million and $5.4 million, respectively. Fiscal 2021
includes $2.8 million of compensation expense which represents the excess of the purchase price over fair value on the CEO’s sale of common stock to the Company and a third party. Refer to Note 9 (Redeemable Preferred Stock and Stockholders’ Equity) for more information on this transaction.

Stock Options—Our Board of Directors determines the option exercise price and has granted all stock options at exercise prices that equal or exceed the fair value of the common stock on the date of grant. The terms of the options may not exceed 10 years. Vesting terms are determined by our Board of Directors and generally vest over four years of continuous service.

A summary of the Company’s stock option activity during the periods indicated is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Number Of Options</th>
<th>Exercise Price</th>
<th>Remaining Contractual Term (Years)</th>
<th>Weighted Average Aggregate Intrinsic Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Outstanding - December 27, 2020</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>902,442</td>
<td>$15.13</td>
<td>7.1</td>
<td>$866</td>
</tr>
<tr>
<td>Exercised</td>
<td>(408,020)</td>
<td>17.49</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forfeited or expired</td>
<td>(17,165)</td>
<td>8.53</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Outstanding - December 26, 2021</strong></td>
<td>477,257</td>
<td>$13.34</td>
<td>5.8</td>
<td>$3,828</td>
</tr>
<tr>
<td>Granted</td>
<td>153,022</td>
<td>20.23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td>(5,067)</td>
<td>7.24</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forfeited or expired</td>
<td>(4,179)</td>
<td>8.18</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Outstanding - December 25, 2022</strong></td>
<td>621,033</td>
<td>$15.12</td>
<td>5.9</td>
<td>$8,444</td>
</tr>
<tr>
<td>Exercisable - December 26, 2021</td>
<td>351,729</td>
<td>$10.41</td>
<td>5.3</td>
<td>$3,828</td>
</tr>
<tr>
<td>Vested and Expected to Vest - December 26, 2021</td>
<td>477,257</td>
<td>$13.34</td>
<td>5.8</td>
<td>$3,828</td>
</tr>
<tr>
<td>Exercisable - December 25, 2022</td>
<td>471,012</td>
<td>$13.56</td>
<td>4.8</td>
<td>$8,444</td>
</tr>
<tr>
<td>Vested and Expected to Vest - December 25, 2022</td>
<td>621,033</td>
<td>$15.12</td>
<td>5.9</td>
<td>$8,444</td>
</tr>
</tbody>
</table>

Assumptions used in the Black-Scholes option-pricing model for stock options granted during fiscal 2022 were as follows:

|                                |                |                |                                  |                                          |
|--------------------------------|----------------|----------------|-----------------------------------|                                          |
| Risk-Free interest rate        | 1.7 %          |                |                                   |                                          |
| Expected term (in years)       | 6.20           |                |                                   |                                          |
| Dividend rate                  | — %            |                |                                   |                                          |
| Volatility                     | 45 %           |                |                                   |                                          |

- **Risk-Free interest rate**—Based on the U.S. Treasury yield curve in effect at the time of the grant.
- **Expected term (in years)**—Represents the period of time that options granted are expected to be outstanding using the weighted average of the life of the option.
- **Dividend rate**—Based on the Company’s historical issuance and management’s expectations for dividend issuance in the future.
- **Volatility**—Based on the average volatility of stock prices for a group of similar companies as a substitute for the historical volatility of the Company’s common shares, which is not determinable without an active external or internal market.

The weighted-average grant date fair value of options granted in fiscal 2022 was $8.90. No options were granted in fiscal 2021.
As of December 25, 2022, there was $1.0 million of unrecognized compensation costs related to option awards. This cost is expected to be recognized over a period of 3.1 years.

**Restricted Stock Units**—Pursuant to the Plan, the Company is authorized to issue restricted stock units (“RSUs”). Vesting terms are determined by our Board of Directors and generally vest annually in equal installments over four years of continuous service.

A summary of the Company’s restricted stock unit activity is as follows:

<table>
<thead>
<tr>
<th>(in thousands, except grant price)</th>
<th>Number Of Units</th>
<th>Weighted-average grant price</th>
<th>Aggregate Intrinsic Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-Vested - December 27, 2020</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>284,355</td>
<td>$8.81</td>
<td>$2,144</td>
</tr>
<tr>
<td>Vested</td>
<td>452,451</td>
<td>8.81</td>
<td></td>
</tr>
<tr>
<td>Forfeited</td>
<td>(144,784)</td>
<td>9.28</td>
<td></td>
</tr>
<tr>
<td><strong>Non-Vested - December 26, 2021</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>495,666</td>
<td>$9.23</td>
<td>$10,032</td>
</tr>
<tr>
<td>Vested</td>
<td>293,552</td>
<td>20.21</td>
<td></td>
</tr>
<tr>
<td>Forfeited</td>
<td>(136,319)</td>
<td>8.26</td>
<td></td>
</tr>
<tr>
<td><strong>Non-Vested - December 25, 2022</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>591,996</td>
<td>$14.27</td>
<td>$16,996</td>
</tr>
<tr>
<td>Vested</td>
<td>(60,903)</td>
<td>10.65</td>
<td></td>
</tr>
</tbody>
</table>

As of December 25, 2022, there was $6.6 million of unrecognized compensation expense related to RSU awards. This cost is expected to be recognized over a period of 2.8 years.

15. **NET LOSS PER SHARE**

The following table sets forth the computation of net loss per common share for the fiscal years indicated:

<table>
<thead>
<tr>
<th>(in thousands, except per share data)</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Numerator:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$(58,987)</td>
<td>$(37,391)</td>
</tr>
<tr>
<td><strong>Denominator:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted-Average common shares</td>
<td>442,753</td>
<td>244,100</td>
</tr>
<tr>
<td>outstanding, basic and diluted</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net loss per share:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic and diluted</td>
<td>$(133.23)</td>
<td>$(153.18)</td>
</tr>
<tr>
<td><strong>Total common stock equivalents</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stock options</td>
<td>400,377</td>
<td>256,601</td>
</tr>
<tr>
<td>Restricted stock units</td>
<td>591,996</td>
<td>495,666</td>
</tr>
<tr>
<td>Preferred stock (as converted to</td>
<td>31,734,518</td>
<td>31,734,518</td>
</tr>
<tr>
<td>common shares)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total common stock equivalents</td>
<td>32,726,891</td>
<td>32,486,785</td>
</tr>
</tbody>
</table>
17. SUBSEQUENT EVENTS

On February 15, 2023, we entered into Amendment No. 2 to the Credit Agreement (the “Second Amendment”), which amends the 2022 Credit Facility and provides for a $30.0 million delayed draw term loan facility (the “Delayed Draw Facility” and the loans thereunder, the “Delayed Draw Term Loans”) to finance construction and capital expenditures in respect of the Company’s production facility in Verona, Virginia. As of March 17, 2023, no amounts have been drawn under the Delayed Draw Facility.

We may draw amounts under the Delayed Draw Facility until the earliest of (i) August 15, 2024, (ii) the date of the fifth funding of Delayed Draw Term Loans (immediately after giving effect to such funding) and (iii) the date the full $30.0 million is drawn under the Delayed Draw Facility. Delayed Draw Term Loans outstanding under the 2022 Credit Facility bear interest at a rate consistent with the 2022 Credit Facility. The Company is required to pay a ticking fee on the amount of available delayed draw term loan commitments. The ticking fee ranges from 0.20% to 0.35% based on Total Rent Adjusted Net Leverage Ratio. Delayed Draw Term Loans have a maturity date of March 11, 2027 (the “Delayed Draw Term Loan Maturity Date”).

Beginning the first full calendar quarter ending after the termination of all the delayed draw term loan commitments, the Company is obligated to make mandatory quarterly principal payments of Delayed Draw Term Loans in an amount equal to the product of (i) the original aggregate principal amount of all funded Delayed Draw Term Loans, multiplied by (ii) 1.25% for the first eight payments and 1.875% for all subsequent payments occurring prior to the Delayed Draw Term Loan Maturity Date.

We evaluated all subsequent activity through March 17, 2023, the date these financial statements were made available to be issued, and concluded that no additional subsequent events have occurred that would require recognition or disclosure in the consolidated financial statements.
CAVA GROUP, INC.
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands, except share and per share amounts)

### ASSETS

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>December 25, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current assets:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$22,716</td>
<td>$39,125</td>
</tr>
<tr>
<td>Trade accounts receivable, net</td>
<td>4,643</td>
<td>2,827</td>
</tr>
<tr>
<td>Other accounts receivable</td>
<td>6,873</td>
<td>4,908</td>
</tr>
<tr>
<td>Inventories</td>
<td>4,340</td>
<td>5,139</td>
</tr>
<tr>
<td>Prepaid expenses and other</td>
<td>8,415</td>
<td>6,151</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td>46,987</td>
<td>58,150</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>272,239</td>
<td>242,983</td>
</tr>
<tr>
<td>Operating lease assets</td>
<td>275,849</td>
<td>273,876</td>
</tr>
<tr>
<td>Goodwill</td>
<td>1,944</td>
<td>1,944</td>
</tr>
<tr>
<td>Intangible assets, net</td>
<td>1,355</td>
<td>1,382</td>
</tr>
<tr>
<td>Other long-term assets</td>
<td>5,580</td>
<td>5,548</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>$603,954</td>
<td>$583,883</td>
</tr>
</tbody>
</table>

### LIABILITIES, PREFERRED STOCK AND STOCKHOLDERS' EQUITY

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>December 25, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current liabilities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$18,004</td>
<td>$14,311</td>
</tr>
<tr>
<td>Accrued expenses and other</td>
<td>55,190</td>
<td>40,468</td>
</tr>
<tr>
<td>Operating lease liabilities - current</td>
<td>32,894</td>
<td>29,539</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td>106,088</td>
<td>84,318</td>
</tr>
<tr>
<td>Deferred income taxes</td>
<td>28</td>
<td>28</td>
</tr>
<tr>
<td>Operating lease liabilities</td>
<td>286,120</td>
<td>285,194</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td>451</td>
<td>538</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>392,687</td>
<td>370,078</td>
</tr>
</tbody>
</table>

**Commitments and Contingencies (Note 11)**

**Preferred stock:**

- Redeemable preferred stock, par value $0.0001 per share; 37,291,370 shares authorized; 31,734,518 shares issued and outstanding

**Stockholders' equity:**

- Common stock, par value $0.0001 per share; 50,000,000 shares authorized; 567,745 and 469,820 issued and outstanding, respectively
- Treasury stock, at cost; 343,500 shares and 295,426 shares, respectively
- Additional paid-in capital
- Accumulated deficit

**Total stockholders’ equity**

**Total liabilities, preferred stock and stockholders' equity**

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.
### CAVA GROUP, INC.
#### UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

**Sixteen Weeks Ended**

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td>$203,083</td>
<td>$159,011</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restaurant operating costs (excluding depreciation and amortization)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food, beverage, and packaging</td>
<td>59,118</td>
<td>50,904</td>
</tr>
<tr>
<td>Labor</td>
<td>52,154</td>
<td>47,022</td>
</tr>
<tr>
<td>Occupancy</td>
<td>16,599</td>
<td>16,740</td>
</tr>
<tr>
<td>Other operating expenses</td>
<td>24,648</td>
<td>22,201</td>
</tr>
<tr>
<td><strong>Total restaurant operating expenses</strong></td>
<td>152,519</td>
<td>136,867</td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>29,024</td>
<td>20,937</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>12,859</td>
<td>12,819</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>2,215</td>
<td>1,284</td>
</tr>
<tr>
<td>Pre-opening costs</td>
<td>5,999</td>
<td>3,566</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>2,719</td>
<td>3,431</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>205,335</td>
<td>178,904</td>
</tr>
<tr>
<td><strong>Loss from operations</strong></td>
<td>(2,252)</td>
<td>(19,893)</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>25</td>
<td>343</td>
</tr>
<tr>
<td>Other income, net</td>
<td>(174)</td>
<td>(258)</td>
</tr>
<tr>
<td><strong>Loss before income taxes</strong></td>
<td>(2,103)</td>
<td>(19,978)</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>38</td>
<td>40</td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>$ (2,141)</td>
<td>$ (20,018)</td>
</tr>
</tbody>
</table>

**Loss per common share:**

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net loss per share, basic and diluted</td>
<td>$ (3.90)</td>
<td>$ (46.25)</td>
</tr>
<tr>
<td>Weighted average shares outstanding, basic and diluted</td>
<td>548,973</td>
<td>432,840</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.
### CAVA GROUP, INC.

**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF PREFERRED STOCK AND STOCKHOLDERS’ EQUITY**

(in thousands except share amounts)

<table>
<thead>
<tr>
<th></th>
<th>Redeemable Preferred Stock</th>
<th>Common Stock</th>
<th>Treasury Stock</th>
<th>Additional Paid in Capital</th>
<th>Accumulated Deficit</th>
<th>Total Stockholders' Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance—December 26, 2021</strong></td>
<td>31,734,518 $ 662,308</td>
<td>374,844 $ —</td>
<td>249,016 $(5,708)</td>
<td>15,219 $(402,532)</td>
<td>$ (5,708)</td>
<td>$ (393,021)</td>
</tr>
<tr>
<td>Equity-based compensation</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
</tr>
<tr>
<td>Stock options exercised</td>
<td>— —</td>
<td>152 —</td>
<td>— —</td>
<td>— —</td>
<td>1 —</td>
<td>1 —</td>
</tr>
<tr>
<td>RSU vesting</td>
<td>— —</td>
<td>94,762 —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
</tr>
<tr>
<td>Repurchase of common stock upon RSU vesting</td>
<td>— —</td>
<td>(32,872) —</td>
<td>32,872 (629)</td>
<td>— —</td>
<td>— —</td>
<td>(629) —</td>
</tr>
<tr>
<td>Cumulative effect of ASC 842 adoption</td>
<td>— —</td>
<td>— — —</td>
<td>— — —</td>
<td>— — —</td>
<td>576 —</td>
<td>576 —</td>
</tr>
<tr>
<td>Net loss</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>(20,018) (20,018)</td>
</tr>
<tr>
<td><strong>Balance—April 17, 2022</strong></td>
<td>31,734,518 $ 662,308</td>
<td>436,886 $ —</td>
<td>281,888 $(6,337)</td>
<td>15,976 $(421,974)</td>
<td>$ (6,337)</td>
<td>$ (412,335)</td>
</tr>
<tr>
<td><strong>Balance—December 25, 2022</strong></td>
<td>31,734,518 $ 662,308</td>
<td>469,820 $ —</td>
<td>295,426 $(6,619)</td>
<td>19,059 $(460,943)</td>
<td>$ (6,619)</td>
<td>$ (448,503)</td>
</tr>
<tr>
<td>Equity-based compensation</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
</tr>
<tr>
<td>Stock options exercised</td>
<td>— —</td>
<td>5,917 —</td>
<td>— —</td>
<td>— —</td>
<td>43 —</td>
<td>43 —</td>
</tr>
<tr>
<td>RSU vesting</td>
<td>— —</td>
<td>140,082 —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
</tr>
<tr>
<td>Repurchase of common stock upon RSU vesting</td>
<td>— —</td>
<td>(48,074) —</td>
<td>48,074 (1,368)</td>
<td>— —</td>
<td>— —</td>
<td>(1,368) —</td>
</tr>
<tr>
<td>Net loss</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>— —</td>
<td>(2,141) (2,141)</td>
</tr>
<tr>
<td><strong>Balance—April 16, 2023</strong></td>
<td>31,734,518 $ 662,308</td>
<td>567,745 $ —</td>
<td>343,500 $(7,987)</td>
<td>20,030 $(463,084)</td>
<td>$ (7,987)</td>
<td>$ (451,041)</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.
CAVA GROUP, INC.
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

Sixteen Weeks Ended
(in thousands)

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cash flows from operating activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$ (2,141)</td>
<td>$ (20,018)</td>
</tr>
<tr>
<td>Adjustments to reconcile net loss to net cash provided by (used in) operating activities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>12,832</td>
<td>10,887</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td>27</td>
<td>1,932</td>
</tr>
<tr>
<td>Equity-based compensation</td>
<td>928</td>
<td>756</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>2,719</td>
<td>3,431</td>
</tr>
<tr>
<td>Changes in operating assets and liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trade accounts receivable</td>
<td>(1,815)</td>
<td>(489)</td>
</tr>
<tr>
<td>Other accounts receivable</td>
<td>(1,965)</td>
<td>(1,871)</td>
</tr>
<tr>
<td>Inventories</td>
<td>799</td>
<td>(28)</td>
</tr>
<tr>
<td>Prepaid expenses and other</td>
<td>1,020</td>
<td>(659)</td>
</tr>
<tr>
<td>Operating lease assets</td>
<td>(5,036)</td>
<td>(24,357)</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>2,234</td>
<td>1,832</td>
</tr>
<tr>
<td>Accrued expenses and other</td>
<td>10,058</td>
<td>(477)</td>
</tr>
<tr>
<td>Operating lease liabilities</td>
<td>6,019</td>
<td>26,699</td>
</tr>
<tr>
<td><strong>Net cash provided by (used in) operating activities</strong></td>
<td>$25,679</td>
<td>(2,363)</td>
</tr>
<tr>
<td><strong>Cash flows from investing activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchase of property and equipment</td>
<td>(39,097)</td>
<td>(22,291)</td>
</tr>
<tr>
<td><strong>Net cash used in investing activities</strong></td>
<td>(39,097)</td>
<td>(22,291)</td>
</tr>
<tr>
<td><strong>Cash flows from financing activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchase of treasury stock</td>
<td>(1,368)</td>
<td>(629)</td>
</tr>
<tr>
<td>Stock options exercised</td>
<td>43</td>
<td>1</td>
</tr>
<tr>
<td>Deferred offering costs paid</td>
<td>(1,411)</td>
<td>—</td>
</tr>
<tr>
<td>Payment of loan acquisition fees</td>
<td>(226)</td>
<td>(697)</td>
</tr>
<tr>
<td>Payments on finance lease obligations</td>
<td>(29)</td>
<td>(30)</td>
</tr>
<tr>
<td><strong>Net cash used in financing activities</strong></td>
<td>(2,991)</td>
<td>(1,355)</td>
</tr>
<tr>
<td>Net change in cash and cash equivalents</td>
<td>(16,409)</td>
<td>(26,009)</td>
</tr>
<tr>
<td>Cash and cash equivalents - beginning of year</td>
<td>39,125</td>
<td>140,332</td>
</tr>
<tr>
<td>Cash and cash equivalents - end of year</td>
<td>$22,716</td>
<td>$114,323</td>
</tr>
</tbody>
</table>

**SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:**

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred offering costs not yet paid</td>
<td>$ 1,432</td>
<td>—</td>
</tr>
<tr>
<td>Cash paid for interest related to long-term debt</td>
<td>78</td>
<td>24</td>
</tr>
<tr>
<td>Cash paid for income taxes</td>
<td>42</td>
<td>22</td>
</tr>
<tr>
<td>Change in accrued purchases of property and equipment</td>
<td>4,729</td>
<td>654</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these consolidated financial statements.
CAVA GROUP, INC.
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. NATURE OF OPERATIONS AND BASIS OF PRESENTATION

CAVA Group, Inc. (together with its wholly owned subsidiaries, referred to as the “Company”, “we”, “us”, and “our” unless specified otherwise) was formed as a Delaware corporation on February 27, 2015, as a holding company. On April 3, 2015, the Company acquired all of the outstanding membership interests in CAVA Foods, LLC, which includes the Consumer Packaged Goods (“CPG”) business consisting of the Company’s proprietary dips, spreads and dressings. On November 21, 2018, the Company acquired all of the outstanding common stock of Zoes Kitchen, Inc. as part of the Company’s strategic expansion initiative.

The Company is headquartered in Washington D.C. and, as of April 16, 2023, the Company operated 263 fast-casual CAVA restaurants in 22 states and Washington D.C. The number of CAVA restaurants excludes one location operating under a licensing arrangement and digital kitchens. The Company’s restaurants serve healthful, fast-casual Mediterranean fare. The Company’s dips and spreads, which are centrally produced, are sold nationally through grocery stores, including Whole Foods Markets, while its dressings are available at grocery stores in select markets.

The Company’s operations are conducted as two reportable segments: CAVA and Zoes Kitchen. These segments were determined on the same basis that the Company’s Chief Executive Officer (“CEO”), who is the chief operating decision maker (“CODM”), manages, evaluates, and makes key decisions regarding the business.

The Company is currently focused on a strategy of converting Zoes Kitchen restaurants into CAVA restaurants, in addition to opening new CAVA restaurants. The first conversion restaurant opened on November 8, 2019. As of April 16, 2023, the Company has opened 145 conversion restaurants and plans to open 8 more conversion restaurants in the remainder of 2023. As of March 2, 2023, the Company has closed all Zoes Kitchen locations.

Interim Financial Statements—The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles and practices of the United States of America (“US GAAP”) for interim financial information. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair statement of the results for interim periods have been included.

Certain information and footnote disclosures normally included in annual financial statements presented in accordance with US GAAP have been omitted pursuant to rules and regulations of the Securities and Exchange Commission (“SEC”). Due to the seasonality of our business, results for any interim financial period are not necessarily indicative of the results that may be achieved for a full fiscal year. In addition, quarterly results of operations may be impacted by the timing and amount of sales and costs associated with opening new restaurants. These interim unaudited condensed consolidated financial statements do not represent complete financial statements and should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 25, 2022.

Principles of Consolidation—The accompanying unaudited condensed consolidated financial statements include the accounts of CAVA Group, Inc. and its wholly owned subsidiaries after elimination of all intercompany accounts and transactions.

Fiscal Year—The Company operates on a 52-week or 53-week fiscal year that ends on the last Sunday of the calendar year. The fiscal year ending December 31, 2023 (“fiscal 2023”) and the fiscal year ended December 25, 2022 (“fiscal 2022”) have 53 weeks and 52 weeks, respectively. In a 52-week fiscal year, the first fiscal quarter contains sixteen weeks and the second, third, and fourth fiscal quarters each contain twelve weeks. In a 53-week fiscal year, the first fiscal quarter contains sixteen weeks, the second and third fiscal quarters each contain twelve weeks, and the fourth fiscal quarter contains thirteen weeks.

Use of Estimates—The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with US GAAP. The preparation of financial statements in conformity with US GAAP requires management to make certain estimates and assumptions that affect reported amounts of assets and liabilities
and disclosure of contingent assets and liabilities as of the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Significant accounting estimates made by the Company include valuation of long-lived, definite and indefinite-lived assets, impairment of long-lived, definite and indefinite-lived assets, estimated useful lives of assets, the Company’s incremental borrowing rate, allowance for doubtful accounts, the fair value of equity-based compensation and common stock, and deferred tax valuation allowances. These estimates are based on information available as of the date of the consolidated financial statements; therefore actual results could differ from those estimates.

Recently Adopted Accounting Standards—On December 26, 2022, the Company adopted Accounting Standards Update (“ASU”) 2016-13, Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments which requires the measurement and recognition of expected credit losses on financial instruments. The amendments in ASU 2016-13 replace the incurred loss model in existing GAAP with a forward-looking expected credit loss model that requires consideration of a broad range of information to estimate credit losses. The adoption of this standard did not have a material impact on our financial position or results from operations.

Recently Issued Accounting Standards—The Company reviewed all other recently issued accounting standards and determined they were either not applicable or not expected to have a material impact on our financial position or results from operations.

JOBS Act Election—In April 2012, the JOBS Act was enacted. Section 107(b) of the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. Thus, an emerging growth company can delay adoption of certain accounting standards until those standards would apply to private companies. The Company has elected to take advantage of the extended transition period to comply with new or revised accounting standards and to adopt certain of the reduced disclosure requirements available to emerging growth companies. As a result of the accounting standards election, the Company will not be subject to the same implementation timing for new or revised accounting standards as other public companies that are not emerging growth companies and, as a result, the Company’s financial statements may not be comparable with similarly situated public companies.

2. REVENUE

The Company’s revenue was as follows for the periods indicated:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen Weeks Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
</tr>
<tr>
<td>Restaurant revenue</td>
<td>$200,628</td>
</tr>
<tr>
<td>CPG revenue and other</td>
<td>2,455</td>
</tr>
<tr>
<td>Revenue</td>
<td>$203,083</td>
</tr>
</tbody>
</table>

Revenue from the sale of the Company’s gift cards and loyalty program is included in restaurant revenue. Refer to Note 6 (Accrued Expenses and Other) for the Company’s gift card and loyalty liabilities balances. Revenue recognized from gift card breakage and the redemption of gift cards that were included in the gift card liability at the beginning of the year was $0.4 million during each of sixteen weeks ended April 16, 2023 and April 17, 2022. The full amount of the outstanding loyalty liability as of April 16, 2023 is expected to be recognized within one year due to the expiration of loyalty rewards being less than one year.

3. FAIR VALUE

Assets and Liabilities Measured at Fair Value on a Recurring Basis—The carrying amounts of our financial instruments, which include cash and cash equivalents, accounts receivable, accounts payable, and other accrued expenses, approximate their fair values due to their short maturities.

Assets and Liabilities Measured at Fair Value on a Non-recurring Basis—Assets recognized or disclosed at fair value in the accompanying unaudited condensed consolidated financial statements on a nonrecurring basis

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include items such as property and equipment, net, operating lease assets, goodwill, and intangible assets, net. These assets are measured at fair value whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable.

Certain operating lease assets for which an impairment loss of $0.7 million was recognized during the sixteen weeks ended April 16, 2023 were measured at fair value, on a non-recurring basis as of April 16, 2023. The fair value of these assets was concluded to be $0.4 million using an income approach (discounted cash flow method), which was measured using Level 3 inputs (unobservable inputs). Unobservable inputs include the discount rate and projected restaurant revenues and expenses. Refer to Note 4 (Property and Equipment, net) for more information.

4. PROPERTY AND EQUIPMENT, NET

The following table presents the Company’s property and equipment, net as of the periods indicated:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>April 16, 2023</th>
<th>December 25, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>600</td>
<td>600</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>221,031</td>
<td>206,849</td>
</tr>
<tr>
<td>Equipment</td>
<td>63,908</td>
<td>58,430</td>
</tr>
<tr>
<td>Furniture and fixtures</td>
<td>18,690</td>
<td>18,472</td>
</tr>
<tr>
<td>Computer hardware and software</td>
<td>34,149</td>
<td>35,190</td>
</tr>
<tr>
<td>Vehicles</td>
<td>565</td>
<td>565</td>
</tr>
<tr>
<td>Construction in progress</td>
<td>42,683</td>
<td>36,269</td>
</tr>
<tr>
<td>Total property and equipment, gross</td>
<td>381,626</td>
<td>356,375</td>
</tr>
<tr>
<td>Less accumulated depreciation</td>
<td>(109,387)</td>
<td>(113,392)</td>
</tr>
<tr>
<td>Total property and equipment, net</td>
<td>$272,239</td>
<td>$242,983</td>
</tr>
</tbody>
</table>

Construction in progress relates to CAVA new restaurant openings, including conversion of Zoes Kitchen restaurants in connection with the Company’s conversion strategy, construction of the new production facility in Verona, VA, as well as technology improvements.

In connection with the finalization of the Company’s conversion strategy described in Note 1 (Nature of Operations and Basis of Presentation), the Company recognized an impairment loss related to operating lease assets of closed restaurants of $0.7 million within the Zoes Kitchen segment during the sixteen weeks ended April 16, 2023. Impairment charges are recorded within asset impairment and disposal costs in the accompanying unaudited consolidated statements of operations.

5. GOODWILL AND INTANGIBLE ASSETS, NET

During the sixteen weeks ended April 16, 2023 and April 17, 2022, there were no changes in the carrying amount of goodwill of $1.9 million.

The following tables present the Company’s intangible assets, net as of the periods indicated:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>Carrying Value</th>
<th>Accumulated Amortization</th>
<th>Net</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trademark</td>
<td>$750</td>
<td>$—</td>
<td>$750</td>
</tr>
<tr>
<td>Other</td>
<td>$605</td>
<td>$—</td>
<td>$605</td>
</tr>
<tr>
<td>Total intangible assets not subject to amortization</td>
<td>$1,355</td>
<td>$—</td>
<td>$1,355</td>
</tr>
<tr>
<td>Intangibles, net</td>
<td>$1,355</td>
<td>$—</td>
<td>$1,355</td>
</tr>
</tbody>
</table>

F-37
6. ACCRUED EXPENSES AND OTHER

The following table presents the Company’s accrued expenses and other as of the periods indicated:

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>December 25, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accrued payroll and payroll taxes</td>
<td>$18,103</td>
<td>$13,413</td>
</tr>
<tr>
<td>Accrued capital purchases</td>
<td>10,996</td>
<td>7,726</td>
</tr>
<tr>
<td>Sales and use tax payable</td>
<td>6,399</td>
<td>2,339</td>
</tr>
<tr>
<td>Gift card and loyalty liabilities</td>
<td>3,293</td>
<td>3,271</td>
</tr>
<tr>
<td>Other accrued expenses</td>
<td>16,399</td>
<td>13,719</td>
</tr>
<tr>
<td><strong>Total accrued expenses and other</strong></td>
<td><strong>$55,190</strong></td>
<td><strong>$40,468</strong></td>
</tr>
</tbody>
</table>

7. DEBT

**JPMorgan Chase Bank Revolving Line of Credit**—On February 15, 2023, the Company entered into a second amendment with respect to our revolving credit agreement with JPMorgan Chase Bank, N.A. as administrative agent dated March 11, 2022 (the “2022 Credit Facility”). The amendment provides for a $30.0 million delayed draw term loan facility (the “Delayed Draw Facility” and the loans thereunder, the “Delayed Draw Term Loans”) to finance construction and capital expenditures in respect of the Company’s production facility in Verona, VA.

As of April 16, 2023, the 2022 Credit Facility consisted of a revolving loan commitment in the aggregate amount of $75.0 million, together with an incremental revolving credit commitment up to an aggregate amount of $25.0 million and a delayed draw term loan facility for $30.0 million. The 2022 Credit Facility has a five-year term and matures on March 11, 2027. As of April 16, 2023, the Company had unamortized loan origination fees of $1.0 million related to the 2022 Credit Facility recorded within other long-term assets on the accompanying unaudited condensed consolidated balance sheet, which includes $0.2 million related to the Delayed Draw Facility.

We may draw amounts under the Delayed Draw Facility until the earliest of (i) August 15, 2024, (ii) the date of the fifth funding of Delayed Draw Term Loans (immediately after giving effect to such funding) and (iii) the date the full $30.0 million is drawn under the Delayed Draw Facility. Delayed Draw Term Loans outstanding under the 2022 Credit Facility bear interest at a rate consistent with the 2022 Credit Facility. The Company is required to pay a ticking fee on the amount of available delayed draw term loan commitments. The ticking fee ranges from 0.20% to 0.35% based on Total Rent Adjusted Net Leverage Ratio. Delayed Draw Term Loans have a maturity date of March 11, 2027 (the “Delayed Draw Term Loan Maturity Date”).

Beginning the first full calendar quarter ending after the termination of all the delayed draw term loan commitments, the Company is obligated to make mandatory quarterly principal payments of Delayed Draw Term Loans in an amount equal to the product of (i) the original aggregate principal amount of all funded Delayed Draw Term Loans, multiplied by (ii) 1.25% for the first eight payments and 1.875% for all subsequent payments occurring prior to the Delayed Draw Term Loan Maturity Date.
Interest on loans under the 2022 Credit Facility are based on one, three or six months Adjusted Term Secured Overnight Financing Rate, as applicable, plus an applicable margin of 1.50% to 2.50% based on the Company’s Total Rent Adjusted Net Leverage Ratio (as defined in the 2022 Credit Facility). The Company also has the ability to draw overnight borrowings for which interest rates are calculated based on the Alternative Base Rate (as defined in the 2022 Credit Facility). The Company had no borrowings under 2022 Credit Facility as of April 16, 2023.

The 2022 Credit Facility is unconditionally guaranteed by our domestic restricted subsidiaries, other than immaterial subsidiaries and other excluded subsidiaries. The 2022 Credit Facility is secured, subject to permitted liens and other exceptions, by a first-priority security interest in certain tangible and intangible assets of the borrower and the guarantors and a first-priority pledge of the capital stock of each domestic restricted subsidiary of the borrower and the guarantors, subject to certain exceptions.

The 2022 Credit Facility includes customary restrictive covenants, including limitations on additional indebtedness, creation of liens, dividend payments, investments and certain transactions with affiliates. The 2022 Credit Facility also includes covenants that require compliance with certain leverage ratios. The availability of certain baskets and the ability to enter into certain transactions may be subject to compliance with such leverage ratios. In addition, the 2022 Credit Facility contains other customary covenants, representations and events of default. As of April 16, 2023, the Company was in compliance with these financial and other covenants.

**Previous SunTrust Revolving Line of Credit**—On November 21, 2018, the Company entered into a revolving credit agreement with SunTrust Bank (as amended, the “2020 Credit Facility”). The 2020 Credit Facility provided for aggregate borrowings outstanding of up to $38.7 million. On March 11, 2022, the Company terminated the 2020 Credit Facility.

### 8. REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS’ EQUITY

The Company has reserved shares of common stock for issuance as follows as of the periods indicated:

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>December 25, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conversion of outstanding shares of preferred stock</td>
<td>31,734,518</td>
<td>31,734,518</td>
</tr>
<tr>
<td>Awards outstanding under the 2015 Equity Incentive Plan</td>
<td>1,280,922</td>
<td>1,213,029</td>
</tr>
<tr>
<td>Shares available for future issuance under the 2015 Equity Incentive Plan</td>
<td>343,916</td>
<td>557,808</td>
</tr>
<tr>
<td>Total reserved shares of common stock</td>
<td>33,359,356</td>
<td>33,505,355</td>
</tr>
</tbody>
</table>

Preferred stock consisted of the following as of April 16, 2023 and December 25, 2022:

<table>
<thead>
<tr>
<th>Series</th>
<th>Shares Authorized (in thousands)</th>
<th>Shares Issued &amp; Outstanding (in thousands)</th>
<th>Liquidation Preference (in thousands)</th>
<th>Carrying Value (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Series A</td>
<td>5,334,183</td>
<td>4,434,746</td>
<td>38,161</td>
<td>(12,912)</td>
</tr>
<tr>
<td>Series B</td>
<td>2,577,005</td>
<td>2,571,195</td>
<td>44,250</td>
<td>44,024</td>
</tr>
<tr>
<td>Series C</td>
<td>1,735,111</td>
<td>1,720,343</td>
<td>34,950</td>
<td>34,609</td>
</tr>
<tr>
<td>Series D</td>
<td>1,487,696</td>
<td>1,473,484</td>
<td>33,389</td>
<td>32,999</td>
</tr>
<tr>
<td>Series E</td>
<td>20,523,572</td>
<td>15,900,947</td>
<td>360,315</td>
<td>359,520</td>
</tr>
<tr>
<td>Series F</td>
<td>5,633,803</td>
<td>5,633,803</td>
<td>212,000</td>
<td>204,068</td>
</tr>
<tr>
<td>Total</td>
<td>37,291,370</td>
<td>31,734,518</td>
<td>723,065</td>
<td>662,308</td>
</tr>
</tbody>
</table>

### 9. INCOME TAXES

The Company’s full pre-tax loss for the sixteen weeks ended April 16, 2023 and April 17, 2022 was from U.S. domestic operations. The Company’s income taxes for the interim periods presented have been included in the accompanying unaudited condensed consolidated financial statements on the basis of an estimated annual effective tax rate. In addition to the amount of tax resulting from applying the estimated annual effective tax rate to pre-tax...
income, we will include, when appropriate, certain items treated as discrete events to arrive at an estimated overall tax amount. For the sixteen weeks ended April 16, 2023 and April 17, 2022, there were no significant discrete items recorded, and the Company recorded less than $0.1 million in tax expense, respectively.

10. LEASES

We adopted ASC 842 in the first quarter of fiscal 2022, as described in Note 1 (Nature of Operations and Basis of Presentation).

The weighted average remaining lease term and discount rate were as follows as of the period indicated:

| Weighted average remaining lease term (years) | 8.37 |
| Weighted average discount rate | 5.71% |

The components of lease cost were as follows for the periods indicated:

<table>
<thead>
<tr>
<th>Classification</th>
<th>($ in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating lease cost</td>
<td>Occupancy, General and administrative expenses</td>
</tr>
<tr>
<td>Pre-opening lease cost</td>
<td>Pre-opening costs</td>
</tr>
<tr>
<td>Closed store lease cost</td>
<td>Restructuring and other costs</td>
</tr>
<tr>
<td>Short-Term lease costs</td>
<td>General and administrative expenses</td>
</tr>
<tr>
<td>Variable lease cost</td>
<td>Occupancy</td>
</tr>
<tr>
<td>Sublease income</td>
<td>Other income</td>
</tr>
<tr>
<td><strong>Total lease cost</strong></td>
<td></td>
</tr>
</tbody>
</table>

Supplemental disclosures of cash flow information related to leases were as follows for periods indicated:

<table>
<thead>
<tr>
<th>($ in thousands)</th>
<th>Sixteen Weeks Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
</tr>
<tr>
<td>Cash paid for operating lease liabilities</td>
<td>$11,464</td>
</tr>
<tr>
<td>Operating lease assets obtained in exchange for operating lease liabilities (*)</td>
<td>13,833</td>
</tr>
<tr>
<td>Derecognition of operating lease assets due to termination or impairment</td>
<td>2,786</td>
</tr>
</tbody>
</table>

* Amounts presented for the sixteen weeks ended April 17, 2022 include a $256.9 million transition adjustment for the adoption of ASC 842.

Refer to Note 4 (Property and Equipment, net) for a description of impairment charges that resulted in a reduction to operating lease assets.
Maturities of lease liabilities were as follows as of April 16, 2023:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Operating leases</th>
</tr>
</thead>
<tbody>
<tr>
<td>2023 (remainder)</td>
<td>$32,650</td>
</tr>
<tr>
<td>2024</td>
<td>50,616</td>
</tr>
<tr>
<td>2025</td>
<td>50,890</td>
</tr>
<tr>
<td>2026</td>
<td>49,828</td>
</tr>
<tr>
<td>2027</td>
<td>47,356</td>
</tr>
<tr>
<td>Thereafter</td>
<td>176,756</td>
</tr>
<tr>
<td>Total</td>
<td>408,096</td>
</tr>
<tr>
<td>Less: imputed interest</td>
<td>89,082</td>
</tr>
<tr>
<td>Operating lease liabilities (current and non-current)</td>
<td>$319,014</td>
</tr>
</tbody>
</table>

As of April 16, 2023, operating lease payments excluded approximately $59.7 million of legally binding minimum lease payments for leases executed but not yet commenced.

11. COMMITMENTS AND CONTINGENCIES

**Purchase Obligations**—The Company enters into various purchase obligations in the ordinary course of business, generally of a short-term nature. Those that are binding primarily relate to amounts owed for produce and other ingredients and supplies, including supplies and materials used for new restaurant openings.

**Letters of Credit**—As of April 16, 2023, the Company had eight irrevocable letters of credit in favor of various landlords in the aggregate amount of $1.3 million. The letters of credit do not require a compensating balance and automatically renew in accordance with the terms of the underlying lease agreement.

**Litigation**—The Company is currently involved in various claims and legal actions that arise in the ordinary course of its business, including claims resulting from employment related matters. Except for the matters described below, none of these claims, most of which are covered by insurance, are expected to have a material effect on the Company. As of the date hereof, the Company is not party to any material pending legal proceedings and is not aware of any claims that could have a material effect on our business, financial condition, results of operations, or cash flows. However, a significant increase in the number of these claims or an increase in amounts owed under successful claims could materially and adversely affect our business, financial condition, results of operations, or cash flows.

In April 2022, CAVA was served with a purported class action complaint relating to organic fluorine and per- and polyfluoroalkyl substances (“PFAS”) in the packaging of its grain and salad bowls. Hamman et al. v. Cava Group, Inc. was filed on April 27, 2022 in the U.S. District Court for the Southern District of California. An amended complaint was subsequently filed on August 18, 2022. After an initial round of motion to dismiss briefing, the court granted in part and denied in part our motion to dismiss on February 8, 2023. Thereafter, plaintiffs filed a second amended complaint on March 1, 2023 seeking, among other relief, compensatory damages in an unspecified amount and medical monitoring. The complaint alleges that certain of our products are unfit for human consumption due to the packaging containing allegedly heightened levels of organic fluorine and unsafe PFAS, and that consumers were misled by certain marketing claims asserted by us regarding the health and sustainability of our products. The complaint further alleges that our products caused bodily injuries to the putative class members who consumed our products. On April 14, 2023, we filed a motion to dismiss for failure to state a claim. This motion is pending.

In April 2023, CAVA was served with a demand letter alleging that we use unhealthy and unsustainable PFAS in our packaging, that our products contain synthetic biocides, and that our “healthy” and “sustainable” marketing claims constitute false and deceptive advertising. The letter demanded that CAVA take certain actions, including refraining from using or sourcing packaging containing PFAS and adding certain product warnings, and further threatened to file an action styled as GMO Free USA v. Cava Group, Inc. in the Superior Court of the District of Columbia Civil Division. As of the date hereof, we have not formally responded to the demand letter.
In connection with Hamman et al. v. Cava Group, Inc., in September 2022, Travelers Property Casualty Company of America sought a declaratory judgment that they are not liable in relation to matters related to PFAS and sought recoupment of CAVA's legal costs in the Hamman action. Travelers Property Casualty Company of America et al v. Cava Group, Inc. was filed September 21, 2022 in the Superior Court of the State of California, County of Orange. On November 9, 2022, we removed the action to the U.S. District Court for the Central District of California. On December 16, 2022, we filed a motion to dismiss. This motion is pending, and, depending on its outcome, we may not be able to recover from our insurance the full amount of any damages we might incur in matters related to PFAS.

We are vigorously defending ourselves in these matters, which are still in their early stages, and the respective plaintiffs have not stated any specific amount of damages to be sought from the Company. As a result, an estimate of reasonably possible losses or range of losses (if any) cannot be made and the final outcomes are uncertain.

12. RELATED PARTY TRANSACTIONS

In September 2020, CAVA Group, Inc. entered into an arrangement whereby Ted Xenohristos joined the Company as its Chief Concept Officer. Mr. Xenohristos currently serves on our Board of Directors, was a founder of the Company, and has an ownership interest in CMRG, Inc. (“CMRG”).

CAVA Group, Inc. entered into a Consulting Agreement with CMRG, which is primarily owned by certain of the founders of the Company including Mr. Xenohristos. Under the terms of the Consulting Agreement, the founders provide culinary, branding, food products, and restaurant operation services to CAVA Mezze Grill in exchange for an annual consulting fee. During the sixteen weeks ended April 17, 2022, $0.1 million was paid to CMRG for consulting services under the Consulting Agreement. This arrangement was effectively terminated in December 2022.

CAVA Group, Inc. entered into a Management Services Agreement (“MSA”) with Act III Management, LLC (“Act III”), which is one of the Company’s investors and is controlled by the Company’s Chair of our Board of Directors. Act III provided consulting in the areas of information technology, strategy, finance, off-premises sales, and restaurant operations. During the sixteen weeks ended April 17, 2022, $0.3 million was paid to Act III under the MSA. This arrangement was terminated in December 2022.

13. EQUITY-BASED COMPENSATION

Stock-Based Plan—On March 16, 2015, the Company adopted the 2015 Equity Incentive Plan (the “Plan”). As of April 16, 2023, the Plan includes a total of 2,702,663 authorized shares of the Company’s common stock for issuance to employees, directors, and consultants through incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock awards, or restricted stock unit awards. During the sixteen weeks ended April 16, 2023 and April 17, 2022, the Company recognized compensation expense related to awards under the Plan of $1.2 million and $0.8 million, respectively.

Stock Options—Our Board of Directors determines the option exercise price and has granted all stock options at exercise prices that equal or exceed the fair value of the common stock on the date of grant. The terms of the options may not exceed 10 years. Vesting terms are determined by our Board of Directors and generally vest over four years of continuous service.
A summary of the Company’s stock option activity during the periods indicated is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Number Of Options</th>
<th>Exercise Price</th>
<th>Remaining Contractual Term (Years)</th>
<th>Aggregate Intrinsic Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Outstanding - December 26, 2021</strong></td>
<td>477,257</td>
<td>$13.34</td>
<td>5.8</td>
<td>$3,828</td>
</tr>
<tr>
<td>Granted</td>
<td>2,500</td>
<td>18.74</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td>(152)</td>
<td>7.96</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forfeited or expired</td>
<td>(448)</td>
<td>8.81</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Outstanding - April 17, 2022</strong></td>
<td>479,157</td>
<td>$13.38</td>
<td>5.5</td>
<td>$3,717</td>
</tr>
<tr>
<td>Exercisable - April 17, 2022</td>
<td>385,016</td>
<td>$11.40</td>
<td>5.1</td>
<td></td>
</tr>
<tr>
<td>Vested and Expected to Vest - April 17, 2022</td>
<td>479,157</td>
<td>$13.38</td>
<td>5.5</td>
<td>$3,717</td>
</tr>
<tr>
<td><strong>Outstanding - December 25, 2022</strong></td>
<td>621,033</td>
<td>15.12</td>
<td>5.9</td>
<td>$8,444</td>
</tr>
<tr>
<td>Granted</td>
<td>85,406</td>
<td>28.72</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exercised</td>
<td>(5,917)</td>
<td>7.26</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forfeited or expired</td>
<td>(11,572)</td>
<td>17.18</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Outstanding - April 16, 2023</strong></td>
<td>688,950</td>
<td>$16.84</td>
<td>6.1</td>
<td>$19,041</td>
</tr>
<tr>
<td>Exercisable - April 16, 2023</td>
<td>499,675</td>
<td>$14.15</td>
<td>4.8</td>
<td></td>
</tr>
<tr>
<td>Vested and Expected to Vest - April 16, 2023</td>
<td>688,950</td>
<td>$16.84</td>
<td>6.1</td>
<td>$19,041</td>
</tr>
</tbody>
</table>

The Company uses the Black-Scholes option-pricing model to determine the fair value of stock options. The following table reflects the weighted-average assumptions utilized in the Black-Scholes option pricing model during the sixteen weeks ended April 16, 2023:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>3.4%</th>
<th>6.2</th>
<th>45.2%</th>
<th>$13.93</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk-free interest rate</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expected term (in years)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dividend rate</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Volatility</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

As of April 16, 2023, there was $2.0 million of unrecognized compensation costs related to option awards. This cost is expected to be recognized over a period of 3.3 years.

**Restricted Stock Units**—Pursuant to the Plan, the Company is authorized to issue restricted stock units (“RSUs”). Vesting terms are determined by our Board of Directors and generally vest annually in equal installments over four years of continuous service.
A summary of the Company's restricted stock unit activity is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Number Of Units</th>
<th>Weighted-average grant price</th>
<th>Aggregate Intrinsic Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-Vested - December 26, 2021</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Granted</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Vested</td>
<td>(94,755)</td>
<td>7.94</td>
<td></td>
</tr>
<tr>
<td>Forfeited</td>
<td>(23,667)</td>
<td>7.80</td>
<td></td>
</tr>
<tr>
<td><strong>Non-Vested - April 17, 2022</strong></td>
<td>377,237</td>
<td>$ 9.64</td>
<td>$ 7,477</td>
</tr>
</tbody>
</table>

| **Non-vested - December 25, 2022** | 591,996         | 14.27                        | 16,996                    |
| Granted              | 176,764         | 28.72                        |                           |
| Vested               | (140,082)       | 13.29                        |                           |
| Forfeited            | (36,706)        | 13.77                        |                           |
| **Non-vested - April 16, 2023** | 591,972         | $ 18.99                      | $ 26,325                  |

As of April 16, 2023, there was $10.4 million of unrecognized compensation expense related to RSU awards. This cost is expected to be recognized over a period of 3.1 years.

14. NET LOSS PER SHARE

The following table sets forth the computation of net loss per common share for the periods indicated:

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Numerator:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>(2,141)</td>
<td>(20,018)</td>
</tr>
<tr>
<td><strong>Denominator:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted-Average common shares outstanding, basic and diluted</td>
<td>548,973</td>
<td>432,840</td>
</tr>
<tr>
<td><strong>Net loss per share:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic and diluted</td>
<td>(3.90)</td>
<td>(46.25)</td>
</tr>
</tbody>
</table>

The Company's potentially dilutive securities, which include preferred stock and outstanding awards under the Plan, have been excluded from the computation of diluted earnings per share as the effect would be anti-dilutive in a net loss position. The Company excluded the following potential common shares, presented based on amounts outstanding at each period end, from the computation of diluted net loss per share for the periods indicated:

<table>
<thead>
<tr>
<th></th>
<th>April 16, 2023</th>
<th>April 17, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stock options</td>
<td>688,950</td>
<td>258,501</td>
</tr>
<tr>
<td>Restricted stock units</td>
<td>591,972</td>
<td>377,237</td>
</tr>
<tr>
<td>Preferred stock (as converted to common shares)</td>
<td>31,734,518</td>
<td>31,734,518</td>
</tr>
<tr>
<td><strong>Total common stock equivalents</strong></td>
<td>33,015,440</td>
<td>32,370,256</td>
</tr>
</tbody>
</table>

15. SEGMENT REPORTING

The CODM reviews segment performance and allocates resources based upon restaurant level profit, which is defined as segment revenues less food, beverage, and packaging expenses, labor, occupancy, and other operating expenses. All segment revenue is earned in the United States, and all intersegment revenues have been eliminated.
Sales from external customers are derived principally from sales of food, beverage, and CPG. The Company does not rely on any major customers as sources of sales. As the CODM is not provided with asset information by segment, assets are reported only on a consolidated basis.

Financial information for the Company’s reportable segments was as follows for the periods presented:

<table>
<thead>
<tr>
<th></th>
<th>Sixteen weeks ended</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>April 16, 2023</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>$196,761</td>
<td>$112,006</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>3,867</td>
<td>44,741</td>
</tr>
<tr>
<td>Other</td>
<td>2,455</td>
<td>2,264</td>
</tr>
<tr>
<td>Total revenue</td>
<td>203,083</td>
<td>159,011</td>
</tr>
<tr>
<td><strong>Restaurant-Level operating expenses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>146,778</td>
<td>92,414</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>4,044</td>
<td>42,632</td>
</tr>
<tr>
<td>Other</td>
<td>1,697</td>
<td>1,821</td>
</tr>
<tr>
<td>Total Restaurant-Level operating expenses</td>
<td>152,519</td>
<td>136,867</td>
</tr>
<tr>
<td><strong>Restaurant-Level profit</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAVA</td>
<td>49,983</td>
<td>19,592</td>
</tr>
<tr>
<td>Zoes Kitchen</td>
<td>(177)</td>
<td>2,109</td>
</tr>
<tr>
<td>Other</td>
<td>758</td>
<td>443</td>
</tr>
<tr>
<td>Total Restaurant-Level profit</td>
<td>50,564</td>
<td>22,144</td>
</tr>
<tr>
<td><strong>Reconciliation of Restaurant-Level profit to loss before income taxes:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative expenses</td>
<td>29,024</td>
<td>20,937</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>12,859</td>
<td>12,819</td>
</tr>
<tr>
<td>Restructuring and other costs</td>
<td>2,215</td>
<td>1,284</td>
</tr>
<tr>
<td>Pre-opening costs</td>
<td>5,999</td>
<td>3,566</td>
</tr>
<tr>
<td>Impairment and asset disposal costs</td>
<td>2,719</td>
<td>3,431</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>25</td>
<td>343</td>
</tr>
<tr>
<td>Other income, net</td>
<td>(174)</td>
<td>(258)</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>$ (2,103)</td>
<td>$ (19,978)</td>
</tr>
</tbody>
</table>

Other includes the Company’s CPG sales from CAVA Foods.

16. **SUBSEQUENT EVENTS**

We evaluated all subsequent activity through May 19, 2023, the date these financial statements were made available to be issued, and concluded that no additional subsequent events have occurred that would require recognition or disclosure in the unaudited condensed consolidated financial statements.
CAVA
Through and including the 25th day after the date of this prospectus, all dealers that effect transactions in these shares of common stock whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligations 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 the expenses payable by the Registrant expected to be incurred in connection with the issuance and distribution of the common stock being registered hereby (other than the underwriting discounts and commissions). All of such expenses are estimates, except for the SEC registration fee, the Financial Industry Regulatory Authority Inc. (“FINRA”) filing fee, and the stock exchange listing fee.

($ in thousands)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEC registration fee</td>
<td>$</td>
</tr>
<tr>
<td>FINRA filing fee</td>
<td>$</td>
</tr>
<tr>
<td>Listing fee</td>
<td>$</td>
</tr>
<tr>
<td>Printing fees and expenses</td>
<td>$</td>
</tr>
<tr>
<td>Legal fees and expenses</td>
<td>$</td>
</tr>
<tr>
<td>Accounting fees and expenses</td>
<td>$</td>
</tr>
<tr>
<td>Blue Sky fees and expenses (including legal fees)</td>
<td>$</td>
</tr>
<tr>
<td>Transfer agent and registrar fees, and expenses</td>
<td>$</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$</strong></td>
</tr>
</tbody>
</table>

* To be completed by amendment.

Item 14. Indemnification of Directors and Officers

Section 102(b)(7) of the DGCL allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our amended and restated certificate of incorporation will provide for this limitation of liability.

Section 145 of the DGCL (“Section 145”) provides, among other things, that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending, or completed 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 is or was 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 person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation may indemnify any persons who were or are a party to any threatened, pending, or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee, or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests, provided further that no indemnification is permitted without judicial approval if the officer, director, employee, or agent is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses (including attorneys’ fees) which such officer or director has actually and reasonably incurred.
Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation or enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify such person under Section 145.

Our amended and restated bylaws will provide that we must indemnify, and advance expenses to, our directors and officers to the full extent authorized by the DGCL. We also intend to enter into indemnification agreements with our directors, which agreements will require us to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, provision of our amended and restated certificate of incorporation, our amended and restated bylaws, agreement, vote of stockholders or disinterested directors or otherwise. Notwithstanding the foregoing, we shall not be obligated to indemnify a director or officer in respect of a proceeding (or part thereof) instituted by such director or officer, unless such proceeding (or part thereof) has been authorized by our Board of Directors pursuant to the applicable procedure outlined in the amended and restated bylaws.

Section 174 of the DGCL provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held jointly and severally liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time may avoid liability by causing his or her dissent to such actions to be entered in the books containing the minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

We expect to maintain standard policies of insurance that provide coverage (1) to our directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act, and (2) to us with respect to indemnification payments that we may make to such directors and officers.

The underwriting agreement will provide for indemnification by the underwriters of us and our officers and directors, and by us of the underwriters, for certain liabilities arising under the Securities Act or otherwise in connection with this offering.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling us under any of the foregoing provisions, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

**Item 15. Recent Sales of Securities**

Within the past three years, the Registrant has granted or issued the following securities of the Registrant which were not registered under the Securities Act:

In June 2020, the Registrant issued an aggregate of 1,564,340 shares of its Series E Preferred Stock to certain accredited investors, at a price per share of $22.66, for gross proceeds of approximately $35.5 million.

In March 2021, the Registrant issued an aggregate of 5,633,803 shares of its Series F Preferred Stock to certain accredited investors, at a price per share of $37.63, for gross proceeds of approximately $212.0 million.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering. Unless otherwise stated, the sales of the above securities were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act (or Regulation D or Regulation S promulgated thereunder) or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. 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.

The information presented in this Item 15 does not give effect to the -for-1 forward stock split that was effectuated on , 2023.

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits.

See the Exhibit Index immediately preceding the signature pages hereto, which is incorporated by reference as if fully set forth herein.

(b) Financial Statement Schedules.

None.

Item 17. Undertakings.

(1) 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(2) The undersigned Registrant hereby undertakes that:

(A) 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.

(B) 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.

(3) The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

II-3
**EXHIBITS**

<table>
<thead>
<tr>
<th>Exhibit Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1*</td>
<td>Form of Underwriting Agreement.</td>
</tr>
<tr>
<td>3.1</td>
<td><em>Sixth Amended and Restated Certificate of Incorporation of the Registrant.</em></td>
</tr>
<tr>
<td>3.2</td>
<td><em>Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation of the Registrant, effective as of April 12, 2023.</em></td>
</tr>
<tr>
<td>3.3*</td>
<td><em>Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation of the Registrant, effective as of.</em></td>
</tr>
<tr>
<td>3.4*</td>
<td><em>Form of Seventh Amended and Restated Certificate of Incorporation of the Registrant.</em></td>
</tr>
<tr>
<td>3.5</td>
<td>Bylaws of the Registrant, as currently in effect.</td>
</tr>
<tr>
<td>3.6*</td>
<td><em>Form of Amended and Restated Bylaws of the Registrant.</em></td>
</tr>
<tr>
<td>5.1</td>
<td>Form of Opinion of Simpson Thacher &amp; Bartlett LLP regarding validity of the shares of common stock registered.</td>
</tr>
<tr>
<td>10.1</td>
<td>Credit Agreement, dated as of March 11, 2022, by and among CAVA Group, Inc., as the borrower, JPMorgan Chase Bank, N.A., as administrative agent, an issuing bank and swingline lender, and the other parties named therein.</td>
</tr>
<tr>
<td>10.2</td>
<td>Amendment No. 1 to the Credit Agreement, dated as of April 22, 2022, among CAVA Group, Inc., the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent.</td>
</tr>
<tr>
<td>10.3</td>
<td>Amendment No. 2 to the Credit Agreement, dated as of February 15, 2023, among CAVA Group, Inc., the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent.</td>
</tr>
<tr>
<td>10.4</td>
<td>Fifth Amended and Restated Investors’ Rights Agreement, dated as of March 26, 2021, by and among CAVA Group, Inc. and the other parties named therein.</td>
</tr>
<tr>
<td>10.5†</td>
<td>2015 Equity Incentive Plan.</td>
</tr>
<tr>
<td>10.6‡</td>
<td><em>Form of 2023 Equity Incentive Plan.</em></td>
</tr>
<tr>
<td>10.7‡</td>
<td><em>Form of 2023 Employee Stock Purchase Plan.</em></td>
</tr>
<tr>
<td>10.8‡</td>
<td><em>Form of 2023 Executive Severance Plan.</em></td>
</tr>
<tr>
<td>10.9‡</td>
<td><em>Form of Employment Agreement between CAVA Group, Inc. and Brett Schulman.</em></td>
</tr>
<tr>
<td>10.10‡</td>
<td>Employment Agreement between CAVA Group, Inc. and Tricia Tolivar, effective as of October 27, 2020.</td>
</tr>
<tr>
<td>10.11‡</td>
<td>Employment Agreement between CAVA Group, Inc. and Jennifer Somers, effective as of October 11, 2021.</td>
</tr>
<tr>
<td>21.1</td>
<td>Subsidiaries of the Registrant.</td>
</tr>
<tr>
<td>23.1</td>
<td>Consent of Deloitte &amp; Touche LLP.</td>
</tr>
<tr>
<td>23.2*</td>
<td>Consent of Simpson Thacher &amp; Bartlett LLP (included as part of Exhibit 5.1).</td>
</tr>
<tr>
<td>24.1</td>
<td>Power of Attorney (included on signature pages to this Registration Statement).</td>
</tr>
<tr>
<td>99.1</td>
<td>Consent of Lauri Shanahan to be named as director nominee.</td>
</tr>
<tr>
<td>107</td>
<td>Filing Fee Table.</td>
</tr>
</tbody>
</table>

* To be filed by amendment.
† Compensatory arrangements for director(s) and/or executive officer(s).
SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Washington, D.C., on May 19, 2023.

CAVA GROUP, INC.

By: /s/ Brett Schulman
Name: Brett Schulman
Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PEOPLE BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Robert Bertram, Amit Patel and Nicholas Antonio and each of them, the true and lawful attorneys-in-fact and agents of the undersigned, with full power of substitution and resubstitution, for and in the name, place, and stead of the undersigned, to sign in any and all capacities (including, without limitation, the capacities listed below), the registration statement, any and all amendments (including post-effective amendments) to the registration statement, and any and all successor registration statements of CAVA Group, Inc., including any filings pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, and hereby grants to such attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and anything necessary to be done to enable CAVA Group, Inc. to comply with the provisions of the Securities Act and all the requirements of the Securities and Exchange Commission, as fully to all intents and purposes as the undersigned might, or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their, or his or her substitute, or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following person in the capacities indicated on May 19, 2023.

<table>
<thead>
<tr>
<th>Signatures</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ Brett Schulman</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td></td>
<td>(principal executive officer)</td>
</tr>
<tr>
<td>Tricia Tolivar</td>
<td>Chief Financial Officer</td>
</tr>
<tr>
<td></td>
<td>(principal financial officer)</td>
</tr>
<tr>
<td>Adam Phillips</td>
<td>Chief Accounting Officer</td>
</tr>
<tr>
<td></td>
<td>(principal accounting officer)</td>
</tr>
<tr>
<td>Ronald Shaich</td>
<td>Chair of the Board of Directors</td>
</tr>
<tr>
<td>Philippe Amouyal</td>
<td>Director</td>
</tr>
<tr>
<td>/s/ David Bosserman</td>
<td></td>
</tr>
<tr>
<td>Benjamin Felt</td>
<td></td>
</tr>
<tr>
<td>/s/ Todd Klein</td>
<td></td>
</tr>
<tr>
<td>Todd Klein</td>
<td></td>
</tr>
<tr>
<td>/s/ Karen Kochevar</td>
<td></td>
</tr>
<tr>
<td>James White</td>
<td></td>
</tr>
<tr>
<td>/s/ Theodoros Xenohristos</td>
<td></td>
</tr>
</tbody>
</table>
### CAVA Group, Inc.

(Exact Name of Registrant as Specified in Its Charter)

**Table 1: Newly Registered and Carry Forward Securities**

<table>
<thead>
<tr>
<th>Security Type</th>
<th>Security Class Title</th>
<th>Fee Calculation or Carry Forward Rule</th>
<th>Amount Registered</th>
<th>Proposed Maximum Offering Price Per Unit</th>
<th>Maximum Aggregate Offering Price(^{(2)})</th>
<th>Fee Rate</th>
<th>Amount of Registration Fee</th>
<th>Carry Forward Form Type</th>
<th>Carry Forward File Number</th>
<th>Carry Forward Initial Effective Date</th>
<th>Filing Fee Previously Paid in Connection with Unsold Securities to be Carried Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity</td>
<td>Common stock, $0.0001 par value per share</td>
<td>Rule 457(o)</td>
<td>$100,000,000</td>
<td>$0.00011020</td>
<td>$11,020</td>
<td></td>
<td>$11,020</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

(2) Includes shares of our Class A common stock subject to the underwriters' option to purchase additional shares.
SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
CAVA GROUP, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Cava Group, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “General Corporation Law”),

DOES HEREBY CERTIFY:

1. That the name of this corporation is Cava Group, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on February 27, 2015 under the name Cava Group, Inc.

2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Fifth Amended and Restated Certificate of Incorporation of this corporation, and declaring said amendment and restatement to be advisable and in the best interests of this corporation, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Fifth Amended and Restated Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

ARTICLE I.
NAME

The name of this corporation is Cava Group, Inc. (the “Corporation”),

ARTICLE II.
REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle 19801. The name of its registered agent at such address is National Registered Agents, Inc.

ARTICLE III.
PURPOSE

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV.
CAPITAL STOCK

4.1 Capital Stock. The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 33,738,320 shares of Common Stock, $0.0001 par
value per share ("Common Stock"), and (ii) 37,291,370 shares of Preferred Stock, $0.0001 par value per share ("Preferred Stock"), of which 5,334,183 shares have been designated Series A Preferred Stock ("Series A Preferred Stock"), 2,577,005 shares have been designated Series B Preferred Stock ("Series B Preferred Stock"), 1,735,111 shares have been designated Series C Preferred Stock ("Series C Preferred Stock"), 1,487,696 shares have been designated Series D Preferred Stock ("Series D Preferred Stock"), 20,523,572 shares have been designated Series E Preferred Stock ("Series E Preferred Stock") and 5,633,803 shares have been designated Series F Preferred Stock ("Series F Preferred Stock").

4.1.1 General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

4.1.2 Voting. The holders of the Common Stock are entitled to one (1) vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Sixth Amended and Restated Certificate of Incorporation (this "Restated Certificate") that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Restated Certificate or pursuant to the General Corporation Law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Restated Certificate) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

4.2 Preferred Stock. The rights, preferences, powers, privileges and restrictions, qualifications and limitations granted to and imposed on the Preferred Stock are as set forth below.

4.2.1 Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in this Restated Certificate) the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount at least equal to (i) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (A) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (B) the number of shares of Common Stock issuable upon conversion of a share of the applicable series of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (ii) in the case of a dividend on any class or series that is not convertible into Common Stock, at a
rate per share of Preferred Stock determined by (A) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (B) multiplying such fraction by an amount equal to the applicable Original Issue Price (as defined below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Preferred Stock pursuant to this Section 4.2.1 shall, for each series of Preferred Stock, be calculated based upon the dividend on the class or series of capital stock that would result in the highest dividend for such series. The “Original Issue Price” shall mean (1) for Series A Preferred Stock, $8.60495 per share (the “Series A Original Issue Price”); (2) for Series B Preferred Stock, $17.20990 per share (the “Series B Original Issue Price”); (3) for Series C Preferred Stock, $20.31570 per share (the “Series C Original Issue Price”); (4) for Series D Preferred Stock, $22.66 per share (the “Series D Original Issue Price”); (5) for Series E Preferred Stock, $22.66 per share (the “Series E Original Issue Price”); (6) for Series F Preferred Stock, $37.63 per share (the “Series F Original Issue Price”), in each case subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such series.

4.2.2 Liquidation, Dissolution or Winding Up: Certain Mergers, Consolidations and Asset Sales.

(a) Preferential Payments to Holders of Series B Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), the holders of shares of Series B Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of shares of Series A Preferred Stock or Common Stock by reason of their ownership thereof and pari passu with the holders of Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, an amount per share equal to the greater of (i) the Series B Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series B Preferred Stock been converted into Common Stock pursuant to Section 4.2.5 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “Series B Liquidation Amount”). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series B Preferred Stock the full amount to which they shall be entitled under this Section 4.2.2(a), the holders of shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall share ratably and pari passu in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.
Preferential Payments to Holders of Series C Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), the holders of shares of Series C Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of shares of Series A Preferred Stock or Common Stock by reason of their ownership thereof and pari passu with the holders of Series B Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, an amount per share equal to the greater of (i) the Series C Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series C Preferred Stock been converted into Common Stock pursuant to Section 4.2.5 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “Series C Liquidation Amount”). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series C Preferred Stock the full amount to which they shall be entitled under this Section 4.2.2(b), the holders of shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall share ratably and pari passu in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

Preferential Payments to Holders of Series D Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), the holders of shares of Series D Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of shares of Series A Preferred Stock or Common Stock by reason of their ownership thereof and pari passu with the holders of Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, an amount per share equal to the greater of (i) the Series D Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series D Preferred Stock been converted into Common Stock pursuant to Section 4.2.5 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “Series D Liquidation Amount”). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series D Preferred Stock the full amount to which they shall be entitled under this Section 4.2.2(c), the holders of shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall share ratably and pari passu in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.
(d) **Preferential Payments to Holders of Series E Preferred Stock.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), the holders of shares of Series E Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of shares of Series A Preferred Stock or Common Stock by reason of their ownership thereof and pari passu with the holders of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series F Preferred Stock, an amount per share equal to the greater of (i) the Series E Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series E Preferred Stock been converted into Common Stock pursuant to Section 4.2.5 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “Series E Liquidation Amount”). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series E Preferred Stock the full amount to which they shall be entitled under this Section 4.2.2(d), the holders of shares of Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall share ratably and pari passu in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(e) **Preferential Payments to Holders of Series F Preferred Stock.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), the holders of shares of Series F Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of shares of Series A Preferred Stock or Common Stock by reason of their ownership thereof and pari passu with the holders of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, an amount per share equal to the greater of (i) the Series F Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series F Preferred Stock been converted into Common Stock pursuant to Section 4.2.5 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “Series F Liquidation Amount”). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series F Preferred Stock the full amount to which they shall be entitled under this Section 4.2.2(e), the holders of shares of Series B Preferred Stock, Series C Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall share ratably and pari passu in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.
(f) **Preferential Payments to Holders of Series A Preferred Stock.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the remaining assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the Series A Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series A Preferred Stock been converted into Common Stock pursuant to Section 4.2.5 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “**Series A Liquidation Amount**”). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the remaining assets of the Corporation available for distribution to its stockholders after the payment of all preferential amounts required to be paid to the holders of shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled under this Section 4.2.2(f), the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(g) **Payments to Holders of Common Stock.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

(h) **Deemed Liquidation Events.**

(A) **Definition.** Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of a majority of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, each such series voting as a separate class, each so elect otherwise by written notice sent to the Corporation at least ten (10) days prior to the effective date of any such event:

1. a merger or consolidation in which: (i) the Corporation is a constituent party; or (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock
that represent, immediately following such merger or consolidation, a majority, by voting power, of the capital stock of (a) the surviving or resulting corporation or (b) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(2) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one (1) or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

(B) Effecting a Deemed Liquidation Event.

(1) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 4.2.2(h)(A)(1)(i) unless the agreement or plan of merger or consolidation for such transaction (the “Merger Agreement”) provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 4.2.2(a), 4.2.2(b), 4.2.2(c), 4.2.2(d), 4.2.2(e), 4.2.2(f) and 4.2.2(g).

(2) In the event of a Deemed Liquidation Event, if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the ninetieth (90) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Preferred Stock, and (iii) if the holders of a majority of the outstanding shares of any series of Preferred Stock so request in a written instrument delivered to the Corporation no later than one-hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by the General Corporation Law governing distributions to stockholders (the “Available Proceeds”), on the one-hundred fiftieth (150th) day after such Deemed Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the Series A Liquidation Amount, Series B Liquidation Amount, Series C Liquidation Amount, Series D Liquidation Amount, Series E Liquidation Amount or Series F Liquidation Amount as applicable. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation shall ratably (in the manner set forth in Sections 4.2.2(a), 4.2.2(b), 4.2.2(c), 4.2.2(d), 4.2.2(e), and 4.2.2(f)) redeem each holder’s shares of Preferred Stock to the fullest extent of such Available Proceeds, and shall redeem the remaining shares as soon as it may
lawfully do so under the General Corporation Law governing distributions to stockholders. Upon any such redemption, each holder shall surrender the certificates being redeemed upon receipt of payment therefor. Prior to the distribution or redemption provided for in this Section 4.2.2(h)(B)(2), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

(C) **Amount Deemed Paid or Distributed.** The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation.

(D) **Allocation of Escrow.** In the event of a Deemed Liquidation Event pursuant to Section 4.2.2(h)(A)(1)(i), if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, the Merger Agreement shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 4.2.2(a), 4.2.2(b), 4.2.2(c), 4.2.2(d), 4.2.2(e), 4.2.2(f) and 4.2.2(g) as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (b) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 4.2.2(a), 4.2.2(b), 4.2.2(c), 4.2.2(d), 4.2.2(e), 4.2.2(f) and 4.2.2(g) after taking into account the previous payment of the Initial Consideration as part of the same transaction.

4.2.3 **Voting.**

(a) On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Restated Certificate, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

(b) Until the closing of a Qualified Public Offering, the Corporation shall not, either directly or indirectly, do any of the following without (in addition to any other vote required by law or by the other provisions of this Restated Certificate) the written consent or affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class on an as converted to Common Stock basis, and any such act or
transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(A) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing;

(B) initiate a bankruptcy proceeding (or consent to any involuntary bankruptcy proceeding) involving the Corporation;

(C) consummate a transaction in which the Corporation would become obligated to file periodic reports under the Securities Exchange Act of 1934, as amended;

(D) create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock, or increase the authorized number of shares of Preferred Stock or any series thereof or Common Stock or increase the authorized number of shares of any additional class or series of capital stock of the Corporation;

(E) create, or authorize the creation of, or issue, or authorize the issuance of, any debt security, create any lien or security interest securing indebtedness (except for purchase money liens or statutory liens of landlords, mechanics, materialmen, workmen, warehousemen and other similar persons arising or incurred in the ordinary course of business) or incur other indebtedness for borrowed money, including but not limited to obligations and contingent obligations under guarantees, or permit any subsidiary to take any such action with respect to any such debt security, lien, security interest or other indebtedness for borrowed money, if the aggregate indebtedness of the Corporation and its subsidiaries for borrowed money following such action would exceed $10,000,000, in each case other than equipment leases or bank lines of credit;

(F) create any mortgage, pledge or other security interest in all or substantially all of the property of the Corporation and its subsidiaries, taken as a whole;

(G) enter into or effect any transaction or series of related transactions outside the ordinary course of business involving the purchase, lease, license or other acquisition (including by merger, consolidation, acquisition of stock or acquisition of assets) by the Corporation or any of its subsidiaries of any assets and/or equity interests of any person for a purchase price in excess of $10,000,000;

(H) enter into or effect any transaction or series of related transactions involving the sale, lease, license or other disposition (including by merger, consolidation, sale of stock or sale of assets) by the Corporation or any of its subsidiaries of all or substantially all of the property of the Corporation and its subsidiaries, taken as a whole; or

(I) enter into any transaction that would constitute a related party transaction requiring disclosure pursuant to Item 404 of Regulation S-K, if the Corporation were a registrant under the Securities Exchange Act of 1934, as amended (provided that any shares of capital stock held by any “related person” interested in such transaction shall be
disregarded in determining whether the approval required by this Section 4.2.3(b)(1) has been obtained in respect of such related party transaction).

4.2.4 **Series B, Series C, Series D, Series E and Series F Preferred Stock Protective Provisions.** At any time when at least 3,694,874 shares of (i) Series B Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock), (ii) shares of Series C Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock), (iii) shares of Series D Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Preferred Stock), (iv) shares of Series E Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series E Preferred Stock), and (v) shares of Series F Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series F Preferred Stock), in the aggregate, are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or by the other provisions of the Restated Certificate) the written consent or affirmative vote of the holders of a majority of the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock given in writing or by vote at a meeting, consenting or voting (as the case may be) as a single class on an as converted to Common Stock basis, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(a) amend, alter or repeal any provision of this Restated Certificate or Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock;

(b) create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock unless the same ranks junior to the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock or increase the authorized number of shares of any additional class or series of capital stock unless the same ranks junior to the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;

(c) reclassify, alter or amend any existing security of the Corporation that is pari passu with the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock in respect of the
distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series F Preferred Stock in respect of any such right, preference or privilege;

(d) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series F Preferred Stock as expressly authorized herein, (ii) dividends or other distributions on the Common Stock solely in the form of additional shares of Common Stock, (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof or (iv) repurchases of stock in connection with the Tender Offer (as defined in the Series E Preferred Stock Purchase Agreement, dated as of August 16, 2018, between the Company and the Purchasers named therein); or

(e) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary.

4.2.4A Series D Preferred Stock Protective Provisions. At any time when at least 500,000 shares of Series D Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the by the other provisions of the Restated Certificate) the written consent or affirmative vote of the holders of at least a majority of the Series D Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(a) amend, alter or repeal any provision of this Restated Certificate or Bylaws of the Corporation in a manner that would alter or change the powers, preferences, or
special rights of the Series D Preferred Stock so as to affect the Series D Preferred Stock adversely, but not so affect the entire class of Preferred Stock; provided, however, that the Series D Preferred Stock shall not be deemed to be affected in a different manner than the entire class of Preferred Stock as a result of the authorization and/or issuance by the Corporation of any equity security (including any other security convertible into or exercisable for any such equity security) having a different issue price, liquidation preference rights and/or redemption rights; or

(b) increase or decrease the number of authorized shares of Series D Preferred Stock.

4.2.4B Series E Preferred Stock Protective Provisions. At any time when at least 500,000 shares of Series E Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series E Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the by the other provisions of the Restated Certificate) the written consent or affirmative vote of the holders of at least a majority of the Series E Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(a) amend, alter or repeal any provision of this Restated Certificate or Bylaws of the Corporation in a manner that would alter or change the powers, preferences, or special rights of the Series E Preferred Stock so as to affect the Series E Preferred Stock adversely, but not so affect the entire class of Preferred Stock; provided, however, that the Series E Preferred Stock shall not be deemed to be affected in a different manner than the entire class of Preferred Stock as a result of the authorization and/or issuance by the Corporation of any equity security (including any other security convertible into or exercisable for any such equity security) having a different issue price, liquidation preference rights and/or redemption rights; or

(b) increase or decrease the number of authorized shares of Series E Preferred Stock.

4.2.4C Series F Preferred Stock Protective Provisions. At any time when at least 250,000 shares of Series F Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series F Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the by the other provisions of the Restated Certificate) the written consent or affirmative vote of the holders of at least a majority of the Series F Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) as a separate class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

(a) amend, alter or repeal any provision of this Restated Certificate or Bylaws of the Corporation in a manner that would alter or change the powers, preferences, or special rights of the Series F Preferred Stock so as to affect the Series F Preferred Stock
adversely, but not so affect the entire class of Preferred Stock; provided, however, that the Series F Preferred Stock shall not be deemed to be affected in a different manner than the entire class of Preferred Stock as a result of the authorization and/or issuance by the Corporation of any equity security (including any other security convertible into or exercisable for any such equity security) having a different issue price, liquidation preference rights and/or redemption rights; or

(b) increase or decrease the number of authorized shares of Series F Preferred Stock.

4.2.5 Optional Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the “Conversion Rights”):

(a) Right to Convert.

(A) Conversion Ratio. Each share of Preferred Stock shall be convertible, without the payment of additional consideration by the holder thereof at the option of the holder thereof, at any time and from time to time, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price for such Preferred Stock by the applicable Conversion Price (as defined below) in effect at the time of conversion. The “Conversion Price” per share shall initially be equal to (i) in the case of the Series A Preferred Stock, the Series A Original Issue Price, (ii) in the case of the Series B Preferred Stock, the Series B Original Issue Price, (iii) in the case of the Series C Preferred Stock, the Series C Original Issue Price, (iv) in the case of the Series D Preferred Stock, the Series D Original Issue Price, (v) in the case of the Series E Preferred Stock, the Series E Original Issue Price and (vi) in the case of the Series F Preferred Stock, the Series F Original Issue Price. Such initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(B) Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(c) Mechanics of Conversion.

(A) Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of such Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock (or, if such
registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for such Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder’s name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the “Conversion Time”), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Section 4.2.5(b) in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

(B) Reservation of Shares. The Corporation shall at all times when any Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Restated Certificate. Before taking any action which would cause an adjustment reducing the Conversion Price for any series of Preferred Stock below the then par value of the shares of Common Stock issuable upon conversion of such series, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(C) Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be
outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Section 4.2.5(b) and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of the series of Preferred Stock to which such shares belonged, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(D) **No Further Adjustment.** Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

(E) **Taxes.** The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4.2.5. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) **Adjustments to Conversion Price for Diluting Issues.**

(A) **Special Definitions.** For purposes of this Section 4.2.5, the following definitions shall apply:

1. **“Option”** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

2. **“Filing Date”** shall mean the date on which this Restated Certificate is accepted for filing by the Secretary of State of Delaware.

3. **“Convertible Securities”** shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

4. **“Additional Shares of Common Stock”** shall mean all shares of Common Stock issued (or, pursuant to Section 4.2.5(d)(C) below, deemed to be issued) by the Corporation after the Filing Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (collectively, the “Exempted Securities”):

   i. shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Preferred Stock;
(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 4.2.5(e) through (h);

(iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement, or arrangement approved by the Board of Directors of the Corporation;

(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security; and

(v) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors of the Corporation;

(B) No Adjustment of Conversion Price. No adjustment in the Conversion Price for a series of Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of a majority of the then-outstanding shares of such series, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(C) Deemed Issue of Additional Shares of Common Stock.

(1) If the Corporation at any time or from time to time after the Filing Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(2) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price of a series of Preferred Stock pursuant to the terms of Section 4.2.5(d)(D), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar
provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of
Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any
increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective
upon such increase or decrease becoming effective, the Conversion Price for such series computed upon the original issue of such
Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion
Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible
Security. Notwithstanding the foregoing, no readjustment pursuant to this Section 4.2.5(d)(C)(2) shall have the effect of increasing
the Conversion Price of a series of Preferred Stock to an amount which exceeds the lower of (i) the Conversion Price for such series
in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii)
the Conversion Price for such series that would have resulted from any issuances of Additional Shares of Common Stock (other than
deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security)
between the original adjustment date and such readjustment date.

(3) If the terms of any Option or Convertible Security (excluding Options or Convertible
Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price
for a series of Preferred Stock pursuant to the terms of Section 4.2.5(d)(D) (either because the consideration per share (determined
pursuant to Section 4.2.5(d)(E)) of the Additional Shares of Common Stock subject thereto was equal to or greater than the
Conversion Price then in effect for such series, or because such Option or Convertible Security was issued before the Filing Date),
are revised after the Filing Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such
Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions
of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon
the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to
the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted,
and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section 4.2.5(d)(C)(1)) shall be
deemed to have been issued effective upon such increase or decrease becoming effective.

(4) Upon the expiration or termination of any unexercised Option or unconverted or
unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its
terms) in an adjustment to the Conversion Price for a series of Preferred Stock pursuant to the terms of Section 4.2.5(d)(D), the
Conversion Price for such series shall be readjusted to such Conversion Price as would have obtained had such Option or
Convertible Security (or portion thereof) never been issued.

(5) If the number of shares of Common Stock issuable upon the exercise, conversion and/or
exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion
and/or exchange, is
calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price for a series of Preferred Stock provided for in this Section 4.2.5(d)(C) shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (2) and (3) of this Section 4.2.5(d)(C)). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price for a series of Preferred Stock that would result under the terms of this Section 4.2.5(d)(C) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Filing Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.2.5(d)(C)), without consideration or for a consideration per share less than the Conversion Price for a series of Preferred Stock in effect immediately prior to such issue, then the Conversion Price for such series shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

\[ CP_2 = CP_1 \times \frac{(A + B)}{(A + C)}. \]

For purposes of the foregoing formula, the following definitions shall apply:

1. “\( CP_2 \)” shall mean the Conversion Price for such series in effect immediately after such issue of Additional Shares of Common Stock;

2. “\( CP_1 \)” shall mean the Conversion Price in effect for such series immediately prior to such issue of Additional Shares of Common Stock;

3. “\( A \)” shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

4. “\( B \)” shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to \( CP_1 \) (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by \( CP_1 \)); and
(5) “C” shall mean the number of such Additional Shares of Common Stock issued or deemed issued in such transaction.

(E) **Determination of Consideration.** For purposes of this Section 4.2.5(d)(E), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) **Cash and Property:** Such consideration shall: (i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest; (ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and (iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(2) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4.2.5(d)(C), relating to Options and Convertible Securities, shall be determined by dividing the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(F) **Multiple Closing Dates.** In the event the Corporation shall issue on more than one (1) date Additional Shares of Common Stock that are a part of one (1) transaction or a series of related transactions and that would result in an adjustment to the Conversion Price of a series of Preferred Stock pursuant to the terms of Section 4.2.5(d)(D) then, upon the final such issuance, such Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(c) **Adjustment for Stock Splits and Combinations.** If the Corporation shall at any time or from time to time after the Filing Date effect a subdivision of the outstanding Common Stock, the Conversion Price in effect for each series of Preferred Stock immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in
proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Filing Date combine the outstanding shares of Common Stock, the Conversion Price in effect for each series of Preferred Stock immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) *Adjustment for Certain Dividends and Distributions.* In the event the Corporation at any time or from time to time after the Filing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price in effect for each series of Preferred Stock immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying each such Conversion Price then in effect by a fraction:

(A) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(B) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, each Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each such Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) no such adjustment shall be made to a Conversion Price if the holders of the applicable series of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of such series had been converted into Common Stock on the date of such event.

(g) *Adjustments for Other Dividends and Distributions.* In the event the Corporation at any time or from time to time after the Filing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 4.2.1 do not apply to such dividend or distribution, then and in each such event the holders of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if
all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(h) **Adjustment for Merger or Reorganization, etc.** Subject to the provisions of Section 4.2.2(h), if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not all series of Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Sections 4.2.5(d), (f) or (g)), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock not converted or exchanged shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one (1) share of such series of Preferred Stock immediately prior to such event would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4.2.5(h) with respect to the rights and interests thereafter of the holders of such Preferred Stock, to the end that the provisions set forth in this Section 4.2.5(h) (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of such Preferred Stock. For the avoidance of doubt, nothing in this Section 4.2.5(h) shall be construed as preventing the holders of Preferred Stock from seeking any appraisal rights to which they are otherwise entitled under the General Corporation Law in connection with a merger triggering an adjustment hereunder, nor shall this Section 4.2.5(h) be deemed conclusive evidence of the fair value of the shares of Preferred Stock in any such appraisal proceeding.

(i) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Price for a series of Preferred Stock pursuant to this Section 4.2.5, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which such series of Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the applicable Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of such Preferred Stock.
(j) **Notice of Record Date.** In the event:

(A) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(B) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(C) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation, then, and in each such case, the Corporation will send or cause to be sent to the holders of Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of such Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to such Preferred Stock and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

4.2.6 **Mandatory Conversion.**

(a) **Trigger Events.** Upon either (a) the closing of a Qualified Public Offering (as defined below) or (b) for a series of Preferred Stock, the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the shares of such series of Preferred Stock (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the “Mandatory Conversion Time”), (i) all outstanding shares of Preferred Stock, or, if pursuant to clause (b) above, all outstanding shares of the applicable series of Preferred Stock, shall automatically be converted into shares of Common Stock, at the then effective conversion rate as calculated pursuant to Section 4.2.5(a)(A) and (ii) such shares may not be reissued by the Corporation. “Qualified Public Offering” shall mean a firmly underwritten public offering of Common Stock at a price per share that is at least one and a half times the Series F Original Issue Price, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock, with gross offering proceeds in excess of Fifty Million Dollars ($50,000,000).

(b) **Procedural Requirements.** All holders of record of applicable shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 4.2.6. Such notice need not be sent in advance of the occurrence of the Mandatory
Conversion Time. Upon receipt of such notice, each holder of such shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Section 4.2.6(a), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Section 4.2.6(b). As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for the shares of Preferred Stock being converted, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Section 4.2.5(b) in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of the series to which such shares of stock belonged, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

4.2.7 Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of such Preferred Stock following redemption.

4.2.8 Waiver. Any of the rights, powers, preferences and other terms of a series of Preferred Stock set forth herein may be waived on behalf of all holders of such series by the affirmative written consent or vote of the holders of a majority of the then-outstanding shares of such series.

4.2.9 Notices. Any notice required or permitted by the provisions of this Article IV to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.
ARTICLE V.
STOCKHOLDER ACTION

Meetings of stockholders may be held within or without the State of Delaware, as the bylaws of the Corporation may provide. Any action required or permitted by the General Corporation Law to be taken at a stockholders’ meeting may be taken without a meeting if the action is taken by stockholders having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all stockholders entitled to vote on the action were present and voted. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE VI.
INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

6.1 Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any current or former director or officer of the Corporation (an “Indemnified Person”) who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “Proceeding”), by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees) reasonably incurred by such Indemnified Person in such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.3, the Corporation shall be required to indemnify an Indemnified Person in connection with a Proceeding (or part thereof) commenced by such Indemnified Person only if the commencement of such Proceeding (or part thereof) by the Indemnified Person was authorized in advance by the Board of Directors.

6.2 Advancement of Expenses of Directors and Officers. The Corporation shall pay the expenses (including attorneys’ fees) incurred by an Indemnified Person in defending any Proceeding in advance of its final disposition; provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Article VI or otherwise and the advancement of such expenses has been authorized by the Board of Directors.

6.3 Claims by Directors and Officers. If a claim for indemnification or advancement of expenses under this Article VI is not paid in full within thirty (30) days after a written claim therefor by the Indemnified Person has been received by the Corporation, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such
action the Corporation shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

6.4 Indemnification of Employees and Agents. The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorney’s fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board of Directors in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board of Directors.

6.5 Advancement of Expenses of Employees and Agents. The Corporation may pay the expenses (including attorney’s fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board of Directors.

6.6 Non-Exclusivity of Rights. The rights conferred on any person by this Article VI shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of this Restated Certificate, the Bylaws of the Corporation, agreement, vote of stockholders or disinterested directors or otherwise.

6.7 Insurance. The Board of Directors may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation’s expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this Article VI; and (b) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article VI.

6.8 Primary Obligation. With the intent that the Corporation shall be the primary source of funds for any advancement or indemnification obligation for the benefit of a director of the Corporation hereunder, the Corporation shall have no right to seek contribution or other reimbursement from any other party (other than pursuant to insurance policies procured by the Corporation and indemnity arrangements entered into in writing with the Corporation) with an obligation (under contract, law or otherwise) to indemnify or advance expenses of a director of the Corporation.

6.9 Amendment or Repeal. Any repeal or amendment of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any person in
respect of any act or omission occurring prior to the time of such repeal or modification. The rights provided hereunder shall inure to the benefit of any Indemnified Person and such person’s heirs, executors and administrators.

ARTICLE VII.
LIABILITY OF DIRECTORS

No director of the Corporation will be personally liable to the Corporation or its stockholders for monetary damages for conduct as a director; provided that this Article VII shall not eliminate the liability of a director for any act or omission for which such elimination of liability is not permitted under the General Corporation Law, including but not limited to (a) any breach of the director’s duty of loyalty to the Corporation or its stockholders, (b) acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, (c) any unlawful distribution under the General Corporation Law, or (d) any transaction from which the director derived an improper personal benefit. Any amendment or repeal of this Article VII or the General Corporation Law shall not adversely affect any right or protection of a director of the Corporation for or with respect to acts or omissions of such director which occur prior to the effective date of the amendment or repeal.

ARTICLE VIII.
AMENDMENT

This Restated Certificate may be amended, altered, changed or repealed with the written consent or affirmative approval of the holders of a majority of the shares outstanding voting together as a single class on an as converted basis, except as otherwise provided by the other provisions of this Restated Certificate.

ARTICLE IX.
MISCELLANEOUS

9.1 Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

9.2 The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “Excluded Opportunity” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, “Covered Persons”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation.

9.3 The Corporation hereby elects not be governed by Section 203 of the General Corporation Law.
9.4 Notwithstanding any provision of law, the Corporation may, by contract, grant to some or all of the security holders of the Corporation preemptive rights to acquire stock of the Corporation, but no stockholders shall have any preemptive rights except as specifically granted.

9.5 For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Restated Certificate from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board of Directors (in addition to any other consent required under this Restated Certificate), such repurchase may be made without regard to any “preferential dividends arrears amount” or “preferential rights amount” (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any “preferential dividends arrears amount” or “preferential rights amount” (as those terms are defined therein) shall be deemed to be zero (0).

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This Sixth Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation’s Fifth Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

[Signature Page Follows]
IN WITNESS WHEREOF, this Sixth Amended and Restated Certificate of Incorporation have been executed by a duly authorized officer of this corporation on this 26th day of March, 2021.

CAVA GROUP, INC.

By:  

/s/ Brett Schulman
Brett Schulman, President
CERTIFICATE OF AMENDMENT TO
SIXTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
CAVA GROUP, INC.

Cava Group, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “General Corporation Law”),

DOES HEREBY CERTIFY:

1. Pursuant to Section 242 of the General Corporation Law, this Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation (this “Amendment”) amends the provisions of the Sixth Amended and Restated Certificate of Incorporation of the Corporation (the “Certificate”).

2. This Amendment has been approved and duly adopted by the Corporation’s Board of Directors and written consent of the stockholders has been given in accordance with the provisions of Sections 228 and 242 of the General Corporation Law, and the provisions of the Certificate.

3. Section 4.1 of Article IV of the Certificate is hereby amended and restated in its entirety to read as set forth below:

   The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 50,000,000 shares of Common Stock, $0.0001 par value per share (“Common Stock”), and (ii) 37,291,370 shares of Preferred Stock, $0.0001 par value per share (“Preferred Stock”), of which 5,334,183 shares have been designated Series A Preferred Stock (“Series A Preferred Stock”), 2,577,005 shares have been designated Series B Preferred Stock (“Series B Preferred Stock”), 1,735,111 shares have been designated Series C Preferred Stock (“Series C Preferred Stock”), 1,487,696 shares have been designated Series D Preferred Stock (“Series D Preferred Stock”), 20,523,572 shares have been designated Series E Preferred Stock (“Series E Preferred Stock”) and 5,633,803 shares have been designated Series F Preferred Stock (“Series F Preferred Stock”).

   * * * * *
IN WITNESS WHEREOF, this Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 12th day of April, 2021.

CAVA GROUP, INC.

/s/ Brett Schulman

Name: Brett Schulman
Title: President and CEO

Signature Page To Certificate Of Amendment To The
Sixth Amendment And Restated Certificate Of Incorporation Of Cava Group, Inc.
BYLAWS
OF
CAVA GROUP, INC.
(A DELAWARE CORPORATION)

ARTICLE I
OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be as set forth in the Certificate of Incorporation of the corporation or as otherwise designated by the Board of Directors of the corporation.

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II
CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, “Corporate Seal Delaware.” Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III
STOCKHOLDERS’ MEETINGS

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law (“DGCL”).

Section 5. Annual Meeting.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation’s notice of meeting of stockholders; (ii) by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in the following paragraph, who
is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5.

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws: (i) the stockholder must have given timely notice thereof in writing to the Secretary; (ii) such other business must be a proper matter for stockholder action under the DGCL; (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in this Section 5(b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation’s voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation’s voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice; and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 5. To be timely, a stockholder’s notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year’s annual meeting; provided, however, that in the event that the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30 days after the anniversary of the preceding year’s annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made if such announcement is made less than 100 days prior to the date of such meeting. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder’s notice as described above. Such stockholder’s notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the “1934 Act”) and Rule 14a-4(d) thereunder (including such person’s written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made: (1) the name and address of such stockholder, as they appear on the corporation’s books, and of such beneficial owner; (2) the
class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner; and (3) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation’s voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation’s voting shares to elect such nominee or nominees (an affirmative statement of such intent, a “Solicitation Notice”).

(c) Notwithstanding anything in the second sentence of Section 5(b) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least 100 days prior to the first anniversary of the preceding year’s annual meeting, a stockholder’s notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section 5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 5. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(e) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders’ meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(f) For purposes of this Section 5, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by: (i) the Chairman of the Board of Directors; (ii) the Chief Executive Officer; (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized
directorships at the time any such resolution is presented to the Board of Directors for adoption); or (iv) by the holders of shares entitled to cast not less than 25% of the votes at the meeting, and shall be held at such place, on such date, and at such time as the Board of Directors shall fix.

(b) If a special meeting is properly called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than 35 nor more than 120 days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

Section 7. Notice of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereof in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute, or by the Certificate of Incorporation or these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of
directors, the affirmative vote of a majority of shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at a duly constituted meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, or the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at a duly constituted meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by statute, or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute, or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy duly authorized at a duly constituted meeting shall be the act of such class or classes or series.

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting in accordance with Section 7.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 37 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three years from its date of creation unless the proxy provides for a longer period.

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one vote, such person’s act binds all; (b) if more than one vote, the act of the majority so voting binds all; (c) if more than one vote,
but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in Section 217(b) of the DGCL. If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even split for the purpose of subsection (c) of Section 217 of the DGCL shall be a majority or even split in interest.

Section 12. List of Stockholders. The Secretary shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably accessible electronic network or otherwise; provided that the information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

Section 13. Action Without Meeting.

(a) Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, or by electronic transmission setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

(b) Every written consent or electronic transmission shall bear the date of signature of each stockholder who signs the consent, and no written consent or electronic transmission shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered to the corporation in the manner herein required, written consents or electronic transmissions signed by a sufficient number of stockholders to take action are delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation’s registered office shall be by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take action were delivered to the corporation as provided in Section 228(c) of the DGCL. If the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate
filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

(d) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section; provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine: (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder; and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in the state of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation’s registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board of Directors of the corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

Section 14. Organization.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman of the Board of Directors has not been appointed or is absent, the Chief Executive Officer, or, if the Chief Executive Officer is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the Chief Executive Officer, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting.
to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV
DIRECTORS

Section 15. Number and Term of Office. Subject to the terms of the Certificate of Incorporation, the authorized number of directors of the corporation shall be fixed by resolution of the Board of Directors from time to time. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient.

Section 16. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 17. Term of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders for a term of one year, provided that, irrespective of the foregoing term, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 18. Vacancies. Unless otherwise provided in the Certificate of Incorporation, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director; provided, however, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director’s successor shall have been elected.
and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

Section 19. Resignation. Any director may resign at any time by delivering notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 20. Removal. Subject to any limitations imposed by applicable law or the Certificate of Incorporation, any director may be removed during his or her term of office, either with or without cause, only by the affirmative vote of the holders of a majority of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the affirmative vote of the holders of a majority of such stock represented at the meeting or pursuant to written consent.

Section 21. Meetings.

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, including a voice-messaging system or other system designated to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for a regular meeting of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board of Directors, the Chief Executive Officer or any director.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal
business hours, at least 24 hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, postage prepaid at least three days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) **Waiver of Notice.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 22. **Quorum and Voting.**

(a) Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the number of directors duly elected and serving but in no event less than one-third of the authorized number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; provided, however, at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 23. **Action Without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 24. **Fees and Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude
Section 25. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and the Certificate of Incorporation, and as provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval; or (ii) adopting, amending or repealing any bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws or by the Certificate of Incorporation.

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 25 may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and
place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any
time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such
special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the
meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the
creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the
transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such
committee.

Section 26. Organization. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman of
the Board of Directors has not been appointed or is absent, the Chief Executive Officer, or if the Chief Executive Officer is absent,
the most senior Vice President (if a director) or, in the absence of any such person, a chairman of the meeting chosen by a majority
of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary directed to do so by
the Chief Executive Officer, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 27. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of
Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the
Secretary, the Chief Technology Officer, the Chief Financial Officer, the Treasurer and the Controller, all of whom shall be elected at
the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant
Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall
deeem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate.
Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law.
The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of
Directors.

Section 28. Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall
have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be
removed in accordance with Section 31. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the
Board of Directors.

(b) Duties of Chairman of the Board of Directors. The Chairman of the Board of Directors, when present, shall
preside at all meetings of the stockholders and the Board of Directors. If the Chairman is unable to preside at such a meeting, the
Chairman may appoint another member of the Board of Directors as the Chairman pro tempore to preside at such
meeting, and in the absence of such an appointment, the Board of Directors may appoint a member of the Board of Directors as the Chairman pro tempore. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no Chief Executive Officer or President elected and serving, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 28.

(c) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, if a Chairman of the Board of Directors has not been appointed or is not present or such Chairman has appointed a Chairman pro tempore. The Chief Executive Officer shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(d) Duties of President. If no officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation and shall have all of the powers of the Chief Executive Officer set forth above. The President shall perform such duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer (if a Chief Executive Officer has been appointed) shall designate from time to time.

(e) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the Chief Executive Officer or the President in the absence or disability of the Chief Executive Officer, the President, and the Chief Technology Officer or whenever the offices of Chief Executive Officer, the President, and the Chief Technology Officer are vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

(f) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The Chief Executive Officer may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other
duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

(g) **Duties of Chief Technology Officer.** The Chief Technology Officer may assume and perform the duties of the Chief Executive Officer or the President in the absence or disability of the Chief Executive Officer and the President or whenever the offices of Chief Executive Officer and the President are vacant. The Chief Technology Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

(h) **Duties of Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time. The Chief Executive Officer may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

Section 29. **Delegation of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 30. **Resignations.** Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Chief Executive Officer or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 31. **Removal.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.
ARTICLE VI
EXECUTION OF CORPORATE INSTRUMENTS AND VOTING
OF SECURITIES OWNED BY THE CORPORATION

Section 32. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 33. Voting of Securities Owned by the Corporation. All stock and other securities of other entities owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII
SHARES OF STOCK

Section 34. Form and Execution of Certificates. The shares of the corporation shall be represented by certificates, or shall be uncertificated. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation represented by certificate shall be entitled to have a certificate signed by or in the name of the corporation by such officers as provided for in Section 158 of the DGCL certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 35. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate or certificates of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost,
stolen, or destroyed certificate or certificates, or the owner’s legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate or certificates alleged to have been lost, stolen, or destroyed.

Section 36. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) Subject to the Certificate of Incorporation, the corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 37. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action
taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation’s registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 38. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII
OTHER SECURITIES OF THE CORPORATION

Section 39. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 34), may be signed by the Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Chief Financial Officer or Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or
on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX
DIVIDENDS

Section 40. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 41. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X
FISCAL YEAR

Section 42. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI
INDEMNIFICATION

Section 43. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.

(a) Directors and Officers. The corporation shall indemnify its directors and officers to the fullest extent not prohibited by the DGCL or any other applicable law; provided, however, that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, provided, further, that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless: (i) such indemnification is expressly required to be made by law; (ii) the proceeding was authorized by the Board of Directors of the corporation; (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law; or (iv) such indemnification is required to be made under subsection (d) of this Section 43.
(b) **Employees and Other Agents.** The corporation shall have power to indemnify its non-officer employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

(c) **Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding; provided, however, that, if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 43 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to subsection (e) of this Section 43, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation, in which event this subsection shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made: (i) by a majority vote of a quorum of directors who were not parties to the proceeding, even if not a quorum; or (ii) by a committee of such directors designated by a majority of such directors, even though less than a quorum; or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) **Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this Bylaw to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if: (i) the claim for indemnification or advances is denied, in whole or in part; or (ii) no disposition of such claim is made within 90 days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the
claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Article XI or otherwise shall be on the corporation.

(e) Non Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL, or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

(h) Amendments. Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

(i) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law. If this Section 43 shall be invalid due to the application of the indemnification provisions of another jurisdiction,
then the corporation shall indemnify each director and officer to the full extent under applicable law.

(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(1) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(2) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(3) The term the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(4) References to a “director,” “executive officer,” “officer,” “employee,” or “agent” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(5) References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Bylaw.
ARTICLE XII
NOTICES

Section 44. Notices.

(a) Notice to Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by United States mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), or as provided for in Section 21 of these Bylaws. If such notice is not delivered personally, it shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person with Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under the DGCL, any notice given under the provisions of the DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom
such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

ARTICLE XIII

AMENDMENTS

Section 45. Amendments. The Board of Directors is expressly empowered to adopt, amend or repeal Bylaws of the corporation. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

RIGHT OF FIRST REFUSAL

Section 46. Right of First Refusal; Restriction on Transfer Without Approval of Board of Directors.

(a) No stockholder shall sell, assign, pledge, or in any manner transfer any of the shares of common stock of the corporation (excluding shares of common stock issued upon the conversion of preferred stock of the corporation) or any right or interest therein, whether voluntarily or by operation of law, or by gift or otherwise, except by a transfer which meets the requirements hereinafter set forth in this Section 46(a):

(1) If the stockholder desires to sell or otherwise transfer any of his shares of common stock, then the stockholder shall first give written notice thereof to the corporation. The notice shall name the proposed transferee and state the number of shares to be transferred, the proposed consideration, and all other terms and conditions of the proposed transfer.

(2) For 30 days following receipt of such notice, the corporation shall have the option to purchase all or a portion of the shares specified in the notice at the price and upon the terms set forth in such notice. In the event of a gift, property settlement or other transfer in which the proposed transferee is not paying the full price for the shares, and that is not otherwise exempted from the provisions of this Section 46(a), the price shall be deemed to be the fair market value of the stock at such time as determined in good faith by the Board of Directors. In the event the corporation elects to purchase all of the shares or a lesser portion of the shares, it shall give written notice to the transferring stockholder of its election and settlement for said shares shall be made as provided below Section 46(a)(4).

(3) The corporation may assign its rights hereunder.
(4) In the event the corporation and/or its assignee(s) elect to acquire any of the shares of the transferring stockholder as specified in said transferring stockholder’s notice, the Secretary shall so notify the transferring stockholder and settlement thereof shall be made in cash within 30 days after the Secretary receives said transferring stockholder’s notice; provided that if the terms of payment set forth in said transferring stockholder’s notice were other than cash against delivery, the corporation and/or its assignee(s) shall pay for said shares on the same terms and conditions set forth in said transferring stockholder’s notice.

(5) In the event the corporation and/or its assignee(s) do not elect to acquire all of the shares specified in the transferring stockholder’s notice, said transferring stockholder may, within the 60-day period following the expiration of the option rights granted to the corporation and/or its assignee(s) herein, transfer the shares specified in said transferring stockholder’s notice which were not acquired by the corporation and/or its assignee(s) as specified in said transferring stockholder’s notice. All shares so sold by said transferring stockholder shall continue to be subject to the provisions of this Section 46(a) in the same manner as before said transfer.

(b) In addition to the restriction set forth in Section 46(a) above, no stockholder shall sell, assign, pledge, or in any manner transfer any of the shares of common stock of the corporation (excluding shares of common stock issued upon the conversion of preferred stock of the corporation) or any right or interest therein, whether voluntarily or by operation of law, or by gift or otherwise without the prior consent of the corporation, upon duly authorized action of its Board of Directors. Without in any way limiting the basis on which the corporation may elect not to consent to a sale, assignment, pledge or transfer, the corporation does not at any time intend to consent to any requested sale, assignment, pledge or transfer: (i) to individuals, companies or any other form of entity identified by the Company as a potential competitor or considered by the corporation to be unfriendly; (ii) if such sale, assignment, pledge or transfer increases the risk of the corporation having a class of security held of record by five hundred or more persons, as described in Section 12(g) of the 1934 Act, and Rule 12g5-1 promulgated thereunder, or otherwise requiring the corporation to register any class of securities under the 1934 Act; (iii) if such sale, assignment, pledge or transfer would result in the loss of any federal or state securities law exemption relied upon by the corporation in connection with the initial issuance of such shares or the issuance of any other securities; (iv) if such sale, assignment, pledge or transfer is facilitated in any manner by any public posting, message board, trading portal, internet site, or similar method of communication, including without limitation any trading portal or internet site intended to facilitate secondary transfers of securities; (v) if such sale, assignment, pledge or transfer is to be effected in a brokered transaction; or (vi) if such sale, assignment, pledge or transfer represents a sale, assignment, pledge or transfer of less than all of the shares then held by the stockholder and its affiliates or is to be made to more than a single transferee. All shares sold, assigned, pledged or transferred with the corporation’s consent pursuant to this Section 46(b) shall continue to be subject to the provisions of this Section 46(b) in the same manner as before said sale, assignment, pledge or transfer.
Anything to the contrary contained herein notwithstanding, the following transactions shall be exempt from the provisions of this Section 46:

1. A stockholder’s transfer of any or all shares held either during such stockholder’s lifetime or on death by will or intestacy to such stockholder’s immediate family or to any custodian or trustee for the account of such stockholder or such stockholder’s immediate family or to any limited partnership of which the stockholder, members of such stockholder’s immediate family or any trust for the account of such stockholder or such stockholder’s immediate family will be the general of limited partner(s) of such partnership. “Immediate family” as used herein shall mean spouse, domestic partner, lineal descendant, father, mother, brother, or sister of the stockholder making such transfer.

2. A stockholder’s transfer of any or all of such stockholder’s shares to the corporation.

3. A corporate stockholder’s transfer of any or all of its shares pursuant to and in accordance with the terms of any merger, consolidation, reclassification of shares or capital reorganization of the corporate stockholder, or pursuant to a sale of all or substantially all of the stock or assets of a corporate stockholder.

4. A corporate stockholder’s transfer of any or all of its shares to any or all of its stockholders.

5. A transfer by a stockholder that is a limited or general partnership to any or all of its partners or former partners.

6. A transfer by a stockholder that is a limited liability company to any or all of its members or former members.

In any such case, the transferee, assignee, or other recipient shall receive and hold such stock subject to the provisions of this Section 46, and there shall be no further transfer of such stock except in accord with this Section 46.

The provisions of this Section 46 may be waived with respect to any transfer either by the corporation, upon duly authorized action of its Board of Directors, or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the corporation (excluding the votes represented by those shares to be transferred by the transferring stockholder). This Section 46 may be amended or repealed either by a duly authorized action of the Board of Directors, or by the stockholders upon the express written consent of the owners of a majority of the voting power of the corporation.

Any sale or transfer, or purported sale or transfer, of securities of the corporation shall be null and void unless the terms, conditions, and provisions of this Section 46 are strictly observed and followed.

The foregoing right of first refusal and restriction on transfer shall terminate upon the date securities of the corporation are first offered to the public pursuant to a
registration statement filed with, and declared effective by, the United States Securities and Exchange Commission under the Securities Act of 1933, as amended.

(g) The certificates representing shares of stock of the corporation shall bear on their face the following legends so long as the foregoing right of first refusal and restriction on transfer remains in effect:

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION AND/OR ITS ASSIGNEE(S), AS PROVIDED IN THE BYLAWS OF THE CORPORATION.”

“THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED WITHOUT THE CONSENT OF THE CORPORATION, AS PROVIDED IN THE BYLAWS OF THE CORPORATION.”

(h) Notwithstanding anything contrary contained in this Section 46, the provisions of Section 46 shall only apply to shares of common stock which are not subject to the restrictions on transfer contained in any Right of First Refusal and Co Sale Agreement entered into among the corporation and holders of its preferred stock, if any.

ARTICLE XV

LOANS TO OFFICERS

Section 47. Loans to Officers. Except as otherwise prohibited under applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

* * * * *
CERTIFICATE OF ADOPTION OF BYLAWS

OF

CAVA GROUP, INC.

The undersigned hereby certifies that he is the duly elected, qualified, and acting Secretary of Cava Group, Inc. and that the foregoing Bylaws, comprising 23 pages, were adopted as the Bylaws of the corporation on March 16, 2015, by the Board of Directors of the corporation.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 16th day of March, 2015.

/s/ Marshall Cannon

Marshall Cannon, Secretary
CAVA Group, Inc.
14 Ridge Square NW, Suite 500
Washington, D.C. 20016

Ladies and Gentlemen:

We have acted as counsel to CAVA Group, Inc., a Delaware corporation (the “Company”), in connection with the Registration Statement on Form S-1 (the “Registration Statement”) filed by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Act”), relating to the issuance by the Company of an aggregate of shares of common stock, par value $0.0001 per share (the “Common Stock”) (together with any additional shares of such stock that may be issued by the Company pursuant to Rule 462(b) (as prescribed by the Commission pursuant to the Act) in connection with the offering described in the Registration Statement, the “Primary Shares”).

We have examined the Registration Statement and a form of the Seventh Amended and Restated Certificate of Incorporation of the Company (the “Amended Charter”), which has been filed with the Commission as an exhibit to the Registration Statement. In addition, we have examined, and have relied as to matters of fact upon, originals, or duplicates or certified or conformed copies, of such records, agreements, documents and other instruments and such certificates or comparable documents of public officials and of officers and representatives of the Company and have made such other investigations as we have deemed relevant and necessary in connection with the opinion hereinafter set forth.

In rendering the opinion set forth below, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as duplicates or certified or conformed copies and the authenticity of the originals of such latter documents.

Based upon the foregoing, and subject to the qualifications, assumptions and limitations stated herein, we are of the opinion that, (A) when the Amended Charter has been duly filed with the Secretary of State of the State of Delaware, (B) when the Board of Directors of the Company (the “Board”) has taken all necessary corporate action to authorize and approve the sale price of the Primary Shares and (C) upon payment and delivery in accordance with the applicable definitive underwriting agreement approved by the Board, the Primary Shares will be validly issued, fully paid and nonassessable.
We do not express any opinion herein concerning any law other than the Delaware General Corporation Law.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement and to the use of our name under the caption “Legal Matters” in the prospectus included in the Registration Statement.

Very truly yours,

SIMPSON THACHER & BARTLETT LLP
CREDIT AGREEMENT

dated as of March 11, 2022

among

CAVA GROUP, INC.,
as the Borrower,

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

and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, an Issuing Bank and Swingline Lender,

JPMORGAN CHASE BANK, N.A.
as Lead Arranger and Bookrunner
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CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of March 11, 2022 (this “Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party hereto, the Issuing Banks from time to time party hereto and JPMorgan Chase Bank, N.A. (“JPMorgan”), in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender.

RECITALS

A. Substantially concurrently with the occurrence of the Closing Date, all outstanding indebtedness for borrowed money of the Borrower and its subsidiaries under that certain Revolving Credit Agreement, dated as of November 21, 2018 (as amended by the First Amendment thereto, dated as of December 4, 2019, that certain Second Amendment and Waiver to Revolving Credit Agreement, dated as of April 29, 2020, that certain Third Amendment to Revolving Credit Agreement, dated as of June 18, 2020, and as further amended, supplemented or otherwise modified from time to time prior to the date hereof, the “Existing Credit Agreement”), among the Borrower, Cava Intermediate, Inc., the several financial institutions and lenders from time to time party thereto and Truist Bank (as successor by merger to Suntrust Bank), as administrative agent, will be repaid, redeemed, discharged, refinanced, replaced or terminated and in each case, the liens and guarantees in support thereof shall be released or terminated (the “Closing Date Refinancing”).

B. The Borrower has requested that the Lenders extend credit under this Agreement in the form of an Initial Revolving Facility with an available amount of $75,000,000.

C. 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 I

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

“ACH” means automated clearing house transfers.

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

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

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

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

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

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

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

(i) (A) any depreciation and/or amortization (including amortization of goodwill, software and other intangible assets), (B) any impairment Charge, including any bad debt expense, and (C) any asset write-off and/or write-down; plus

(ii) any amount that may be added back in the calculation of Consolidated Adjusted EBITDA for such period pursuant to clause (c)(viii) of the definition thereof.

“Adjusted Daily Simple SOFR” means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided, that if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Adjusted Term SOFR Rate” means for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%; provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

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

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

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

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

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

“Affiliated Lender” means the Borrower, any Affiliate of the Borrower and/or any subsidiary of the Borrower.

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

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

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

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1%, and (c) the Adjusted Term SOFR Rate for a one-month Interest Period as published two (2) U.S. Government Securities Business Days prior to such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, provided that, for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14(b)), then the Alternate Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Parties” has the meaning assigned to such term in Section 8.03(c).

“Applicable Percentage” means 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)(i)), when there is a Defaulting Lender, such Defaulting Lender’s Revolving Credit Commitment shall be disregarded for any relevant calculation. In the event that the Revolving Credit Commitments of any Class have expired or been terminated, the Applicable Percentage of any Revolving Lender of such Class shall
be determined on the basis of the Revolving Credit Exposure of such Revolving Lender attributable to its Revolving Credit Commitment of such Class, giving effect to any assignment thereof.

“Applicable Rate” means, for any day, the rate per annum applicable to the relevant Class of Loans in the table set forth below under the caption “ABR Spread” or “Term Benchmark/RFR Spread”, as the case may be, based upon the Total Rent Adjusted Net Leverage Ratio; provided that, until the first Adjustment Date following the completion of at least one full Fiscal Quarter ending after the Closing Date, the “Applicable Rate” shall be the applicable rate per annum set forth below in Category 2 of the table set forth below:

<table>
<thead>
<tr>
<th>Total Rent Adjusted Net Leverage Ratio</th>
<th>ABR Spread (including Swingline Loans)</th>
<th>Term Benchmark/RFR Spread</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greater than or equal to 6.00 to 1.00</td>
<td>1.50%</td>
<td>2.50%</td>
</tr>
<tr>
<td>Category 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greater or equal to than 4.50 to 1.00 but less than 6.00 to 1.00</td>
<td>1.25%</td>
<td>2.25%</td>
</tr>
<tr>
<td>Category 3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greater than or equal to 3.50 to 1.00 but less than 4.50 to 1.00</td>
<td>1.00%</td>
<td>2.00%</td>
</tr>
<tr>
<td>Category 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greater than or equal to 2.50 to 1.00 but less than 3.50 to 1.00</td>
<td>0.75%</td>
<td>1.75%</td>
</tr>
<tr>
<td>Category 5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less 2.50 to 1.00</td>
<td>0.50%</td>
<td>1.50%</td>
</tr>
</tbody>
</table>

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

“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 VII), 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 VII), 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 Electronic Platform” has the meaning assigned to such term in Section 8.03(b).

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

“Arranger” means JPMorgan, in its capacity as lead arranger and bookrunner hereunder.

“Artal” means Artal International S.C.A.

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

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

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

(a) the sum of:

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

(ii) (A) the amount of any capital contribution in respect of Qualified Capital Stock or the proceeds of any issuance of Qualified Capital Stock after the Closing Date that are Not Otherwise Applied (other than any amount (1) constituting a Cure Amount or an Available Excluded Contribution Amount, (2) received from the Borrower or any Restricted Subsidiary or (3) consisting of the proceeds of any loan or advance made pursuant to Section 6.06(h)(ii)) received or deemed to be received as Cash equity by the Borrower or any of its Restricted Subsidiaries, plus (B) the fair market value, as determined by the Borrower in good faith, of Cash Equivalents, marketable securities or other property received or deemed to be received by the Borrower as a capital contribution in respect of Qualified Capital Stock or in return for any issuance of Qualified Capital Stock that are Not Otherwise Applied (other than any amount (1) constituting a Cure Amount or an Available Excluded Contribution Amount or (2) received from the Borrower or any Restricted Subsidiary), in each case, during the period from and including the day immediately following the Closing Date through and including such time; provided that, in connection with any utilization of the Available Amount pursuant to Section 6.04(a)(iii)(A), the proceeds of any IPO shall not build the Available Amount pursuant to this clause (a)(iii); plus
(iii) the aggregate principal amount of any Indebtedness (including any Disqualified Capital Stock), of the Borrower or any Restricted Subsidiary issued after the Closing Date (other than Indebtedness or such Disqualified Capital Stock issued to the Borrower or any Restricted Subsidiary), which has been converted into or exchanged for Capital Stock of the Borrower or any Parent Company that does not constitute Disqualified Capital Stock, together with the fair market value of any Cash Equivalents and the fair market value (as determined by the Borrower in good faith) of any assets received by the Borrower or such Restricted Subsidiary upon such exchange or conversion, in each case, during the period from and including the day immediately following the Closing Date through and including such time; plus

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

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

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

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

(viii) [reserved]; plus
(ix) the aggregate face amount of any Indebtedness of the Borrower and/or any Restricted Subsidiary that is cancelled, released or otherwise terminated by virtue of the incurrence or assumption by any Unrestricted Subsidiary of any such Indebtedness, including by way of an “exchange” or similar transaction; plus

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

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

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

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

(b) the sale or issuance of Qualified Capital Stock of the Borrower that are Not Otherwise Applied (other than (x) to any Restricted Subsidiary, (y) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or (z) with the proceeds of any loan or advance made pursuant to Section 6.06(h)(ii)); provided that, in connection with any utilization of the Available Excluded Contribution Amount pursuant to Section 6.04(a)(iii)(B), the proceeds of any IPO shall not build the Available Excluded Contribution Amount pursuant to this clause (b), in each case, designated by the Borrower as an Available Excluded Contribution Amount on or promptly after the date on which the relevant capital contribution is made (or deemed to be made) or the relevant proceeds are received (or deemed to be received), as the case may be, and which are excluded from the calculation of the Available Amount.

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

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.
“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliate (other than through liquidation, administration or other insolvency proceedings).

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

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

“Bankruptcy Code” means Title 11 of the United States Code (11 USC § 101 et seq.), as it has been, or may be, amended, from time to time.

“Benchmark” means, initially, with respect to any Term Benchmark Loan, the Term SOFR Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.14.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

1. the Adjusted Daily Simple SOFR;

2. the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the
then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides (in consultation with the Borrower) may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary (in consultation with the Borrower) in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

1. in the case of clause (1) or (2) of the definition of “Benchmark Transition Event”, the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

2. in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even
if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

1. a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

2. a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

3. a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at

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the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

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


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

“Board” means the Board of Governors of the Federal Reserve System of the US.

“Borrower” has the meaning assigned to such term in the preamble to this Agreement and shall, for the avoidance of doubt, include any Successor Borrower.

“Borrower Materials” has the meaning assigned to such term in Section 9.01(d).

“Borrowing” means any Loans of the same Type and Class made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03 and substantially in the form attached hereto as Exhibit B or such other form that is reasonably acceptable to the Administrative Agent and the Borrower, including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and the Borrower, in each case, appropriately completed and signed by a Responsible Officer of the Borrower.

“Burdensome Agreement” has the meaning assigned to such term in Section 6.05.

“Business Day” means any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or Chicago; provided that, in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings of such RFR Loan, any such day that is a U.S. Government Securities Business Day.

“Business Optimization Initiative” has the meaning assigned to such term in the definition of “Consolidated Adjusted EBITDA”.

“Capital Expenditures” means, with respect to the Borrower and its Restricted Subsidiaries for any period, the aggregate amount, without duplication, of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capital Leases) that would, in accordance with GAAP, be, or are required to be included as, capital expenditures on the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries for such period.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person; provided that for the avoidance of doubt, the amount of obligations attributable to any Capital Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

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“Capital Stock” means any and all shares, interests, participations, preferred equity certificates, convertible preferred equity certificates or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, but excluding for the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing.

“Captive Insurance Subsidiary” means any Restricted Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Restricted Subsidiary thereof).

“Cash” means money, currency or a credit balance in any Deposit Account, in each case determined in accordance with GAAP.

“Cash Equivalents” means, as at any date of determination, (a) readily marketable securities (i) issued or directly and unconditionally guaranteed or insured as to interest and principal by the US government or (ii) issued by any agency or instrumentality of the US the obligations of which are backed by the full faith and credit of the US, in each case maturing within one year after such date and, in each case, repurchase agreements and reverse repurchase agreements relating thereto, (b) readily marketable direct obligations issued by any state of the US or any political subdivision of any such state or any public instrumentality thereof or by any foreign government, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody’s or at least “A” from Fitch (or, if at any time none of S&P, Moody’s or Fitch rates such obligations, an equivalent rating from another nationally recognized statistical rating agency) and, in each case, repurchase agreements and reverse repurchase agreements relating thereto, (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P, at least P-2 from Moody’s or at least “F2” from Fitch (or, if at any time none of S&P, Moody’s or Fitch rates such obligations, an equivalent rating from another nationally recognized statistical rating agency), (d) deposits, money market deposits, time deposit accounts, certificates of deposit or bankers’ acceptances (or similar instruments) maturing within one year after such date and issued or accepted by any Lender or by any bank organized under, or authorized to operate as a bank under, the laws of the US, any state thereof or the District of Columbia or any political subdivision thereof or any foreign bank or its branches or agencies in each case organized under, or authorized to operate as a bank under, the laws of any jurisdiction in which any subsidiary is organized or has operations and that has capital and surplus of not less than $100,000,000 and, in each case, repurchase agreements and reverse repurchase agreements relating thereto, (e) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank having capital and surplus of not less than $100,000,000, (f) shares of any investment fund that has (i) substantially all of its assets invested in the types of investments referred to in clauses (a) through (e) above, (ii) net assets of not less than $250,000,000 and (iii) a rating of at least A-2 from S&P, at least P-2 from Moody’s or at least “A” from Fitch (or, if at any time either S&P, Moody’s or Fitch are not rating such fund, an equivalent rating from another nationally recognized statistical rating agency) and (g) solely with respect to any Captive Insurance Subsidiary, any investment that such Captive Insurance Subsidiary is not prohibited to make in accordance with applicable law. “Cash Equivalents” shall also include (x) Investments of the type and maturity described in clauses (a) through (g) above of foreign obligors, which Investments or obligors (or the parent companies thereof) have the ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (y) other short-term Investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in Investments that are analogous to the Investments described in clauses (a) through (g) and in this paragraph.

“Cash Interest Expense Amount” has the meaning assigned to such term in the definition of “Consolidated Fixed Charges”.

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“Change in Law” means (a) the adoption of any law, treaty, rule or regulation after the Closing Date, (b) any change in any law, treaty, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or such Issuing Bank or by such Lender’s or such Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date (other than any such request, guideline or directive to comply with any law, rule or regulation that was in effect on the Closing Date). For purposes of this definition and Section 2.15, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or US or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case described in clauses (a), (b) and (c) above, be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means (a) at any time prior to the consummation of an 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), common stock representing more than 50% of the total voting power of all of the outstanding voting common stock of the Borrower and (b) at any time after the consummation of an IPO, the acquisition of the beneficial ownership, directly or indirectly, beneficially or of record, by any Person or group (as used in this definition, within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) (including any group acting for the purpose of acquiring, holding or disposing of Securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), but excluding (i) any employee benefit plan and/or Person acting as the trustee, agent or other fiduciary or administrator therefor, (ii) one or more Permitted Holders and (iii) underwriters in connection with any offering of Capital Stock), of voting common stock representing more than 50% of the total voting power of all of the outstanding voting common stock of the Borrower; provided that notwithstanding the provisions of this clause (b), no “Change of Control” shall be deemed to have occurred under this clause (b) if the Permitted Holders have the right, by voting power, contract or otherwise, to elect or designate for election at least a majority of the board of directors of the Borrower.

For purposes of this definition, (1) a Person or group shall not be deemed to beneficially own Capital Stock or voting power subject to a stock or asset purchase agreement, merger agreement or similar agreement (or voting or similar agreement related thereto) until the consummation of the acquisition of the Capital Stock or voting power pursuant to the transactions contemplated by such agreement, (2) if any group (other than a Permitted Holder) includes one or more Permitted Holders, the issued and outstanding Capital Stock of the relevant Person that is directly or indirectly owned by the Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of this definition, (3) a Person or group (other than Permitted Holders) will not be deemed to beneficially own the Capital Stock of another Person as a result of its ownership of the Capital Stock or other securities of such other Person’s parent company (or any related contractual right) unless it beneficially owns or controls 50% or more of the total voting power of the Capital Stock entitled to vote for the election of directors of such Person’s parent company having a majority of the aggregate votes on the board of directors (or equivalent governing body) of such Person’s parent company and (4) the right to acquire voting stock (so long as such Person does not have the right to direct the voting stock subject to such right) or any veto power in connection with the acquisition or disposition of voting stock will not cause a party to be a beneficial owner.

“Charge” means any fee, charge, expense, cost, accrual, reserve or loss of any kind.

“Charged Amounts” has the meaning assigned to such term in Section 9.19.
“Class”, when used with respect to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Initial Revolving Loans, Additional Revolving Loans, Incremental Term Loans of any series established as a separate “Class” pursuant to Section 2.22, 2.23 and/or 9.02(c)(ii) or Swingline Loans, (b) any Commitment, refers to whether such Commitment is an Initial Revolving Credit Commitment, an Additional Revolving Credit Commitment of any series established as a separate “Class” pursuant to Section 2.22, 2.23 and/or 9.02(c)(ii) or a commitment to make Swingline Loans, (c) any Lender, refers to whether such Lender has a Loan or Commitment of a particular Class and (d) any Revolving Credit Exposure, refers to whether such Revolving Credit Exposure is attributable to a Revolving Credit Commitment of a particular Class.

“Closing Date” means March 11, 2022, the date on which the conditions specified in Section 4.01 were satisfied (or waived in accordance with Section 9.02).

“Closing Date Refinancing” has the meaning assigned to such term in the recitals to this Agreement.

“CME Term SOFR Administrator” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

“CNI Growth Amount” means, at any date of determination, for the period (treated as one accounting period) from the first day of the Fiscal Quarter of the Borrower during which the Closing Date occurs and ending with the last Fiscal Quarter of the Borrower included in the most recently ended Test Period, an amount (which amount shall not be less than zero for any Fiscal Quarter) determined on a cumulative basis equal to 50% of Adjusted Consolidated Net Income for each such Fiscal Quarter included in such period (if Adjusted Consolidated Net Income for such Fiscal Quarter is positive).


“Collateral” means any and all property of any Loan Party subject (or purported to be subject) to a Lien under any Collateral Document and any and all other property of any Loan Party, now existing or hereafter acquired, that is or becomes subject (or purported to be subject) to a Lien pursuant to any Collateral Document to secure the Secured Obligations. For the avoidance of doubt, in no event shall “Collateral” include any Excluded Asset.

“Collateral and Guarantee Requirement” means, at any time, subject to (x) the applicable limitations set forth in this Agreement and/or any other Loan Document and the terms of any applicable Intercreditor Agreement and (y) the time periods (and extensions thereof) set forth in Section 5.12 and/or Section 5.15, as applicable, the requirement that:

(a) on the Closing Date, the Administrative Agent shall have received (A) each Collateral Document and Loan Guaranty listed on Schedule 1.01(b), duly executed by each Loan Party party thereto, (B) a pledge of all of the Capital Stock (together, in the case of Capital Stock that is certificated, with undated stock or similar powers for each such certificate executed in blank by a Responsible Officer of the pledgor thereof) listed on Schedule 3 to the Perfection Certificate, (C) each Material Debt Instrument listed on Schedule 4 to the Perfection Certificate, endorsed (without recourse) in blank or accompanied by executed transfer form in blank by the pledgor thereof, (D) Uniform Commercial Code financing statements in appropriate form for filing in the jurisdiction of organization of each Loan Party and (E) an Intellectual Property Security Agreement in appropriate form for filing with the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable; and
(b) after the Closing Date, in the case of any Restricted Subsidiary that is required to become (or otherwise becomes) a Loan Party after the Closing Date the Administrative Agent shall have received:

(i) (A) a Joinder Agreement, (B) if the respective Restricted Subsidiary required to comply with the requirements set forth in this definition pursuant to Section 5.12 owns registrations of or applications for US Patents, Trademarks and/or Copyrights that constitute Collateral, an Intellectual Property Security Agreement, (C) a completed Perfection Certificate, (D) Uniform Commercial Code financing statements in appropriate form for filing in such jurisdictions as the Administrative Agent may reasonably request and (E) an executed joinder to each applicable Intercreditor Agreement in substantially the form attached as an exhibit thereto or such other form to which the Administrative Agent may reasonably agree;

(ii) each item of Collateral that such Restricted Subsidiary is required to deliver under Section 4.02 of the Security Agreement (which, for the avoidance of doubt, shall be delivered within the time periods set forth in Section 5.12(a)); and

(iii) in the case of any subsidiary that has been designated as a Discretionary Guarantor (A) with respect to any such subsidiary that is a Domestic Subsidiary, the documents described in clause (b)(i) above and (B) with respect to any such subsidiary that is a Foreign Subsidiary, (1) a Joinder Agreement and (2) such other documentation relating to such categories of assets (other than Excluded Assets) as the Borrower and Administrative Agent may reasonably agree;

“Collateral Documents” means, collectively, (a) the Security Agreement (and any supplement thereto delivered to the Administrative Agent), (b) each Intellectual Property Security Agreement and (c) each of the other instruments and documents pursuant to which any Loan Party grants (or purports to grant) a Lien on any Collateral as security for payment of the Secured Obligations.

“Commercial Tort Claim” has the meaning set forth in Article 9 of the UCC.

“Commitment” means, with respect to each Lender, such Lender’s Initial Revolving Credit Commitment and any Additional Commitment, as applicable, in effect as of such time.

“Commitment Fee Rate” means, on any date (a) with respect to the Initial Revolving Credit Commitments, the applicable rate per annum set forth below based upon the Total Rent Adjusted Net Leverage Ratio; provided that, until the first Adjustment Date following the completion of at least one full Fiscal Quarter ending after the Closing Date, “Commitment Fee Rate” shall be the applicable rate per annum set forth below in Category 2 and (b) with respect to Additional Revolving Credit Commitments of any Class, the rate or rates per annum specified in the applicable Refinancing Amendment, Incremental Facility Amendment or Extension Amendment:

<table>
<thead>
<tr>
<th>Total Rent Adjusted Net Leverage Ratio</th>
<th>Commitment Fee Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td></td>
</tr>
<tr>
<td>Greater than or equal to 6.00 to 1.00</td>
<td>0.35%</td>
</tr>
<tr>
<td>Category 2</td>
<td></td>
</tr>
<tr>
<td>Greater or equal to than 4.50 to 1.00 but less than 6.00 to 1.00</td>
<td>0.30%</td>
</tr>
</tbody>
</table>
Total Rent Adjusted Net Leverage Ratio | Commitment Fee Rate
--- | ---
Category 1  
Greater than or equal to 6.00 to 1.00 | 0.35%
Category 3  
Greater than or equal to 3.50 to 1.00 but less than 4.50 to 1.00 | 0.25%
Category 4  
Greater than or equal to 2.50 to 1.00 but less than 3.50 to 1.00 | 0.20%
Category 5  
Less 2.50 to 1.00 | 0.20%

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

“Commitment Schedule” means the Schedule attached hereto as Schedule 1.01(a).

“Commodity Exchange Act” means the Commodity Exchange Act (7 USC § 1 et seq.).

“Communications” has the meaning assigned to such term in Section 8.03(c).

“Company Competitor” means any competitor of the Borrower and/or any of its subsidiaries.

“Competitor Debt Fund Affiliate” means, with respect to any Company Competitor or any Affiliate thereof, any debt fund, investment vehicle, regulated bank entity or unregulated lending entity (in each case, other than any Disqualified Lending Institution or any Excluded Party) that is (a) primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business for financial investment purposes (but not with a view towards (i) owning the borrower or issuer of any such loan or similar extension of credit or (ii) investing in special or opportunistic situations) and (b) managed, sponsored or advised by any person that is controlling, controlled by or under common control with the relevant Company Competitor or Affiliate thereof, but only to the extent that no personnel involved with the investment in the relevant Company Competitor or its Affiliates, or the management, control or operation thereof, (i) makes (or has the right to make or participate with others in making) investment decisions on behalf of, or otherwise cause the direction of the investment policies of, such debt fund, investment vehicle, regulated bank entity or unregulated entity or (ii) has access to any information (other than information that is publicly available) relating to the Borrower and/or any entity that forms part of its business (including any of its subsidiaries).

“Compliance Certificate” means a Compliance Certificate substantially in the form of Exhibit D or such other form to which the Borrower and the Administrative Agent may reasonably agree.

“Confidential Information” has the meaning assigned to such term in Section 9.13.
“Consolidated Adjusted EBITDA” means, with respect to any Person on a consolidated basis for any period, the sum of:

(a) Consolidated Net Income for such period; plus

(b) to the extent not otherwise included in the determination of Consolidated Net Income for such period, the amount of any proceeds of any business interruption insurance policy (whether or not then received so long as such Person in good faith expects to receive such proceeds); plus

(c) without duplication, those amounts which, in the determination of Consolidated Net Income for such period, have been deducted for:

   (i) Consolidated Interest Expense; plus

   (ii) Tax expenses in respect of, and any provision for, federal, state, local and foreign income Taxes; plus

   (iii) (A) all depreciation and amortization (including amortization of goodwill, software and other intangible assets), (B) all impairment Charges, including any bad debt expense, and (C) all asset write-offs and/or write-downs, including any amortization or write-off of (1) intangible assets and non-cash organization costs, (2) deferred financing and debt issuance fees, costs and expenses, (3) capitalized expenditures (including capitalized software expenditures), (4) the amortization of original issue discount resulting from the issuance or incurrence of Indebtedness at less than par and/or (5) the non-cash amortization of favorable or unfavorable lease assets or liabilities; plus

   (iv) any earn-out and/or contingent consideration obligation (including those accounted for as bonuses, compensation or otherwise) and any adjustment thereof incurred in connection with the Transactions and/or any acquisition and/or other Investment (whether or not consummated) which is paid or accrued during such period and, in each case, adjustments thereof; plus

   (v) any non-cash Charge, including the excess of GAAP rent expense over actual cash rent paid during such period due to the use of straight line rent for GAAP purposes (provided that to the extent that any such non-cash Charge represents an accrual or reserve for any potential cash item in any future period, (A) such Person may elect not to add back such non-cash Charge in the current period and (B) to the extent such Person elects to add back such non-cash Charge in the current period, the cash payment in respect thereof in such future period shall be deducted from Consolidated Adjusted EBITDA to such extent in such future period); plus

   (vi) any non-cash compensation Charge and/or any other non-cash Charge arising from the granting of any stock option or similar arrangement (including any profits interest), the granting of any stock appreciation right and/or similar arrangement (including any repricing, amendment, modification, substitution or change of any such stock option, stock appreciation right, profits interest or similar arrangement); plus

   (vii) (A) Transaction Costs, (B) any non-recurring Charge incurred in connection with any transaction (in each case, whether or not consummated and whether or not permitted under this Agreement), including (1) any issuance and/or incurrence of
Indebtedness (including any Charge that would constitute a Public Company Cost), and/or any issuance and/or offering of Capital Stock (including, in each case, by any Parent Company or in connection with an IPO), any acquisition or other Investment, any Disposition, any recapitalization, any merger, consolidation or amalgamation, any option buyout or any repayment, redemption, refinancing, amendment or modification of Indebtedness (including any amortization or write-off of debt issuance or deferred financing costs, premiums and prepayment penalties) or any similar transaction and/or (2) equipment leases and/or equipment financings, (C) the amount of any non-recurring Charge that is actually reimbursed or reimbursable by any third party pursuant to any indemnification or reimbursement provision or similar agreement (including any purchase price adjustment) or insurance; provided that in respect of any Charge that is added back in reliance on this clause (C), the relevant Person in good faith expects to receive reimbursement for such Charge and/or (D) non-recurring Public Company Costs; plus

(viii) without duplication of any amount referred to in clause (b) above, the amount of (A) any Charge to the extent that a corresponding amount is received in cash by such Person from a Person other than such Person or any Restricted Subsidiary of such Person under any agreement providing for reimbursement of such Charge or (B) any Charge with respect to any liability or casualty event, business interruption or any product recall, (i) so long as such Person has submitted in good faith, and reasonably expects to receive payment in connection with, a claim for reimbursement of such amounts under its relevant insurance policy or (ii) without duplication of any amount included in a prior period under clause (B)(i) above, to the extent such Charge is covered by insurance proceeds received in cash during such period; plus

(ix) (A) the amount of management fees permitted by Section 6.04(a)(xvi) and/or payments to outside directors of the Borrower or any Parent Company actually paid by or on behalf of, or accrued by, such Person or any of its subsidiaries; provided that, in each case, such payment is permitted under this Agreement and (B) to the extent the relevant payment is permitted hereunder, the amount of any payment to any holder of any option in respect of the Capital Stock of the Borrower and/or any Parent Company in lieu of a Restricted Payment, which payment is made to compensate such optionholder as if it was an equity holder at the time of the relevant Restricted Payment; plus

(x) any Charge attributable to the undertaking and/or implementation of new initiatives, business optimization activities, cost savings initiatives, cost rationalization programs, operating improvements and/or expense reductions and/or synergies and/or similar initiatives and/or programs (including, in connection with any integration, operational improvement, restructuring or transition, any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, including unused warehouse restaurant, store or Unit Locations), any inventory optimization program and/or any curtailment, any business optimization Charge, any Charge relating to the destruction of equipment, any restructuring Charge and/or integration Charge (including any Charge relating to any tax restructuring), any Charge relating to the closure, consolidation or relocation of any facility, restaurant, store or Unit Location (including but not limited to rent termination costs, moving costs and legal costs) any severance Charge, any systems implementation Charge, any Charge relating to entry into any new market, any Charge relating to any strategic initiative, any signing Charge, any Charge relating to any retention or completion bonus, any expansion and/or relocation Charge, any Charge associated with any modification to any pension and post-retirement employee benefit plan, any Charge associated with system design, update and/or
establishment, any upgrade Charge, any platform optimization Charge, any new system implementation Charge, any startup and/or expansion Charge (including administrative, overhead, staffing and related costs and expenses), any Charge in connection with new and/or expanded operations, any Charge in connection with unused warehouse space, any Charge relating to a new contract, any consulting Charge, or any corporate development Charge, any Charge incurred in connection with software, product and/or intellectual property development, any Charge relating to any distribution network and/or sales channel, any Charge in connection with any exit from, wind down or termination of any line of business, any Charge related to any customer dispute, any Charge in connection with the implementation, replacement, development or upgrade of any operational, reporting and/or information technology system and/or technology initiative, in each case, other than any such Charge incurred in the ordinary course of business (as determined by the Borrower in good faith); provided that the amount included in Consolidated Adjusted EBITDA in any four Fiscal Quarter period in reliance on this clause (c)(x), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 20% Adjustments, shall not exceed 20% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(xi) any Charge incurred or accrued in connection with any single or one-time event, including any such Charges incurred or accrued in connection with (A) acquisitions or similar investments, (B) the consolidation or reconfiguration of any facility, (C) litigation or other legal matter (including actual or prospective legal settlements, fines, judgments or orders) and/or (D) Charges arising from insurance claims and settlements; provided that the amount included in Consolidated Adjusted EBITDA in any four Fiscal Quarter period in reliance on this clause (c)(xi) (other than such Charges of the type described in the foregoing clause (A) and/or any other one-time Disposition or issuance of debt or equity), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 15% Adjustments, shall not exceed 15% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(xii) any add-back, adjustment and/or exclusion reflected in the Financial Model delivered to the Administrative Agent (including, for the avoidance of doubt, in connection with any acquisition or similar investment prior to or after the Closing Date); plus

(xiii) any loss of operating income that is attributable to any facility, restaurant, store or Unit Location that is temporarily closed for a period not to exceed (or reasonably expected not to exceed) 12 months for remodeling, construction, refurbishment and/or rebuilds; provided that such losses shall be determined based on the store level profits and losses based on the average of six consecutive four-week reporting periods immediately
preceding such closure; provided, further, that the amount included in Consolidated Adjusted EBITDA in any four Fiscal Quarter period in reliance on this clause (c)(xiii) shall not exceed 5% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(d) to the extent not included in Consolidated Net Income for such period, cash actually received (or any netting arrangement resulting in reduced cash expenditures) during such period in respect of any non-cash income or gain that was deducted in the calculation of Consolidated Adjusted EBITDA (including any component definition) pursuant to clause (h) below for any previous period and not added back; plus

(e) the full pro forma “run rate” expected cost savings, operating expense reductions, operational improvements, business optimization, restructurings, and/or cost synergies (collectively, “Run-Rate Synergies”) (net of actual amounts realized) that are reasonably identifiable (in the good faith determination of such Person) related to (i) the Transactions, (ii) any asset sale, merger or other business combination, Investment, Disposition, operating improvement, expense reduction, restructuring, cost savings initiative, and/or any initiative similar to any of the foregoing (including the entry into or renegotiation of, or in respect of which binding commitments have been entered for, any contract and/or other arrangement) and/or specified transaction (each, a “Business Optimization Initiative”), in each case, consummated or implemented prior to or on the Closing Date and (iii) any Business Optimization Initiative consummated or implemented after the Closing Date; provided that, with respect to this clause (iii), the relevant Business Optimization Initiative resulting in (or substantial steps toward the relevant Business Optimization Initiative that would result in) such Run-Rate Synergies (x) must either be taken or expected to be taken within 18 months following the applicable date of determination and (y) the amounts added back in any four Fiscal Quarter period in reliance on this clause (e)(iii), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 20% Adjustments, shall not exceed 20% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(f) Consolidated Restaurant Pre-Opening Costs; plus

(g) to the extent not otherwise included in calculating Consolidated Net Income, the amount of any distribution received by such Person from any Unrestricted Subsidiary; plus

(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 (including the excess of actual cash rent paid over GAAP rent expense during such period to the use of straight line rent for GAAP purposes), all as determined in accordance with GAAP; provided that if any non-cash income or non-cash gain represents an accrual or deferred income in respect of potential cash items in any future period, such Person may determine not to deduct the relevant non-cash gain or income in the then-current period; minus
(i) the amount of any cash payment made during such period in respect of any non-cash accrual, reserve or other non-cash Charge that (A) is accounted for in a prior period, (B) was added to Consolidated Net Income to determine Consolidated Adjusted EBITDA for such prior period and (C) does not otherwise reduce Consolidated Net Income for the current period; minus

(j) any tax benefit received during such period in respect of any federal, state, local and foreign income Taxes.

“Consolidated Adjusted EBITDAR” means, as of any date of determination, an amount equal to (without duplication) (a) Consolidated Adjusted EBITDA for such Test Period plus (b) Consolidated Cash Rental Expense for such Test Period.

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

“Consolidated First Lien Debt” means, as to any Person at any date of determination, the aggregate principal amount of Consolidated Total Debt outstanding on such date that is secured by a Lien on substantially all of the Collateral and that constitutes First Lien Debt.

“Consolidated Fixed Charges” means, as of any date of determination, the sum of the following determined on a consolidated basis for such period, without duplication, for the Borrower and its Restricted Subsidiaries in accordance with GAAP: (a)(i) consolidated cash interest expense relating to Consolidated Total Debt (excluding, among other things, (A) amortization of deferred financing fees, (B) any expense arising from any financing fee (including agency and commitment fees), (C) any expense arising from the discounting of indebtedness in connection with the application of recapitalization and/or acquisition accounting, (D) any penalty and/or interest relating to any tax and (E) any non-cash interest expense attributable to any movement in the mark-to-market valuation of any hedging or other derivative obligation and/or any payment obligation arising under any hedge agreement or other derivative instrument (other than any interest rate hedge agreement or other derivative instrument)) (this clause (a)(i), the “Cash Interest Expense Amount”) minus (ii) cash interest income, plus (b) Consolidated Cash Rental Expense plus (c) regularly scheduled cash payments of principal of any outstanding Indebtedness for borrowed money (with respect to any Test Period containing any period ended prior to the Closing Date, calculated excluding principal payments in respect of the Existing Credit Agreement, including the Closing Date Refinancing), other than any such payments financed with the proceeds of or refinanced through the incurrence of any additional Indebtedness permitted hereunder (other than any Revolving Loans).

“Consolidated Interest Expense” means, with respect to any Person for any period, the sum of (a) consolidated total interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued and whether or not capitalized, (including, without duplication, amortization of any debt issuance cost, original issue discount, any premium paid to obtain payment, financial assurance or similar bonds, any interest capitalized during construction, any non-cash interest payment, the interest component of any deferred payment obligation, the interest component of any payment under any Capital Lease (regardless of whether accounted for as interest expense under GAAP), any commission, discount and/or other fee or charge owed with respect to any letter of credit and/or bankers’ acceptance, any fee
and/or expense paid to the Administrative Agent in connection with its services hereunder, any other bank, administrative agency (or trustee) and/or financing fee, to the extent not otherwise included in consolidated total interest expense, customary commissions, discounts, yield and other fees and charges (including interest expense) relating to any cost associated with any surety bond in connection with financing activities (whether amortized or immediately expensed)) plus (b) any cash dividend paid or payable in respect of Disqualified Capital Stock during such period other than to such Person or any Restricted Subsidiary, plus (c) any net losses or obligations arising from any Hedge Agreement and/or other derivative financial instrument issued by such Person for the benefit of such Person or its subsidiaries, in each case, determined on a consolidated basis for such period. For purposes of this definition, interest in respect of any Capital Lease shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capital Lease in accordance with GAAP.

“Consolidated Net Income” means, in respect of any period and as determined for any Person (the “Subject Person”) on a consolidated basis, an amount equal to the sum of net income, determined in accordance with GAAP, but excluding:

(a) (i) the income of any Person (other than the Subject Person or a Restricted Subsidiary of the Subject Person) in which any other Person (other than the Subject Person or any Restricted Subsidiary of the Subject Person) has a joint interest, except to the extent of the amount of dividends, distributions or other payments (including any ordinary course dividend, distribution or other payment) paid in cash (or to the extent converted into cash) to the Subject Person or any of its Restricted Subsidiaries by such Person during such period and (ii) the loss of any Person (other than the Subject Person or a Restricted Subsidiary of the Subject Person (or a Person who, if a subsidiary of the Subject Person, would be a Restricted Subsidiary of the Subject Person)) in which any other Person (other than the Subject Person or any of its Restricted Subsidiaries) has a joint interest, other than to the extent that the Subject Person or any of its Restricted Subsidiaries has contributed Cash or Cash Equivalents to such Person in respect of such loss during such period;

(b) any gain or Charge attributable to any asset Dispositions (including asset retirement costs and including any abandonment of assets) or of returned surplus assets outside the ordinary course of business;

(c) (i) any Charge from (A) any extraordinary item (as determined in good faith by such Person) and/or (B) any unusual, non-recurring, infrequent and/or exceptional item (as determined in good faith by such Person) and/or (ii) any Charge attributable to and/or payment of any actual or prospective legal settlement, fine, judgment or order; provided that any Charges excluded from Consolidated Net Income pursuant to this clause (c), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 15% Adjustments, shall not exceed 15% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act);

(d) any net gain or Charge with respect to, or in connection with, (i) any disposed, abandoned, divested and/or discontinued asset, property or operation (other than, at the option of such Person, any gain or Charge
relating to any asset, property or operation held for sale or pending the divestiture and/or termination thereof), (ii) any disposal, abandonment, divestiture and/or discontinuation of any asset, property or operation outside the ordinary course of business (including any asset retirement cost) (other than, at the option of such Person, any gain or Charge relating to assets or properties held for sale or pending the divestiture or termination thereof) and/or (iii) any facility that has been closed during such period; provided that any Charges excluded from Consolidated Net Income pursuant to this clause (d)(iii), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 20% Adjustments, shall not exceed 20% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act);

(e) (i) any write-off or amortization made of any deferred financing cost and/or premium paid and (ii) any Charge attributable to the early extinguishment of Indebtedness (and the termination of any associated Hedge Agreement);

(f) (i) any non-recurring Charge incurred as a result of, pursuant to or in connection with any management equity plan, bonus or other incentive plan, profits interest plan or stock option plan or any other management or employee benefit plan or agreement, pension plan or other long-term or post-employment plan (including any post-employment benefit scheme which has been agreed with the relevant pension trustee), any stock subscription or shareholder agreement, any employee benefit trust, any employment benefit scheme or any similar equity plan or agreement (including any deferred compensation arrangement) and (ii) any Charge incurred in connection with the rollover, acceleration or payout of Capital Stock held by management; provided that, in the case of clause (ii), to the extent that any such Charge is a cash charge, such Charge shall only be excluded to the extent the same is funded with net cash proceeds contributed to relevant Person as a capital contribution or as a result of the sale or issuance of Qualified Capital Stock;

(g) any Charge (other than recurring Public Company Costs) that is established, adjusted and/or incurred, as applicable, (i) within 12 months after the Closing Date that is required to be established, adjusted or incurred, as applicable, as a result of the Transactions in accordance with GAAP, (ii) within 12 months after the closing of any other acquisition or similar Investment that is required to be established, adjusted or incurred, as applicable, as a result of such acquisition in accordance with GAAP or (iii) as a result of any change in, or the adoption or modification of, accounting principles and/or policies in accordance with GAAP;

(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, leases, rights fee arrangements, software, goodwill, intangible assets, in-process research and development, deferred revenue, advanced billing and debt line items thereof), resulting from the application of purchase accounting, recapitalization accounting and/or acquisition method accounting, as applicable, in relation to the Transactions or any consummated acquisition or other Investment or the amortization or write-off of any amount thereof, and (ii) the cumulative effect of changes (effected through cumulative effect adjustment or retroactive application) in, and/or any change resulting from the adoption or modification of, accounting principles or policies made in such period in accordance with GAAP which affect Consolidated Net Income (except that, if such Person determines in good faith that the cumulative effects thereof are not material to the interests of the Lenders, the effects of any change, adoption or modification of any such principles or
policies may be included in any subsequent period after the Fiscal Quarter in which such change, adoption or modification was made;

(i) any realized or unrealized gain and/or loss in the fair market value of (A) any obligation under any Hedge Agreement as determined in accordance with GAAP and/or (B) any other derivative instrument pursuant to, in the case of this clause (B), Financial Accounting Standards Board’s Accounting Standards Codification No. 815-Derivatives and Hedging, and/or (ii) any realized or unrealized foreign currency translation or transaction gain or loss (including any currency re-measurement of Indebtedness, any net gain or loss resulting from Hedge Agreements for currency exchange risk associated with the foregoing or any other currency related risk and any gain or loss resulting from any intercompany Indebtedness, any foreign currency translation or transaction or any other currency-related risk); provided that, notwithstanding anything to the contrary herein, any realized gain or loss in respect of any Designated Operational FX Hedge shall be included in the calculation of Consolidated Net Income;

(j) 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;

(k) any non-recurring non-cash (and, with respect to clause (ii), cash) Charge (including any implementation Charge) (other than any write-down of current assets) (including non-cash compensation expense and any amount representing any non-cash adjustment) required by the application of (i) FASB Statement No. 144, (ii) FASB Statement No. 141R, (iii) FASB Statement No. 142 and (iv) Accounting Standards Update No. 2014-09, Revenue from Contracts with Customers;

(l) any non-recurring cash Charge required by the application of FASB Statement No. 141R to be expensed by such Person and/or any Restricted Subsidiary during the applicable period; provided that any Charges excluded from Consolidated Net Income pursuant to this clause (l), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 15% Adjustments, shall not exceed 15% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified 15% Adjustments, the Specified 20% Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); and

(m) (i) any one-time cumulative effect adjustment resulting from any change in accounting for revenue required by Accounting Standards Codification 606 or its replacement and/or (ii) any non-recurring Charge incurred in connection with the implementation of Accounting Standards Codification 606.

“Consolidated Restaurant Pre-Opening Costs” means “Start-up Costs” (as such term is defined in SOP 98-5 published by the American Institute of Certified Public Accountants) and other Charges related to the acquisition, opening, conversion and/or organizing of new facilities, stores, restaurants and/or other Unit Locations, including the cost of feasibility studies, opening marketing, branding and rent expenses, staff training and recruiting and travel costs for employees engaged in such start-up activities, in each case, to the extent such costs and/or Charges are classified as “pre-opening” or “Start-up Costs” in accordance with GAAP.

“Consolidated Secured Debt” means, as to any Person at any date of determination, the aggregate principal amount of Consolidated Total Debt outstanding on such date that is secured by a Lien on substantially all of the Collateral.
“Consolidated Total Assets” means, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of the applicable Person at such date.

“Consolidated Total Debt” means, as to any Person at any date of determination, (x) the aggregate outstanding principal amount of all third party debt for borrowed money (including LC Disbursements that have not been reimbursed within three Business Days and excluding, for the avoidance of doubt, undrawn letters of credit), (y) to the extent constituting Indebtedness, obligations in respect of Capital Leases and (z) the aggregate outstanding principal amount of all purchase money Indebtedness, in each case, as such amount may be adjusted to reflect the effect (as determined by the Borrower in good faith) of any Debt FX Hedge, calculated on a mark-to-market basis; provided that “Consolidated Total Debt” shall be calculated (a) net of the Unrestricted Cash Amount (provided that the maximum amount of the Unrestricted Cash Amount permitted to be so deducted shall not exceed $20,000,000) and (b) excluding (i) any obligation, liability or indebtedness of such Person if, upon or prior to the maturity thereof, such Person has irrevocably deposited with the proper Person in trust or escrow the necessary funds (or evidences of indebtedness) for the payment, redemption or satisfaction of such obligation, liability or indebtedness, and thereafter such funds and evidences of such obligation, liability or indebtedness or other security so deposited are not included in the calculation of the Unrestricted Cash Amount, (ii) any debt the proceeds of which are held in Escrow and (iii) for the avoidance of doubt, any amount owing under, or in respect of, any earn-out obligation and/or any purchase price adjustment.

“Contractual Obligation” means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Copyright” means the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright whether published or unpublished or registered or unregistered, copyright registrations and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (e) all rights corresponding to any of the foregoing.

“Corresponding Amount” has the meaning assigned to such term in Section 8.14(c).

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Covered Party” has the meaning assigned to such term in Section 9.26(a).

“Credit Extension” means each of (a) the making of a Revolving Loan or Swingline Loan (other than any Letter of Credit Reimbursement Loan or any Revolving Loan resulting from the application of Section 2.04(b)) or (b) the issuance, amendment, modification, renewal or extension of any Letter of Credit (other than any such amendment, modification, renewal or extension that does not increase the Stated Amount of the relevant Letter of Credit).
“Credit Party” has the meaning assigned to such term in Section 9.14.

“Cure Amount” has the meaning assigned to such term in Section 6.10(d).

“Cure Right” has the meaning assigned to such term in Section 6.10(d).

“Customary Bridge Loans” means bridge loans with a maturity date of not longer than one year; provided that the final maturity date of any loan, note, security or other Indebtedness which is exchanged for or otherwise replaces (or is to be exchanged for or otherwise replace) such bridge loans is not earlier than the Latest Maturity Date on the date of the issuance or incurrence thereof.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal to SOFR for the day (such day “SOFR Determination Date”) that is five (5) U.S. Government Securities Business Days prior to (a) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (b) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

“Debt FX Hedge” means any Hedge Agreement entered into for the purpose of hedging currency related risks in respect of any Indebtedness of the type described in the definition of “Consolidated Total Debt”.

“Debtor Relief Laws” means the Bankruptcy Code of the US, and all other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the US or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition which upon notice, lapse of time or both would become an Event of Default.

“Defaulting Lender” means any Person that has (a) defaulted in (or is otherwise unable to perform) its obligations under this Agreement, including its obligations, (x) to make a Loan within two Business Days of the date required to be made by it hereunder or (y) to fund its participation in a Letter of Credit or Swingline Loan required to be funded by it hereunder within two Business Days of the date such obligation arose or such Loan or Letter of Credit or Swingline Loan was required to be made or funded, unless, in the case of subclause (x) above, such Person notifies the Administrative Agent in writing that such failure is the result of such Person’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) notified the Administrative Agent, any Issuing Bank or the Swingline Lender or the Borrower in writing that it does not intend to satisfy or perform any such obligation or has made a public statement to the effect that it does not intend to comply with its funding or other obligations under this Agreement or under agreements in which it commits to extend credit generally (unless such writing indicates that such position is based on such Person’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan cannot be satisfied), (c) failed, within two Business Days after the request of the Administrative Agent or the Borrower, to confirm in writing that it will comply with the terms of this Agreement relating to its obligations to fund any prospective Loan and/or any participation in any then outstanding Letter of Credit or Swingline Loans; provided that such Person shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent, (d) become (or any parent company thereof has become) insolvent or been determined by any
Governmental Authority having regulatory authority over such Person or its assets, to be insolvent, or the assets or management of which has been taken over by any Governmental Authority or (e)(i) become (or any parent company thereof has become) either the subject of (A) a bankruptcy or insolvency proceeding or (B) a Bail-In Action, (ii) has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or (iii) has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment, unless in the case of any Person subject to this clause (e), the Borrower and the Administrative Agent have each determined that such Person intends, and has all approvals required to enable it (in form and substance satisfactory to the Borrower and the Administrative Agent), to continue to perform its obligations hereunder; provided that no Person shall be deemed to be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in such Person or its parent by any Governmental Authority; provided that such action does not result in or provide such Person with immunity from the jurisdiction of courts within the US or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contract or agreement to which such Person is a party. In the event that the Administrative Agent determines that any Person is a Defaulting Lender pursuant to the foregoing, such determination shall be conclusive and binding absent manifest error, and such Person shall be deemed to be a Defaulting Lender (subject to Section 2.21(e)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, each Issuing Bank, the Swingline Lender and each Lender promptly following such determination.

“Delaware Divided LLC” means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

“Delaware LLC” means any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Deposit Account” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“Derivative Transaction” means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap, collar or floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) any exchange-rate transaction, including any cross-currency interest-rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks, (c) any equity derivative transaction, including any equity-linked swap, any equity-linked option, any forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk and (d) any commodity (including precious metal) derivative transaction, including any commodity-linked swap, any commodity-linked option, any forward commodity-linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management, managers or consultants of the Borrower or its subsidiaries shall be a Derivative Transaction.

“Designated Non-Cash Consideration” means the fair market value (as determined by the Borrower in good faith) of non-Cash consideration received by the Borrower or any Restricted Subsidiary in
connection with any Disposition pursuant to Section 6.07(h) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower, setting forth the basis of such valuation (which amount will be reduced by the amount of Cash or Cash Equivalents received in connection with a subsequent sale or conversion of such Designated Non-Cash Consideration to Cash or Cash Equivalents).

“Designated Operational FX Hedge” means any Hedge Agreement (a) entered into for the purpose of hedging currency-related risks in respect of the revenues, cash flows or other balance sheet items of the Borrower and/or any of its subsidiaries and (b) designated at the time entered into (or on or prior to the Closing Date, with respect to any Hedge Agreement entered into on or prior to the Closing Date) as a Designated Operational FX Hedge by the Borrower in a writing delivered to the Administrative Agent.

“Discretionary Guarantor” has the meaning assigned to such term in Section 5.12(b).

“Disposition” or “Dispose” means the sale, lease, sublease, license, abandonment or other disposition of any property of any Person, including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division.

“Disqualified Capital Stock” means any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, on or prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued (it being understood that if any such redemption is in part, only such part coming into effect prior to the date that is 91 days following the Latest Maturity Date shall constitute Disqualified Capital Stock), (b) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock that would constitute Disqualified Capital Stock, in each case at any time on or prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued or (c) contains any mandatory repurchase obligation (other than for Qualified Capital Stock), in whole or in part, which may come into effect prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued (it being understood that if any such repurchase obligation is in part, only such part coming into effect prior to the date that is 91 days following the Latest Maturity Date shall constitute Disqualified Capital Stock), provided that any (x) Capital Stock that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Capital Stock upon the occurrence of any change of control or any other liquidity event or any Disposition occurring prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued shall not constitute Disqualified Capital Stock if the documentation governing such Capital Stock provides that the issuer thereof will not redeem any such Capital Stock pursuant to such provisions unless either (1) the relevant redemption is permitted by the terms of this Agreement or (2) the Termination Date has occurred and (y) for purposes of clauses (a) through (c) above, it is understood and agreed that if any such maturity, redemption conversion, exchange, repurchase obligation or scheduled payment is in part, only such part coming into effect prior to the date that is 91 days following the Latest Maturity Date (determined at the time such Capital Stock is issued) shall constitute Disqualified Capital Stock.

Notwithstanding the preceding sentence, (A) if such Capital Stock is issued pursuant to any plan for the benefit of directors, officers, employees, members of management, managers or consultants or by any such plan to such directors, officers, employees, members of management, managers or consultants, in each case in the ordinary course of business of the Borrower or any Restricted Subsidiary and/or any Parent
Company, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the issuer thereof in order to satisfy applicable statutory or regulatory obligations and (B) no Capital Stock held by any future, present or former employee, director, officer, manager, member of management or consultant (or their respective Affiliates or Immediate Family Members) of the Borrower (or any Parent Company or any subsidiary) shall be considered Disqualified Capital Stock because such stock is redeemable or subject to repurchase pursuant to any management equity subscription agreement, stock option, stock appreciation right or other stock award agreement, stock ownership plan, put agreement, stockholder agreement or similar agreement that may be in effect from time to time.

“Disqualified Institution” means:

(a) (i) any Person identified in writing to the Arrangers on or prior to the Closing Date, (ii) any Person that is identified in writing to the Administrative Agent after the Closing Date (provided that any Person so identified after the Closing Date must be reasonably acceptable to the Administrative Agent), (iii) any Affiliate of any Person described in clauses (i) or (ii) above that is reasonably identifiable on the basis of such Person’s name as an Affiliate of such Person, and (iv) any other Affiliate of any Person described in clauses (i), (ii) or (iii) above that is identified in a written notice to the Administrative Agent (each such person, a “Disqualified Lending Institution”);

(b) (i) any Person that is or becomes a Company Competitor and/or any Affiliate of any Company Competitor (other than a Competitor Debt Fund Affiliate), in each case, that is identified in writing to the Administrative Agent, (ii) any Affiliate of any Person described in clause (i) above (other than any Competitor Debt Fund Affiliate) that is reasonably identifiable on the basis of such Person’s name as an Affiliate of such Person and (iii) any other Affiliate of any Person described in clauses (i) or (ii) above that is identified in a written notice to the Administrative Agent; it being understood and agreed that no Competitor Debt Fund Affiliate of any Company Competitor may be designated as a Disqualified Institution pursuant to this clause (iii); and

(c) any Affiliate or Representative of any Arranger and/or any Initial Lender that is engaged as a principal primarily in private equity, mezzanine financing or venture capital (any Person described in this clause (c), an “Excluded Party”);

provided that no written notice delivered pursuant to clauses (a)(ii), (a)(iv), (b)(i) and/or (b)(iii) above shall apply retroactively to disqualify any person that has acquired or agreed to acquire prior to the delivery of such notice (i) an assignment of an interest in the Loans pursuant to a fully executed Assignment and Assumption (including any consents thereto required hereby) or (ii) a participation interest in the Loans pursuant to a fully executed participation agreement that provides for “participation” only (including any consents thereto required hereby).

The Borrower shall be permitted to remove any Person from the list of Disqualified Institutions; provided that at any time after the removal of such Person, the Borrower shall be permitted to re-designate such Person as a Disqualified Institution without the consent of the Administrative Agent or any other Person.

“Disqualified Lending Institution” has the meaning assigned to such term in the definition of “Disqualified Institution”.

“Disqualified Person” has the meaning assigned to such term in Section 9.05(f)(ii).
“Dollars” or “$” refers to lawful money of the US.

“Domestic Subsidiary” means any subsidiary of the Borrower incorporated or organized under the laws of the US, any state thereof or the District of Columbia.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country (or, to the extent that the United Kingdom is not an EEA Member Country, the United Kingdom), which is subject to the supervision of a Resolution Authority, (b) any entity established in an EEA Member Country (or, to the extent that the United Kingdom is not an EEA Member Country, the United Kingdom), which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country (or, to the extent that the United Kingdom is not an EEA Member Country, the United Kingdom), which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for the Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent or the Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“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 and (d) any Approved Fund of any Lender, provided that, in any event, “Eligible Assignee” shall not include (i) any natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons), (ii) any Disqualified Institution or (iii) the Borrower or any of its Affiliates.

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, land surface and subsurface strata & natural resources such as wetlands, flora and fauna.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to the Environment.

“Environmental Laws” means any applicable Requirements of Law relating to (a) environmental matters, including those relating to any Hazardous Materials Activity; or (b) the generation, use, storage, transportation or disposal of or exposure to Hazardous Materials, in any manner applicable to the Borrower or any of its Restricted Subsidiaries or any Facility.
“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the Environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.


“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with the Borrower or any Restricted Subsidiary and is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” means (a) a Reportable Event; (b) a withdrawal by the Borrower or any Restricted Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations at any facility of the Borrower or any Restricted Subsidiary or any ERISA Affiliate as described in Section 4062(e) of ERISA, in each case, resulting in liability pursuant to Section 4063 of ERISA; (c) a complete or partial withdrawal by the Borrower or any Restricted Subsidiary or any ERISA Affiliate from a Multiemployer Plan resulting in the imposition of Withdrawal Liability on the Borrower or any Restricted Subsidiary or any ERISA Affiliate, notification of the Borrower or any Restricted Subsidiary or any ERISA Affiliate concerning the imposition of Withdrawal Liability or notification that a Multiemployer Plan is “insolvent” within the meaning of Section 4245 of ERISA; (d) the filing of a notice of intent to terminate a Pension Plan under Section 4041(c) of ERISA, the treatment of a Pension Plan amendment as a termination under Section 4041(c) of ERISA, the commencement of proceedings by the PBGC to terminate a Pension Plan or the receipt by the Borrower or any Restricted Subsidiary or any ERISA Affiliate of notice of the treatment of a Multiemployer Plan amendment as a termination under Section 4041A of ERISA or of notice of the commencement of proceedings by the PBGC to terminate a Multiemployer Plan; (e) the occurrence of an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any Restricted Subsidiary or any ERISA Affiliate, with respect to the termination of any Pension Plan; or (g) the conditions for imposition of a Lien under Section 303(k) of ERISA have been met with respect to any Pension Plan.

“Escrow” has the meaning set forth in the definition of “Indebtedness”.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Event of Default” has the meaning assigned to such term in Article VII.

“Exchange Act” means the Securities Exchange Act of 1934 and the rules and regulations of the SEC promulgated thereunder (with respect to the definitions of “Change of Control” and “Permitted Holders” as in effect on the Closing Date).

“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 (to the extent such contract is binding on such asset at the time of its acquisition and not incurred in contemplation thereof); it being understood that the term “Excluded Asset” shall not include proceeds or receivables arising out of any contract described in this clause (a) to the extent that the assignment of such proceeds or receivables is expressly deemed to be effective under the UCC or other applicable Requirements of Law notwithstanding the relevant prohibition, violation or termination right;

(b) the Capital Stock of any (i) Captive Insurance Subsidiary, (ii) Unrestricted Subsidiary, (iii) not-for-profit subsidiary and/or (iv) Immaterial Subsidiary (other than an Immaterial Subsidiary that is a Loan Party);

(c) any intent-to-use Trademark application prior to the filing and acceptance by the U.S. Patent and Trademark Office of a “Statement of Use” or “Amendment to Allege Use” 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 or any registration issuing therefrom under applicable Requirements of Law;

(d) any asset (including Capital Stock), the grant or perfection of a security interest in which (i) would be prohibited under applicable Requirements of Law (including any rule and/or regulation of any Governmental Authority) (after giving effect to applicable anti-assignment provisions of the UCC or other applicable Requirements of Law), (ii) would require any governmental or regulatory consent, approval, license or authorization, in each case, to the extent such consent, approval, license or authorization has not been obtained (it being understood and agreed that no Loan Party shall have any obligation to procure any such consent, approval, license or authorization) (after giving effect to applicable anti-assignment provisions of the UCC or other applicable Requirements of Law); it being understood that the term “Excluded Asset” shall not include proceeds or receivables arising out of any asset described in clauses (d)(i) or (d)(ii) to the extent that the assignment of such proceeds or receivables is effective under the UCC or other applicable Requirements of Law notwithstanding the relevant requirement or prohibition or (iii) could be reasonably likely to result in material adverse tax consequences (including as a result of the application of Section 956 of the Code or any similar Requirement of Law) to the Borrower, any Parent Company and/or any of their respective subsidiaries as determined by the Borrower in good faith;

(e) (i) any leasehold Real Estate Asset, (ii) except to the extent a security interest therein can be perfected by the filing of a UCC-1 financing statement, any other leasehold interest, and (iii) any owned Real Estate Asset;

(f) the Capital Stock of (i) any Person that is not the Borrower or a Wholly-Owned Subsidiary of the Borrower and/or (ii) any subsidiary of any non-Wholly Owned Subsidiary of the Borrower;
(g) any Margin Stock;

(h) the Capital Stock of (i) any Foreign Subsidiary and (ii) any FSHCO, in each case, (A) in excess of 65% of the issued and outstanding voting Capital Stock and 100% of the issued and outstanding non-voting Capital Stock of any such Foreign Subsidiary and/or FSHCO or (B) to the extent such Foreign Subsidiary or FSHCO is not a first-tier Subsidiary of any Loan Party;

(i) any Commercial Tort Claim;

(j) any Deposit Account, securities account and/or similar account (including any securities entitlement), escrow, fiduciary and/or trust account, payroll and other employee wage and benefit accounts, tax accounts (including, sales tax accounts), any cash collateral account, any Cash and Cash Equivalents and any funds and other property held or maintained in any such accounts (other than, in each case, proceeds of other Collateral as to which perfection may be accomplished by filing a UCC-1 financing statement or automatically in accordance with the UCC);

(k) assets subject to any purchase money security interest, Capital Lease obligation, sale-leaseback obligation or similar arrangement, in each case, that is permitted or otherwise not prohibited by the terms of this Agreement and to the extent the grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or similar arrangement or create a right of termination in favor of any other party thereto; it being understood that the term “Excluded Asset” shall not include proceeds or receivables arising out of any asset described in this clause (k) to the extent that the assignment of such proceeds or receivables is expressly deemed to be effective under the UCC or other applicable Requirements of Law notwithstanding the relevant violation or invalidation;

(l) any Letter-of-Credit Right that does not constitute a supporting obligation, except to the extent the security interest therein may be perfected by filing of a financing statement under the UCC of any applicable jurisdiction;

(m) motor vehicles and other assets subject to certificates of title, except to the extent the security interest therein may be perfected by filing of a financing statement under the UCC of any applicable jurisdiction;

(n) any asset of a Person acquired by the Borrower or any other Restricted Subsidiary that, at the time of the relevant acquisition, is encumbered to secure assumed Indebtedness permitted by this Agreement to the extent (and for so long as) the documentation governing the applicable assumed Indebtedness prohibits such asset from being pledged to secure the Secured Obligations and the relevant prohibition was not implemented in contemplation of the applicable acquisition;

(o) any asset with respect to which the Borrower has in good faith determined that the cost, burden, difficulty or consequence (including (i) any effect on the ability of the relevant Loan Party to conduct its operations and business in the ordinary course of business and (ii) the cost of mortgage, stamp, intangible or other taxes or expenses) of obtaining or perfecting a security interest therein outweighs, or is excessive in light of, the practical benefit of a security interest to the relevant Secured Parties afforded thereby (and the Lenders acknowledge that the Collateral that may be provided by any Loan Party may be limited to minimize stamp duty, notarization, registration or other applicable fees, taxes and duties where the benefit to the Secured Parties of increasing the secured amount is disproportionate to the level of such fees, taxes and duties);
any governmental license or state or local franchise, charter or authorization, to the extent a security interest in any such license, franchise, charter or authorization would be prohibited or restricted thereby, after giving effect to the anti-assignment provisions of the UCC of any applicable jurisdiction, other than any proceeds or receivable thereof to the extent the assignment of the same is effective under the UCC of any applicable jurisdiction notwithstanding such consent or restriction; and

(q) aircraft, airframes, aircraft engines, helicopters and equipment and/or other assets that are affixed to, or otherwise constitute, such aircraft, airframes, aircraft engines and/or helicopters.

“Excluded Party” has the meaning assigned to such term in the definition of “Disqualified Institution”.

“Excluded Subsidiary” means:

(a) Any Restricted Subsidiary that is not a Wholly-Owned Subsidiary of Borrower;

(b) any Immaterial Subsidiary;

(c) any Restricted Subsidiary that (i) is prohibited or restricted from providing a Loan Guaranty by (A) any Requirement of Law or (B) any Contractual Obligation that exists on the Closing Date or at the time such Restricted Subsidiary becomes a subsidiary (which Contractual Obligation was not entered into in contemplation of the acquisition of such Restricted Subsidiary (including pursuant to assumed Indebtedness)), (ii) would require a governmental (including regulatory) or third party consent, approval, license or authorization (including any regulatory consent, approval, license or authorization) to provide a Loan Guaranty (including under any financial assistance, corporate benefit, thin capitalization, capital maintenance, liquidity maintenance or similar legal principles), unless such consent, approval, license or authorization has been obtained (it being understood and agreed that none of the Borrower and/or any of their respective subsidiaries shall have any obligation to obtain (or seek to obtain) any such consent, approval, license or authorization) or (iii) with respect to which the provision of a Loan Guaranty could reasonably be expected to result in material and adverse tax consequences to the Borrower, any Parent Company and/or any of their respective subsidiaries as determined by the Borrower in good faith;

(d) any not-for-profit subsidiary;

(e) any Captive Insurance Subsidiary;

(f) any Foreign Subsidiary;

(g) any Domestic Subsidiary that (i) is a FSHCO or (ii) is a direct or indirect subsidiary of any Foreign Subsidiary or FSHCO;

(h) any Unrestricted Subsidiary;

(i) any Restricted Subsidiary acquired by the Borrower or any Restricted Subsidiary that, at the time of the relevant acquisition, is an obligor in respect of assumed Indebtedness permitted by Section 6.01 to the extent (and for so long as) the documentation governing the applicable assumed Indebtedness prohibits such subsidiary from providing a Loan Guaranty (which
prohibition was not implemented in contemplation of such Restricted Subsidiary becoming a subsidiary in order to avoid the requirement of providing a Loan Guaranty);

(j) any other Restricted Subsidiary with respect to which the burden or cost of providing a Loan Guaranty outweighs, or would be excessive in light of, the practical benefits afforded thereby as determined by the Borrower in good faith in consultation with the Administrative Agent;

(k) solely in the case of any Swap Obligation that constitutes a “swap” within the meaning of section 1(a)(47) of the Commodity Exchange Act (for which the avoidance of doubt shall be determined after giving effect to any “keepwell, support or other agreement” (as such terms are used under the Commodity Exchange Act)), any Domestic Subsidiary that is not an “eligible contract participant” as defined under the Commodity Exchange Act and the regulations thereunder;

(l) any subsidiary where the provision by such subsidiary of a Loan Guaranty could reasonably be expected to conflict with the fiduciary duties of such subsidiary’s directors or result in, or could reasonably be expected to result in, a material risk of personal or criminal liability for such subsidiary or any of its officers or directors or to the extent it is not within the legal capacity of such subsidiary to provide a Loan Guaranty (whether as a result of financial assistance, corporate benefit, thin capitalization, capital maintenance, liquidity maintenance or similar rules or otherwise); and

(m) any broker-dealer subsidiary;

(n) any subsidiary of any Person described in the foregoing clauses (a) through (m).

“Excluded Swap Obligation” means, with respect to any Loan Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Loan Guaranty of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such Swap Obligation (or any Loan Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof, or any Governmental Authority succeeding to any or all of its functions) (a) by virtue of such Loan Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 3.20 of the Loan Guaranty and any other “keepwell”, support or other agreement for the benefit of such Loan Guarantor) at the time the Loan Guaranty of such Loan Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation or (b) in the case of any Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Loan Guarantor is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee provided by (or grant of such security interest by, as applicable) such Loan Guarantor becomes or would become effective with respect to such Swap Obligation. If any Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Loan Guaranty or security interest is or becomes illegal.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender or Issuing Bank, or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Loan Document, (a) any Taxes imposed on (or measured by) net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (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) in the case of a Lender,
any US federal withholding Tax that is imposed on amounts payable to or for the account of such Lender (other than a Lender that became a Lender pursuant to an assignment under Section 2.19) with respect to an applicable interest in a Loan or Commitment pursuant to a Requirement of Law in effect on the date on which such Lender (i) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires its interest in such Loan or (ii) designates a new lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Tax were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it designated a new lending office, (c) any Tax imposed as a result of a failure by such recipient to comply with Section 2.17(f) or (j) and (d) any Tax imposed under FATCA.

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

“Extended Revolving Credit Commitment” has the meaning assigned to such term in Section 2.23(a).

“Extended Revolving Loans” has the meaning assigned to such term in Section 2.23(a).

“Extension” has the meaning assigned to such term in Section 2.23(a).

“Extension Amendment” means an amendment to this Agreement that is reasonably satisfactory to the Administrative Agent (to the extent required by Section 2.23) and the Borrower executed by (a) the Borrower and the Subsidiary Guarantors, (b) the Administrative Agent and (c) each Lender that has accepted the applicable Extension Offer pursuant hereto and in accordance with Section 2.23.

“Extension Offer” has the meaning assigned to such term in Section 2.23(a).

“Facility” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or, except with respect to Articles 5 and 6, previously owned, leased, operated or used by the Borrower or any of its Restricted Subsidiaries or any of their respective predecessors or Affiliates.

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


“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that, if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States of America.
“Fee Letter” means the Fee Letter, dated January 25, 2022, among the Borrower and JPMorgan.

“Financial Model” means the final financial model made available by the Borrower to the Administrative Agent prior to the Closing Date.

“First Lien Debt” means (a) the Initial Revolving Loans and (b) any other Indebtedness (other than any such Indebtedness among the Borrower and/or any of their respective subsidiaries) that is secured by a Lien on the Collateral that is pari passu with the Lien securing the Initial Revolving Loans.

“First Lien Rent Adjusted Net Leverage Ratio” means the ratio, as of any date of determination, of (a)(i) Consolidated First Lien Debt as of the last day of the most recently ended Test Period, plus (ii) the product of (A) Consolidated Cash Rental Expense for such Test Period and (B) eight to (b) Consolidated Adjusted EBITDAR for such Test Period, in each case, of the Borrower and its Restricted Subsidiaries on a consolidated basis.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year of the Borrower ending on a date set forth in the table below, which table may be amended by the Borrower and the Administrative Agent as permitted under Section 5.17 in the event of a change in the Fiscal Year of the Borrower.

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<tbody>
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<td>Q2 2022</td>
<td>July 10, 2022</td>
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</table>

“Fiscal Year” means each fiscal year of the Borrower ending on or about December 31 of each calendar year.

“Fitch” means Fitch Ratings, Inc.

“Fixed Amount” has the meaning assigned to such term in Section 1.11(c).
“Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a)(i) Consolidated Adjusted EBITDAR for the relevant Test Period minus (ii) Maintenance Capital Expenditures for such Test Period to (b) (i) Consolidated Fixed Charges for such Test Period plus (ii) to the extent added back in the calculation of “Consolidated Adjusted EBITDA” for such Test Period, the aggregate amount of federal, state, local and foreign income taxes paid or payable in cash plus (iii) the aggregate amount of Restricted Payments made in Cash in the relevant Test Period (other than Restricted Payments made pursuant to Sections 6.04(a)(i)(F), 6.04(a)(ii), 6.04(a)(iii)(A) (except to the extent made in reliance on clause (a)(i) of the definition of “Available Amount”), 6.04(a)(iii)(B), 6.04(a)(v), 6.04(a)(vi), 6.04(a)(viii), 6.04(a)(xi), 6.04(a)(xii) and/or 6.04(a)(xiii)).

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt, the initial Floor for each of Adjusted Term SOFR Rate or Adjusted Daily Simple SOFR shall be 0.00%.

“Foreign Lender” means any Lender or Issuing Bank that is not a US Person.

“Foreign Subsidiary” means any subsidiary of the Borrower that is not a Domestic Subsidiary.

“FSHCO” means (a) any direct or indirect Domestic Subsidiary that has no material assets other than the Capital Stock and/or Indebtedness of one or more Foreign Subsidiaries and (b) any direct or indirect Domestic Subsidiary that has no material assets other than the Capital Stock and/or Indebtedness of one or more Persons of the type described in the immediately preceding clause (a) or in this clause (b).

“GAAP” means generally accepted accounting principles in the US in effect and applicable to the accounting period in respect of which reference to GAAP is made.

“Governmental Authority” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with the US, a foreign government or any political subdivision thereof, including any applicable supranational body (such as the European Union or the European Central Bank).

“Governmental Authorization” means any permit, license, authorization, approval, plan, directive, consent order or consent decree of or from any Governmental Authority.

“Granting Lender” has the meaning assigned to such term in Section 9.05(e).

“Guarantee” of or by any Person (the “Guarantor”) means any obligation, contingent or otherwise, of the Guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation of any other Person (the “Primary Obligor”) in any manner and including any obligation of the Guarantor (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other monetary obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the Primary Obligor so as to enable the Primary Obligor to pay such Indebtedness or other monetary obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or monetary obligation, (e) entered into for the purpose of assuring in any other manner
the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (f) secured by any Lien on any assets of such Guarantor securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or monetary other obligation is assumed by such Guarantor (or any right, contingent or otherwise, of any holder of such Indebtedness or other monetary obligation to obtain any such Lien); provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition, Disposition or other transaction permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Guarantor” has the meaning assigned to such term in the definition of “Guarantee”.

“Hazardous Materials” means any chemical, material, substance or waste, or any constituent thereof, which is prohibited, limited or regulated under any Environmental Law or by any Governmental Authority or which poses a hazard to the Environment or to human health and safety, including without limitation, petroleum and petroleum by-products, asbestos and asbestos-containing materials, polychlorinated biphenyls, medical waste and pharmaceutical waste.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Material, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Material, and any corrective action or response action with respect to any of the foregoing.

“Hedge Agreement” means any agreement with respect to any Derivative Transaction (or any master agreement which is intended to govern multiple Derivative Transactions) between any Loan Party or any Restricted Subsidiary and any other Person.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any Hedge Agreement.

“Immaterial Subsidiary” means, as of any date, any subsidiary of the Borrower the contribution to (a) Consolidated Adjusted EBITDA of which, when taken together with the contribution to Consolidated Adjusted EBITDA of all other subsidiaries that are Immaterial Subsidiaries, does not exceed 5.0% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period and (b) Consolidated Total Assets of which, when taken together with the contribution to Consolidated Total Assets of all other subsidiaries that are Immaterial Subsidiaries, does not exceed 5.0% of Consolidated Total Assets as of the last day of the most recently ended Test Period; provided that, at all times prior to the first delivery of financial statements pursuant to Section 5.01(a) or (b), this definition shall be applied based on the pro forma consolidated financial statements delivered pursuant to Section 4.01.

“Immediate Family Member” means, with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, domestic partner, former domestic partner, sibling, mother-in-law, father-in-law, son-in-law and/or daughter-in-law (including any adoptive relationship), any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals, such individual’s estate (or an executor or administrator acting on its behalf), heirs or legatees or any private foundation or
fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“Impacted Loans” has the meaning assigned to such term in Section 2.14(a).

“Incremental Cap” means $25,000,000.

“Incremental Commitment” means any commitment made by a lender to provide all or any portion of any Incremental Facility or Incremental Loan.

“Incremental Equivalent Debt” means Indebtedness in the form of pari passu senior secured or unsecured notes or loans and/or junior secured or unsecured notes or loans and/or, in each case commitments in respect of any of the foregoing; provided that:

(a) the aggregate outstanding principal amount (or committed amount, if applicable under Section 1.11) thereof shall not exceed the Incremental Cap (as in effect at the time of determination);

(b) the final maturity date with respect to such notes or loans (other than Customary Bridge Loans and/or revolving Indebtedness) is no earlier than the Latest Maturity Date on the date of the issuance or incurrence, as applicable, thereof;

(c) subject to clause (b), such Indebtedness may otherwise have an amortization schedule as determined by the Borrower and the lenders providing such Incremental Equivalent Debt;

(d) the currency, pricing (including any “MFN” or other pricing terms), interest rate margins, rate floors, fees, premiums (including prepayment premiums), funding discounts and the maturity and amortization schedule applicable to any Incremental Equivalent Debt shall be determined by the Borrower and the lender or lenders providing such Incremental Equivalent Debt;

(e) such Incremental Equivalent Debt will be documented pursuant to separate documentation from the credit agreement governing the Revolving Facility;

(f) if such Indebtedness is (i) secured by the Collateral on a pari passu basis with the Secured Obligations that constitute First Lien Debt, (ii) secured by the Collateral on a junior basis as compared to the Secured Obligations that constitute First Lien Debt or (iii) subordinated to the Obligations in right of payment, then the holders of such Indebtedness (or a representative thereof) shall be party to an Intercreditor Agreement; and

(g) no such Indebtedness may be (A) issued or guaranteed by any subsidiary of the Borrower which is not a Loan Party (it being understood and agreed that the obligations of any Person with respect to any Escrow arrangement into which the proceeds of such Indebtedness are deposited shall not constitute a guarantee by any subsidiary that is not a Loan Party) or (B) secured by any asset that does not constitute Collateral; it being understood that any such Indebtedness that is funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements may be secured by the applicable funds and related assets held in Escrow (and the proceeds thereof) until the date on which such funds are released from Escrow.

“Incremental Facilities” has the meaning assigned to such term in Section 2.22(a).
“Incremental Facility Amendment” means an amendment to this Agreement that is reasonably satisfactory to the Administrative Agent (solely for purposes of giving effect to Section 2.22) and the Borrower executed by each of (a) 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 Facility” has the meaning assigned to such term in Section 2.22(a).

“Incremental Revolving Facility Lender” means, with respect to any Incremental Revolving Facility, each Revolving Lender providing any portion of such Incremental Revolving Facility.

“Incremental Revolving Loans” has the meaning assigned to such term in Section 2.22(a).

“Incremental Term Facility” has the meaning assigned to such term in Section 2.22(a).

“Incremental Term Loan” has the meaning assigned to such term in Section 2.22(a).

“Incurrence-Based Amount” has the meaning assigned to such term in Section 1.11(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 of such Person owed for all or any part of the deferred purchase price of property or services (excluding (i) any earn-out obligation or purchase price adjustment until such obligation (A) becomes a liability on the statement of financial position or balance sheet (excluding the footnotes thereto) in accordance with GAAP and (B) has not been paid within 30 days after becoming due and payable, (ii) any such obligation incurred under ERISA, (iii) accrued expenses and trade accounts payable in the ordinary course of business (including on an inter-company basis) and (iv) liabilities associated with customer prepayments and deposits), which purchase price is (A) due more than six months from the date of the incurrence of the obligation in respect thereof or (B) evidenced by a note or similar written instrument);

(e) any monetary obligation of any other Person secured by any Lien on any asset owned or held by such Person regardless of whether the Indebtedness secured thereby has been assumed by such Person or is non-recourse to the credit of such Person;

(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 any obligation under any Derivative Transaction be deemed to constitute “Indebtedness” for any calculation of the First Lien Rent Adjusted Net Leverage Ratio, the Total Rent Adjusted Net Leverage Ratio, or any other financial ratio under this Agreement, (ii) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (A) the aggregate unpaid principal amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith and (iii) the term “Indebtedness” shall exclude (A) intercompany loans and/or advances arising from cash management, tax and accounting operations and (B) intercompany loans and/or advances made in the ordinary course of business that have a term that does not exceed 364 days.

For all purposes hereof, the Indebtedness of any Person shall (i) include the Indebtedness of any third person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venture) to the extent such Person would be liable therefor under applicable Requirements of Law or any agreement or instrument by virtue of such Person’s ownership interest in such Person, (A) except to the extent the terms of such Indebtedness provide that such Person is not liable therefor and (B) only to the extent the relevant Indebtedness is of the type that would be included in the calculation of Consolidated Total Debt; provided that, notwithstanding anything herein to the contrary, the term “Indebtedness” shall not include, and shall be calculated without giving effect to, (1) the effects of Accounting Standards Codification Topic 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose hereunder as a result of accounting for any embedded derivatives created by the terms of such Indebtedness (it being understood that any such amounts that would have constituted Indebtedness hereunder but for the application of this proviso shall not be deemed an incurrence of Indebtedness hereunder) and (2) the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivative created by the terms of such Indebtedness (it being understood that any such amounts that would have constituted Indebtedness hereunder under this Agreement but for the application of this sentence shall not be deemed to be an incurrence of Indebtedness hereunder and (ii) exclude (A) obligations incurred in connection with the consummation of any transaction solely to the extent the proceeds thereof are and continue to be held in an escrow, trust, collateral or similar account or arrangement (collectively, an “Escrow”) and are not otherwise made available to such Person, (B) prepaid or deferred revenue and (C) obligations that constitute “Indebtedness” solely by virtue of a pledge of an Investment (without an accompanying guaranty) in any Unrestricted Subsidiary.

The amount of any Indebtedness that is issued at a discount to its initial principal amount shall be calculated based on the initial stated principal amount thereof without giving effect to any such discount.

“Indemnified Taxes” means (a) all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 9.03(b).

“Information” has the meaning assigned to such term in Section 3.11(a).
“Initial Lenders” means the Initial Revolving Lenders who are party to this Agreement as Lenders on the Closing Date.

“Initial Revolving Credit Commitment” means, with respect to any Person, the commitment of such Person to make Initial Revolving Loans (and acquire participations in Letters of Credit and Swingline Loans) hereunder as set forth on the Commitment Schedule, or in the Assignment Agreement pursuant to which such Person assumed its Initial Revolving Credit Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 or 2.19, (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.05 or (c) increased pursuant to Section 2.22. The aggregate amount of the Initial Revolving Credit Commitments as of the Closing Date is $75,000,000.

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

“Initial Revolving Credit Maturity Date” means the date that is five years after the Closing Date.

“Initial Revolving Facility” means the Initial Revolving Credit Commitments and the Initial Revolving Loans and other extensions of credit thereunder.

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

“Initial Revolving Loan” has the meaning assigned to such term in Section 2.01(a)(ii).

“Intellectual Property Security Agreement” means any agreement, or a supplement thereto, executed on or after the Closing Date confirming or effecting the grant of any Lien on IP Rights owned by any Loan Party to the Administrative Agent, for the benefit of the Secured Parties, required in accordance with this Agreement and the Security Agreement, including an Intellectual Property Security Agreement substantially in the form of Exhibit C.

“Intercompany Note” means a promissory note substantially in the form of Exhibit F or such other form to which the Borrower and the Administrative Agent may reasonably agree.

“Intercreditor Agreement” means, with respect to any Indebtedness, any intercreditor or subordination agreement or arrangement (which may take the form of a “waterfall” or similar provision), as applicable, the terms of which are (i) consistent with market terms (as determined by the Borrower and the Administrative Agent in good faith) governing arrangements for the sharing and/or subordination of liens and/or arrangements relating to the distribution of payments, as applicable, at the time the relevant intercreditor agreement is proposed to be established in light of the type of Indebtedness subject thereto and/or (ii) reasonably acceptable to the Borrower and the Administrative Agent.

“Interest Election Request” means a request by the Borrower in the form of Exhibit H hereto or another form reasonably acceptable to the Administrative Agent to convert or continue a Borrowing in accordance with Section 2.08.

“Interest Payment Date” means (a) with respect to any ABR Loan (other than a Swingline Loan), the first day of each calendar month and the Maturity Date (b) with respect to any RFR Loan (if after the effectiveness of a Benchmark Replacement), (1) each date that is on the numerically corresponding day in
each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the Maturity Date, (c) with respect to any Term Benchmark Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing 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 and the Maturity Date and (d) with respect to any Swingline Loan, the day that such Loan is required to be repaid and the Maturity Date.

“Interest Period” means with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), 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, (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, and (iii) no tenor that has been removed from this definition pursuant to Section 2.14(e) shall be available for specification in such Borrowing Request or Interest Election. 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.

“Investment” means (a) any purchase or other acquisition for consideration by the Borrower or any of its Restricted Subsidiaries of any of the Capital Stock of any other Person (other than any Loan Party), (b) the acquisition for consideration by the Borrower or any of its Restricted Subsidiaries of any operating division or operating line of business or other operating business unit of such other Person and (c) any loan, advance (other than any loan to any current or former employee, officer, director, member of management, manager, consultant or independent contractor of the Borrower, any Restricted Subsidiary, or any Parent Company for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution in exchange for consideration by the Borrower or any of its Restricted Subsidiaries to any other Person. Subject to Section 5.10, the amount of any Investment shall be the original cost of such Investment, plus the cost of any addition thereto that otherwise constitutes an Investment, without any adjustment for any increase or decrease in value, or any write-up, write-down or write-off with respect thereto, but giving effect to (i) any repayment of principal and/or interest in the case of any Investment in the form of a loan or other debt instrument and (ii) any return of capital or return on Investment in the case of any equity Investment (whether as a distribution, dividend, redemption or sale but not in excess of the amount of the relevant initial Investment). It is understood and agreed that the term “Investment” shall exclude (A) intercompany advances arising from cash management, tax and accounting operations and (B) intercompany loans, advances or Indebtedness made in the ordinary course of business that have a term that does not exceed 364 days.

“Investors” means collectively, (i) Artal and its controlled affiliated funds, (ii) Act III Holdings LLC and its affiliated funds, (iii) Ronald M. Shaich, (iv) Ronald M. Shaich’s spouse, parents, siblings, members of his immediate family (including adopted children and step children) and/or direct lineal descendants, and any trust, the beneficiaries of which, include only the foregoing persons, (v) Revolution Growth III, LP and its affiliated funds and (vi) SWaN & Legend Fund 3, LP and its affiliated funds.
“IP Rights” has the meaning assigned to such term in Section 3.05(b).

“IP Separation Transaction” means (a) any Disposition by the Borrower or any Restricted Subsidiary of any Material Intellectual Property to any Unrestricted Subsidiary (other than any non-exclusive licenses or bona fide operational joint venture established for legitimate business purposes) and/or (b) any Investment by the Borrower or any Restricted Subsidiary in the form of a contribution of Material Intellectual Property to any Unrestricted Subsidiary (other than any non-exclusive licenses or bona fide operational joint venture established for legitimate business purposes).

“IPO” means an initial public offering or any other transaction or series of related transactions that results in any of the common Capital Stock of the Borrower or any Parent Company being publicly traded on any U.S. national securities exchange or analogous public exchange in any other jurisdiction.

“IRS” means the US Internal Revenue Service.

“Issuing Bank” means, as the context may require, (a) JPMorgan and (b) each other Person that is or becomes a Revolving Lender, that, in the case of this clause (b), agrees to act as an Issuing Bank hereunder pursuant to Section 2.05(h)(ii), and in the case of clauses (a) and (b), each such Person in its capacity as an issuer of Letters of Credit hereunder. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by any branch or Affiliate of such Issuing Bank, in which case the term “Issuing Bank” shall include any such branch or Affiliate with respect to Letters of Credit issued by such branch or Affiliate.

“Joinder Agreement” means a Joinder Agreement substantially in the form of Exhibit K or such other form that is reasonably satisfactory to the Administrative Agent and the Borrower; it being understood and agreed that any Joinder Agreement executed by any Foreign Subsidiary may include such modifications as may be necessary to reflect the fact that such Foreign Subsidiary may not become party to the Security Agreement.

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

“JPM Parties” has the meaning assigned to such term in Section 9.27.

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

“Junior Lien Debt” means any Indebtedness (other than Indebtedness among the Borrower and/or any of their respective subsidiaries) that is secured by a Lien on the Collateral that is expressly junior or subordinated to the Lien on the Collateral securing the Initial Revolving Loans.

“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 Revolving Loan, Revolving Credit Commitment or Incremental Term Loan.

“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.

“LC Collateral Account” has the meaning assigned to such term in Section 2.05(i).

“LC Disbursement” means a payment or disbursement made by an Issuing Bank pursuant to a Letter of Credit.
“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit (other than any Letter of Credit that is subject to Letter of Credit Support at such time) at such time and (b) the aggregate principal amount of all LC Disbursements that have not yet been reimbursed at such time. The LC Exposure of any Revolving Lender at any time shall equal its Applicable Revolving Credit Percentage of the aggregate LC Exposure at such time.

“Legal Reservations” means the application of the relevant Debtor Relief Laws, general principles of equity and/or principles of good faith and fair dealing.

“Lenders” means the Revolving Lenders, any Incremental Term 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 letter of credit issued pursuant to this Agreement.

“Letter of Credit Commitment” means with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit in an aggregate amount to not exceed the amount set forth opposite such Person’s name on the Commitment Schedule.

“Letter of Credit Reimbursement Loan” has the meaning assigned to such term in Section 2.05(d)(i).

“Letter of Credit Request” means a request by the Borrower for a new Letter of Credit or an amendment to any existing Letter of Credit in accordance with Section 2.05 and substantially in the form of Exhibit N or such other form that is reasonably satisfactory to the relevant Issuing Bank and the Borrower.

“Letter of Credit Right” has the meaning set forth in Article 9 of the UCC.

“Letter of Credit Sublimit” means $10,000,000, subject to increase in accordance with Section 2.22.

“Letter of Credit Support” means, with respect to any Letter of Credit, that (a) such Letter of Credit has been Cash collateralized in an amount equal to 102% of the face amount of such Letter of Credit, (b) a separate letter of credit has been issued in favor of the Issuing Bank (or its designee) with respect to such Letter of Credit pursuant to arrangements reasonably satisfactory to such Issuing Bank and in an amount equal to 102% of the face amount of the applicable Letter of Credit issued hereunder, (c) such Letter of Credit has been deemed reissued under another agreement in a manner reasonably acceptable to the applicable Issuing Bank or (d) other arrangements reasonably acceptable to the relevant Issuing Bank with respect to such Letter of Credit.

“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, but excluding licenses of IP Rights), 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 (i) the Cash and Cash Equivalents of the Borrower and its subsidiaries plus (ii) Total Revolving Commitment less the aggregate Revolving Credit Exposure.
“Loan Documents” means this Agreement, any Promissory Note, each Loan Guaranty, the Collateral Documents, any Intercreditor Agreement (if any) to which the Borrower is a party, any Perfection Certificate, each Refinancing Amendment, each Incremental Facility Amendment, each Extension Amendment and any other document or instrument designated by the Borrower and the Administrative Agent as a “Loan Document”. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto.

“Loan Guarantor” means any Subsidiary Guarantor.

“Loan Guaranty” means the Loan Guaranty, substantially in the form of Exhibit I, executed by each Loan Party thereto and the Administrative Agent for the benefit of the Secured Parties, as supplemented in accordance with the terms of Section 5.12.

“Loan Parties” means the Borrower and each Loan Guarantor.

“Loans” means any Revolving Loan, any Swingline Loan, any Incremental Term Loan or any Additional Revolving Loan.

“Maintenance Capital Expenditures” means Capital Expenditures incurred for repair or replacement at, or otherwise to maintain, the Borrower’s Unit Locations, offices and related properties, whether in existence on or after the Closing Date, that are necessary to maintain a status quo level of operating performance as of or after the Closing Date, in each case other than capitalized software expenditures.

“Margin Stock” has the meaning assigned to such term in Regulation U.

“Material Adverse Effect” means a material adverse effect on (i) the business, assets or financial condition, in each case, of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) the rights and remedies (taken as a whole) of the Administrative Agent under the applicable Loan Documents or (iii) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the applicable Loan Documents.

“Material Debt Instrument” means any physical instrument evidencing any Indebtedness for borrowed money owing from any Person other than any Loan Party which is required to be pledged and delivered to the Administrative Agent (or its bailee) pursuant to the Security Agreement.

“Material Intellectual Property” means any IP Rights owned by any Loan Party that is material to the operation of the business of the Borrower and its Restricted Subsidiaries, taken as a whole.

“Maturity Date” means (a) with respect to the Initial Revolving Facility, the Initial Revolving Credit Maturity Date, (b) with respect to any Revolver Replacement Facility, the final maturity date for such Revolver Replacement Facility, as the case may be, as set forth in the applicable Refinancing Amendment, (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, the final maturity date set forth in the applicable Extension Amendment.

“Maximum Rate” has the meaning assigned to such term in Section 9.19.

“Minimum Extension Condition” has the meaning assigned to such term in Section 2.23(b).

“Moody’s” means Moody’s Investors Service, Inc.
“Multiemployer Plan” means any employee benefit plan which is a “multiemployer plan” as defined in Section 3(37) of ERISA that is subject to the provisions of Title IV of ERISA, and in respect of which the Borrower or any of its Restricted Subsidiaries, or any of their respective ERISA Affiliates, makes or is obligated to make contributions or with respect to which any of them has any ongoing obligation or liability, contingent or otherwise.

“Net Proceeds” means:

(a) with respect to any Disposition, the Cash proceeds (including Cash Equivalents and Cash proceeds subsequently received (as and when received) in respect of non-cash consideration initially received), net of:

   (i) selling costs and out-of-pocket expenses (including reasonable broker’s fees or commissions, legal fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith and transfer and similar Taxes and the Borrower’s good faith estimate of income Taxes paid or payable (including pursuant to any Tax sharing arrangement and/or any intercompany distribution) in connection with such Disposition); it being understood that the reduction in the amount of any net operating loss resulting from such Disposition shall be deemed to constitute an income Tax “paid or payable” for purposes of this clause (i);

   (ii) amounts provided as a reserve in accordance with GAAP against any liabilities under any indemnification obligation or purchase price adjustment associated with such Disposition (provided that to the extent and at the time any such amount is released from such reserve, such amounts shall constitute Net Proceeds);

   (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness (other than the Loans and any other Indebtedness that constitutes First Lien Debt or Junior Lien Debt) which is secured by the asset sold in such Disposition and which is required to be repaid or otherwise comes due or would be in default and is repaid (other than any such Indebtedness that is assumed by the purchaser of such asset);

   (iv) any Cash escrow (until released from escrow to the Borrower or any of its Restricted Subsidiaries) from the sale price for such Disposition;

   (v) in the case of any Disposition by any non-Wholly-Owned Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (v)) that is attributable to any minority interest and not available for distribution to or for the account of the Borrower or a Wholly-Owned Subsidiary as a result thereof; and

   (vi) any amount used to repay or return any customer deposit required to be repaid or returned as a result of such Disposition; and

(b) with respect to any issuance or incurrence of Indebtedness, issuance of Capital Stock and/or any contribution in respect of any Capital Stock, the Cash proceeds thereof, net of all Taxes and customary fees, commissions, costs, underwriting discounts and other fees and expenses incurred in connection therewith, including any cost associated with the unwinding of any Hedge Agreement in connection with such Indebtedness.
“Non-Defaulting Revolving Lenders” has the meaning assigned to such term in Section 2.21(d)(i).

“Not Otherwise Applied” means, with respect to the proceeds of the issuance of Qualified Capital Stock or contribution with respect to Qualified Capital Stock, that as of any date of determination such proceeds have not previously been applied to permit a transaction in reliance on Sections 6.04(a)(ii)(B), (a)(iii)(A) (to the extent a Restricted Payment is made in reliance on clause (a)(ii) or (a)(x) of the definition of “Available Amount”), 6.04(a)(iii)(B), 6.04(a)(vii), 6.04(b)(y), (b)(vi)(A) (to the extent a Restricted Debt Payment is made in reliance on clause (a)(ii) or (a)(x) of the definition of “Available Amount”), 6.06(n), 6.06(o)(i) (to the extent an Investment is made in reliance on clause (a)(ii) or (a)(x) of the definition of “Available Amount”) and/or 6.06(o)(ii).

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit Q or such other form as may be approved by the Administrative Agent and the Borrower (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and the Borrower), appropriately completed and signed by a Responsible Officer.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB’s Website” means the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Obligations” means all unpaid principal of and accrued and unpaid interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses (including fees and expenses accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), reimbursements, indemnities and all other advances to, debts, liabilities and obligations of any Loan Party to the Lenders or to any Lender, the Administrative Agent, any Issuing Bank or any indemnified party arising under the Loan Documents in respect of any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising.

“Obligations Derivative Instrument” has the meaning assigned to such term in Section 9.05(d)(ii).

“OFAC” means the Office of Foreign Assets Control of the U.S. Treasury Department.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation or organization and its by-laws, (b) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, (d) with respect to any limited liability company, its articles of organization or certificate of formation, and its operating agreement, and (e) with respect to any other form of entity, such other organizational documents required by local Requirements of Law or customary under such jurisdiction to
document the formation and governance principles of such type of entity. In the event that any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

“Other 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 from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary Taxes or any intangible, recording, filing or other similar Taxes arising from any payment made under any Loan Document or from the execution, delivery, performance or enforcement or registration, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, but excluding 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).

“Other Taxes” means all present or future stamp, court or documentary Taxes or any intangible, recording, filing or other similar Taxes arising from any payment made under any Loan Document or from the execution, delivery, performance or enforcement or registration, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, but excluding any such Taxes that are Other Connection Taxes imposed with respect to an assignment or participation (other than an assignment made pursuant to Section 2.19).

“Outstanding Amount” means (a) with respect to any Revolving Loan and/or Swingline Loan on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowing and/or prepayment or repayment of such Revolving Loan and/or Swingline Loans, as the case may be, occurring on such date, (b) with respect to any Letter of Credit, the aggregate amount available to be drawn under such Letter of Credit after giving effect to any change in the aggregate amount available to be drawn under such Letter of Credit or the issuance or expiry of such Letter of Credit, including as a result of any LC Disbursement and (c) with respect to any LC Disbursement on any date, the amount of the aggregate outstanding amount of such LC Disbursement on such date after giving effect to any disbursement with respect to any Letter of Credit occurring on such date and any other change in the aggregate amount of such LC Disbursement as of such date, including as a result of any reimbursement by the Borrower of such unreimbursed LC Disbursement.

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Parent Company” means any Person of which the Borrower is a direct or indirect Wholly-Owned Subsidiary.

“Participant” has the meaning assigned to such term in Section 9.05(c)(i).

“Participant/SPC Register” has the meaning assigned to such term in Section 9.05(e).

“Patent” means the following: (a) any and all patents and patent applications; (b) all inventions described and claimed therein; (c) all reissues, divisionals, continuations, renewals, extensions and continuations in part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights corresponding to any of the foregoing.
“Payment” has the meaning assigned to such term in Section 8.06(c)(i).

“Payment Notice” has the meaning assigned to such term in Section 8.06(c)(ii).

“PBGC” means the Pension Benefit Guaranty Corporation.

“PCT Listco” means any Wholly-Owned Subsidiary of Borrower formed in contemplation of an IPO to become the Public Entity.

“PCT Reorganization Transaction” means, collectively, the transactions taken in connection with and reasonably related to consummating an IPO, including:

(a) formation and ownership of any PCT Shell Company;

(b) entry into, and performance of, (i) a reorganization or similar agreement among any of the Borrower, one or more of its subsidiaries, any Parent Company and/or any PCT Shell Company that implements a transaction described in this definition and any other reorganization transaction in connection with any IPO, so long as after giving effect to such agreement and the transactions contemplated thereby, in the good faith determination of the Borrower, in consultation with the Administrative Agent, the security interests of the Lenders in the Collateral and the Loan Guaranty, taken as a whole, would not be materially impaired and (ii) any customary underwriting agreement in connection with an IPO and any future follow-on underwritten public offering of common Capital Stock in the Public Entity, including the provision by such Public Entity and the Borrower of customary representations, warranties, covenants and indemnification to the underwriters thereunder;

(c) the merger of any PCT Subsidiary with one or more direct or indirect holders of Capital Stock in Borrower, with such PCT Subsidiary as the survivor of such merger, and holding Capital Stock in the Borrower and/or (ii) the dividend or other distribution by the Borrower of Capital Stock of any PCT Shell Company or other transfer of ownership to any holder of Capital Stock of the Borrower;

(d) the issuance of the Capital Stock of any PCT Shell Company to holders of Capital Stock of the Borrower in connection with any PCT Reorganization Transaction;

(e) the making of Restricted Payments to (or Investments in) any PCT Shell Company or any subsidiary to permit the Borrower to make distributions or other transfers, directly or indirectly, to PCT Listco, in each case, solely for the purpose of paying, and solely in the amount necessary for PCT Listco to pay, IPO-related expenses and the making of any such distribution by the Borrower;

(f) the repurchase by PCT Listco of its Capital Stock from the Borrower or any Restricted Subsidiary;

(g) the entry into any exchange agreement, pursuant to which holders of Capital Stock of the Borrower and certain non-economic/voting Capital Stock in PCT Listco will be permitted to exchange such interests for certain economic/voting Capital Stock of PCT Listco;

(h) any issuance, dividend or distribution of the Capital Stock of any PCT Shell Company or other Disposition of ownership thereof to any PCT Shell Company and/or the direct or indirect holders of Capital Stock of Borrower; and
(i) any other transaction reasonably incidental to, or necessary for the consummation of, an IPO so long as after giving effect to such transaction, in the good faith determination of the Borrower, in consultation with the Administrative Agent, the security interests of the Lenders in the Collateral and the Loan Guaranty, taken as a whole, would not be materially impaired.

“PCT Shell Company” means each of PCT Listco and any PCT Subsidiary.

“PCT Subsidiary” means any Wholly-Owned Subsidiary of PCT Listco formed in contemplation of, and to facilitate, any PCT Reorganization Transaction and any IPO.

“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 Restricted Subsidiaries, or any of their respective ERISA Affiliates, maintains or contributes to or has an obligation to contribute to, or otherwise has any liability, contingent or otherwise.

“Perfection Certificate” means a certificate substantially in the form of Exhibit J or such other form that is reasonably acceptable to the Administrative Agent and the Borrower.

“Perfection Requirements” means (a) with respect to any Loan Party (other than any Discretionary Guarantor that is a Foreign Subsidiary), the filing of appropriate financing statements with the office of the Secretary of State or other appropriate office of the state of organization of each Loan Party, the filing of Intellectual Property Security Agreements or other appropriate instruments or notices with the US Patent and Trademark Office and the US Copyright Office (solely as required under applicable Requirements of Law), the delivery to the Administrative Agent of, solely to the extent the same constitutes Collateral, any stock certificate or promissory note, together with instruments of transfer executed in blank and (b) with respect to any Discretionary Guarantor that is a Foreign Subsidiary, any recording, filing, registration, notification or other action required to be taken in the applicable jurisdiction, in each case of the foregoing clauses (a) and (b), to the extent required by the applicable Loan Documents.

“Permitted Acquisition” means any acquisition made by the Borrower or any of its Restricted Subsidiaries, whether by purchase, merger or otherwise, of (i) all or substantially all of the assets, or any business line, unit or division, product line and/or the re-purchase of franchised Unit Locations (including research and development and related assets in respect of any product) of, any Person engaged in a Similar Business or (ii) a majority of the outstanding Capital Stock of any Person engaged in a Similar Business (it being understood and agreed that “Permitted Acquisition” shall include any Investment in (x) any Restricted Subsidiary the effect of which is to increase the Borrower’s or any Restricted Subsidiary’s equity ownership in such Restricted Subsidiary or (y) any joint venture for the purpose of increasing the Borrower’s or its relevant Restricted Subsidiary’s ownership interest in such joint venture, in each case if (1) such Person is or becomes a Restricted Subsidiary or (2) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys all or a substantial portion of its assets (or such division, business line, unit or product line) to, or is liquidated into, the Borrower and/or any Restricted Subsidiary as a result of such transaction); provided that:

(a) the Borrower is in compliance with Section 6.10(a), Section 6.10(b) and Section 6.10(c) on a Pro Forma Basis; and

(b) the total consideration paid by Loan Parties for (i) the Capital Stock of any Person that is not and does not become a Loan Party, (ii) with respect to any Investment of the type referred to in clauses (x) and (y) above after giving effect to which the relevant Restricted Subsidiary or joint venture is not and does not become a Loan Party or (iii) in the case of an asset acquisition,
assets that are not acquired by any Loan Party, in each case, taken together with the total consideration for all such Persons and assets so acquired after the Closing Date, shall not exceed (x) prior to the consummation of an IPO, the greater of $2,500,000 and 10% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(c) the limitation described in the immediately preceding clause (b) shall not apply to any acquisition to the extent (i) any such consideration is financed with the proceeds of sales of the Qualified Capital Stock of, or common equity capital contributions to, the Borrower or any Restricted Subsidiary, other than any Cure Amount or Available Excluded Contribution Amount and/or (ii) the Person so acquired (or the Person owning the assets so acquired) becomes a Subsidiary Guarantor even though such Person is not otherwise required to become a Subsidiary Guarantor; and

(d) in the event the amount available under the immediately preceding clause (b) is reduced as a result of any acquisition of (i) any Restricted Subsidiary that does not become a Loan Party or (ii) any assets that are not transferred to a Loan Party and such Restricted Subsidiary subsequently becomes a Loan Party or such assets are subsequently transferred to a Loan Party respectively, the amount available under the immediately preceding clause (b) shall be proportionately increased as a result thereof.

“Permitted Asset Swap” means the concurrent purchase and sale or exchange of Related Business Assets or any combination of Related Business Assets between the Borrower and/or any Restricted Subsidiary, on the one hand, and any other Person, on the other hand.

“Permitted Holders” means (a) each of the Investors, their respective Affiliates and their respective investment entities, including funds, partnerships, co-investment vehicles and managed account arrangements established, operated, managed, advised or controlled directly or indirectly by the foregoing or other entities under common control with such Investor or its Affiliates, (b) any Person who holds any Capital Stock of the Borrower as of the date of this Agreement, (c) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members and any member of such group; provided that, in the case of such group and any member of such group and without giving effect to the existence of such group or any other group, no Person or other group (other than the Permitted Holders specified in clauses (a) or (b) of this definition) own, directly or indirectly, more than 50% of the total voting power of all of the outstanding voting common stock of the Borrower (or, for the avoidance of doubt, of any Public Entity) held by such 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 Restricted Subsidiary or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of its ERISA Affiliates, other than any Multiemployer Plan.

“Platform” has the meaning assigned to such term in Section 5.01.

“Primary Obligor” has the meaning assigned to such term in the definition of “Guarantee”.

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“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Pro Forma Basis” or “pro forma effect” means, with respect to any determination of the Total Rent Adjusted Net Leverage Ratio, the First Lien Rent Adjusted Net Leverage Ratio, the Fixed Charge Coverage Ratio, Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets (including any component definition thereof), that:

(a) in the case of (i) any Disposition of all or substantially all of the Capital Stock of any Restricted Subsidiary or any division and/or product line of the Borrower and/or any Restricted Subsidiary, (ii) any designation of a Restricted Subsidiary as an Unrestricted Subsidiary, (iii) the implementation of any Business Optimization Initiative relating to a cost-savings action and/or (iv) if applicable, any Subject Transaction described in clause (h) or (i) of the definition thereof, income statement items (whether positive or negative and including any expected cost saving) attributable to the property or Person subject to such Subject Transaction, shall be excluded as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made;

(b) in the case of (i) any Permitted Acquisition or other Investment, (ii) any designation of any Unrestricted Subsidiary as a Restricted Subsidiary, and/or (iii) if applicable, any Subject Transaction described in clause (i) of the definition thereof, income statement items (whether positive or negative) attributable to the property or Person subject to such Subject Transaction shall be included as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made;

(c) any retirement or repayment of Indebtedness by the Borrower or any of its Subsidiaries that constitutes a Subject Transaction shall be deemed to have occurred as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made;

(d) any Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in connection therewith that constitutes a Subject Transaction shall be deemed to have occurred as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made; provided that, (i) if such Indebtedness has a floating or formula rate, such Indebtedness shall have an implied rate of interest for the applicable Test Period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness at the relevant date of determination (taking into account any interest hedging arrangements applicable to such Indebtedness), (ii) interest on any obligation with respect to any Capital Lease shall be deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower in good faith to be the rate of interest implicit in such obligation in accordance with GAAP and (iii) interest on any Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen by the Borrower;
(e) the acquisition of any asset included in calculating Consolidated Total Assets (other than the amount Cash or Cash Equivalents, which is addressed in clause (g) below), whether pursuant to any Subject Transaction or any Person becoming a subsidiary or merging, amalgamating or consolidating with or into the Borrower or any of its subsidiaries, or the Disposition of any asset included in calculating Consolidated Total Assets described in the definition of “Subject Transaction”, shall be deemed to have occurred as of the last day of the applicable Test Period with respect to any test or covenant for which such calculation is being made;

(f) subject to Section 1.11, other than, for the avoidance of doubt, for purposes of Section 6.10(a), Section 6.10(b) and Section 6.10(c), the Unrestricted Cash Amount shall be calculated as of the date of the consummation of such Subject Transaction after giving pro forma effect thereto, including any application of cash proceeds in connection therewith (other than, for the avoidance of doubt, the cash proceeds of any Indebtedness that is the Subject Transaction for which such a calculation is being made); and

(g) each other Subject Transaction shall be deemed to have occurred as of the first day of the applicable Test Period (or, in the case of Consolidated Total Assets, as of the last day of such Test Period) with respect to any test or covenant for which such calculation is being made.

It is hereby agreed that for purposes of determining pro forma compliance with Section 6.10(a), Section 6.10(b) and/or Section 6.10(c) prior to the last day of the first full Fiscal Quarter after the Closing Date, the applicable level shall be the level cited in Section 6.10(a), Section 6.10(b) or Section 6.10(c), as applicable. Notwithstanding anything to the contrary set forth in the immediately preceding paragraph, for the avoidance of doubt, when calculating the Total Rent Adjusted Net Leverage Ratio for purposes of the definitions of “Applicable Rate” and “Commitment Fee Rate” and for purposes of Section 6.10(d) (other than for the purpose of determining pro forma compliance with Section 6.10(a), Section 6.10(b) or Section 6.10(c) as a condition to taking any action under this Agreement), the events described in the immediately preceding paragraph that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect.

“Projections” means the financial projections, forecasts, financial estimates and other forward-looking and/or projected information of or relating to the Borrower and its subsidiaries included in the Financial Model (or a supplement thereto).

“Promissory Note” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit L, evidencing the aggregate outstanding principal amount of Loans of the Borrower to such Lender resulting from the Loans made by such Lender.

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

“Public Company Costs” means Charges associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 (and, in each case, similar Requirements of Law under other jurisdictions) and the rules and regulations promulgated in connection therewith and Charges relating to compliance with the provisions of the Securities Act and the Exchange Act (and, in each case, similar Requirements of Law under other jurisdictions), as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors’, managers’ and/or employees’ compensation, fees and expense reimbursement, Charges relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees.
(including auditors’ and accountants’ fees), listing fees, filing fees and other costs and/or expenses associated with being a public company.

“Public Entity” means, following any IPO, the Person the Capital Stock of which is publicly traded as a result of such IPO (which may, for the avoidance of doubt, be any Parent Company or any PCT Listco that Borrower will distribute to any Parent Company in connection with an IPO).

“Public Lender” has the meaning assigned to such term in Section 9.01(d).

“OFC Credit Support” has the meaning assigned to such term in Section 9.26.

“Qualified Capital Stock” of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock.

“Ratio Debt” has the meaning assigned to such term in Section 6.01(s).

“Real Estate Asset” means, at any time of determination, all right, title and interest (fee, leasehold or otherwise) of any Person in and to real property (including, but not limited to, land, improvements and fixtures thereon) or any rents, sale proceeds or other amounts resulting from or in connection with such real property.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two (2) Business Days preceding the date of such setting, (2) if (after the effectiveness of a Benchmark Replacement) the RFR for such Benchmark is Daily Simple SOFR, then four (4) Business Days prior to such setting or (3) if such Benchmark is neither the Term SOFR Rate nor Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

“Refinancing Amendment” means an amendment to this Agreement that is reasonably satisfactory to the Administrative Agent and the Borrower executed by (a) the Borrower, (b) the Administrative Agent and (c) each Lender that agrees to provide all or any portion of the Revolver Replacement Facility, as applicable, being incurred pursuant thereto and in accordance with Section 9.02(c).

“Refinancing Indebtedness” has the meaning assigned to such term in Section 6.01(o).

“Refunding Capital Stock” has the meaning assigned to such term in Section 6.04(a)(vii).

“Register” has the meaning assigned to such term in Section 9.05(b).

“Regulated Bank” means any insured depository institution that is regulated by foreign, federal or state banking regulators, including the United States Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Board.

“Regulation D” means Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation S-X” means Regulation S-X under the Securities Act.

“Regulation U” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.
“Related Business Assets” means assets (other than cash or Cash Equivalents) used or useful in a Similar Business; provided that any asset received by the Borrower or any Restricted Subsidiary in exchange for any asset transferred by the Borrower or any Restricted Subsidiary shall not be deemed to constitute a Related Business Asset if such asset consists of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

“Related Funds” means with respect to any Lender that is an Approved Fund, any other Approved Fund that is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, managers, officers, shareholders, trustees, employees, partners, agents, advisors and other representatives of such Person and such Person’s Affiliates.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the Environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“Relevant Governmental Body” means the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB, or, in each case, any successor thereto.

“Replaced Revolving Facility” has the meaning assigned to such term in Section 9.02(c)(ii).

“Replacement Debt” means any Refinancing Indebtedness (whether borrowed in the form of secured or unsecured loans, issued in a public offering, Rule 144A under the Securities Act or other private placement or bridge financing in lieu of the foregoing or otherwise) incurred in respect of Indebtedness permitted under Section 6.01(a) (and any subsequent refinancing of such Replacement Debt).

“Report” means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Borrower’s assets from information furnished by or on behalf of the Borrower, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

“Reportable Event” means, with respect to any Pension Plan, any of the events described in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period is waived under PBGC Reg. Section 4043.

“Representatives” has the meaning assigned to such term in Section 9.13.

“Required Lenders” means, at any time, Lenders having Loans or unused Commitments representing more than 50% of the sum of the total Loans and such unused Commitments at such time.

“Requirements of Law” means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of any Governmental Authority, in each case.
whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Rescindable Amount” has the meaning assigned to such term in Section 2.18(d).

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

“Responsible Officer” means, with respect to any Person, the chief executive officer, the president, the chief financial officer, the treasurer, any assistant treasurer of such Person and any other individual or similar official thereof, any executive vice president, any senior vice president, any vice president or the chief operating officer or other officer responsible for the administration of the obligations of such Person in respect of this Agreement, any member of the board of directors (in the case of any Person that is not incorporated in the US), and, as to any document delivered on the Closing Date, shall include any secretary or assistant secretary or any other individual or similar official thereof with substantially equivalent responsibilities of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer of the applicable Loan Party so designated in writing by the Borrower to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of any Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party, and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Debt” means any Indebtedness described in clause (a) of the definition of “Indebtedness” (other than such Indebtedness among the Borrower or any of its subsidiaries) of any Loan Party that (a)(i) is contractually subordinated in right of payment to the Obligations, (ii) constitutes Junior Lien Debt or (iii) is unsecured and (b) has an individual outstanding principal amount in excess of the Threshold Amount.

“Restricted Debt Payment” has the meaning set forth in Section 6.04(b).

“Restricted Payment” means (a) any dividend or other distribution on account of any shares of any class of the Capital Stock of the Borrower, except a dividend payable solely in shares of Qualified Capital Stock to the holders of such class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of any shares of any class of the Capital Stock of the Borrower and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of the Capital Stock of the Borrower now or hereafter outstanding.

“Restricted Subsidiary” means, as to any Person, any subsidiary of such Person that is not an Unrestricted Subsidiary. Unless otherwise specified, “Restricted Subsidiary” means any Restricted Subsidiary of the Borrower.

“Revolver Replacement Facility” has the meaning assigned to such term in Section 9.02(c)(ii).

“Revolving Credit Commitment” means any Initial Revolving Credit Commitment and any Additional Revolving Credit Commitment.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the aggregate Outstanding Amount at such time of such Lender’s Initial Revolving Credit Exposure and Additional Revolving Credit Exposure.
“Revolving Facility” means the Initial Revolving Facility, any Incremental Revolving Facility, any facility governing Extended Revolving Credit Commitments or Extended Revolving Loans and any Revolver Replacement Facility.

“Revolving Lender” means any Initial Revolving Lender and any Additional Revolving Lender. Unless the context otherwise requires, the term “Revolving Lender” shall include the Swingline Lender.

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

“RFR Borrowing” means, as to any Borrowing, the RFR Loans comprising such Borrowing.

“RFR Loan” means a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.

“Run-Rate Synergies” has the meaning assigned to such term in the definition of “Consolidated Adjusted EBITDA”.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of the S&P Global, Inc.

“Sale and Lease-Back Transaction” means any arrangement providing for the lease by the Borrower and/or any Restricted Subsidiary of any property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary in contemplation of such lease arrangement.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, (c) the European Union, (d) any European Union member state or (e) Her Majesty’s Treasury of the United Kingdom.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, the Crimea Region of Ukraine, the Donetsk People’s Republic, the Luhansk People’s Republic, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means any Person that is the target of Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by (i) OFAC or the U.S. Department of State or (ii) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom; (b) any Person organized or resident in a Sanctioned Country; or (c) the government of a Sanctioned Country.

“Scheduled Payment Date” means the last Business Day of each March, June, September and December (commencing March 31, 2022).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of its functions.

“Secured Hedging Obligations” means all Hedging Obligations (other than any Excluded Swap Obligation) under each Hedge Agreement that is in effect on the Closing Date or entered into at any time on or after the Closing Date between any Loan Party and (a) a counterparty that is (or is an Affiliate of) the Administrative Agent, a Lender or an Arranger as of the Closing Date or at the time such Hedge Agreement is entered into and/or (b) any other Person designated by the Borrower to the Administrative Agent, in each case, for which such Loan Party agrees to provide security and in each case that has been designated to the Administrative Agent in writing by the Borrower as being a Secured Hedging Obligation for purposes of the Loan Documents (provided that the Borrower may designate all Hedge Agreements under a specified
ISDA master agreement as being Secured Hedging Obligations without the need for separate notices for each Hedge Agreement), it being understood that each counterparty thereto shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article VIII, Section 9.03 and Section 9.10 and any applicable Intercreditor Agreement as if it were a Lender.

“Secured Obligations” means all Obligations, together with (a) all Banking Services Obligations and (b) all Secured Hedging Obligations.

“Secured Parties” means (a) the Lenders, the Issuing Banks and the Swingline Lender, (b) the Administrative Agent, (c) each counterparty to a Hedge Agreement with a Loan Party the obligations under which constitute Secured Hedging Obligations, (d) each provider of Banking Services to any Loan Party the obligations under which constitute Banking Services Obligations, and (e) any beneficiary of any indemnification obligation undertaken by any Loan Party under any Loan Document.

“Securities Act” means the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder.

“Security” means a fungible financial instrument that holds some monetary value, such as representing (a) an ownership interest in a publicly-traded company or rights to such ownership, or (b) a creditor relationship with a Governmental Authority or company.

“Security Agreement” means the Pledge and Security Agreement, substantially in the form of Exhibit M, among the Loan Parties, as grantors, and the Administrative Agent for the benefit of the Secured Parties.

“Similar Business” means any Person the majority of the revenues of which are derived from a business that would be permitted by Section 5.18 if the references to “Restricted Subsidiaries” in Section 5.18 were read to refer to such Person.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”.

“SPC” has the meaning assigned to such term in Section 9.05(e).

“Specified 5% Adjustment” means the adjustment set forth in clause (c)(xiii) of the definition of “Consolidated Adjusted EBITDA”.

“Specified 15% Adjustments” means the adjustments set forth in clause (c)(xi) (other than Charges of the type described in the clause (c)(xi)(A) and/or any other one-time Disposition or issuance of debt or
equity) of the definition of “Consolidated Adjusted EBITDA” and in clauses (c) and (l) of the definition of “Consolidated Net Income”.

“Specified 20% Adjustments” means the adjustments set forth in clauses (c)(x) and (e)(iii) of the definition of “Consolidated Adjusted EBITDA” and in clause (d)(iii) of the definition of “Consolidated Net Income”.

“Specified Adjustments” means the Specified 5% Adjustment, the Specified 15% Adjustments, the Specified 20% Adjustments and all other pro forma adjustments.

“Specified Commitment” has the meaning assigned to such term in Section 1.11(g).

“Specified Commitment Notice” has the meaning assigned to such term in Section 1.11(g).

“Specified Guarantor Release Provision” has the meaning assigned to such term in Section 8.07.

“Stated Amount” means, with respect to any Letter of Credit, at any time, the maximum amount available to be drawn thereunder, in each case determined (a) as if any future automatic increase in the maximum available amount provided for in any such Letter of Credit had in fact occurred at such time and (b) without regard to whether any conditions to drawing could then be met but after giving effect to all previous drawings made thereunder.

“Subject Indebtedness” has the meaning assigned to such term in Section 1.03.

“Subject Person” has the meaning assigned to such term in the definition of “Consolidated Net Income”.

“Subject Transaction” means:

(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 (i) anyRestricted Subsidiary the effect of which is to increase the Borrower’s or any Restricted Subsidiary’s respective equity ownership in such Restricted Subsidiary or (ii) any joint venture for the purpose of increasing the Borrower’s or its relevant Restricted Subsidiary’s ownership interest in such joint venture), in each case that is permitted by this Agreement;

(c) any Disposition of (i) all or substantially all of the assets or (ii) the Capital Stock of any subsidiary (or any business unit, line of business or division of the Borrower and/or any Restricted Subsidiary) not prohibited by this Agreement;

(d) the designation of a Restricted Subsidiary as an Unrestricted Subsidiary or an Unrestricted Subsidiary as a Restricted Subsidiary in accordance with Section 5.10;

(e) any incurrence, retirement, redemption, repayment and/or prepayment of Indebtedness (other than any Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes);
(f) any capital contribution in respect of Qualified Capital Stock or any issuance of Qualified Capital Stock (other than any amount constituting a Cure Amount);

(g) the implementation of any Business Optimization Initiative;

(h) at the election of the Borrower, any discontinued operation; and/or

(i) any other event that by the terms of the Loan Documents requires pro forma compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a pro forma basis.

“subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of such Person or a combination thereof, in each case to the extent the relevant entity’s financial results are required to be included in such Person’s consolidated financial statements under GAAP; provided that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interests in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding. Unless otherwise specified, “subsidiary” shall mean any subsidiary of the Borrower.

“Subsidiary Guarantor” means (a) on the Closing Date each subsidiary of the Borrower (other than any such subsidiary that is an Excluded Subsidiary on the Closing Date) and (b) thereafter, each subsidiary of the Borrower that becomes a Guarantor of the Secured Obligations pursuant to the terms of this Agreement (including any such subsidiary designated as a Discretionary Guarantor pursuant to Section 5.12(b)), in each case, until such time as the relevant subsidiary is released from its obligations under the Loan Guaranty in accordance with the terms and provisions hereof.

“Successor Borrower” has the meaning assigned to such term in Section 6.07(a).

“Supported QFC” has the meaning assigned to such term in Section 9.26.

“Swap Obligations” means, with respect to any Loan Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall equal to its Applicable Revolving Credit Percentage of the aggregate Swingline Exposure at such time.

“Swingline Lender” means JPMorgan, in its capacity as lender of Swingline Loans hereunder, or any successor lender of Swingline Loans hereunder.

“Swingline Loan” has the meaning assigned to such term in Section 2.04.

“Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f).
“Taxes” means all present and future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Benchmark” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

“Term SOFR Determination Day” has the meaning assigned to such term in the definition of “Term SOFR Reference Rate”.

“Term SOFR Rate” means, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two (2) U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“Term SOFR Reference Rate” means, for any day and time (such day, the “Term SOFR Determination Day”), and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.

“Transactions” means the execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“Termination Date” has the meaning assigned to such term in the lead-in to Article V.

“Test Period” means, as of any date, the period of four consecutive Fiscal Quarters then most recently ended for which financial statements under Section 5.01(a) or Section 5.01(b), as applicable, have been delivered (or are required to have been delivered); it being understood and agreed that prior to the first delivery (or required delivery) of financial statements under Sections 5.01(a) or (b), “Test Period” means the period of four consecutive Fiscal Quarters most recently ended for which financial statements of the Borrower are available.

“Threshold Amount” means $6,000,000.

“Total Rent Adjusted Net Leverage Ratio” means the ratio, as of any date of determination, of (a)(i) Consolidated Total Debt outstanding as of the last day of the most recently ended Test Period, plus (ii) the product of (A) Consolidated Cash Rental Expense for such Test Prior and (B) eight, to (b) Consolidated Adjusted EBITDAR for such Test Period, in each case, of the Borrower and its Restricted Subsidiaries on a consolidated basis.

“Total Revolving Credit Commitment” means, at any time, the aggregate amount of the Revolving Credit Commitments, as in effect at such time.
“Trademark” means the following: (a) all trademarks (including service marks), common law marks, trade names, trade dress, and logos, slogans and other indicia of origin, and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing, (b) all renewals of the foregoing, (c) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including damages, claims, and payments for past and future infringements thereof, (d) all rights to sue for past, present, and future infringements and other violations of the foregoing, including the right to settle suits involving claims and demands for royalties owing and (e) all rights corresponding to any of the foregoing.

“Transaction Costs” means fees, premiums, expenses and other transaction costs (including original issue discount or upfront fees) payable or otherwise borne by the Borrower, any Parent Company and/or its subsidiaries in connection with the Transactions and the transactions contemplated thereby.

“Transactions” means, collectively, (a) the execution, delivery and performance by the Loan Parties of the Loan Documents to which they are a party and the Borrowing of Loans hereunder on the Closing Date, (b) the Closing Date Refinancing and (c) the payment of the Transaction Costs.

“Treasury Capital Stock” has the meaning assigned to such term in Section 6.04(a)(vii).

“Treasury Regulations” means the US federal income tax regulations promulgated under the Code.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted Term SOFR Rate, the Alternate Base Rate or, following the effectiveness of a Benchmark Replacement, Adjusted Daily Simple SOFR.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the creation or perfection of security interests.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unit Location” means, collectively, the property comprising the restaurant locations or on which the Borrower or any of its Subsidiaries intends to build out a restaurant.

“Unrestricted Cash Amount” means, as to any Person on any date of determination, the amount of (a) unrestricted Cash and Cash Equivalents of such Person and (b) Cash and Cash Equivalents of such Person that are restricted in favor of the Revolving Facility 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 creditors.}
secured indebtedness), in each case, (x) whether or not held in a pledged account and (y) calculated in accordance with GAAP.

“Unrestricted Subsidiary” means (a) any subsidiary of the Borrower that is listed on Schedule 5.10 hereto or designated by the Borrower as an Unrestricted Subsidiary after the Closing Date pursuant to Section 5.10 and (b) each subsidiary of any Person described in the preceding clause (a). For the avoidance of doubt, there are no Unrestricted Subsidiaries as of the Closing Date.

“US” means the United States of America.

“US Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“US Special Resolution Regimes” has the meaning assigned to such term in Section 9.26.

“USA PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“Wholly-Owned Subsidiary” of any Person means a subsidiary of such Person, 100% of the Capital Stock of which (other than directors’ qualifying shares or shares required by Requirements of Law to be owned by a resident of the relevant jurisdiction) is owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

“Withdrawal Liability” means any liability to any Multiemployer Plan as the result of a “complete” or “partial” withdrawal by the Borrower or any Restricted Subsidiary or any ERISA Affiliate from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Term Benchmark Loan”) or by Class and Type (e.g., a “Term Benchmark Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Term Benchmark Borrowing”) or by Class and Type (e.g., a “Term Benchmark Revolving Borrowing”).

Section 1.03 Terms Generally. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.
(b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(c) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

(d) The word “will” shall be construed to have the same meaning and effect as the word “shall.”

(e) The words “herein,” “hereof” and “hereunder,” and words of similar import, when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision hereof.

(f) Any definition of or reference to any agreement, instrument or other document herein or in any Loan Document shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified or extended, replaced or refinanced (subject to any restrictions or qualifications on such amendments, restatements, amendment and restatements, supplements or modifications or extensions, replacements or refinancings set forth herein).

(g) Any reference to any Requirement of Law in any Loan Document shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Requirement of Law.

(h) Any reference herein or in any Loan Document to any Person shall be construed to include such Person’s successors and permitted assigns.

(i) All references herein or in any Loan Document to Articles, Sections, clauses, paragraphs, Exhibits and Schedules shall be construed to refer to Articles, Sections, clauses and paragraphs of, and Exhibits and Schedules to, such Loan Document.

(j) In the computation of periods of time in any Loan Document from a specified date to a later specified date, the word “from” means “from and including”, the words “to” and “until” mean “to but excluding” and the word “through” means “to and including”.

(k) The words “asset” and “property”, when used in any Loan Document, shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including Cash, securities, accounts and contract rights.

(l) For purposes of determining compliance at any time with Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 and 6.09, in the event that any Affiliate transaction, Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Burdensome Agreement, Investment or Disposition, as applicable, meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of such Sections 6.01 (other than Section 6.01(a); provided that it is understood that the provisions of this Section 1.03(l) shall apply to any amount incurred in reliance on the definition of “Incremental Cap”), 6.02 (other than Section 6.02(a)), 6.04, 6.05, 6.06, 6.07 and 6.09, the Borrower, in its sole discretion, may, from time to time, classify or reclassify such transaction or item (or portion thereof) under one or more clauses of each such Section and will only be required to include the amount and type of such transaction (or portion thereof) in any one category; provided that:
(i) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or following the initial incurrence of any portion of any Indebtedness incurred under Section 6.01 (other than Section 6.01(a)); provided that it is understood that the provisions of this clause (i) shall apply to any amount incurred in reliance on the definition of “Incremental Cap” (such portion of such Indebtedness, the “Subject Indebtedness”), if any such Subject Indebtedness could, based on such financial statements, have been incurred in reliance on Section 6.01(s), such Subject Indebtedness shall automatically be reclassified as having been incurred under Section 6.01(s) and any associated Lien will be deemed to have been permitted under Section 6.02 upon any such reclassification;

(ii) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or following the making of any Investment in reliance on Section 6.06 (other than Section 6.06(aa)), if all or any portion of such Investment could, based on such financial statements, have been made in reliance on Section 6.06(aa), such Investment (or the relevant portion thereof) shall automatically be reclassified as having been made in reliance on Section 6.06(aa);

(iii) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or, following the making of any Restricted Payment under Section 6.04(a) (other than Section 6.04(a)(viii)), if all or any portion of such Restricted Payment could, based on such financial statements, have been made in reliance on Section 6.04(a)(x), such Restricted Payment (or the relevant portion thereof) shall automatically be reclassified as having been made in reliance on Section 6.04(a)(x); and

(iv) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or, following the making of any Restricted Debt Payment under Section 6.04(b) (other than Section 6.04(b)(vii)), if all or any portion of such Restricted Debt Payment could, based on such financial statements, have been made in reliance on Section 6.04(b)(vii), such Restricted Debt Payment (or the relevant portion thereof) shall automatically be reclassified as having been made in reliance on Section 6.04(b)(vii);

provided, further, that it is understood and agreed that, with respect to the fourth Fiscal Quarter of any Fiscal Year, prior to the date on which financial statements of the type described in Section 5.01(b) for such Fiscal Year are delivered the Borrower may, in its sole discretion, rely on financial statements of the type described in Section 5.01(a) that are internally available to trigger the reclassification of any transaction based on the financial results as of the end of the fourth Fiscal Quarter of such Fiscal Year.

(m) It is understood and agreed that any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Burdensome Agreement, Investment, Disposition and/or Affiliate transaction need not be permitted solely by reference to one category of permitted Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Burdensome Agreement, Investment, Disposition and/or Affiliate transaction under Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 or 6.09, respectively, and may instead be permitted in part under any combination thereof, but the Borrower will only be required to include the amount and type of such transaction (or portion thereof) in one such category (or combination thereof). To the extent the applicability of Sections 6.07 or 6.09 with respect to any transaction is subject to a materiality threshold, such transaction shall only be required to comply with the provisions of such Sections to the extent of the amount of such transaction that is in excess of such materiality threshold.

(n) For purposes of any amount herein expressed as a percentage of Consolidated Adjusted EBITDA, “Consolidated Adjusted EBITDA”, unless the context otherwise requires, shall be deemed to refer to Consolidated Adjusted EBITDA of the Borrower and its Restricted Subsidiaries.
Section 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 First Lien Rent Adjusted Net Leverage Ratio, the Total Rent Adjusted Net Leverage Ratio, Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets shall be construed and interpreted in accordance with GAAP, as in effect from time to time; provided that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date of delivery of the financial statements described in Section 3.04(a) in GAAP or in the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change becomes effective until such notice have been withdrawn or such provision amended in accordance herewith; provided, further, that if the Borrower so requests, the Borrower and the Administrative Agent shall negotiate in good faith to enter into an amendment of the relevant affected provisions (without the payment of any amendment or similar fee to the Lenders) to preserve the original intent thereof in light of such change in GAAP or the application thereof; provided, further, that all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any subsidiary at “fair value,” as defined therein and (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary herein, but subject to Section 1.11, all financial ratios and tests (including the First Lien Rent Adjusted Net Leverage Ratio, the Total Rent Adjusted Net Leverage Ratio and the amount of Consolidated Total Assets, Consolidated Adjusted EBITDAR and Consolidated Adjusted EBITDA) contained in this Agreement that are calculated with respect to any Test Period during which any Subject Transaction occurs shall be calculated with respect to such Test Period and such Subject Transaction on a Pro Forma Basis. Further, if since the beginning of any such Test Period and on or prior to the date of any required calculation of any financial ratio or test (i) any Subject Transaction has occurred or (ii) any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries or any joint venture since the beginning of such Test Period has consummated any Subject Transaction, then, in each case, any applicable financial ratio or test shall be calculated on a Pro Forma Basis for such Test Period as if such Subject Transaction had occurred at the beginning of the applicable Test Period (or, in the case of Consolidated Total Assets (or with respect to any determination pertaining to the balance sheet, including the acquisition of Cash and/or Cash Equivalents), as of the last day of such Test Period) (it being understood, for the avoidance of doubt, that solely for purposes of (A) calculating actual compliance with Section 6.10(a), Section 6.10(b) or Section 6.10(c) and (B) calculating the Total Rent Adjusted Net Leverage Ratio for purposes of the definitions of “Applicable Rate” and “Commitment Fee Rate”, in each case, the date of the required calculation shall be the last day of the Test Period, and no Subject Transaction occurring thereafter shall be taken into account).

(c) Notwithstanding anything to the contrary contained in paragraph (a) above or in the definition of “Capital Lease,”, only those leases (assuming for purposes hereof that such leases were then in existence) that would constitute Capital Leases in conformity with GAAP as in effect prior to giving
effect to the adoption of ASU No. 2016-02 “Leases (Topic 842)” and ASU No. 2018-11 “Leases (Topic 842)” shall be considered Capital Leases hereunder or under any other Loan Document, and all calculations and deliverables under this Agreement or any other Loan Document shall be made, prepared or available, as applicable, in accordance therewith; provided that all financial statements required to be provided hereunder may, at the option of the Borrower, be prepared in accordance with GAAP without giving effect to the foregoing treatment of Capital Leases.

Section 1.05 Effectuation of Transactions. Each of the representations and warranties contained in the Loan Documents (and all corresponding definitions) is made after giving effect to the Transactions, unless the context otherwise requires.

Section 1.06 Timing of Payment or Performance. When payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of “Interest Period”) or performance shall extend to the immediately succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

Section 1.07 Times of Day. Unless otherwise specified herein, all references herein to times of day shall be references to Chicago time (daylight or standard, as applicable).

Section 1.08 Currency Equivalents Generally.

(a) For purposes of any determination under Article I, Article V, Article VI (other than Section 6.10(a), Section 6.10(b) and Section 6.10(c) and the calculation of compliance with any financial ratio for purposes of taking any action hereunder) or Article VII with respect to any Affiliate transaction, the amount of any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Investment, Disposition or other transaction, event or circumstance, or any determination under any other provision of this Agreement, (any of the foregoing, a “specified transaction”), in a currency other than Dollars, (i) the Dollar equivalent amount of a specified transaction in a currency other than Dollars shall be calculated based on the rate of exchange quoted by the Bloomberg Foreign Exchange Rates & World Currencies Page (or any successor page thereto, or in the event such rate does not appear on any Bloomberg Page, by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower) for such foreign currency, as in effect at 11:00 a.m. (London time) on the date of such specified transaction (which, in the case of any Restricted Payment, shall be deemed to be the date of the declaration thereof and, in the case of the incurrence of Indebtedness, shall be deemed to be on the date first committed); provided that, if any Indebtedness is incurred (and, if applicable, associated Lien granted) to refinance or replace other Indebtedness denominated in a currency other than Dollars, and the relevant refinancing or replacement would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing or replacement, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing or replacement Indebtedness (and, if applicable, associated Lien granted) does not exceed an amount equal to (x) unpaid accrued interest and premiums (including tender premiums) thereon plus other reasonable and customary fees and expenses (including upfront fees and original issue discount) incurred in connection with such refinancing or replacement, (y) any existing commitment unutilized thereunder and (z) any additional amount permitted to be incurred under Section 6.01 and (ii) for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred solely as a result of a change in the rate of currency exchange occurring after the time of any specified transaction so long as such specified transaction was permitted at the time incurred, made, acquired, committed, entered or declared as set forth in clause (i). For purposes of Section 6.10(a), Section 6.10(b), Section 6.10(c) and the calculation of compliance with any financial ratio for purposes of
taking any action hereunder, on any relevant date of determination, amounts denominated in currencies other than Dollars shall be translated into Dollars at the applicable currency exchange rate used in preparing the financial statements delivered pursuant to Sections 5.01(a) or (b) (or, prior to the first such delivery, the financial statements referred to in Section 3.04), as applicable, for the relevant Test Period and will, with respect to any Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of any Hedge Agreement permitted hereunder in respect of currency exchange risks with respect to the applicable currency in effect on the date of determination for the Dollar equivalent amount of such Indebtedness; provided that the amount of any Indebtedness that is subject to a Debt FX Hedge shall be determined in accordance with the definition of “Consolidated Total Debt”. Notwithstanding the foregoing or anything to the contrary herein, to the extent that the Borrower would not be in compliance with Section 6.10(a), Section 6.10(b) and/or Section 6.10(c) if any Indebtedness denominated in a currency other than Dollars were to be translated into Dollars on the basis of the applicable currency exchange rate used in preparing the financial statements delivered pursuant to Section 5.01(a) or (b), as applicable, for the relevant Test Period, but would be in compliance with Section 6.10(a), Section 6.10(b) or Section 6.10(c), as applicable, if such Indebtedness that is denominated in a currency other than in Dollars were instead translated into Dollars on the basis of the average relevant currency exchange rates over such Test Period (taking into account the currency translation effects, determined in accordance with GAAP, of any Hedge Agreement permitted hereunder in respect of currency exchange risks with respect to the applicable currency in effect on the date of determination for the Dollar equivalent amount of such Indebtedness), then, solely for purposes of compliance with Section 6.10(a), Section 6.10(b) or Section 6.10(c), as applicable, the Total Rent Adjusted Net Leverage Ratio as of the last day of such Test Period shall be calculated on the basis of such average relevant currency exchange rates; provided that the amount of any Indebtedness that is subject to a Debt FX Hedge shall be determined in accordance with the definition of “Consolidated Total Debt”.

(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 refines, any of its then-existing Loans with Incremental Loans, Loans in connection with any Revolver Replacement Facility, 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 Interest Rates; Benchmark Notifications. The interest rate on a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.14(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or
any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.11 Certain Calculations and Tests.

(a) Notwithstanding anything to the contrary herein, to the extent that the terms of this Agreement require (i) compliance with any financial ratio or test (including Section 6.10(a), Section 6.10(b), Section 6.10(c), any First Lien Rent Adjusted Net Leverage Ratio test, any Total Rent Adjusted Net Leverage Ratio test and/or any Fixed Charge Coverage Ratio test) and/or any cap expressed as a percentage of Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets, (ii) the absence of a Default or Event of Default (or any type of Default or Event of Default), (iii) the making or accuracy of any representation and/or warranty or (iv) compliance with availability under any basket or cap (including any basket or cap expressed as a percentage of Consolidated Adjusted EBITDA or Consolidated Total Assets), in each case, a condition to (A) the consummation of any transaction in connection with any acquisition or similar Investment (including the assumption or incurrence of Indebtedness), (B) the making of any Restricted Payment and/or (C) the making of any Restricted Debt Payment, the determination of whether the relevant condition is satisfied may be made, at the election of the Borrower, (1) in the case of any acquisition or similar Investment (including with respect to any Indebtedness contemplated, assumed or incurred in connection therewith), at the time of (or on the basis of the financial statements for the most recently ended Test Period at the time of) either (x) the execution of the definitive agreement with respect to such acquisition or Investment, (y) in connection with an acquisition to which the United Kingdom Code or Takeover and Mergers (or any comparable Requirement of Law) applies, the date on which a “Rule 2.7 announcement” of a firm intention to make an offer in respect of the target of an acquisition (or equivalent notice under comparable Requirements of Law) or (z) the consummation of such acquisition or Investment, (2) in the case of any Restricted Payment (including with respect to any Indebtedness contemplated or incurred in connection therewith), at the time of (or on the basis of the financial statements for the most recently ended Test Period at the time of) either (x) the declaration of such Restricted Payment or (y) the making of such Restricted Payment and (3) in the case of any Restricted Debt Payment (including with respect to any Indebtedness contemplated or incurred in connection therewith), at the time of (or on the basis of the financial statements for the most recently ended Test Period at the time of) either (x) delivery of irrevocable (which may be conditional) notice with respect to such Restricted Debt Payment or (y) the making of such Restricted Debt Payment, in each case, after giving effect, on a Pro Forma Basis, to (I) the relevant acquisition, Investment, Restricted Payment, Restricted Debt Payment and/or any related Indebtedness (including the intended use of proceeds thereof) and (II) to the extent definitive documents in respect thereof have been executed, the Restricted Payment has been declared or delivery of notice with respect to a Restricted Debt Payment has been delivered (which definitive documents, declaration or notice has not terminated or expired without the consummation thereof), any other Subject Transaction that the Borrower has elected to treat in accordance with this clause (a).

(b) For purposes of determining the permissibility of any action, change, transaction or event that requires a calculation of any financial ratio or test (including Section 6.10(a), Section 6.10(b), Section 6.10(c), any First Lien Rent Adjusted Net Leverage Ratio test, any Total Rent Adjusted Net Leverage Ratio test and/or any Fixed Charge Coverage Ratio test, and/or the amount of Consolidated Adjusted EBITDA,
Consolidated Adjusted EBITDAR or Consolidated Total Assets), such financial ratio or test shall be calculated (subject to clause (a) above) at the
time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or
Event of Default shall be deemed to have occurred solely as a result of a change in such financial ratio or test or amount occurring after such
calculation, or after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may
be.

(c) Notwithstanding anything to the contrary herein, with respect to any amount incurred or transaction entered into (or consummated)
in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including any First Lien Rent
Adjusted Net Leverage Ratio test, any Fixed Charge Coverage Ratio test and/or any Total Rent Adjusted Net Leverage Ratio test) (any such
amount, including any such amount drawn or deemed to have been drawn under any revolving credit facility and, for the avoidance of doubt, any
amount that is expressed as a percentage of Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets,
a “Fixed Amount”) substantially concurrently with any amount incurred or transaction entered into (or consummated) in reliance on a provision
of this Agreement that requires compliance with a financial ratio or test (including Section 6.10(a), Section 6.10(b), Section 6.10(c), any First
Lien Rent Adjusted Net Leverage Ratio test, any Secured Rent Adjusted Net Leverage Ratio test, any Fixed Charge Coverage Ratio test and/or
any Total Rent Adjusted Net Leverage Ratio test) (any such amount, an “Incurrence-Based Amount”), it is understood and agreed that (i) any
Fixed Amount shall be disregarded in the calculation of the financial ratio or test applicable to the relevant Incurrence-Based Amount and
(ii) except as provided in the preceding clause (i), pro forma effect shall be given to the entire transaction. The Borrower may elect that any
amount incurred or transaction entered into (or consummated) in reliance on one or more of any Incurrence-Based Amount or any Fixed Amount
in its sole discretion; provided that, unless the Borrower elects otherwise, each such amount or transaction shall be deemed incurred, entered into
or consummated first under any Incurrence-Based Amount to the maximum extent permitted thereunder.

(d) The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall
be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

(e) The increase in any amount secured by any Lien by virtue of the accrual of interest, the accretion of accreted value, the payment of
interest or a dividend in the form of additional Indebtedness, amortization of original issue discount and/or any increase in the amount of
Indebtedness outstanding solely as a result of any fluctuation in the exchange rate of any applicable currency will not be deemed to be the
creation, incurrence, assumption, or the permission or sufferance to exist of a Lien for purposes of Section 6.02.

(f) With respect to any pro forma calculation that is required to be made in connection with any acquisition or similar Investment in
respect of which financial statements for the applicable target are not available for the same Test Period for which financial statements of the
Borrower are available, the Borrower shall make the relevant calculation on the basis of the relevant available financial statements (even if for
differing periods) or such other commercially reasonable basis as the Borrower may elect.

(g) In connection with the implementation or assumption of any revolving commitment and/or any delayed draw commitment (in each
case, other than any such commitment implemented pursuant to Section 2.22) in reliance on any Incurrence-Based Amount, the Borrower may,
in its sole discretion elect to, by written notice to the Administrative Agent (a “Specified Commitment Notice”), either (a) treat all or any portion
of such revolving commitment and/or delayed draw commitment as having been fully drawn on the date of implementation or assumption (such
commitment (or portion thereof), a “Specified Commitment”), in which case (i) the Borrower shall not be required to comply with any financial ratio or
test in connection with any drawing thereunder after the date of incurrence or assumption and (ii) other than for purposes of (A) the Applicable Rate, (B) the Commitment Fee Rate and/or (C) actual compliance with Section 6.10(a), Section 6.10(b), Section 6.10(c), the amount of such Specified Commitment shall be deemed to have been an actual incurrence of Indebtedness thereunder on the date of implementation or assumption for purposes of calculating any Incurrence-Based Amount or (b) test the permissibility of all or any portion of any drawing under such revolving commitment and/or delayed draw commitment on the date of such drawing (if any), in which case, such revolving commitment and/or delayed draw commitment (or portion thereof) shall only be treated as drawn for purposes of any Incurrence-Based Amount to the extent of any actual drawing thereunder that is outstanding at the applicable time of determination. It is understood and agreed that the Borrower may, at any time in its sole discretion, (x) deliver a Specified Commitment Notice with respect to any revolving commitment and/or delayed draw commitment and/or (y) withdraw any Specified Commitment Notice with respect to all or any portion of any revolving commitment and/or delayed draw commitment and instead elect to treat such revolving commitment and/or delayed draw commitment in accordance with clause (a) or (b) of the immediately preceding sentence.

(h) It is understood and agreed that the Borrower and/or any Restricted Subsidiary may incur Indebtedness permitted under any provision of Section 6.01 to refinance Indebtedness originally incurred under the same provision of Section 6.01 while the Indebtedness being refinanced remains outstanding so long as the proceeds of the applicable refinancing Indebtedness are promptly deposited with the trustee or other applicable representative of the holders of the Indebtedness being refinanced, which proceeds will be applied to satisfy and discharge the Indebtedness being refinanced in accordance with the documentation governing such Indebtedness.

Section 1.12 Certain Determinations.

(a) With respect to determination of the permissibility of any transaction by the Borrower and/or any subsidiary under this Agreement, (i) the delivery by the Borrower of a third party valuation report from (A) a nationally recognized accounting, appraisal, investment banking or consulting firm or (B) another firm reasonably acceptable to the Administrative Agent, in each case, shall be conclusive with respect to the value of the assets covered thereby and (ii) any determination of whether an action is taken “in the ordinary course of business” or “in a manner consistent with past practice” (or, in either case, any similar expression) shall be made by the Borrower in good faith.

(b) It is understood and agreed for the avoidance of doubt that the carve-outs from the provisions of Article VI may include items or activities that are not restricted by the relevant provision and the inclusion of such items or activities shall not be construed to expand the scope of Article VI, as applicable.

Section 1.13 Conflicts. In the event of any conflict or inconsistency between any term or provision of this Agreement (excluding the Exhibits hereto) and any term or provision of any Exhibit to this Agreement, the term or provision of this Agreement shall govern, and the Borrower shall be entitled to make such revisions to the relevant term or provision of the applicable Exhibit to ensure that such term or provision is consistent with the corresponding term or provision of this Agreement.

Section 1.14 Confidentiality; Privilege, Etc. Notwithstanding any obligation to provide information under any Loan Document or allow the Administrative Agent, the Lenders or any third party to access or inspect the books and records of the Borrower or its subsidiaries or otherwise as set forth in this Agreement or any other Loan Document, none of the Borrower or any of its subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (a) that constitutes a non-financial trade secret or non-financial proprietary information of any Person, (b) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective Representatives)
ARTICLE II
THE CREDITS

Section 2.01 Commitments.

(a) Subject to the terms and conditions set forth herein, each Initial Revolving Lender severally, and not jointly, agrees to make revolving loans (the “Initial Revolving Loans”) to the Borrower in Dollars at any time and from time to time on and after the Closing Date, and until the earlier of the Initial Revolving Credit Maturity Date and the termination of the Initial Revolving Credit Commitment of such Initial Revolving Lender in accordance with the terms hereof; provided that, after giving effect to any Borrowing of Initial Revolving Loans, the Outstanding Amount of such Initial Revolving Lender’s Initial Revolving Credit Exposure shall not exceed such Initial Revolving Lender’s Initial Revolving Credit Commitment. Within the foregoing limits and subject to the terms, conditions and limitations set forth herein, Revolving Loans may consist of ABR Loans, Term Benchmark Loans (or, if after the effectiveness of a Benchmark Replacement, RFR Loans), or a combination thereof; and may be borrowed, paid, repaid and reborrowed.

(b) Subject to the terms and conditions of this Agreement and any applicable Refinancing Amendment, Extension Amendment, or Incremental Facility Amendment, each Lender with an Additional Commitment of a given Class, severally and not jointly, agrees to make Additional Loans of such Class to the Borrower, which Loans shall not exceed for any such Lender at the time of any incurrence thereof the Additional Commitment of such Class of such Lender as set forth in the applicable Refinancing Amendment, Extension Amendment or Incremental Facility Amendment.

Section 2.02 Loans and Borrowings.

(a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. Each Swingline Loan shall be made in accordance with the terms and procedures set forth in Section 2.04.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Term Benchmark Loans (or, if after the effectiveness of a Benchmark Replacement, RFR Loans) as the Borrower may request in accordance herewith; provided that each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Term Benchmark 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 Term Benchmark Loan shall be deemed to have been made and held by such Lender, and the obligation of the Borrower to repay such Term Benchmark Loan shall nevertheless be to such Lender for the account of such domestic or foreign branch or Affiliate of such Lender and (iii) in exercising such option, such Lender shall use reasonable efforts to minimize increased costs to the Borrower resulting therefrom (which obligation of such Lender shall not require it to take, or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it otherwise determines.
would be disadvantageous to it and in the event of such request for costs for which compensation is provided under this Agreement, the
provisions of Section 2.15 shall apply); provided, further, that no such domestic or foreign branch or Affiliate of such Lender shall be entitled to
any greater indemnification under Section 2.17 in respect of any US federal withholding tax with respect to such Term Benchmark 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 Term Benchmark Borrowing, such Term Benchmark Borrowing (or, if after
the effectiveness of a Benchmark Replacement, RFR Borrowing) shall comprise an aggregate principal amount that is an integral multiple of
$100,000 and not less than $500,000. Each ABR Borrowing when made shall be in a minimum principal amount of $250,000 and in an integral
multiple of $50,000; provided that an ABR Loaning Loan Borrowing may be made in a lesser aggregate amount that is (x) equal to the entire aggregate unused Revolving Credit Commitment or (y) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(d). Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be
more than a total of 10 different Interest Periods in effect for Term Benchmark Borrowings at any time outstanding (or such greater number of
different Interest Periods as the Administrative Agent may agree from time to time).

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not, nor shall it be entitled to, request, or to elect to
convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date applicable to the
relevant Loans.

Section 2.03 Requests for Borrowings. Each Revolving Loan Borrowing, each conversion of Revolving Loans from one Type to the
other, and each continuation of Term Benchmark Loans shall be made upon irrevocable notice by the Borrower to the Administrative Agent,
which may be given by a Borrowing Request or an Interest Election Request, as applicable (provided that any notice in respect of any Revolving
Loan Borrowing (x) to be made on the Closing Date may be conditioned on the occurrence of the Closing Date, (y) to be made in connection
with any acquisition, investment or repayment or redemption of Indebtedness may be conditioned on the closing of such Permitted Acquisition,
permitted Investment or permitted repayment or redemption of Indebtedness or (z) for any other purpose to which the Administrative Agent may
consent (such consent not to be unreasonably withheld or delayed), may be conditioned on the occurrence of the relevant event). Each such
notice must be in the form of a Borrowing Request or an Interest Election Request, as applicable, appropriately completed and signed by a
Responsible Officer of the Borrower and must be received by the Administrative Agent (by hand delivery or other electronic transmission
(including “.pdf” or “.tif”)) not later than (i) 10:00 a.m. three Business Days prior to the requested day of any Borrowing of, conversion to or
continuation of Term Benchmark Loans (or, if after the effectiveness of a Benchmark Replacement, five Business Days prior to the requested
day of any Borrowing of, conversion to or continuation of RFR Loans) (or one Business Day in the case of any Borrowing of Term Benchmark
Loans to be made on the Closing Date) and (ii) 12:00 p.m. on the requested date of any Borrowing of or conversion to ABR Loans (other than
Swingline Loans) (or, in each case, such later time as is reasonably acceptable to the Administrative Agent); provided, however, that if the
Borrower wishes to request Term Benchmark Loans having an Interest Period other than one, three or six months in duration or such shorter
period as provided in the definition of “Interest Period”, (A) the applicable notice from the Borrower must be received by the Administrative
Agent not later than 12:00 p.m. four Business Days prior to the requested date of the relevant Borrowing, conversion or continuation (or such
later time as is reasonably acceptable to the Administrative Agent), whereupon the Administrative Agent shall give prompt notice to the
appropriate Lenders of such request, (B) the relevant requested Interest Period shall be deemed to be available to each appropriate Lender unless
such Lender has delivered written notice to the Administrative Agent indicating that such Interest Period is not available to such Lender within
one

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Business Day following the date on which the notice described in clause (A) above is posted by the Administrative Agent and (C) not later than 10:00 a.m. three Business Days before the requested date of the relevant Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower whether or not the requested Interest Period is available to the appropriate Lenders.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark 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 Term Benchmark Borrowing (or, if after the effectiveness of a Benchmark Replacement, RFR Borrowing), no later than one Business Day following receipt of a Borrowing Request in accordance with this Section.

Section 2.04 Swingline Loans.

(a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make swingline loans ("Swingline Loans") to the Borrower from time to time on and after the Closing Date and until the Latest Revolving Credit Maturity Date, in an aggregate principal amount at any time outstanding not to exceed $5,000,000; provided that (i) the Swingline Lender shall not be required to make any Swingline Loan to refinance any outstanding Swingline Loan and (ii) after giving effect to any Swingline Loan, the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and LC Exposure shall not exceed the Total Revolving Credit Commitment. Each Swingline Loan shall be in a minimum principal amount of not less than $50,000 or such lesser amount as may be agreed by the Swingline Lender; provided that, notwithstanding the foregoing, any Swingline Loan may be in an aggregate amount that is (1) equal to the entire unused balance of the aggregate unused Revolving Credit Commitments or (2) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(d). Within the foregoing limits and subject to the terms and conditions set forth herein, Swingline Loans may be borrowed, prepaid and reborrowed. To request a Swingline Loan, the Borrower shall notify the Swingline Lender (with a copy to the Administrative Agent) of such request by delivery of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of the Borrower, not later than 12:00 p.m. on the day of a proposed Swingline Loan. The Swingline Lender shall make each Swingline Loan available to the Borrower on the same Business Day by means of a credit to the account designated in the related Borrowing Request or otherwise in accordance with the instructions of the Borrower (including, in the case of a Swingline Loan made to finance the reimbursement of any LC Disbursement as provided in Section 2.05(e), by remittance to the applicable Issuing Bank).

(b) The Swingline Lender may by written notice given to the Administrative Agent (and in any event, if such notice is received by 11:00 a.m. on a Business Day, no later than 4:00 p.m. on such Business Day and if received after 11:00 a.m., “on a Business Day” shall mean no later than 9:00 a.m. on the immediately succeeding Business Day) on any Business Day require the Revolving Lenders to purchase a participation on the Business Day following receipt of such notice in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which the Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Revolving Lender’s Applicable Revolving Credit Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender’s Applicable Revolving Credit Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and
continuance of a Default or any reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by effecting a wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Revolving Loans made by such Revolving Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders pursuant to this Section 2.04(b)), and the Administrative Agent shall promptly remit to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower of any participation in any Swingline Loan acquired pursuant to this Section 2.04(b), and thereafter any payment in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower in respect of any Swingline Loan after receipt by the Swingline Lender of the proceeds of any sale of participations therein shall be promptly remitted by the Swingline Lender to the Administrative Agent, and any such amount received by the Administrative Agent shall be promptly remitted by the Administrative Agent to each Revolving Lender that has made its payment pursuant to this Section 2.04(b) and to the Swingline Lender, as their interests may appear; provided that if and to the extent such payment is required to be funded to the Borrower for any reason, such payment shall be repaid to the Swingline Lender or the Administrative Agent, as the case may be, and thereafter to the Borrower. The purchase of participations in a Swingline Loan pursuant to this Section 2.04(b) shall not relieve the Borrower of any default in the payment thereof.

(c) If any Revolving Lender fails to make available to the Administrative Agent (for the account of the Swingline Lender) any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.04 by the time specified in Section 2.04(b), the Swingline Lender shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Effective Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the Swingline Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amount owing under this clause (c) shall be conclusive absent manifest error.

Section 2.05 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, (i) each Issuing Bank agrees, in each case in reliance upon the agreements of the other Revolving Lenders set forth in this Section 2.05, (A) from time to time on any Business Day during the period from the Closing Date to the fifth Business Day prior to the Latest Revolving Credit Maturity Date, upon the request of the Borrower, to issue Letters of Credit, issued on sight basis only on behalf of the Borrower and/or any of its subsidiaries (provided that the Borrower will be the applicant) and to amend or renew any Letter of Credit previously issued by it, in accordance with Section 2.05(b), and (B) to honor any draft under any Letter of Credit; provided that no Issuing Bank shall be required to issue any Letter of Credit if (x) the Stated Amount of such Letter of Credit, taken together with the aggregate Stated Amount of all other then-outstanding Letters of Credit then issued by such Issuing Bank would exceed such Issuing Bank’s Letter of Credit Commitment or (y) the issuance of such Letter of Credit would violate any policies or procedures of such Issuing Bank applicable to letters of credit generally and consistently applied by such Issuing Bank to similarly situated borrowers, and (ii) each Revolving Lender severally agrees to participate in each Letter of Credit as provided in Section 2.05(d). It is understood and agreed that no Issuing Bank shall be required (but shall be permitted) to issue any Letter of Credit that (x) is not denominated in Dollars, (y) has a face amount that is less than $50,000 and (z) if (1) any order, judgment or decree of any Governmental Authority with jurisdiction over such Issuing Bank shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any directive (whether or not having the force of
law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or direct that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or (2) the issuance of such Letter of Credit would violate one or more policies to such Issuing Bank now or hereafter applicable to similarly situated borrowers under comparable credit facilities and letters of credit generally.

(i) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of any Letter of Credit, the Borrower shall deliver to the applicable Issuing Bank and the Administrative Agent, at least three Business Days in advance of the requested date of issuance (or such shorter period as is acceptable to the applicable Issuing Bank), a Letter of Credit Request (it being understood that, to the extent applicable, the issuance of any Letter of Credit expressly for the benefit of any subsidiary that is not a Loan Party shall be contingent upon the Administrative Agent’s receipt of any documentation and other information with respect to such subsidiary that has not been previously provided with respect to any Loan Party, that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, and reasonably requested by the applicable Issuing Bank at least three Business Days prior to the requested date of issuance). To request an amendment, extension or renewal of an outstanding Letter of Credit, (other than any automatic extension of a Letter of Credit permitted under Section 2.05(c)) the Borrower shall submit a Letter of Credit Request to the applicable Issuing Bank or Issuing Banks selected by the Borrower (with a copy to the Administrative Agent) at least three Business Days in advance of the requested date of amendment, extension or renewal (or such shorter period as is acceptable to the applicable Issuing Bank), identifying the Letter of Credit to be amended, extended or renewed, and specifying the proposed date (which shall be a Business Day) and other details of the amendment, extension or renewal. If requested by the applicable Issuing Bank in connection with any request for any Letter of Credit, the Borrower shall also submit a letter of credit application on such Issuing Bank’s standard form. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. No Letter of Credit, letter of credit application or other document entered into by the Borrower with any Issuing Bank relating to any Letter of Credit shall contain any representation or warranty, covenant or event of default not set forth in this Agreement (and to the extent any representation or warranty, covenant or event of default in any letter of credit application or any such other document is inconsistent herewith, the same shall be rendered null and void (or reformed automatically without further action by any Person to conform to the terms of this Agreement), and all representations and warranties, covenants and events of default set forth therein shall contain standards, qualifications, thresholds and exceptions for materiality or otherwise consistent with those set forth in this Agreement (and, to the extent any representation or warranty, covenant or event of default in any letter of credit application or any such other document is inconsistent herewith, the same shall be deemed to automatically incorporate the applicable standards, qualifications, thresholds and exceptions set forth herein without action by any Person). No Letter of Credit may be issued, amended, extended or renewed unless (and with respect to clauses (i) and (ii) below, upon the issuance, amendment, extension or renewal of each Letter of Credit, the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, or renewal (i) the LC Exposure does not exceed the Letter of Credit Sublimit, and (ii) (A) the aggregate amount of the Initial Revolving Credit Exposure shall not exceed the aggregate amount of the Initial Revolving Credit Commitments then in effect, (B) the aggregate amount of the Additional Revolving Credit Exposure attributable to any Class of Additional Revolving Credit Commitments does not exceed the aggregate amount of the Additional Revolving Credit Commitments of such Class then in effect and (C) if such Letter of Credit has a
term that extends beyond the Maturity Date applicable to the Revolving Credit Commitments of any Class, the aggregate amount of the
LC Exposure attributable to Letters of Credit expiring after such Maturity Date (1) does not exceed the aggregate amount of the
Revolving Credit Commitments then in effect that are scheduled to remain in effect after such Maturity Date or (2) is subject to Letter of
Credit Support.
(b) Expiration Date. No Letter of Credit shall expire later than the earlier of (A) the date that is one year after the date of the issuance
of such Letter of Credit (or such later date to which the applicable Issuing Bank may agree) and (B) the date that is five Business Days prior to
the Latest Revolving Credit Maturity Date; provided that any Letter of Credit may provide for the automatic extension thereof for any number of
additional periods of up to one year in duration (which additional periods shall not extend beyond the date referred to in the preceding clause (B)
unless such Letter of Credit is subject to Letter of Credit Support).
(c) Participations. By the issuance of any Letter of Credit (or an amendment to any Letter of Credit increasing the amount thereof) and
without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, the applicable Issuing Bank hereby grants to each
Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such
Revolving Lender’s Applicable Revolving Credit Percentage of the aggregate amount available to be drawn under such Letter of Credit. In
consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the
Administrative Agent, for the account of the applicable Issuing Bank, such Lender’s Applicable Percentage of each LC Disbursement made by
such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (d) of this Section, or of any reimbursement
payment required to be refunded to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire
participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any
circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default
or Event of Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any
offset, abatement, withholding or reduction whatsoever.
(d)

Reimbursement.

(i) If the applicable Issuing Bank makes any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse
such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 11:00 a.m. on (i)
the Business Day that the Borrower receives notice of such LC Disbursement under paragraph (f) of this Section, if such notice is
received prior to 9:00 a.m. on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such
notice, if such notice is received after 9:00 a.m. on the day of receipt, (provided that the Borrower may, subject to the conditions to
borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Revolving Loan
Borrowing in an equivalent amount (any such Revolving Loan Borrowing, a “Letter of Credit Reimbursement Loan”)), and, to the extent
so financed, the obligation of the Borrower to make such payment shall be discharged and replaced by the resulting Borrowing (it being
understood and agreed that the Borrower may also request a Swingline Loan to reimburse such LC Disbursement in accordance with
Section 2.04, subject, in the case of any such Swingline Loan, to the satisfaction of the applicable conditions set forth in Section 4.02). If
the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable
LC Disbursement, the payment then due from the Borrower in respect thereof and such Revolving Lender’s Applicable Revolving Credit
Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its
Applicable

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Revolving Credit Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Revolving Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Revolving Lenders and such Issuing Bank as their interests may appear.

(ii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the applicable Issuing Bank any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.05(d) by the time specified therein, such Issuing Bank shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate per annum equal to the greater of the Federal Funds Effective Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the applicable Issuing Bank submitted to any Revolving Lender (through the Administrative Agent) with respect to any amount owing under this clause (ii) shall be conclusive absent manifest error.

(e) Obligations Absolute. The obligation of the Borrower to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute and unconditional and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the applicable Issuing Bank under any Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the obligations of the Borrower hereunder. Neither the Administrative Agent, the Revolving Lenders nor any Issuing Bank, nor any of their respective Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such Issuing Bank; provided that the foregoing shall not be construed to excuse such Issuing Bank from liability to the Borrower to the extent of any direct damages suffered by the Borrower that are caused by such Issuing Bank’s failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of applicable Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to any document presented which appears on its face to be in substantial compliance with the terms of any Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such document without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such document if such document is not in strict compliance with the terms of such Letter of Credit.
(f) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. After such examination and provided that the documents received are compliant with the terms and conditions of the applicable Letter of Credit, such Issuing Bank shall promptly notify the Administrative Agent and the Borrower by electronic means upon any LC Disbursement thereunder; provided that no failure to give or delay in giving such notice shall relieve the Borrower of its obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(g) Interim Interest. If any Issuing Bank makes any LC Disbursement, then unless the Borrower reimburses such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement (or the date on which such LC Disbursement is reimbursed with the proceeds of Loans, as applicable), at the rate per annum then applicable to Initial Revolving Loans that are ABR Loans; provided that if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (d) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (d) of this Section to reimburse such Issuing Bank shall be for the account of such Revolving Lender to the extent of such payment and shall be payable on the date on which the Borrower is required to reimburse the applicable LC Disbursement in full (and, thereafter, on demand).

(h) Replacement or Resignation of an Issuing Bank; Designation of New Issuing Banks. Any Issuing Bank may be replaced with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) and the Borrower at any time by written agreement among the Borrower, the Administrative Agent and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of an Issuing Bank. At the time any such replacement becomes effective, unless otherwise agreed by the replaced Issuing Bank, the Borrower shall pay all unpaid fees accrued prior to such date for the account of the replaced Issuing Bank pursuant to Section 2.12(b)(ii). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term “Issuing Bank” shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of any Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(i) The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and the relevant Revolving Lender, designate one or more additional Revolving Lenders to act as an issuing bank under the terms of this Agreement. Any Revolving Lender designated as an issuing bank pursuant to this paragraph (i) who agrees in writing to such designation shall be deemed to be an “Issuing Bank” (in addition to being a Revolving Lender) in respect of Letters of Credit issued or to be issued by such Revolving Lender in respect of its Letter of Credit Commitment (the amount of which Letter of Credit Commitment shall be specified in the agreement pursuant to which such Revolving Lender becomes an Issuing Bank), and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Bank and such Revolving Lender; provided that, for the avoidance of doubt, it is understood and agreed that the Letter of Credit Commitments of the other Issuing Banks shall not be reduced or otherwise be affected by the appointment of any additional Revolving Lender as an Issuing Bank pursuant to this paragraph (i); provided further that notwithstanding anything to the contrary contained herein, this Agreement may be amended to give
effect to such appointment with the consent of the Borrower, the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and such Issuing Bank being appointed in accordance with this Section 2.05(h), which amendment may determine the face amount of Letters of Credit required to be issued by such Issuing Bank, and the consent of no other Lender shall be required therefor.

(ii) Notwithstanding anything to the contrary contained herein, each Issuing Bank may, upon 30 days’ prior written notice to the Borrower, each other Issuing Bank and the Lenders, resign as Issuing Bank, which resignation shall be effective as of the date referenced in such notice (but in no event less than 30 days (or such later date as the relevant Issuing Bank may agree) after the delivery of such written notice); provided that the effectiveness of such resignation shall be conditioned on and subject to the appointment of a replacement Issuing Bank reasonably satisfactory to the Borrower who agrees to assume the entire Letter of Credit Commitment of the resigning Issuing Bank, and no such resignation shall become effective unless and until such replacement Issuing Bank has accepted such appointment and agreed to provide such Letter of Credit Commitment on terms acceptable to the Borrower; provided, further, that it is understood and agreed that in the event of any such resignation, any Letter of Credit then outstanding shall remain outstanding (irrespective of whether any amount have been drawn at such time). In the event of any such resignation of any Issuing Bank, the Borrower shall be entitled, but shall not be obligated, to appoint another Revolving Lender that is willing, in its sole discretion to accept such appointment in writing as successor Issuing Bank in respect of such resigning Issuing Bank; it being understood that the resignation of any such Issuing Bank shall not be effective in the event of a failure to appoint any such successor Issuing Bank and/or a failure of any Revolving Lender to accept such appointment as Issuing Bank. Upon the acceptance of any appointment as Issuing Bank hereunder, the successor Issuing Bank shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Issuing Bank, and the retiring Issuing Bank shall be discharged from its duties and obligations in such capacity hereunder.

(i) Cash Collateralization.

(i) If any Event of Default exists and the Loans have been declared due and payable in accordance with Article VII hereof, then on the Business Day following the date on which the Borrower receives notice from the Administrative Agent (at the direction of the Required Revolving Lenders) demanding the deposit of Cash collateral pursuant to this paragraph (i), the Borrower shall deposit (or shall cause to be deposited), in an interest-bearing account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the “LC Collateral Account”), an amount in Cash equal to 102% of the LC Exposure as of such date (minus the amount then on deposit in the LC Collateral Account); provided that the obligation to deposit such Cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 7.01(f) or (g).

(ii) Any such deposit under clause (i) above shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations in accordance with the provisions of this paragraph (i). The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account, and the Borrower hereby grants the Administrative Agent, for the benefit of the Secured Parties, a first priority security interest in the LC Collateral Account. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it has not been
reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Revolving Lenders) be applied to satisfy other Secured Obligations. If the Borrower is required to provide an amount of Cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (together with all interest and other earnings with respect thereto, to the extent not applied as aforesaid) shall be returned to the Borrower promptly (but in no event later than three Business Days) after such Event of Default has been cured or waived.

(j) **Reporting.** (i) Not later than the third Business Day following the last day of each month and at each issuance of a Letter of Credit (or at such other intervals as the Administrative Agent and the applicable Issuing Bank shall agree), each Issuing Bank shall provide to the Administrative Agent a schedule of the Letters of Credit issued by it, and (ii) at each issuance of a Letter of Credit, the applicable Issuing Bank shall provide to the Administrative Agent a description of such Letter of Credit, in each case, in form and substance reasonably satisfactory to the Administrative Agent, showing the date of issuance of each (or such) Letter of Credit, the account party, the original face amount (if any), the expiration date, and the reference number of any Letter of Credit outstanding at any time during such month (or of such Letter of Credit, as applicable), and showing the aggregate amount (if any) payable by the Borrower to such Issuing Bank during such month (or with respect to such Letter of Credit, as applicable).

Section 2.06 **[Reserved]**.

Section 2.07 **Funding of Borrowings.**

(a) Each Lender shall make (x) each Loan to be made by it hereunder available to the Administrative Agent not later than 2:00 p.m. on the Business Day specified in the applicable Borrowing Request by wire transfer of immediately available funds to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender’s respective Applicable Percentage; provided that Swingline Loans shall be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received on the same Business Day, in like funds, to the account designated in the relevant Borrowing Request or as otherwise directed by the Borrower; provided that ABR Revolving Loans made to finance the reimbursement of any LC Disbursement as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent has received notice from any Lender that such Lender will not make available to the Administrative Agent such Lender’s share of any Borrowing prior to the proposed date of such Borrowing (or, in the case of any Borrowing of ABR Loans, prior to 2:00 p.m. on the date of such Borrowing), the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if any Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to Loans comprising such Borrowing at such time. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender’s Loan included in such Borrowing and the obligation of the Borrower to repay the Administrative Agent such corresponding amount pursuant to this Section 2.07(b) shall cease. If the Borrower pays such
amount to the Administrative Agent, the amount so paid shall constitute a repayment of such Borrowing by such amount. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower or any other Loan Party may have against any Lender as a result of any default by such Lender hereunder.

Section 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 Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert any Borrowing denominated in Dollars to a Borrowing of a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders based upon their Applicable Percentages and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Loans, which may not be a Term Benchmark Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall deliver an Interest Election Request, appropriately completed and signed by a Responsible Officer of the Borrower, to the Administrative Agent in accordance with Section 2.03. If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(c) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each applicable Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

(d) If the Borrower fails to deliver (or cause to be delivered) a timely Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, such Borrowing shall be converted at the end of such Interest Period to an ABR Borrowing.

Section 2.09  Termination and Reduction of Commitments.

(a) Unless previously terminated, (i) the Initial Revolving Credit Commitments shall automatically terminate on the Initial Revolving Credit Maturity Date, and (ii) the Additional Revolving Credit Commitments of any Class shall automatically terminate on the Maturity Date specified therefor in the applicable Refinancing Amendment, Extension Amendment or Incremental Facility Amendment, as applicable.

(b) Upon delivery of the notice required by Section 2.09(c), the Borrower may at any time terminate or from time to time reduce the Revolving Credit Commitments of any Class; provided that (i) each reduction of the Revolving Credit Commitments of any Class shall be in an amount that is an integral multiple of $100,000 and not less than $500,000 and (ii) the Borrower shall not terminate or reduce the Revolving Credit Commitments of any Class if, after giving effect to any concurrent prepayment of Revolving Loans, Swingline Loans and/or the provision of Letter of Credit Support with respect to any outstanding Letter of Credit, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of such Class would exceed the aggregate amount of the Revolving Credit Commitments of such Class; provided that, after the establishment of any Class of Additional Revolving Credit Commitments, any such termination or reduction of the Revolving Credit Commitments of any Class shall be subject to the provisions set forth in Section 2.22, 2.23 and/or 9.02, as applicable.
(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce any Revolving Credit Commitment under paragraph (b) of this Section in writing at least three Business Days prior to the effective date of such termination or reduction (or such later date to which the Administrative Agent may agree), specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Revolving Lenders of each applicable Class of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that any such notice may state that it is conditioned upon the effectiveness of other transactions or other events, in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of any Revolving Credit Commitment pursuant to this Section 2.09 shall be permanent. Upon any reduction of any Revolving Credit Commitment, the Revolving Credit Commitment of each Revolving Lender of the relevant Class shall be reduced by such Revolving Lender’s Applicable Percentage of the amount of such reduction.

Section 2.10 Repayment of Loans; Evidence of Debt.

(a) (i) The Borrower hereby unconditionally promises to pay in Dollars (A) to the Administrative Agent for the account of each Initial Revolving Lender, the then-unpaid principal amount of the Initial Revolving Loans of such Lender on the Initial Revolving Credit Maturity Date, (B) to the Administrative Agent for the account of each Additional Revolving Lender, the then-unpaid principal amount of each Additional Revolving Loan of such Additional Revolving Lender on the Maturity Date applicable thereto and (C) to the Swingline Lender, the then unpaid principal amount of each Swingline Loan on the Latest Revolving Credit Maturity Date.

(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 any outstanding Letter of Credit, provide Letter of Credit Support with respect thereto), in each case to the extent necessary so that, after giving effect thereto, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of any other Class does not exceed the Revolving Credit Commitments of such other Class then in effect, (B) prepay Swingline Loans to the extent necessary so that, after giving effect thereto, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of any other Class shall not exceed the Revolving Credit Commitments of such other Class then in effect and (C) make payment in full of all accrued and unpaid fees and all reimbursable expenses and other Obligations with respect to the Revolving Facility of the applicable Class then due, together with accrued and unpaid interest (if any) thereon.

(b) 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.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class, Type and currency thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders or the Issuing Banks and each Lender’s or Issuing Bank’s share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein.
provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any manifest error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement, (ii) in the event of any inconsistency between the accounts maintained by the Administrative Agent pursuant to paragraph (c) of this Section and any Lender’s records, the accounts of the Administrative Agent shall govern and (iii) in the event of any inconsistency between the Register and any other accounts maintained by the Administrative Agent, the Register shall govern absent manifest error.

(e) Any Lender may request that any Loan made by it be evidenced by a Promissory Note. In such event, the Borrower shall prepare, execute and deliver a Promissory Note to such Lender payable to such Lender and its registered permitted assigns; it being understood and agreed that such Lender (and/or its applicable permitted assign) shall be required to return such Promissory Note to the Borrower in accordance with Section 9.05(b)(iii) and upon the occurrence of the Termination Date (or as promptly thereafter as practicable). If any Lender loses the original copy of its Promissory Note, it shall execute an affidavit of loss containing an indemnification provision that is reasonably satisfactory to the Borrower. The obligation of each Lender to execute and deliver an affidavit of loss containing an indemnification provision that is reasonably satisfactory to the Borrower shall survive the Termination Date.

Section 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 Revolving Loans of any Class and/or any Borrowing of Swingline Loans, in whole or in part without premium or penalty (but subject to Section 2.16); provided that (A) after the establishment of any Class of Additional Revolving Loans, any such prepayment of any Borrowing of Revolving Loans of any Class shall be subject to the provisions set forth in Section 2.22, 2.23 and/or 9.02, as applicable and (B) no Borrowing of Revolving Loans may be prepaid unless all Swingline Loans then outstanding, if any, are prepaid concurrently therewith. Each such prepayment shall be paid to the Revolving Lenders in accordance with their respective Applicable Percentages of the relevant Class.

(ii) The Borrower shall notify the Administrative Agent (and the Swingline Lender, if applicable) pursuant to delivery to the Administrative Agent (and the Swingline Lender, if applicable) of a Notice of Loan Prepayment in writing of any prepayment under this Section 2.11(a) (i) in the case of any prepayment of a Term Benchmark Borrowing, not later than 10:00 a.m. three Business Days before the date of prepayment (or, if after the effectiveness of a Benchmark Replacement, five Business Days before the date of prepayment of an RFR Borrowing), (ii) in the case of any prepayment of an ABR Borrowing, not later than 10:00 a.m., on the date of prepayment or (iii) in the case of any prepayment of any Swingline Loan, not later than 11:00 a.m. on the date of prepayment (or, in each case, such later time as to which the Administrative Agent may reasonably agree). Each such notice shall be irrevocable (except as set forth in the proviso to this sentence) and shall specify the prepayment date and the principal amount of each Borrowing or portion or each relevant Class to be prepaid; provided that any notice of prepayment delivered by the Borrower may be conditioned upon the effectiveness of other transactions or other events, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to any Borrowing, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount at least equal to the amount that would be permitted in the case of a Borrowing of the same Type.
and Class as provided in Section 2.02(c), or such lesser amount that is then outstanding with respect to such Borrowing being repaid (and in increments of $100,000 in excess thereof or such lesser incremental amount that is then outstanding with respect to such Borrowing being repaid).

(b) Mandatory Prepayments.

(i) (A) In the event that the aggregate Revolving Credit Exposure of any Class exceeds the Total Revolving Credit Commitment of such Class then in effect, the Borrower shall, within five Business Days of receipt of notice from the Administrative Agent, prepay the Revolving Loans or Swingline Loans and/or reduce LC Exposure, in an aggregate amount sufficient to reduce such aggregate Revolving Credit Exposure as of the date of such payment to an amount not to exceed 100% of the Revolving Credit Commitment of such Class then in effect by taking any of the following actions as it shall determine at its sole discretion: (I) prepayment of Revolving Loans and/or Swingline Loans in accordance with Section 2.11(a)(i) and/or (II) with respect to any excess LC Exposure, provide Letter of Credit Support with respect thereto.

(B) Each prepayment of any Revolving Loan Borrowing under this Section 2.11(b)(i) shall be paid to the Revolving Lenders in accordance with their respective Applicable Percentages of the applicable Class.

(ii) Prepayments made under this Section 2.11(b) shall be (A) accompanied by accrued interest as required by Section 2.13 (which may, at the election of the Borrower, be netted in the calculation of the applicable prepayment amount (and in the event such election is made, the amount of the applicable prepayment of principal and the amount of such accrued interest shall be determined by the Borrower in good faith in consultation with the Administrative Agent)) and (B) subject to Section 2.16.

Section 2.12 Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender of any Class (other than any Defaulting Lender) a commitment fee, which shall accrue at a rate equal to the Commitment Fee Rate per annum applicable to the Revolving Credit Commitments of such Class on the actual daily amount of the unused Revolving Credit Commitment of such Class of such Revolving Lender during the period from and including the Closing Date to the date on which such Lender's Revolving Credit Commitment of such Class terminates. Accrued Commitment fees shall be payable in arrears on each Scheduled Payment Date for the quarterly period then most recently ended (or, in the case of the first such payment made after the Closing Date, for the period from the Closing Date to such date), and on the date on which the Revolving Credit Commitments of the applicable Class terminate. For purposes of calculating the commitment fee payable pursuant to this Section 2.12(a), the Revolving Credit Commitment of any Class shall be deemed to have been used to the extent of the outstanding principal amount of the Revolving Loans of such Class and the LC Exposure attributable to the Revolving Credit Commitment of such Class, but no portion of the Revolving Credit Commitment of any Class shall be deemed to have been used as a result of any outstanding Swingline Loan.

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender of any Class, a participation fee with respect to its participation in any outstanding Letter of Credit that is not subject to Letter of Credit Support, which shall accrue at the Applicable Rate used to determine the interest rate applicable to Revolving Loans of such Class that are Term Benchmark Loans on the daily portion of such Lender’s LC Exposure that is attributable to its Revolving Credit Commitment of such Class (excluding any portion thereof that is attributable to any unreimbursed LC Disbursement), during the period from and including the Closing Date to the earlier of (A) the later of the date on which
such Revolving Lender’s Revolving Credit Commitment of such Class terminates and the date on which such Revolving Lender ceases to have any LC Exposure attributable to its Revolving Credit Commitment of such Class and (B) the Termination Date, and (ii) to each Issuing Bank, for its own account, a fronting fee, in respect of each Letter of Credit that is not subject to Letter of Credit Support issued by such Issuing Bank for the period from the date of issuance of such Letter of Credit to the earliest of (A) the expiration date of such Letter of Credit, (B) the date on which such Letter of Credit terminates, (C) the Termination Date, computed at a rate agreed by such Issuing Bank and the Borrower (but in any event not to exceed 0.125% per annum) of the daily available amount of such Letter of Credit, as well as such Issuing Bank’s standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or the processing of any drawing thereunder. Participation fees and fronting fees shall accrue to but excluding each Scheduled Payment Date and be payable in arrears for the quarterly period then most recently ended (or, in the case of the payment made on the first such date after the Closing Date, for the period from the Closing Date to such date) on each Scheduled Payment Date; provided that all such fees shall be payable on the date on which the Revolving Credit Commitments of the applicable Class terminate, and any such fees accruing after the date on which the Revolving Credit Commitments of the applicable Class terminate and prior to the Termination Date shall be payable on demand. Any other fee payable to any Issuing Bank pursuant to this paragraph shall be payable within 30 days after receipt of a written demand (accompanied by reasonable back-up documentation) therefor.

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, the annual administration fee described in the Fee Letter.

(d) All fees payable hereunder shall be paid on the date due, in Dollars and in immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to any Issuing Bank). Fees paid shall not be refundable under any circumstance except as otherwise provided in the Fee Letter. Fees payable hereunder shall accrue through and including the last day of the month immediately preceding the applicable fee payment date.

(e) Unless otherwise indicated herein, all computations of fees shall be made on the basis of a 360-day year and shall be payable for the actual days elapsed (including the first day but excluding the last day). Each determination by the Administrative Agent of the amount of any fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.13 Interest.

(a) The Revolving Loans and the Swing Loans, in each case, comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Revolving Loans comprising each Term Benchmark Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) If a Benchmark Replacement has occurred, each RFR Loan shall bear interest at a rate per annum equal to the Adjusted Daily Simple SOFR plus the Applicable Rate).

(d) Notwithstanding the foregoing but in all cases subject to Section 9.05(f), if any principal of or interest on any Revolving Loan or Swingline Loan, any LC Disbursement or other amount payable by the Borrower hereunder is not, in each case, paid or reimbursed when due, whether at stated maturity, upon acceleration or otherwise, the relevant overdue amount shall bear interest, to the fullest extent permitted by applicable Requirements of Law, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal or interest of any Revolving Loan, Swingline Loan or unreimbursed LC Disbursement, 2.00% plus the rate otherwise applicable to such Revolving Loan, Swingline Loan or
LC Disbursement as provided in the preceding paragraphs of this Section or (ii) in the case of any fee and other amounts, 2.00% plus the rate applicable to Revolving Loans that are ABR Loans as provided in paragraph (a) of this Section 2.13; provided that no amount shall accrue pursuant to this Section 2.13(d) on any overdue amount, reimbursement obligation in respect of any LC Disbursement or other amount that is payable to any Defaulting Lender so long as such Lender is a Defaulting Lender.

(e) Accrued interest on each Revolving Loan and Swingline Loan shall be payable in arrears on each Interest Payment Date for such Revolving Loan or Swingline Loan and (i) on the Maturity Date applicable to such Loan, (ii) in the case of a Revolving Loan of any Class, upon termination of the Revolving Credit Commitments of such Class and (iii) in the case of any Swingline Loan, upon termination of all of the Revolving Credit Commitments, as applicable; provided that (A) interest accrued pursuant to paragraph (d) of this Section 2.13 shall be payable on demand, (B) except as provided in Section 2.11(b)(iii), in the event of any repayment or prepayment of any Revolving Loan (other than an ABR Revolving Loan of any Class prior to the termination of the Revolving Credit Commitments of such Class) or Swingline Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (C) in the event of any conversion of any Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such 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 Term SOFR Rate (and, if after the effectiveness of a Benchmark Replacement, Adjusted Daily Simple SOFR) shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. Interest shall accrue on each Loan for the day on which the Loan is made and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall bear interest for one day.

Section 2.14 Alternate Rate of Interest; Illegality.

(a) Subject to clauses (b), (c), (d), (e), and (f) of this Section 2.14, if:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) (A) prior to commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate (including, because the Term SOFR Reference Rate is not available or published on a current basis) for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR or Daily Simple SOFR; or

(ii) the Administrative Agent is advised by the Required Lenders in writing that (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or Loan) included in such Borrowing for such Interest Period or (B) at any time, the Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or Loan) included in such Borrowing;
then the Administrative Agent shall give notice thereof to the Borrower and the Lenders through Electronic System as provided in Section 9.01
as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Borrowing shall instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) be repaid or converted into an ABR Borrowing if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above and (2) any Borrowing Request that requests an RFR Borrowing shall instead be deemed to be a Borrowing Request, as applicable, for an ABR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan (or after the effectiveness of a Benchmark Replacement, any RFR Loan) is outstanding on the date of the Borrower’s receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to such Term Benchmark Loan (or after the effectiveness of a Benchmark Replacement, any RFR Loan), then until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) an ABR Loan if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above, on such day, and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will have the right (in consultation with the Borrower) to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.
(d) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent (including, if applicable, in consultation with the Borrower) or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark Loans (or after the effectiveness of a Benchmark Replacement, any RFR Loan) to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted (1) any request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to (A) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an ABR Borrowing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event or (2) any such request for an RFR Borrowing into a request for an ABR Borrowing. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan (or after the effectiveness of a Benchmark Replacement, any RFR Loan) is outstanding on the date of the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect such Term Benchmark Loan (or after the effectiveness of a Benchmark Replacement, any RFR Loan), then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, (x) an RFR Loan so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) an ABR Loan if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan.
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 Term SOFR Rate) or Issuing Bank;

(ii) subjects any Lender or Issuing Bank to any Taxes (other than (A) Indemnified 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, cost or expense (other than Taxes) affecting this Agreement or Term Benchmark 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 Term Benchmark 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 Term Benchmark Loan or Letter of Credit in an amount deemed by such Lender or Issuing Bank to be material, then, within 30 days after the Borrower’s receipt of the certificate contemplated by paragraph (c) of this Section 2.15, the Borrower will pay (or cause to be paid) to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered; provided that the Borrower shall not be liable for such compensation if (x) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto, (y) such Lender invokes Section 2.20 or (z) in the case of requests for reimbursement under clause (iii) above resulting from a market disruption, (A) the relevant circumstances do not generally affect the banking market or (B) the applicable request has not been made by Lenders constituting Required Lenders.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding liquidity or capital requirements has or would have the effect of reducing the rate of return on such Lender’s or Issuing Bank’s capital or on the capital of such Lender’s or Issuing Bank’s holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank to be material, then, within 30 days after the Borrower’s receipt of the certificate contemplated by paragraph (c) of this Section 2.15, the Borrower will pay (or cause to be paid) to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender’s or such Issuing Bank’s holding company for any such reduction suffered.

(c) Any Lender or Issuing Bank requesting compensation under this Section 2.15 shall be required to deliver a certificate to the Borrower that (i) sets forth the amount or amounts necessary to compensate such Lender or Issuing Bank or the holding company thereof, as applicable, as specified in paragraph (a) or (b) of this Section, (ii) sets forth, in reasonable detail, the manner in which such amount or amounts were determined and (iii) certifies that such Lender or Issuing Bank is generally charging such amounts to similarly situated borrowers, which certificate shall be conclusive absent manifest error.
(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender’s or Issuing Bank’s right to demand such compensation; provided, however, that the Borrower shall not be required to compensate any Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than six months prior to the date that such Lender or Issuing Bank notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s or Issuing Bank’s intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six month period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16 Break Funding Payments. (a) Subject to Section 9.05(f), in the event of (a) the conversion or prepayment of any principal of any Term Benchmark 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 Term Benchmark Loan on the date or in the amount specified in any notice delivered pursuant hereto or (c) the assignment of any Term Benchmark Loan of any Lender other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the actual amount of any actual out-of-pocket loss, expense and/or liability (including any actual out-of-pocket loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund or maintain Term Benchmark Loans, but excluding loss of anticipated profit) that such Lender has incurred or sustained as a result of such event. Any Lender requesting compensation under this Section 2.16 shall be required to deliver a certificate to the Borrower that (A) sets forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, the basis therefor and, in reasonable detail, the manner in which such amount or amounts were determined and (B) certifies that such Lender is generally charging the relevant amounts to similarly situated borrowers, which certificate shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11 and is revoked in accordance therewith) or (iii) the assignment of any RFR Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrower pursuant to Section 2.18, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 2.17 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of the applicable withholding agent) requires the deduction or withholding of any Tax from any such payment, then (i) if such Tax is an Indemnified Tax, the amount payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions or withholdings applicable to additional sums payable under this Section 2.17) each Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deductions or withholdings been
made, (ii) the applicable withholding agent shall be entitled to make such withholding or deductions and (iii) the applicable withholding agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(b) Payment of Other Taxes. In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law or at the option of the Administrative Agent timely reimburse it for the payment of Other Taxes.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent and each Lender within 10 days after demand therefor, for the full amount of any Indemnified Taxes payable or paid by the Administrative Agent or such Lender, as applicable, or required to be withheld or deducted from a payment to the Administrative Agent or such Lender (including, in each case, Indemnified 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 judgement of a court of competent jurisdiction (or documented in any settlement agreement) to have resulted from the gross negligence, bad faith, or willful misconduct of the Administrative Agent or such Lender, and, in each case, any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted. 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 amount of the relevant payment or liability. Such certificate shall be conclusive absent manifest error. Notwithstanding anything to the contrary contained in this Section 2.17, no Borrower shall be required to indemnify the Administrative Agent or any Lender pursuant to this Section 2.17 for any amount to the extent the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so, provided, however, that if the circumstances giving rise to such indemnification claim have a retroactive effect (e.g., in connection with the audit of a prior tax year), then the Notice Date shall be the date that is six months after the latest of (i) the date of the conclusion of an audit relating to such Tax assessment, (ii) the date that the liability for and amount of such Tax assessment has been agreed to by the Administrative Agent or applicable Lender and the applicable tax authority (e.g., by documentation in a settlement agreement), and (iii) the date that the liability for and amount of such Tax assessment is determined by a final and non-appealable judgement of a court of competent jurisdiction.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 9.05(c) relating to the maintenance of a Participant Register (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable after any payment of any Taxes pursuant to this Section 2.17 by any Loan Party to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued, if any, by such Governmental Authority.
Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment that is reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of any withholding Tax with respect to any payment made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation as the Borrower or the Administrative Agent may reasonably request to permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Requirements of Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided to the Administrative Agent pursuant to this Section 2.17(f). Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (f)(ii)(A), (ii)(B) and (ii)(D) of this Section 2.17) shall not be required if in the Lender’s reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) each Lender that is a US Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which it becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two executed copies of IRS Form W-9 (or any successor forms) certifying that such Lender is exempt from US federal backup withholding;

(B) each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

1. in the case of any Foreign Lender claiming the benefits of an income tax treaty to which the US is a party, two executed copies of IRS Form W-8BEN or W-8BEN-E, (or any successor forms) as applicable, establishing any available exemption from, or reduction of, US federal withholding Tax;

2. two executed copies of IRS Form W-8ECI (or any successor forms);

3. in the case of any Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (x) two executed copies of a certificate substantially in the form of Exhibit O-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10-percent shareholder” of the Borrower

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within the meaning of Section 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code, and that no payments payable to such Lender are effectively connected with the conduct of a US trade or business (a “Tax Compliance Certificate”) and (y) two executed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms) as applicable; or

(4) to the extent any Foreign Lender is not the beneficial owner (e.g., where the Foreign Lender is a partnership or participating Lender), two executed copies of IRS Form W-8IMY (or any successor forms), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or any successor forms), a Tax Compliance Certificate substantially in the form of Exhibit O-2 or Exhibit O-4, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if such Foreign Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a Tax Compliance Certificate substantially in the form of Exhibit O-3 on behalf of each such direct or indirect partner(s);

(C) each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two executed copies of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in US federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to any Lender under any Loan Document would be subject to US federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by applicable Requirements of Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation as is prescribed by applicable Requirements of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for US federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender’s owner and, as applicable, such Lender.

Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect (including any specific documentation required above in this Section 2.17(f)), it shall deliver to the Borrower and the Administrative Agent updated or other appropriate documentation
(including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so.

(g) **Treatment of Certain Refunds.** If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes (whether received in cash or applied as a credit against any cash Taxes payable) as to which it has been indemnified by the Borrower or with respect to which any Loan Party has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the applicable Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the applicable Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the Administrative Agent or any Lender be required to pay any amount to the 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 and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 2.17 shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the relevant Loan Party or any other Person.

(h) **Survival.** Each party’s obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) **Definition of “Lender”.** For the avoidance of doubt, the term “Lender” shall, for all purposes of this Section 2.17, include any Issuing Bank and the Swingline Lender, and the term “applicable Law” includes FATCA.

(j) **Certain Documentation.** On or before the date JPMorgan becomes a party to this Agreement, it shall deliver to Borrower two executed copies of IRS Form W-9 certifying that it is exempt from U.S. federal backup withholding. At any time thereafter, JPMorgan 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), JPMorgan shall not be required to provide any documentation that JPMorgan 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 2:00 p.m. on the date when due. Each such payment shall be made in immediately available funds (or such other form of consideration as the relevant recipient may agree), without set-off or counterclaim. Any amount received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding
Business Day for purposes of calculating interest thereon. Each such payment shall be made to the Administrative Agent to the applicable account designated by the Administrative Agent to the Borrower, except that payments pursuant to Sections 2.12(b)(ii), 2.15, 2.16, 2.17 and/or 9.03 shall be made directly to the Person or Persons entitled thereto. The Administrative Agent shall distribute any such payment received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as provided in Sections 2.19(b), 2.21, 2.22, 2.23, 9.02(c) and/or 9.05 and/or any other express provision of this Agreement, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans of a given Class and each conversion of any Borrowing to or continuation of any Borrowing of any Type (and of the same Class) shall be allocated pro rata among the Lenders in accordance with their respective Applicable Percentages of the applicable Class. Each Lender agrees that in computing such Lender’s portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender’s percentage of such Borrowing to the next higher or lower whole Dollar amount. All payments hereunder shall be made in Dollars (or such other form of consideration as the relevant recipient may agree). Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) Subject in all respects to the provisions of any applicable Intercreditor Agreement, all proceeds of Collateral received by the Administrative Agent while an Event of Default exists and all or any portion of the Loans have been accelerated hereunder pursuant to Section 7.01, shall be applied:

(i) first, to the payment of all costs and expenses then due incurred by the Administrative Agent in connection with any collection, sale or realization on Collateral or otherwise in connection with this Agreement, any other Loan Document or any of the Secured Obligations, including all court costs and the fees and expenses of agents and legal counsel, the repayment of all advances made by the Administrative Agent hereunder or under any other Loan Document on behalf of any Loan Party and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document,

(ii) second, on a pro rata basis, to pay any fees, indemnities or expense reimbursements constituting Secured Obligations then due to the Administrative Agent (other than those covered in clause first above) or to the Swingline Lender or any Issuing Bank from the Borrower,

(iii) third, on a pro rata basis in accordance with the amounts of the Secured Obligations (other than contingent indemnification obligations for which no claim has yet been made) owed to the Secured Parties on the date of any such distribution, to the payment in full of the Secured Obligations (including, with respect to LC Exposure, an amount to be paid to the Administrative Agent equal to 102% of the LC Exposure (minus the amount then on deposit in the LC Collateral Account) on such date, to be held in the LC Collateral Account as Cash collateral for such Obligations); provided that if any Letter of Credit expires undrawn, then any Cash collateral held to secure the related LC Exposure shall be applied in accordance with this Section 2.18(b), beginning with clause first above,

(iv) fourth, as provided in any applicable Intercreditor Agreement, and

(v) fifth, to, or at the direction of, the Borrower or as a court of competent jurisdiction may otherwise direct.

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(c) If any Lender obtains payment (whether voluntary, involuntary, through the exercise of any right of set-off or otherwise) in respect of any principal of or interest on any Loan of any Class or any participation in LC Disbursements or Swingline Loans held by it resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans of such Class and participations in LC Disbursements or Swingline Loans and accrued interest thereon than the proportion received by any other Lender with Loans of such Class and participations in LC Disbursements or Swingline Loans, then the Lender receiving such greater proportion shall purchase (for Cash at face value) participations in the Loans of such Class and sub-participations in LC Disbursements or Swingline Loans of other Lenders of such Class at such time outstanding to the extent necessary so that the benefit of all such payments shall be shared by the Lenders of such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of such Class and participations in LC Disbursements or Swingline Loans; provided that (i) if any such participation is purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by any Lender as consideration for the assignment of or sale of a participation in any Loan to any permitted assignee or participant, including any payment made or deemed made in connection with Sections 2.22, 2.23, 9.02(c) and/or Section 9.05. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise rights of set-off and counterclaim against the Borrower with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.18(c) and will, in each case, notify the Lenders following any such purchase or repayment. Each Lender that purchases a participation pursuant to this Section 2.18(c) shall from and after the date of such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

(d) (i) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or any Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable Issuing Bank, as the case may be, the amount due.

(ii) With respect to any payment that the Administrative Agent makes for the account of the Lenders or any Issuing Bank hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the “Rescindable Amount”): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.
(iii) A notice from the Administrative Agent to any Lender with respect to any amount owing under this clause (d) shall be conclusive, absent manifest error.

(e) If any Lender fails to make any payment required to be made by it pursuant to Section 2.07(b) or Section 2.18(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amount thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender’s obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 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 Term Benchmark 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 Term Benchmark Loans pursuant to Section 2.20, (ii) any Loan Party is required to pay any additional amount to or indemnify any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, (iii) any Lender is a Defaulting Lender or (iv) in connection with any proposed amendment, waiver or consent requiring the consent of “each Lender”, “each Revolving Lender” or “each Lender directly affected thereby” (or any other Class or group of Lenders other than the Required Lenders) with respect to which Required Lender or Required Revolving Lender consent (or the consent of Lenders holding loans or commitments of such Class or lesser group representing more than 50% of the sum of the total loans and unused commitments of such Class or lesser group at such time) has been obtained, as applicable, any Lender is a non-consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (x) terminate the applicable Commitments of such Lender, and repay all Obligations of the Borrower owing to such Lender relating to the applicable Loans and participations held by such Lender as of such termination date (provided that, if, after giving effect such termination and repayment, the aggregate amount of the Revolving Credit Exposure of any Class exceeds the aggregate amount of the Revolving Credit Commitments of such Class then in effect, the Borrower shall, not later than the next Business Day, prepay one or more Revolving Loan Borrowings of the applicable Class and/or Swingline Loans (and, if no Revolving Loan Borrowings of such Class are outstanding, deposit Cash collateral in the LC Collateral Account) in an amount necessary to eliminate such excess) or (y) replace such Lender by requiring such Lender to assign and delegate (and such Lender shall be obligated to assign and delegate), without recourse (in accordance with and subject to the restrictions contained in Section 9.05), all of its interests, rights and obligations under this Agreement to an Eligible Assignee that assumes such obligations (which Eligible Assignee may be another Lender, if any Lender accepts such assignment); provided that (A) such Lender has received payment of an amount equal to the outstanding principal amount of its Loans and, if applicable, participations in LC Disbursements or Swingline Loans, in each case of such Class of Loans and/or Commitments, accrued interest thereon, accrued fees and all other amounts payable to it under any Loan Document with respect to such Class of Loans and/or Commitments, (B) in the case of any assignment resulting from a claim for
compensation under Section 2.15 or any payment required to be made pursuant to Section 2.17, such assignment would result in a reduction in such compensation or payment and (C) such assignment does not conflict with applicable Requirements of Law. No Lender (other than a Defaulting Lender) shall be required to make any such assignment and delegation, and the Borrower may not repay the Obligations of such Lender or terminate its Commitments, if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each Lender agrees that if it is replaced pursuant to this Section 2.19, it shall execute and deliver to the Administrative Agent an Assignment Agreement to evidence such sale and purchase and shall deliver to the Administrative Agent any Promissory Note (if the assigning Lender’s Loans are evidenced by one or more Promissory Notes) subject to such Assignment Agreement (provided that the failure of any Lender removed 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  [Reserved].

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 provision of this Agreement or any other Loan Document.

(b) The Loans, the Commitments and the Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders, each affected Lender, the Required Lenders, the Required Revolving Lenders or such other number of Lenders as may be required hereby or under any other Loan Document have taken or may take any action hereunder (including any consent to any waiver, amendment or modification pursuant to Section 9.02); provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which (i) increases the Commitment of such Defaulting Lender hereunder, (ii) reduces the principal amount of any amount owing to such Defaulting Lender or (iii) affects such Defaulting Lender disproportionately and adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(c) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of any Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.11, Section 2.15, Section 2.16, Section 2.17, Section 2.18, Article VII, Section 9.05 or otherwise, and including any amount made available to the Administrative Agent by such Defaulting Lender pursuant to Section 9.09), shall be applied at such time or times as may be determined by the Administrative Agent and, where relevant, the Borrower as follows: first, to the payment of any amount owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amount owing by such Defaulting Lender to any applicable Issuing Bank and/or the Swingline Lender hereunder; third, if so reasonably determined by the Administrative Agent or reasonably requested by the applicable Issuing Bank, to be held as Cash collateral for future funding obligations of such Defaulting Lender in respect of any participation in any Letter of Credit; fourth, so long as no Default or Event of Default exists,
as the Borrower may request, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; 

**fifth**, as the Administrative Agent or the Borrower may elect, to be held in a Deposit Account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; 

**sixth**, to the payment of any amount owing to the non-Defaulting Lenders, Issuing Banks or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any non-Defaulting Lender, any Issuing Bank or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; 

**seventh**, to the payment of any amount owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; and 

**eighth**, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loan or LC Exposure in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loan or LC Exposure was made or created, as applicable, at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Exposure owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loan of, or LC Exposure owed to, such Defaulting Lender. Any payment, prepayment or other amount paid or payable to any Defaulting Lender that are applied (or held) to pay any amount owed by any Defaulting Lender or to post Cash collateral pursuant to this Section 2.21(c) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

**d) If any Swingline Exposure or LC Exposure exists at the time any Lender becomes a Defaulting Lender then:**

(i) the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders under the Revolving Facility (the “Non-Defaulting Revolving Lenders”) in accordance with their respective Applicable Revolving Credit Percentages but only to the extent that (A) the sum of the Revolving Credit Exposures of all non-Defaulting Lenders attributable to the Revolving Credit Commitments of any Class does not exceed the total of the Revolving Credit Commitments of all Non-Defaulting Revolving Lenders of such Class and (B) the Revolving Credit Exposure of any non-Defaulting Lender that is attributable to its Revolving Credit Commitment of such Class does not exceed such non-Defaulting Lender’s Revolving Credit Commitment of such Class; it being understood and agreed that, subject to Section 9.23, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against any Defaulting Lender arising from such Lender’s having become a Defaulting Lender, including any claim of any Non-Defaulting Lender as a result of such Non-Defaulting Lender’s increased exposure following such reallocation;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any other right or remedy available to it hereunder or under applicable Requirements of Law, within two Business Days following notice by the Administrative Agent, Cash collateralize 102% of such Defaulting Lender’s LC Exposure and any obligation of such Defaulting Lender to fund any participation in any Swingline Exposure (after giving effect to any partial reallocation pursuant to clause (i) above and any Cash collateral provided by such Defaulting Lender or pursuant to Section 2.21(c) above) or make other arrangements reasonably satisfactory to the Administrative Agent and to the applicable Issuing Bank and/or the Swingline Lender with respect to such LC Exposure and/or Swingline Exposure and any obligation to fund any participation therein. Cash collateral (or the appropriate portion thereof) provided to reduce LC Exposure or other obligations shall be released promptly following (A) the elimination of the applicable LC Exposure or other obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender (or, as appropriate, its
assignee following compliance with Section 2.19)) or (B) the Administrative Agent’s good faith determination that there exists excess Cash collateral (including as a result of any subsequent reallocation of Swingline Exposure and/or LC Exposure among the non-Defaulting Lenders described in clause (j) above);

(iii) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to this Section 2.21(d), then the fees payable to the applicable Lenders pursuant to Sections 2.12(a) and (b), as the case may be, shall be adjusted to give effect to such reallocation; and

(iv) if any Defaulting Lender’s LC Exposure is not Cash collateralized, prepaid or reallocated pursuant to this Section 2.21(d), then, without prejudice to any rights or remedies of the applicable Issuing Bank or any Revolving Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender’s LC Exposure shall be payable to the applicable Issuing Bank until such Defaulting Lender’s LC Exposure is Cash collateralized or reallocated.

(e) So long as any Revolving Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan, and no Issuing Bank shall be required to issue, extend, create, incur, amend or increase any Letter of Credit unless the relevant Issuing Banks, as applicable, are reasonably satisfied that the related exposure will be 102% covered by the Revolving Credit Commitments of the non-Defaulting Revolving Lenders, Cash collateral provided pursuant to Section 2.21(e) and/or Cash collateral provided in accordance with Section 2.21(d), and participating interest in any such newly issued, extended or created Letter of Credit or newly made Swingline Loan shall be allocated among Non-Defaulting Revolving Lenders in a manner consistent with Section 2.21(d)(i) (it being understood that Defaulting Lenders shall not participate therein).

(f) In the event that the Administrative Agent and the Borrower agree that any Defaulting Lender has adequately remedied all matters that caused such Person to be a Defaulting Lender, then the Applicable Revolving Credit Percentage of LC Exposure and the Swingline Exposure of the Revolving Lenders shall be readjusted to reflect the inclusion of such Person’s Revolving Credit Commitment, and on such date such Revolving Lender shall purchase at par such of the Revolving Loans of the applicable Class of the other Revolving Lenders (other than any Swingline Loan) or participations in Revolving Loans of the applicable Class as the Administrative Agent determine as necessary in order for such Revolving Lender to hold such Revolving Loans or participations in accordance with its Applicable Percentage of the applicable Class or its Applicable Revolving Credit Percentage, as applicable. Notwithstanding the fact that any Defaulting Lender has adequately remedied all matters that caused such Person to be a Defaulting Lender, (x) no adjustment will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender and (y) except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Person’s having been a Defaulting Lender.

Section 2.22 Incremental Credit Extensions.

(a) The Borrower may, at any time, on one or more occasions pursuant to an Incremental Facility Amendment (x) add one or more new Classes of term facilities and/or increase the principal amount of term loans of any existing Class by requesting new commitments to provide such term loans (any such new Class or increase, an “Incremental Term Facility,” and any loan made pursuant to an Incremental Term Facility, an “Incremental Term Loan”) and/or (y) increase the aggregate amount of the Revolving Credit Commitments of any existing Class (any such increase, an “Incremental Revolving Facility” and, together with any Incremental Term Facility, “Incremental Facilities”; and the loans thereunder, “Incremental
Revolving Loans” and any Incremental Revolving Loans, together with any Incremental Term Loans, the “Incremental Loans”) in an aggregate outstanding principal amount not to exceed the Incremental Cap; provided that:

(i) no Incremental Commitment in respect of any Incremental Term Facility may be in an amount that is less than $5,000,000 (or such lesser amount to which the Administrative Agent may reasonably agree);

(ii) except as the Borrower and any Lender may separately agree, no Lender shall be obligated to provide any Incremental Commitment, and the determination to provide any Incremental Commitment shall be within the sole and absolute discretion of such Lender (it being agreed that the Borrower shall not be obligated to offer the opportunity to any Lender to participate in any Incremental Facility);

(iii) no Incremental Facility or Incremental Loan (nor the creation, provision or implementation thereof) shall require the approval of any existing Lender other than in its capacity, if any, as a lender providing all or part of any Incremental Commitment or Incremental Loan;

(iv) except as otherwise permitted herein (including with respect to currency, pricing (including any “MFN” or other pricing term), interest rate margins, rate floors, fees, premiums (including prepayment premiums), funding discounts, maturity and amortization),

(A) the terms of any Incremental Term Facility, must be reasonably acceptable to the Administrative Agent; it being agreed that any terms applicable to such Incremental Term Facility that (1) are applicable only after the then-existing Latest Maturity Date, (2) are, taken as a whole, in the good faith determination of the Borrower, not more favorable to the lenders or the agent of such Incremental Term Facility than those contained in the Loan Documents, (3) are more favorable to the lenders or the agent of such Incremental Term Facility than those contained in the Loan Documents and are then conformed (or added) to the Loan Documents for the benefit of the Lenders or, as applicable, the Administrative Agent (i.e., by conforming or adding a term to the then-outstanding Loans pursuant to the applicable Incremental Facility Amendment) and/or (4) taken as a whole, reflect then current market terms and conditions at the time of the incurrence or issuance of such Incremental Term Facility (as determined by the Borrower in good faith), shall, in each case, be deemed to be satisfactory to the Administrative Agent; provided that, notwithstanding the foregoing, any Incremental Term Facility may be structured as a “delayed draw” facility with such conditions to borrowing thereunder as the Borrower and the relevant Incremental Lenders may agree; and

(B) the terms of any Incremental Revolving Facility (for the avoidance of doubt, other than any arrangement, commitment, structuring, underwriting, ticking and/or amendment fee paid or to be paid in connection with the implementation of such Incremental Revolving Facility) shall be consistent with the terms of a then-existing Revolving Facility (if any);

(v) the currency, pricing (including any “MFN” or other pricing term), interest rate margins, rate floors, fees, premiums (including any prepayment premium), funding discounts and, subject to clauses (vi) and (vii) below, the maturity and amortization schedule applicable to any Incremental Facility shall be determined by the Borrower and the lender or lenders providing such Incremental Facility;
(vi) other than with respect to any Incremental Term Facility consisting of Indebtedness in the form of Customary Bridge Loans, the final maturity date with respect to any Class of Incremental Term Loan shall be no earlier than the then-existing Latest Maturity Date, it being understood and agreed for the avoidance of doubt that any undrawn commitment in respect of any Incremental Term Facility may terminate at such time as the Borrower and the lenders providing the relevant Incremental Term Facility may agree;

(vii) subject to clause (vi) above, any Incremental Term Facility may otherwise have an amortization schedule as determined by the Borrower and the lenders providing such Incremental Term Facility;

(viii) subject to clause (iv) above, to the extent applicable, any fee payable in connection with any Incremental Facility shall be determined by the Borrower and the arrangers and/or lenders providing such Incremental Facility;

(ix) (A) any Incremental Term Facility may rank pari passu with or junior to any then-existing Class of Loans in right of payment and/or security or may be unsecured (and to the extent the relevant Incremental Facility is secured on a junior lien basis or subordinated in right of payment, it shall be subject to an Intercreditor Agreement) and (B) no Incremental Facility may be (x) guaranteed by any subsidiary that is not a Loan Party (it being understood and agreed that the obligations of any subsidiary with respect to any escrow arrangement into which the proceeds of such Incremental Term Facility are deposited shall not constitute a guarantee by any subsidiary that is not a Loan Party) or (y) secured by any asset that does not constitute Collateral; it being understood that any Incremental Facility that is funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements may be secured by the applicable funds and related assets held in Escrow (and the proceeds thereof) until the date on which such funds are released from Escrow;

(x) the effectiveness of any Incremental Facility shall be subject to compliance with Section 6.10(a), Section 6.10(b), Section 6.10(c) on a Pro Forma Basis as of the last day of the most recently ended Test Period prior to the incurrence of such Incremental Facility;

(xi) the proceeds of any Incremental Facility may be used for working capital needs and other general corporate purposes and any other use not prohibited by this Agreement; and

(xii) on the date of the Borrowing of any Incremental Term Loans that will be of the same Class as any then-existing Class of Incremental 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 Incremental Term Loans of such Class on a pro rata basis (based on the relative sizes of such Borrowings), so that each Incremental Term Lender providing such Incremental Term Loans will participate proportionately in each then-outstanding Borrowing of Incremental Term Loans of such Class; it being acknowledged that the application of this clause (a)(xii) may result in new Incremental Term Loans having an Interest Period (the duration of which may be less than one month) that begin during an Interest Period then applicable to outstanding Term Benchmark Loans of the relevant Class and which end on the last day of such Interest Period; and

(xiii) to the extent that of any Incremental Facility does not rank pari passu with any then-existing Class of Loans in right of payment and security or is unsecured, such Incremental Facility will be documented pursuant to separate documentation from this Agreement (it being
understood and agreed that any “last out” facility that is pari passu with any then-existing Class of Loans, as applicable, in right of security but which is “last out” with respect to payment priority may be documented hereunder.

(b) Incremental Commitments may be provided by any existing Lender, or by any other Eligible Assignee (any such other lender being called an “Incremental Lender”); provided that the Administrative Agent (and, in the case of any Incremental Revolving Facility, the Swingline Lender and any Issuing Bank) shall have a right to consent (such consent not to be unreasonably withheld, conditioned or delayed) to the relevant Incremental Lender’s provision of Incremental Commitments if such consent would be required under Section 9.05(b) for an assignment of Loans to such Incremental Lender.

(c) Each Lender or Incremental Lender providing a portion of any Incremental Commitment shall execute and deliver to the Administrative Agent and the Borrower all such documentation (including the relevant Incremental Facility Amendment) as may be reasonably required by the Administrative Agent to evidence and effectuate such Incremental Commitment. On the effective date of the relevant Incremental Commitment, each Incremental Lender shall become a Lender for all purposes in connection with this Agreement.

(d) As conditions precedent to the effectiveness of any Incremental Facility or the making of any Incremental Loan:

(i) upon its request, the Administrative Agent shall be entitled to receive customary written opinions of counsel with respect to the Borrower, as well as such reaffirmation agreements, supplements and/or amendments as it may reasonably require;

(ii) the Administrative Agent shall be entitled to receive, from each Incremental Lender, an Administrative Questionnaire and such other documents as it may reasonably require from such Incremental Lender;

(iii) subject to Section 2.22(h), the Administrative Agent shall have received a Borrowing Request as if the relevant Incremental Loans were subject to Section 2.03 or another written request the form of which is reasonably acceptable to the Administrative Agent (it being understood and agreed that the requirement to deliver a Borrowing Request shall not result in the imposition of any condition precedent to the availability of the relevant Incremental Loans (including with respect to the absence of a Default or Event of Default and/or the accuracy of any representation and/or warranty)); and

(iv) the Administrative Agent shall be entitled to receive a certificate of the Borrower signed by a Responsible Officer thereof certifying and attaching a copy of the resolutions adopted by the governing body of the Borrower approving or consenting to such Incremental Facility or Incremental Loans.

(e) Notwithstanding anything to the contrary in this Section 2.22 or in any other provision of any Loan Document, the conditions to the availability or funding of any Incremental Facility shall be determined by the relevant Incremental Lenders providing such Incremental Facility and the Borrower.

(f) Upon the implementation of any Incremental Revolving Facility pursuant to this Section 2.22, (i) each Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each relevant Incremental Revolving Facility Lender, and each relevant Incremental Revolving Facility Lender will automatically and without further act be deemed to have assumed a portion of such Revolving Lender’s participations hereunder in outstanding Letters of
Credit and Swingline Loans such that, after giving effect to each deemed assignment and assumption of such participations, all of the Revolving Lenders’ (including each Incremental Revolving Facility Lender) (A) participations hereunder in Letters of Credit and (B) participations hereunder in Swingline Loans shall, in each case of the foregoing clauses (A) and (B), be held on a pro rata basis on the basis of their respective Revolving Credit Commitments (after giving effect to any increase in the Revolving Credit Commitment pursuant to Section 2.22) and (ii) the existing Revolving Lenders of the applicable Class shall assign Revolving Loans to certain other Revolving Lenders of such Class (including the Revolving Lenders providing the relevant Incremental Revolving Facility), and such other Revolving Lenders (including the Revolving Lenders providing the relevant Incremental Revolving Facility) shall purchase such Revolving Loans, in each case to the extent necessary so that all of the Revolving Lenders of such Class participate in each outstanding Borrowing of Revolving Loans pro rata on the basis of their respective Revolving Credit Commitments of such Class (after giving effect to any increase in the Revolving Credit Commitment of such Class pursuant to this Section 2.22); it being understood and agreed that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to this clause (f).

(g) On the date of effectiveness of any Incremental Revolving Facility, the Letter of Credit Sublimit and/or the maximum amount of Swingline Loans, as applicable, permitted hereunder shall increase by an amount, if any, agreed upon by the Borrower, the Administrative Agent and the relevant Issuing Bank and/or the Swingline Lender, as applicable; it being understood and agreed that the Borrower and any Lender providing any Incremental Revolving Facility may agree that such Lender will provide a portion of the Letter of Credit Sublimit in excess of its Applicable Percentage thereof.

(h) The Lenders hereby irrevocably authorize the Administrative Agent to, and the Administrative Agent shall (without the consent of any Lender (other than any Lender providing the applicable Incremental Facility)), enter into any Incremental Facility Amendment and/or any amendment to any other Loan Document as may be necessary, appropriate or advisable in order to establish any Incremental Facility (including any new Class or sub-Class in respect of Loans or commitments pursuant to this Section 2.22) including (i) technical amendments as may be necessary, appropriate or advisable in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Classes or sub-Classes, in each case on terms consistent with this Section 2.22 and/or (ii) any other amendment contemplated by Section 9.02(d)(ii). In addition, the Incremental Facility Amendment with respect to any Incremental Term Facility may, without the consent of any Lender (other than any Lender providing such Incremental Term Loans) or the Administrative Agent, include such amendments to this Agreement as may be necessary, appropriate or advisable as reasonably determined by the Administrative Agent and the Borrower to make the applicable Incremental Term Loans “fungible” with the relevant existing Class of Incremental Term Loans (including by modifying the amortization schedule and/or extending the time period during which any prepayment premium applies).

(i) This Section 2.22 shall supersede any provision in Section 2.18 or 9.02 to the contrary.

Section 2.23 Extensions of Loans and Revolving Credit Commitments.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an “Extension Offer”) made from time to time by the Borrower to all Lenders holding Loans of any Class or Commitments of any Class, in each case on a pro rata basis (based on the aggregate outstanding principal amount of the respective Loans or Commitments of such Class) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate transactions with any individual Lender who accepts the terms contained in the relevant Extension Offer to extend the Maturity Date of all or a portion of such Lender’s Loans and/or Commitments of such Class and otherwise modify the terms of all or a
portion of such Loans and/or Commitments pursuant to the terms of the relevant Extension Offer (including by increasing the interest rate or fees payable in respect of such Loans and/or Commitments (and related outstandings) and/or modifying the amortization schedule, if any, in respect of such Loans) (each, an “Extension”; it being understood that any Extended Revolving Credit Commitments shall constitute a separate Class of Revolving Credit Commitments from the Class of Revolving Credit Commitments from which they were converted), so long as the following terms are satisfied:

(i) except as to (A) currency, pricing (including any “MFN” or other pricing terms), interest rate margins, rate floors, fees, premiums (including prepayment premiums), funding discounts, maturity and amortization (which shall, subject to the immediately succeeding clause (iii) and to the extent applicable, be determined by the Borrower and any Lender who agrees to an Extension of its Revolving Credit Commitments and set forth in the relevant Extension Offer), (B) terms applicable to such Extended Revolving Credit Commitments or Extended Revolving Loans (each as defined below) that are, taken as a whole, in the good faith determination of the Borrower, more favorable to the lenders or the agent of such Extended Revolving Credit Commitments or Extended Revolving Loans than those contained in the Loan Documents and are then conformed (or added) to the Loan Documents for the benefit of the Revolving Lenders or, as applicable, the Administrative Agent (i.e., by conforming or adding a term to the then-outstanding Revolving Loans pursuant to the applicable Extension Amendment), (C) terms, taken as a whole, that reflect then current market terms and conditions, taken as a whole, at the time of incurrence or issuance (as determined by the Borrower) and (D) any covenant or other provision applicable only after the Latest Revolving Credit Maturity Date, the Revolving Credit Commitment of any Lender who agrees to an extension with respect to such Commitment (an “Extended Revolving Credit Commitment”; and the Loans thereunder, “Extended Revolving Loans”), and the related outstandings, shall constitute a revolving commitment (or related outstandings, as the case may be) with substantially consistent terms (or terms not less favorable to existing Lenders) as the Class of Revolving Credit Commitments subject to the relevant Extension Offer (and related outstandings) provided hereunder; provided that to the extent more than one Revolving Facility exists after giving effect to any such Extension, (x) the borrowing and repayment of Revolving Loans with respect to any Revolving Facility after the effective date of such Extended Revolving Credit Commitments shall be made on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that any Revolving Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in repayments on a pro rata basis with such Revolving Facilities and that in the event of any Revolving Facility that must participate in borrowings on a less than pro rata basis as compared to other Revolving Facilities, such Revolving Facility shall participate in repayments on a less than pro rata basis as compared to such other Revolving Facilities (in each case, except, in any event, for (1) payments of interest and fees at different rates on the Revolving Facilities (and related outstandings), (2) repayments required on the Maturity Date of any Revolving Facility and (3) repayments made in connection with a permanent repayment and termination of the Revolving Credit Commitments under any Revolving Facility (subject to clause (z) below)), (y) all Swingline Loans and all Letters of Credit shall be participated on a pro rata basis by all Revolving Lenders and (z) any permanent repayment of Revolving Loans with respect to, and reduction or termination of Revolving Credit Commitments under, any Revolving Facility after the effective date of such Extended Revolving Credit Commitments shall be made on a non-pro rata basis with all other Revolving Facilities (it being understood that a Revolving Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in permanent repayments of Revolving Loans with respect to, and reduction and termination of revolving Credit Commitments under, such Revolving Facility on a pro rata basis with such other Revolving Facilities and that in the event of any Revolving Facility that must participate in borrowings on a less than pro rata basis as compared to other Revolving Facilities, such other Revolving Facility shall participate in permanent repayments of Revolving Loans...
Loans with respect to, and reduction and termination of Revolving Credit Commitments under, such Revolving Facility on a less than pro rata basis as compared to such other Revolving Facilities; provided in each case, that notwithstanding the foregoing, to the extent any such Revolving Commitments are terminated in full and refinanced or replaced with a Revolver Replacement Facility or Replacement Debt, such Revolving Commitments may be terminated on a greater than pro rata basis);

(ii) 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;

(iii) 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;

(iv) unless the Administrative Agent otherwise agrees, any Extension must be in a minimum amount of $5,000,000;

(v) any applicable Minimum Extension Condition must be satisfied or waived by the Borrower;

(vi) any documentation in respect of any Extension shall be consistent with the foregoing; and

(vii) no Extension of any Revolving Facility shall be effective as to the obligations of the Swingline Lender to make any Swingline Loan or any Issuing Bank with respect to Letters of Credit without the consent of the Swingline Lender or such Issuing Bank (such consents not to be unreasonably withheld or delayed) (and, in the absence of such consent, all references herein to Latest Revolving Credit Maturity Date shall be determined, when used in reference to the Swingline Lender or such Issuing Bank, as applicable, without giving effect to such Extension).

(b) (i) No Extension consummated in reliance on this Section 2.23 shall constitute a voluntary or mandatory prepayment for purposes of Section 2.11, (ii) the scheduled amortization payments (insofar as such schedule affects payments due to Lenders participating in the relevant Class) set forth in Section 2.10 shall be adjusted to give effect to any Extension of any Class of Loans and/or Commitments and (iii) except as set forth in clause (a)(viii) above, no Extension Offer is required to be in any minimum amount or any minimum increment; provided that the Borrower may at its election specify as a condition (a “Minimum Extension Condition”) to the consummation of any Extension that a minimum amount (to be specified in the relevant Extension Offer in the Borrower’s sole discretion) of Loans or Commitments (as applicable) of any or all applicable tranches be tendered; it being understood that the Borrower may, in its sole discretion, waive any such Minimum Extension Condition. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.23 (including, for the avoidance of doubt, the payment of any interest, fees or premium in respect of any Extended 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)(vii), 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 Revolving Credit Commitments and all obligations in respect thereof shall constitute Secured Obligations under this Agreement and the other Loan Documents that are secured by the Collateral and guaranteed on a pari passu basis with all other applicable Secured Obligations under this Agreement and the other Loan Documents. The Lenders hereby irrevocably authorize the Administrative Agent to enter into any Extension Amendment and any amendment to any of the other Loan Documents with the Loan Parties as may be necessary in order to establish new Classes or sub-Classes in respect of Loans or Commitments so extended and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Classes or sub-Classes, in each case on terms consistent with this Section 2.23.

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five Business Days’ (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.23.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

On the dates and to the extent required pursuant to Sections 4.01 or 4.02, as applicable, the Borrower hereby represents and warrants to the Lenders, the Issuing Banks and the Administrative Agent that:

Section 3.01 Organization; Powers. The Borrower and each of its Restricted Subsidiaries (a) is (i) duly organized or incorporated (as applicable) and validly existing and (ii) in good standing (to the extent such concept exists in the relevant jurisdiction) under the Requirements of Law of its jurisdiction of organization, (b) has all requisite organizational power and authority to own its assets and to carry on its business as now conducted and (c) is qualified to do business in, and is in good standing (to the extent such concept exists in the relevant jurisdiction) in, every jurisdiction where the ownership, lease or operation of its properties or conduct of its business requires such qualification, except, in each case referred to in this Section 3.01 (other than clause (a)(i) and clause (b), in each case, with respect to the Borrower) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.02 Authorization; Enforceability. The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is a party (a) are within such Loan Party’s corporate or other organizational power and (b) have been duly authorized by all necessary corporate or other organizational action of such Loan Party. Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to the Legal Reservations.

Section 3.03 Governmental Approvals; No Conflicts. The execution and delivery of each Loan Document by each Loan Party thereto and the performance by such Loan Party of its obligations thereunder (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) in connection with the Perfection Requirements and (iii) such consents, approvals, registrations, filings,
or other actions the failure to obtain or make which would not be reasonably expected to have a Material Adverse Effect, (b) will not violate any (i) of such Loan Party’s Organizational Documents or (ii) Requirement of Law applicable to such Loan Party which violation, in the case of this clause (b)(ii), would reasonably be expected to have a Material Adverse Effect and (c) will not violate or result in a default under any material Contractual Obligation to which such Loan Party is a party which violation, in the case of this clause (c), would reasonably be expected to result in a Material Adverse Effect.

Section 3.04 Financial Condition; No Material Adverse Effect.

(a) The financial statements most recently provided pursuant to Section 5.01(a) or (b), as applicable, present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower on a consolidated basis as of such dates and for such periods in accordance with GAAP, (i) except as otherwise expressly noted herein, (ii) subject, in the case of quarterly financial statements, to the absence of footnotes and normal year-end adjustments and (iii) if applicable, except as may be necessary to reflect any differing entities and/or organizational structure prior to giving effect to the Transactions.

(b) Since the Closing Date, there have been no events, developments or circumstances that have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect that is continuing.

Section 3.05 Properties.

(a) The Borrower and each of its Restricted Subsidiaries have good and valid fee simple title to or rights to purchase, or valid leasehold interests in, or easements or other limited property interests in, all of their respective Real Estate Assets and have good and valid title to their personal property and assets, including the Collateral, in each case, except (i) for defects in title that do not materially interfere with their ability to conduct their business as currently conducted or to utilize such properties and assets for their intended purposes, (ii) for any Permitted Lien, or (iii) where the failure to have such title would not reasonably be expected to have a Material Adverse Effect.

(b) The Borrower and its Restricted Subsidiaries own or otherwise have a license or right to use all rights in Patents, Trademarks, Copyrights and other rights in works of authorship (including all Copyrights embodied in software) and all other intellectual property rights (collectively, “IP Rights”) that are used in the conduct their respective businesses as presently conducted without any infringement, violation 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, violation 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 or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any of its Restricted Subsidiaries which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for any matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (i) neither the Borrower nor any of its Restricted Subsidiaries is subject to, or has received notice of, any Environmental Claim or Environmental Liability or knows of any basis for any Environmental Liability or Environmental Claim of the Borrower or any of its Restricted Subsidiaries and (ii) neither the Borrower nor any of its Restricted Subsidiaries has failed to
comply with any Environmental Law or to obtain, maintain or comply with any Governmental Authorization, permit, license or other approval required under any Environmental Law.

(c) Neither the Borrower nor any of its Restricted Subsidiaries has treated, stored, transported or Released any Hazardous Materials on, at, under or from any currently or formerly owned, leased or operated real estate or facility in a manner that would reasonably be expected to have a Material Adverse Effect.

Section 3.07 Compliance with Laws. Each of the Borrower and each of its Restricted Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except, in each case where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; it being understood and agreed that this Section 3.07 shall not apply to the Requirements of Law covered by Section 3.17.

Section 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 the Borrower and each of its Restricted Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed by or with respect to it and has paid or caused to be paid all Taxes required to have been paid by it that are due and payable (including in its capacity as a withholding agent), except (a) Taxes (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 Restricted Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (c) to the extent that the failure to do so, individually or in the aggregate, could 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 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 Borrower and its subsidiaries, to the knowledge of the Borrower, all written information (other than the Projections, forecasts, financial estimates, other forward-looking information and/or projected information, information of a general economic or industry-specific nature and/or any third party report and/or memorandum (but not the written information (other than Projections, forecasts, financial estimates, other forward looking information and/or projected information and/or general economic or industry-specific information) on which such third party report and/or memorandum was based, if such written information was provided to any Initial Lender, any Arranger or the Administrative Agent)) concerning the Borrower and its subsidiaries that was prepared by or on behalf of the Borrower or its subsidiaries or their respective representatives and made available to any Initial Lender, any Arranger or the Administrative Agent in connection with the Transactions on or before the Closing Date (collectively, the “Information”), when taken as a whole, did not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary

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in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements were made (after giving effect to all supplements and updates thereto from time to time).

(b) As of the Closing Date, the Projections have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time furnished (it being recognized that such Projections are not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond the Borrower’s control, that no assurance can be given that any particular financial projections will be realized, that actual results may differ from projected results and that such differences may be material).

Section 3.12 Solvency. As of the Closing Date, after giving effect to the Transactions and the incurrence of the Indebtedness and obligations being incurred in connection with this Agreement on the Closing Date, (i) the sum of the debt (including contingent liabilities) of the Borrower and its Restricted Subsidiaries, taken as a whole, does not exceed the fair value of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) the capital of the Borrower and its Restricted Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, contemplated as of the Closing Date; and (iii) the Borrower and its Restricted Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debts as they mature in accordance with their terms. For purposes of this Section 3.12, (A) it is assumed that the Indebtedness and other obligations under the Revolving Facility will come due at their respective maturities and (B) the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Section 3.13 Subsidiaries. Schedule 3.13 sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name of the Borrower, each subsidiary of the Borrower and the ownership interest therein held by the Borrower or its applicable subsidiary, and (b) the type of entity of the Borrower and each of its subsidiaries.

Section 3.14 Security Interest in Collateral. Subject to the terms of the final paragraph of Section 4.01, the Legal Reservations, the Perfection Requirements and the provisions, limitations and/or exceptions set forth in this Agreement and/or any other Loan Document, the Collateral Documents create legal, valid and enforceable Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of itself and the other Secured Parties, and upon the satisfaction of the applicable Perfection Requirements and/or any other perfection action required under the terms of any Loan Document, such Liens constitute perfected Liens (with the priority that such Liens are expressed to have under the relevant Collateral Documents, unless otherwise permitted hereunder or under any Collateral Document) on the Collateral (to the extent such Liens are then required to be perfected under the terms of the Loan Documents) securing the Secured Obligations, in each case as and to the extent set forth therein.

For the avoidance of doubt, notwithstanding anything herein or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) the effect of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in the Capital Stock held by any Loan Party in any Person organized under the laws of any jurisdiction other than the jurisdiction in which such Loan Party is organized, or as to the rights and remedies of the Administrative Agent or any Lender with respect thereto, under the Requirements of Law of any jurisdiction other than the jurisdiction in which such Loan Party is organized, (B) the enforcement of any security interest, or right or remedy with respect to any Collateral that may be limited or restricted by, or require any consent, authorization approval or license under, any Requirement of Law or (C) on the Closing Date
and until required pursuant to Section 5.12, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent the same is not required on the Closing Date.

Section 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 or slowdowns against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower or any of its Restricted Subsidiaries, threatened and (b) the hours worked by and payments made to employees of the Borrower and its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters.

Section 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 or incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U.

Section 3.17  Sanctions; PATRIOT ACT and FCPA.

(a)  (i) None of the Borrower, nor any of its Restricted Subsidiaries nor any officer or director of any of the foregoing nor, to the knowledge of the Borrower, employee or agent of any of the foregoing is a Sanctioned Person; and (ii) the Borrower will not directly or, to its knowledge, indirectly, use the proceeds of the Loans or Letters of Credit or otherwise make available such proceeds to any Person for (x) the purpose of funding, financing or facilitating the activities of any Person that is the subject or target of any applicable Sanctions, except to the extent licensed or otherwise approved by OFAC or in compliance with applicable exemption, licenses or other approvals; (y) the purpose of funding, financing or facilitating activities in a Sanctioned Country; or (z) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(b)  To the extent applicable, each Loan Party, their respective officers and directors, and to the knowledge of each Loan Party their employees and agents, are in compliance, in all material respects, with Anti-Corruption Laws, Sanctions and the USA PATRIOT Act.

(c)  (i) Neither the Borrower nor any of its Restricted Subsidiaries nor, to the knowledge of the Borrower, any director, officer, or employee of the Borrower or any Restricted Subsidiary, nor, to the knowledge of the Borrower, any agent (solely to the extent acting in its capacity as an agent for the Borrower or any of its subsidiaries), has taken any action, directly or, to its knowledge, indirectly, that would result in a material violation by any such Person of Anti-Corruption Laws, including making any offer, payment, promise to pay or authorization or approval of the payment of any money, or other property, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in each case in contravention of Anti-Corruption Laws; and (ii) the Borrower will not directly or, to its knowledge, indirectly, used the proceeds of the Loans or Letters of Credit or otherwise make available such proceeds to any governmental official or employee, political party, official of a political party, candidate for public office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage in violation of Anti-Corruption Laws.

The representations and warranties set forth in Section 3.17 above made by or on behalf of any Foreign Subsidiary are subject to and limited by any Requirement of Law applicable to such Foreign Subsidiary; it being understood and agreed that to the extent that any Foreign Subsidiary is unable to make any such representation or warranty set forth in Section 3.17 as a result of the application of this sentence, such Foreign Subsidiary shall be deemed to have represented and warranted that it is in compliance, in all material respects, with any equivalent Requirement of Law relating to sanctions, anti-terrorism, anti-
corruption or anti-money laundering that is applicable to such Foreign Subsidiary in its relevant local jurisdiction of organization.

ARTICLE IV
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, in each case, on the Closing Date, shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received from the Borrower and each Loan Party, to the extent party thereto, (i) a counterpart signed by the Borrower or such Loan Party (or written evidence reasonably satisfactory to the Administrative Agent (which may include a copy transmitted by facsimile or other electronic method) that such party has signed a counterpart) of (A) this Agreement and (B) each Promissory Note requested by a Lender at least three Business Days prior to the Closing Date and (ii) a Borrowing Request as required by Section 2.03.

(b) Legal Opinions. The Administrative Agent (or its counsel) shall have received, on behalf of itself, the Lenders and each Issuing Bank on the Closing Date, customary written opinions of (i) Weil, Gotshal & Manges LLP, in its capacity as special counsel for the Borrower and the Loan Parties, (ii) McDees Wallace & Nurick LLC, in its capacity as Maryland counsel for certain of the Loan Parties and (iii) Huie Fernambucq & Stewart, LLP, in its capacity as Alabama counsel for certain of the Loan Parties, in each case, dated the Closing Date and addressed to the Administrative Agent, the Lenders and each Issuing Bank.

(c) Financial Statements and Compliance Certificate. The Administrative Agent shall have received:

(i) the audited consolidated balance sheet of the Borrower for the Fiscal Year ended on December 27, 2020 and the audited consolidated statements of income and cash flows of the Borrower for the Fiscal Year then ended; and

(ii) the unaudited consolidated balance sheet and the unaudited consolidated statements of income and cash flows of the Borrower for the Fiscal Quarters ended on April 18, 2021, July 11, 2021 and October 3, 2021.

(d) Secretary’s Certificate and Good Standing Certificates of Loan Parties. The Administrative Agent (or its counsel) shall have received:

(i) a certificate of each Loan Party on the Closing Date, dated the Closing Date and executed by a Responsible Officer, which shall:

(A) certify that attached thereto is a true and complete copy of the resolutions, written consents or extracts of minutes of a meeting, as applicable, of its board of directors, board of managers, supervisory board, shareholders, members or other governing body (as the case may be and in each case, to the extent required) authorizing the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect,
(B) identify by name and title and bear the signatures of the Responsible Officer or authorized signatory of such Loan Party on the Closing Date that is authorized to sign the Loan Documents to which it is a party on the Closing Date, as applicable, and

(C) certify (I) that attached thereto is a true and complete copy of the certificate or articles of incorporation or organization (or memorandum of association, articles of association or other equivalent thereof) of each Loan Party on the Closing Date (certified by the relevant authority of the jurisdiction of organization of such Loan Party) and a true and correct copy of its by-laws or operating, management, partnership or similar agreement (to the extent applicable) and (II) that such documents or agreements have not been amended (except as otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date), and

(ii) a good standing certificate (or equivalent), dated as of a recent date for each such Loan Party from the relevant office of its jurisdiction of organization (to the extent available in the jurisdiction of organization of such Loan Party).

(e) Representations and Warranties. The representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date; provided that (i) to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or for such period and (ii) to the extent that any representation and warranty is qualified by or subject to a “material adverse effect”, “material adverse change” or similar term or qualification, the same shall be true and correct in all respects.

(f) Fees. 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) Closing Date Refinancing. The Closing Date Refinancing shall be consummated and the Administrative Agent shall have received a customary payoff letter providing for the release of liens securing the obligations under the Existing Credit Agreement (to the extent required by the definition of “Closing Date Refinancing”) upon the consummation of the Closing Date Refinancing.

(h) No Default or Event of Default. At the time of and immediately after giving effect to the making of the Loans to be made on the Closing Date, no Default or Event of Default has occurred and is continuing.

(i) Solvency. The Administrative Agent (or its counsel) shall have received a certificate in substantially the form of Exhibit P from a Responsible Officer of the Borrower dated as of the Closing Date and certifying as to the matters set forth therein.

(j) Perfection Certificate. The Administrative Agent (or its counsel) shall have received a completed Perfection Certificate dated the Closing Date and signed by a Responsible Officer of the Borrower, together with all attachments contemplated thereby.
(k) **Filings Registrations and Recordings.** Subject to the final paragraph of this Section 4.01 and except as may otherwise be agreed by the Administrative Agent, the requirements set forth in clause (a) of the definition of “Collateral and Guarantee Requirement” shall be satisfied.

(l) **Material Adverse Effect.** Since December 27, 2020, there shall not have occurred a Material Adverse Effect.

(m) **USA PATRIOT Act.** No later than three Business Days in advance of the Closing Date, the Administrative Agent shall have received all documentation and other information reasonably requested with respect to any Loan Party in writing by any Initial Lender at least 10 Business Days in advance of the Closing Date, which documentation or other information is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(n) **Beneficial Ownership Certification.** To the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, no later than three Business Days in advance of the Closing Date, the Administrative Agent shall have received a Beneficial Ownership Certification in relation to the Borrower to the extent reasonably requested by it at least 10 Business Days in advance of the Closing Date.

(o) **Officer’s Certificate.** The Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower certifying the satisfaction of the conditions precedent set forth in Sections 4.01(e), (f) and (l).

For purposes of determining whether the conditions specified in this Section 4.01 have been satisfied on the Closing Date, by funding the Loans hereunder or issuing a Letter of Credit on the Closing Date, the Administrative Agent, each Lender and each Issuing Bank, as applicable, shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Administrative Agent, such Lender or such Issuing Bank, as the case may be.

Notwithstanding the foregoing, to the extent that the Lien on any Collateral is not or cannot be created or perfected on the Closing Date (other than, to the extent required herein or in the other Loan Documents, the creation and perfection of a Lien on Collateral that is of the type that may be perfected by the filing of a Form UCC-1 financing statement under the UCC), then the creation and/or perfection of such Lien shall not constitute a condition precedent to the availability of the Revolving Facility on the Closing Date, but may instead be delivered or perfected within the time period set forth in Section 5.15 (or such later date as the Administrative Agent may reasonably agree).

Section 4.02 **Each Credit Extension.** After the Closing Date, the obligation of each Revolving Lender and each Issuing Bank to make any Credit Extension is subject to the satisfaction of the following conditions:

(a) (i) In the case of any Borrowing, the Administrative Agent shall have received a Borrowing Request as required by Section 2.03, (ii) in the case of the issuance of any Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a Letter of Credit Request or (iii) in the case of any Borrowing of Swingline Loans, the Swingline Lender and the Administrative Agent shall have received Borrowing Request as required by Section 2.04(a).

(b) The representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of any such
Credit Extension with the same effect as though such representations and warranties had been made on and as of the date of such Credit Extension; provided that, to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or for such period; provided, further, that, any representation and warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates or for such periods.

(c) At the time of and immediately after giving effect to the applicable Credit Extension, no Default or Event of Default has occurred and is continuing.

Each Credit Extension after the Closing Date shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (b) and (c) of this Section; provided, however, that, for the avoidance of doubt, the conditions set forth in this Section 4.02 shall not apply to (A) any Incremental Loan and/or (B) any Credit Extension under any Refinancing Amendment and/or Extension Amendment, unless, in each case, the lenders in respect thereof have required satisfaction of the same in the applicable Incremental Facility Amendment, Refinancing Amendment or Extension Amendment, as applicable.

ARTICLE V
AFFIRMATIVE COVENANTS

From the Closing Date until the date on which all Revolving Credit Commitments have expired or terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document (other than (i) contingent indemnification obligations for which no claim or demand has been made and (ii) for the avoidance of doubt, obligations and liabilities under Banking Services Obligations and Secured Hedging Obligations) have been paid in full in the manner prescribed by Section 2.18 and all Letters of Credit have expired or have been terminated (or have been made subject to Letter of Credit Support) and all LC Disbursements have been reimbursed (such date, the “Termination Date”), and the Borrower hereby covenant and agree with the Lenders, the Issuing Banks and the Administrative Agent 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. Within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, commencing with the Fiscal Quarter ending on April 17, 2022, the consolidated balance sheet of the Borrower as at the end of such Fiscal Quarter and the related consolidated statements of income or operations and cash flows of the Borrower for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, and setting forth, in reasonable detail, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail; provided that any comparison against the corresponding figures from the corresponding period in any prior Fiscal Year may reflect the financial results of any applicable predecessor entity;

(b) Annual Financial Statements. Within 120 days after the end of each Fiscal Year (commencing with the Fiscal Year ended December 26, 2021), (i) the consolidated balance sheet of the Borrower as at the end of such Fiscal Year and the related consolidated statements of income or operations and cash flows of the Borrower for such Fiscal Year and setting forth, in reasonable detail, in comparative form the corresponding figures for the previous Fiscal Year (it being understood and agreed that no such comparison shall be required if (A) the relevant independent certified public accountant is not willing to
provide the same or (B) the corresponding figures from the previous Fiscal Year are not available) and (ii) with respect to such consolidated financial statements, a report thereon of Deloitte & Touche, LLP or other independent certified public accountant of recognized national standing (which report shall not be subject to (A) a “going concern” qualification (but not a “going concern” explanatory paragraph or like statement) except as resulting from, in the good faith determination of the Borrower, (1) the impending maturity of any Indebtedness, (2) the breach or anticipated breach of any financial covenant and/or (3) the activities, operations, financial results, assets or liabilities of any Unrestricted Subsidiary) or (B) a qualification as to the scope of the relevant audit), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower as at the dates indicated and its results of operations and cash flows for the periods indicated in conformity with GAAP;

(c) Compliance Certificate. Together with each delivery of financial statements pursuant to Sections 5.01(a) and (b), (i) a duly executed and completed Compliance Certificate and (ii) a summary of the pro forma adjustments (if any) necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such financial statements and (B) a list identifying each Unrestricted Subsidiary as of the last day of the Fiscal Quarter covered by such Compliance Certificate or confirmation that there is no change in such information since the later of the Closing Date and the date of the last such list delivered pursuant to this clause (i)(B);

(d) Notice of Default; Notice of Material Adverse Effect. Promptly upon any Responsible Officer of the Borrower obtaining knowledge of (i) any Default or Event of Default or (ii) the occurrence of any event or change that has caused or evidences or would reasonably be expected to cause or evidence, either individually or in the aggregate, a Material Adverse Effect, a reasonably-detailed written notice specifying the nature and period of existence of such condition, event or change and what action the Borrower has taken, is taking and proposes to take with respect thereto;

(e) Notice of Litigation. Promptly upon any Responsible Officer of the Borrower obtaining knowledge of (i) the institution of, or threat of, any Adverse Proceeding not previously disclosed in writing by the Borrower to the Administrative Agent, or (ii) any material development in any Adverse Proceeding that, in the case of either of clauses (i) or (ii), would reasonably be expected to have a Material Adverse Effect, written notice thereof from the Borrower together with such other non-privileged information as may be reasonably available to the Loan Parties to enable the Lenders to evaluate such matters;

(f) ERISA. Promptly upon any Responsible Officer of the Borrower becoming aware of the occurrence of any ERISA Event that would reasonably be expected to have a Material Adverse Effect, a written notice from the Borrower specifying the nature thereof, what action the Borrower, any Restricted Subsidiary or any ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the U.S. Department of Labor or the PBGC with respect thereto;

(g) Financial Plan. Within 90 days after the beginning of any Fiscal Year (commencing with the Fiscal Year ending December 31, 2023), an annual consolidated financial budget for such Fiscal Year prepared by management of the Borrower;

(h) Information Regarding Collateral. Promptly, in any event, within 60 days of the relevant change (or such later date to which the Administrative Agent may agree in its reasonable discretion), written notice (i) with respect to the Borrower or any other Loan Party that is a Domestic Subsidiary, of any change in (A) such Loan Party’s legal name, (B) such Loan Party’s type of organization, (C) such Loan Party’s jurisdiction of organization or (D) such Loan Party’s organizational identification number, in each case, to the extent such information is necessary to enable the Administrative Agent to perfect or maintain the perfection and priority of its security interest in the Collateral of the relevant Loan Party, together with a
certified copy of the applicable Organizational Document reflecting the relevant change, and (ii) with respect to any Loan Party that is a Discretionary Guarantor, such types of changes affecting the perfection or priority of the Administrative Agent’s security interest in the applicable Collateral of such Discretionary Guarantor as the Borrower and the Administrative Agent have agreed in connection with such Loan Party becoming a Discretionary Guarantor; and

(i) **Certain Reports.** Promptly upon their becoming available and without duplication of any obligation with respect to any such information that is otherwise required to be delivered under the provisions of any Loan Document, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by the Borrower or its applicable Parent Company to all of its security holders acting in such capacity and (ii) all regular and periodic reports and all registration statements (other than on Form S-8 or a similar form) and prospectuses, if any, publicly filed by the Borrower or its applicable Parent Company with any securities exchange or with the SEC or any analogous Governmental Authority or private regulatory authority with jurisdiction over matters relating to securities, in each case other than any prospectus relating to any equity plan; and

(j) **Other Information.** Such customary additional information (financial or otherwise) that is readily available to the Borrower as the Administrative Agent may reasonably request from time to time regarding the financial condition or business of the Borrower and its Restricted Subsidiaries.

Documents required to be delivered pursuant to this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earliest to occur of the date (i) on which the Borrower (or a representative thereof) (A) posts such documents or (B) provides a link thereto, in each case, at the website address listed on Schedule 5.01 (which Schedule 5.01 may be updated from time to time), (ii) (A) on which such documents are delivered by the Borrower to the Administrative Agent for posting on behalf of the Borrower on IntraLinks/SyndTrak or another relevant website (the “Platform”), if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent) or (B) on which the relevant documents are electronically mailed or otherwise transmitted to the Administrative Agent in a manner to which the Administrative Agent may reasonably agree or (iii) in respect of the items required to be delivered pursuant to Section 5.01(a), (b) and/or (i), on which such items have been made available on the SEC website or the website of the relevant analogous governmental or private regulatory authority or securities exchange (including, for the avoidance of doubt, by way of “EDGAR”).

Notwithstanding the foregoing, the obligations in Section 5.01(a) and (b) may instead be satisfied with respect to any relevant information of the Borrower by furnishing (i) the applicable financial statements or other information required by such clauses of the Borrower (or any Parent Company) or (ii) in the case of Sections 5.01(a) and (b), the Borrower’s (or any Parent Company thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC or any securities exchange, in each case, within the time periods specified in such paragraphs and without any requirement to provide notice of such filing to the Administrative Agent or any Lender; provided that, with respect to each of clauses (i) and (ii), (A) to the extent (x) such financial statements relate to any Parent Company and (y) either (1) such Parent Company (or any other Parent Company that is a subsidiary of such Parent Company) has any material third party Indebtedness and/or material operations (as determined by the Borrower in good faith and other than any operations that are attributable solely to such Parent Company’s ownership of the Borrower and its subsidiaries) or (2) there are material differences (in the good faith determination of the Borrower) between the financial statements of such Parent Company and its consolidated subsidiaries, on the one hand, and the Borrower and its consolidated subsidiaries, on the other hand, such financial statements or Form 10-K or Form 10-Q, as applicable, shall be accompanied by unaudited consolidating information that summarizes in reasonable detail the differences between the information relating to such Parent Company and its consolidated subsidiaries, on the one hand, and the information relating to the Borrower and its consolidated
subsidiaries on a consolidated stand-alone basis, on the other hand (other than any such difference relating to shareholders’ equity), and (B) to the extent such financial statements are in lieu of statements required to be provided under Section 5.01(b), such statements shall be accompanied by a report and opinion with respect to the financial statements of the applicable Parent Company of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall satisfy the applicable requirements set forth in Section 5.01(b).

No financial statement required to be delivered pursuant to Section 5.01(a) or (b) shall be required to include any acquisition accounting adjustment relating to the Transactions or any Permitted Acquisition or other Investment to the extent it is not practicable to include any such adjustment in such financial statement.

Section 5.02 Existence. Except as otherwise permitted under Section 6.07 or Section 6.09, the Borrower will, and the Borrower will cause each of its Restricted Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights, franchises, licenses and permits reasonably necessary to the normal conduct of 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 the Borrower nor any of the Borrower’s Restricted Subsidiaries shall be required to preserve any such existence (other than with respect to the preservation of existence of 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. The Borrower will, and the Borrower will cause each of its Restricted Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income or businesses or franchises before any penalty or fine accrues thereon; provided that no such Tax need be paid if (i) it is being contested in good faith by appropriate proceedings, so long as adequate reserves or other appropriate provisions, as are required in conformity with GAAP, have been made therefor or (ii) 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 Restricted Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and casualty and condemnation excepted, all property reasonably necessary to the normal conduct of business of the Borrower and its Restricted Subsidiaries and from time to time will make or cause to be made all needed and appropriate repairs, renewals and replacements thereof, in each case except as expressly permitted by this Agreement or where the failure to maintain such properties or make such repairs, renewals or replacements could not reasonably be expected to have a Material Adverse Effect.

Section 5.05 Insurance. (a) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, the Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, such insurance coverage with respect to liability, loss or damage in respect of the assets, properties and businesses of the Borrower and its Restricted Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Each such policy of insurance shall, subject to Section 5.15, (i) name the Administrative Agent on behalf of the Secured Parties as an additional insured thereunder as its interests may appear and (ii) to the extent available from the relevant insurance carrier, in the case of each casualty insurance policy (excluding any business interruption insurance policy) (A) contain a lender loss payable clause or endorsement that names
the Administrative Agent, on behalf of the Secured Parties as the lender loss payee thereunder and (B) provide for at least 30 days’ prior written notice to the Administrative Agent of any modification or cancellation of such policy (or 10 days’ prior written notice in the case of the failure to pay any premium thereunder); provided that, unless an Event of Default exists, (A) the Administrative Agent agrees that the Borrower and/or its applicable Restricted Subsidiary shall have the sole right to adjust or settle any claims under such insurance and (B) all proceeds from a casualty event shall be paid to the Borrower.

Section 5.06 Inspections. The Borrower will, and the Borrower will cause each of its Restricted Subsidiaries to, permit any authorized representative designated by the Administrative Agent to visit and inspect any of the properties of the Borrower and any of its Restricted Subsidiaries at which the principal financial records and executive officers of the applicable Person are located, to inspect, copy and take extracts from its and their respective financial and accounting records, and to discuss its and their respective affairs, finances and accounts with its and their Responsible Officers and independent public accountants (provided that the Borrower (or any of its subsidiaries) may, if it so chooses, be present at or participate in any such discussion), all upon reasonable notice and at reasonable times during normal business hours; provided that (a) only the Administrative Agent on behalf of the Lenders may exercise the rights of the Administrative Agent and the Lenders under this Section 5.06, (b) except as expressly set forth in clause (c) below during the continuance of an Event of Default under Section 7.01(a), (f) or (g), the Administrative Agent shall not exercise such rights more often than one time during any calendar year and (c) when an Event of Default under Section 7.01(a), (f) or (g) exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice.

Section 5.07 Maintenance of Books and Records. The Borrower will, and will cause its Restricted Subsidiaries to, maintain proper books of record and account containing entries of all material financial transactions and matters involving the assets and business of the Borrower and its Restricted Subsidiaries that are full, true and correct in all material respects and permit the preparation of consolidated financial statements in accordance with GAAP.

Section 5.08 Compliance with Laws. The Borrower will comply, and the Borrower will cause each of its Restricted Subsidiaries to comply, with all applicable Requirements of Law (including applicable ERISA, the Code and all Environmental Laws and the USA PATRIOT Act), except to the extent the failure of the Borrower or the relevant Restricted Subsidiary to comply could not reasonably be expected to have a Material Adverse Effect. The Borrower will comply, and the Borrower will cause each of its Restricted Subsidiaries to comply in all material respects with all applicable Anti-Corruption Laws and Sanctions; provided that the requirements set forth in this Section 5.08, as they pertain to compliance by any Foreign Subsidiary with any Sanctions, the USA PATRIOT ACT and Anti-Corruption Laws, are subject to and limited by any Requirement of Law applicable to such Foreign Subsidiary in its relevant local jurisdiction and shall not apply to such Foreign Subsidiary to the extent the same conflict with relevant local Requirements of Law applicable to such Foreign Subsidiary. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

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 Restricted Subsidiaries, a copy of any and all written communications with respect to (A) any Environmental Claim that, individually or in the aggregate, would reasonably be expected to give rise to a Material Adverse Effect, (B) any Release required to be reported by the Borrower or any of its Restricted Subsidiaries to any federal, state or local governmental or regulatory agency or other Governmental Authority that would reasonably
be expected to have a Material Adverse Effect, (C) any request made to the Borrower or any of its Restricted Subsidiaries for information from any governmental agency that suggests such agency is investigating whether the Borrower or any of its Restricted Subsidiaries may be potentially responsible for any Hazardous Materials Activity which would reasonably be expected to have a Material Adverse Effect and (D) such other documents and information as from time to time may reasonably be requested by the Administrative Agent in relation to any matters disclosed pursuant to this Section 5.09(a);

(b) Hazardous Materials Activities, Etc. The Borrower shall promptly take, and shall cause each of its Restricted Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by the Borrower or its Restricted Subsidiaries, and address with appropriate corrective or remedial action any Release or threatened Release of Hazardous Materials at or from any Facility, in each case, that would reasonably be expected to have a Material Adverse Effect and (ii) make an appropriate response to any Environmental Claim against the Borrower or any of its Restricted Subsidiaries and discharge any obligations it may have to any Person thereunder, in each case, where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.10 Designation of Subsidiaries. The Borrower may at any time after the Closing Date designate (or re-designate) any subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (a) immediately after giving effect to such designation (or re-designation), no Event of Default exists (including after giving effect to the reclassification of any Investment in, Indebtedness of and/or Lien on the assets of, the applicable Restricted Subsidiary or Unrestricted Subsidiary), (b) immediately after giving effect to such designation (or re-designation), the Borrower is in compliance with Section 6.10(a), Section 6.10(b) and Section 6.10(c) on a Pro Forma Basis as of the last day of the most recently ended Test Period, (c) no Restricted Subsidiary may be designated (or re-designated) as an Unrestricted Subsidiary if, as of the date of the designation thereof such Restricted Subsidiary owns or is the exclusive licensee of or, immediately after giving effect to such designation (or re-designation), will own or be the exclusive licensee of, any Material Intellectual Property and (d) as of the date of the designation thereof, no Unrestricted Subsidiary shall own any Capital Stock in any Restricted Subsidiary of the Borrower (unless such Restricted Subsidiary is also designated as an Unrestricted Subsidiary). The designation of any subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower (or its applicable Restricted Subsidiary) therein at the date of designation in an amount equal to the portion of the fair market value of the net assets of such subsidiary attributable to the Borrower’s (or its applicable Restricted Subsidiary’s) equity interest therein as estimated by the Borrower in good faith (and such designation shall only be permitted to the extent such Investment is permitted under Section 6.06). The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the making, incurrence or granting, as applicable, at the time of designation of any then-existing Investment, Indebtedness or Lien of such subsidiary, as applicable; provided that, upon any re-designation of any Unrestricted Subsidiary as a Restricted Subsidiary, the Borrower (or its applicable Restricted Subsidiary) shall be deemed to continue to have an Investment in the resulting Restricted Subsidiary in an amount (if positive) equal to (a) the Borrower’s (or its applicable Restricted Subsidiary’s) “Investment” in such Restricted Subsidiary at the time of such re-designation, less (b) the portion of the fair market value of the net assets of such Restricted Subsidiary attributable to the Borrower’s (or its applicable Restricted Subsidiary’s) equity therein at the time of such re-designation as estimated by the Borrower in good faith.

Section 5.11 Use of Proceeds.

(a) The Borrower shall use the proceeds of the Revolving Loans (i) on the Closing Date, (A) to finance (or to replenish balance sheet cash used to finance) all or a portion of the Transactions (including the payment of Transaction Costs and other costs and expenses), (B) to finance other general corporate purposes, (C) to finance working capital needs and (D) to cash collateralize letters of credit issued on behalf of the Borrower and its subsidiaries under the Existing Credit Agreement, and (ii) after the Closing Date,
to finance working capital needs and other general corporate purposes of the Borrower and its subsidiaries and any other purpose not prohibited by the terms of the Loan Documents.

(b) The Borrower shall use the proceeds of the Swingline Loans made after the Closing Date to finance the working capital needs and other general corporate purposes of the Borrower and its subsidiaries and for any other purpose not prohibited by the terms of the Loan Documents.

(c) Letters of Credit may be issued (i) on the Closing Date in the ordinary course of business and to replace or provide credit support for any letter of credit, bank guarantee and/or surety, customs, performance or similar bond of the Borrower and its subsidiaries or any of their Affiliates and/or to replace cash collateral posted by any of the foregoing Persons and (ii) after the Closing Date, for general corporate purposes of the Borrower and its subsidiaries and any other purpose not prohibited by the terms of the Loan Documents.

Section 5.12 Covenant to Guarantee Obligations and Provide Security

(a) Upon (i) the formation or acquisition after the Closing Date of any Restricted Subsidiary, (ii) the designation of any Unrestricted Subsidiary as a Restricted Subsidiary or (iii) any Restricted Subsidiary that was an Excluded Subsidiary ceasing to be an Excluded Subsidiary, on or before the date on which a Compliance Certificate is required to be delivered pursuant to Section 5.01(c), for the Fiscal Quarter in which the relevant formation, acquisition, designation or cessation occurred (or such longer period as the Administrative Agent may reasonably agree), the Borrower shall (A) cause such Restricted Subsidiary (other than any Excluded Subsidiary) to comply with the requirements set forth in clause (b) of the definition of “Collateral and Guarantee Requirement” and (B) upon the reasonable request of the Administrative Agent, which request may not be made unless the Consolidated Total Assets of the relevant Restricted Subsidiary constitutes more than 10% of the Consolidated Total Assets of the Borrower and its Restricted Subsidiaries, taken as a whole, cause the relevant Restricted Subsidiary (other than any Excluded Subsidiary) to deliver to the Administrative Agent a signed copy of a customary opinion of counsel for such Restricted Subsidiary, addressed to the Administrative Agent, the Issuing Banks and the Lenders.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, the Borrower may, in its sole discretion, elect to cause any Restricted Subsidiary and/or Parent Company (any such Person, a “Discretionary Guarantor”) that is not otherwise required to be a Subsidiary Guarantor to provide a Loan Guaranty by causing such Person to execute a Joinder Agreement, and any such Person shall constitute a Loan Party and a Guarantor for all purposes hereunder; it being understood and agreed that such Person shall constitute a Loan Guarantor if such Person shall grant a security interest in such categories of assets pursuant to such documentation as the Borrower and the Administrative Agent may reasonably agree; provided that (i) in the case of any Discretionary Guarantor that is a Foreign Subsidiary, the jurisdiction of such person is reasonably satisfactory to the Administrative Agent and (ii) the Administrative Agent shall have received at least two Business Days prior to such person becoming a Guarantor, all documentation and other information in respect of such person required under applicable “know your customer” and anti-money laundering rules and regulations (including the USA Patriot Act).

(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 may apply retroactively) for the creation and perfection of security interests in, or obtaining of legal opinions or other deliverables with respect to, particular assets or the provision of any Loan Guaranty by any Restricted Subsidiary, and each Lender hereby consents to any such extension of time;
any Lien required to be granted from time to time pursuant to the definition of “Collateral and Guarantee Requirement” and/or any action requested in connection therewith shall be subject to the exceptions and limitations set forth in this Agreement and the Collateral Documents;

perfection by control shall not be required with respect to assets requiring perfection through control agreements or other control arrangements, including Deposit Accounts, securities accounts and commodities accounts (other than control of (A) pledged Capital Stock of the Borrower or any material first tier Restricted Subsidiary of a Loan Party and/or (B) any Material Debt Instrument owing from any Person that is not a Loan Party, in each case, to the extent the same otherwise constitute Collateral);

(iv) no Loan Party shall be required to seek any landlord lien waiver, bailee letter, estoppel, warehouseman waiver or other collateral access or similar letter or agreement;

(v) no Loan Party (other than any Discretionary Guarantor that is organized under the laws of a jurisdiction outside of the US) will be required to (A) take any action to grant or perfect a security interest in any asset located outside of the US or (B) execute any security agreement, pledge agreement, mortgage, deed, charge or other collateral document governed by the laws of any jurisdiction other than the US, any state thereof or the District of Columbia; it being understood and agreed that no Loan Party (including any Discretionary Guarantor) will be required to take any action to perfect a security interest in the Collateral in any jurisdiction other than the jurisdiction in which such Loan Party is organized (other than with respect to the required pledge of the Capital Stock of any Discretionary Guarantor that is not organized under the laws of the United States or any state thereof, the jurisdiction of organization of such Discretionary Guarantor);

(vi) in no event will (A) the Collateral include any Excluded Asset or (B) any Excluded Subsidiary be required to become a Subsidiary Guarantor;

(vii) without limiting clause (xiii) below, no action shall be required to perfect any Lien with respect to (A) any vehicle or other asset subject to a certificate of title, (B) any Letter-of-Credit Right, (C) the Capital Stock of any Immaterial Subsidiary (other than any Immaterial Subsidiary that is a Loan Party), (D) the Capital Stock of any Person that is not a subsidiary, which Person, if a subsidiary, would constitute an Immaterial Subsidiary and/or (E) any aircraft, in each case, except to the extent that a security interest therein can be perfected by filing a Form UCC-1 (or similar) financing statement under the UCC (without the requirement to list a “VIN” or similar number);

(viii) no action shall be required to perfect a Lien in any asset in respect of which the perfection of a security interest therein would (A) be prohibited by enforceable anti-assignment provisions set forth in any contract that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than in the case of Capital Leases, purchase money and similar financings), (B) violate the terms of any contract relating to such asset that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than in the case of Capital Leases, purchase money and similar financings), (C) trigger termination of any contract relating to such asset that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than in the case of Capital Leases, purchase money and similar financings) pursuant to any “change of control” or similar provision; it being understood
that the Collateral shall include any proceeds and/or receivables arising out of any contract described in this clause to the extent the assignment of such proceeds or receivables is expressly deemed effective under the UCC or other applicable Requirement of Law notwithstanding the relevant prohibition, violation or termination right;

(ix) (A) no Loan Party shall be required to perfect a Lien in any asset to the extent the perfection of a security interest in such asset would be prohibited under any applicable Requirement of Law and (B) it is understood and agreed, for the avoidance of doubt, that no Loan Party shall be required to comply with the Federal Assignment of Claims Act or any similar statute;

(x) any Joinder Agreement, any Collateral Document and/or any other Loan Document executed by any Restricted Subsidiary that is required to become (or otherwise becomes) a Loan Party pursuant to Section 5.12(a) above (including any Joinder Agreement) may, with the consent of the Administrative Agent (not to be unreasonably withheld or delayed), include such schedules (or updates to schedules) as may be necessary to qualify any representation or warranty set forth in any Loan Document to the extent necessary to ensure that such representation or warranty is true and correct to the extent required thereby or by the terms of any other Loan Document;

(xi) the Lenders and the Administrative Agent acknowledge and agree that the Collateral that may be provided by any Loan Party may be limited to minimize stamp duty, notarization, registration or other applicable fees, taxes and duties where the benefit to the Secured Parties of increasing the secured amount is disproportionate to the cost of such fees, taxes and duties;

(xii) the Administrative Agent shall not require the taking of a Lien on, or require the perfection of any Lien granted in, any asset as to which the cost of obtaining or perfecting such Lien (including any mortgage, stamp, intangibles or other tax or expenses relating to such Lien) is excessive in relation to the benefit to the Lenders of the security afforded thereby as reasonably determined in writing by the Borrower and the Administrative Agent;

(xiii) except with respect to any Discretionary Guarantor that is organized under the laws of a jurisdiction outside the US, no Loan Party shall be required, and the Administrative Agent shall not be authorized, to perfect any security interest by means other than (A) filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of any Loan Party’s jurisdiction of organization, (B) filings with the US federal government offices with respect to IP Rights as expressly required by the Security Agreement (to the extent a security interest can be perfected by such filings), or (C) delivery to the Administrative Agent, for its possession (subject to the terms of any applicable Intercreditor Agreement), of any Collateral consisting of pledged Capital Stock held by any Loan Party in the Borrower or any Restricted Subsidiary that is a Wholly-Owned Subsidiary and/or any Material Debt Instrument issued to the Borrower or another Loan Party, in each case, to the extent required by the Security Agreement; and

(xiv) (A) no Collateral Document executed and delivered after the Closing Date will impose any commercial obligation on any Loan Party or contain any representation, warranty or undertaking that is not required for the creation and/or perfection of a security interest in the relevant asset and (B) to the extent the subject matter of any representation, warranty or undertaking in any Collateral Document executed and delivered after the Closing Date is the same as any representation, warranty or covenant in the Credit Agreement, such representation, warranty or covenant shall be no more burdensome to the applicable Loan Party than the corresponding
provision of this Agreement unless the relevant additional requirement is necessary for the creation and/or perfection of a security interest in the relevant asset.

(d) It is understood and agreed for the avoidance of doubt that the Borrower may elect to join any Domestic Subsidiary that is not required to be or become a Subsidiary Guarantor solely because such Restricted Subsidiary is an Immaterial Subsidiary without (i) the consent of the Administrative Agent or (ii) delivery of an opinion of counsel.

Section 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) the Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements, instruments, notices and acknowledgments and take all such further actions (including the filing and recordation of financing statements and/or amendments thereto and other documents), that may be required under any applicable Requirement of Law and which the Administrative Agent may reasonably request to ensure the creation, perfection and priority of the Liens created or intended to be created under the Collateral Documents, all at the expense of the relevant Loan Parties; and

(b) the Borrower will, and will cause each other applicable Loan Party to, (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts (including notices to third parties), deeds, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to ensure the creation, perfection and priority of the Liens created or intended to be created under the Collateral Documents.

Section 5.15 Post-Closing Covenant. Take the actions required by Schedule 5.15 in each case within the time periods specified therein (or, in each case, such longer period to which the Administrative Agent may reasonably agree).

Section 5.16 Depository Banks. The Borrower and each of its Subsidiaries will maintain the Administrative Agent as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business. Additionally, the Administrative Agent shall be the principal provider of other bank products to the Borrower and its Subsidiaries.

Section 5.17 Fiscal Year. In the event that the Borrower elects to change the end date of its Fiscal Year to a date other than as described in the definition of “Fiscal Year”, the Borrower shall notify the Administrative Agent in writing, in which case the Borrower and the Administrative Agent will, and are hereby authorized to, make any adjustment to this Agreement that is necessary to reflect such change in Fiscal Year.

Section 5.18 Nature of Business. From and after the Closing Date, the Borrower shall, and shall cause its Restricted Subsidiaries to, ensure that any material line of business in which it engages is either (a) a business engaged in by the Borrower and/or any Restricted Subsidiary on the Closing Date or a similar, incidental, complementary, ancillary or related business or (b) another line of business to which, in the case of this clause (b), the Administrative Agent provides its consent.
Section 5.19 Amendments or Waivers of Organizational Documents. The Borrower shall, and shall cause each Subsidiary Guarantor to, ensure that it does not, without the consent of the Administrative Agent, amend or modify its respective Organizational Documents in a manner that is, in the good faith determination of the Borrower, materially adverse to the Lenders (in their capacity as such), taken as a whole; provided that, for the avoidance of doubt, it is understood and agreed that the Borrower and/or any Subsidiary Guarantor may make any change to its organizational form and/or consummate any other transaction that is permitted under Section 6.07.

ARTICLE VI
NEGATIVE COVENANTS

From the Closing Date until the Termination Date, the Borrower covenants and agrees with the Lenders, the Issuing Banks and the Administrative Agent that:

Section 6.01 Indebtedness. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to create, incur, assume or otherwise become or remain liable with respect to any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness of (i) the Borrower to any Restricted Subsidiary and/or (ii) any Restricted Subsidiary to the Borrower and/or any other Restricted Subsidiary; provided that (A) in the case of any Indebtedness of any Restricted Subsidiary that is not a Loan Party owing to the Borrower or any Restricted Subsidiary that is a Loan Party, the related Investment is permitted under Section 6.06, and (B) any Indebtedness of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party incurred in reliance on this clause (b) must be unsecured and expressly subordinated to the Obligations of such Loan Party on terms that are reasonably acceptable to the Administrative Agent (it being understood that the subordination terms set forth in the Intercompany Note are acceptable to the Administrative Agent);

(c) (i) Indebtedness arising from any agreement providing for indemnification, adjustment of purchase price or similar obligations (including contingent earn-out obligations) incurred in connection with the Transactions, any Disposition permitted hereunder, any acquisition or other Investment permitted hereunder or consummated prior to the Closing Date or any other purchase of assets or Capital Stock or any other Investment, and (ii) Indebtedness arising from guaranties, letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments securing the performance of the Borrower or any such Restricted Subsidiary pursuant to any such agreement;

(d) Indebtedness of the Borrower and/or any Restricted Subsidiary (i) as a result of or pursuant to tenders, statutory obligations, bids, leases, governmental contracts, trade contracts, surety, stay, customs, appeal, performance and/or return of money bonds or other similar obligations incurred in the ordinary course of business or pursuant to self-insurance obligations and not in connection with debt for borrowed money and (ii) in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments to support any of the foregoing items;

(e) Indebtedness of the Borrower and/or any Restricted Subsidiary in respect of Banking Services and/or otherwise in connection with Cash management and Deposit Accounts;

(f) (i) guaranties by the Borrower and/or any Restricted Subsidiary of the obligations of suppliers, customers, franchisees and licensees in the ordinary course of business in an aggregate outstanding principal amount not to exceed the greater of $1,500,000 and 5% of Consolidated Adjusted EBITDA, (ii) Indebtedness incurred in the ordinary course of business in respect of obligations of the
Borrower and/or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services and (iii) Indebtedness in respect of letters of credit, bankers’ acceptances, bank guaranties or similar instruments supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of business;

(g) Guarantees by the Borrower and/or any Restricted Subsidiary of Indebtedness or other obligations of the Borrower, any Restricted Subsidiary and/or any joint venture with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.01 or other obligations not prohibited by this Agreement; provided that in the case of any Guarantee by any Loan Party of the obligations of any non-Loan Party, the related Investment is permitted under Section 6.06;

(h) Indebtedness of the Borrower and/or any Restricted Subsidiary existing, or pursuant to commitments existing, on the Closing Date; provided that any such Indebtedness or commitment having an outstanding principal amount in excess of $1,000,000 shall be described on Schedule 6.01;

(i) Indebtedness of Restricted Subsidiaries that are not Loan Parties; provided that the aggregate outstanding principal amount of such Indebtedness shall not exceed (x) prior to the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $9,600,000 and 40% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(j) Indebtedness of the Borrower and/or any Restricted Subsidiary consisting of obligations owing under incentive, supply, license or similar agreements entered into in the ordinary course of business;

(k) Indebtedness of the Borrower and/or any Restricted Subsidiary consisting of (i) the financing of insurance premiums, (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business and/or (iii) obligations to reacquire assets or inventory in connection with customer financing arrangements in the ordinary course of business;

(l) Indebtedness of the Borrower and/or any Restricted Subsidiary with respect to Capital Leases and purchase money Indebtedness in an aggregate outstanding principal amount not to exceed (x) prior to the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $12,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(m) Indebtedness of any Person that becomes a Restricted Subsidiary and/or Indebtedness assumed in connection with any acquisition or similar Investment; provided that:

(i) such Indebtedness (A) existed at the time such Person became a Restricted Subsidiary or the assets subject to such Indebtedness were acquired and (B) was not created or incurred in contemplation of the applicable acquisition or similar Investment, and

(ii) after giving effect to such Indebtedness on a Pro Forma Basis, the Borrower is in compliance with Section 6.10(a);

(n) Indebtedness issued by the Borrower or any Restricted Subsidiary to any stockholder of the Borrower (or 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 the Borrower (or any Parent Company) permitted by Section 6.04(a):

(o) Indebtedness refinancing, refunding or replacing any Indebtedness permitted under clauses (a), (h), (i), (l), (m), (t), (s), (f), (u) and/or (cc) of this Section 6.01 (in any case, including any refinancing Indebtedness incurred in respect thereof, “Refinancing Indebtedness”) and any subsequent Refinancing Indebtedness in respect thereof; provided that:

(i) the principal amount of such Indebtedness does not exceed the principal amount of, and commitments in respect of, the Indebtedness being refinanced, refunded or replaced, except by (A) an amount equal to unpaid accrued interest, penalties and premiums (including tender premiums) thereon plus underwriting discounts, other reasonable and customary fees, commissions and expenses (including upfront fees, original issue discount or initial yield payments) incurred in connection with the relevant refinancing, refunding or replacement and the related refinancing transaction, (B) an amount equal to any existing commitments unutilized thereunder and (C) additional amounts permitted to be incurred pursuant to this Section 6.01 (provided that (1) any additional Indebtedness referenced in this clause (C) satisfies the other applicable requirements of this definition (with additional amounts incurred in reliance on this clause (C) constituting a utilization of the relevant basket or exception pursuant to which such additional amount is permitted) and (2) if such additional Indebtedness is secured, the Lien securing such Indebtedness satisfies the applicable requirements of Section 6.02);

(ii) in the case of Refinancing Indebtedness with respect to clauses (a), (w) and/or (z) (other than Customary Bridge Loans), such Indebtedness (other than revolving indebtedness) has a final maturity equal to or later than (and, in the case of revolving Indebtedness, does not require mandatory commitment reductions, if any, prior to) (x) the final maturity of the Indebtedness refinanced, refunded or replaced and (y) the Latest Maturity Date;

(iii) the terms of any Replacement Debt with an original principal amount in excess of the Threshold Amount (excluding, to the extent applicable, pricing (including any “MFN” provision), fees, premiums, rate floors, optional prepayment, funding discounts, maturity, amortization schedule, redemption terms or subordination terms and security), are not, taken as a whole (as determined by the Borrower in good faith), more favorable to the lenders providing such Indebtedness than those applicable to the Indebtedness being refinanced, refunded or replaced (other than (A) any covenant or any other provision applicable only to periods after the applicable maturity date of the debt when being refinanced as of such date, (B) any covenant or provision which constitutes a then-current market term for the applicable type of Indebtedness (as determined by the Borrower in good faith), or (C) any covenant or other provision which is conformed (or added) to the Loan Documents for the benefit of the Lenders or, as applicable, the Administrative Agent, pursuant to an amendment to this Agreement effectuated in reliance on Section 9.02(d)(ii), it being understood and agreed that if any Refinancing Indebtedness that constitutes a revolving facility includes a financial covenant, the requirement set forth in this clause (iii) shall be satisfied if such financial covenant is added to this Agreement for the benefit of the then-existing Revolving Facility);

(iv) in the case of Refinancing Indebtedness with respect to Indebtedness permitted under clauses (i), (l), (m)(ii)(C), (r), (t), (u) and/or (cc) of this Section 6.01, the incurrence thereof shall be without duplication of any amount outstanding in reliance on the relevant clause such that the amount available under the relevant clause shall be reduced by the amount of the applicable Refinancing Indebtedness;
(v) except in the case of Refinancing Indebtedness constituting Replacement Debt, (A)(1) such Indebtedness, if secured, is
secured only by Permitted Liens at the time of such refinancing, refunding or replacement (it being understood that secured Indebtedness
may be refinanced with unsecured Indebtedness), and (2) either (x) if the Liens securing such Indebtedness were originally contractually
subordinated to the Liens on the Collateral securing the Initial Revolving Facility, the Liens securing such Indebtedness are subordinated
to the Liens on the Collateral securing the Initial Revolving Facility on terms not materially less favorable (as determined by the
Borrower in good faith), taken as a whole, to the Lenders than those (I) applicable to the Liens securing the Indebtedness being
refinanced, refunded or replaced, taken as a whole, or (II) set forth in any relevant Intercreditor Agreement or (y) the purchase,
defeasance, redemption, repurchase, repayment, refinancing or other acquisition or retirement of such Indebtedness is permitted under
Section 6.04(b) (other than Section 6.04(b)(i)); it being understood that the proceeds of any such Refinancing Indebtedness may be
funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements, (B) such
Indebtedness is incurred by the obligor or obligors in respect of the Indebtedness being refinanced, refunded or replaced, except to the
extent otherwise permitted pursuant to Section 6.01 (it being understood that (1) any entity that was a guarantor in respect of the relevant
refinanced Indebtedness may be the primary obligor in respect of the refinancing Indebtedness, and any entity that was the primary
obligor in respect of the relevant refinanced Indebtedness may be a guarantor in respect of the refinancing Indebtedness and (2) the
obligation of any Person with respect to any Escrow arrangement into which the proceeds of such Refinancing Indebtedness are
deposited shall not constitute a Guarantee) and (C) if the Indebtedness being refinanced, refunded or replaced was expressly
contractually subordinated to the Obligations in right of payment, (x) such Indebtedness is contractually subordinated to the Obligations
in right of payment, or (y) if not contractually subordinated to the Obligations in right of payment, the purchase, defeasance, redemption,
repurchase, repayment, refinancing or other acquisition or retirement of such Indebtedness is permitted under Section 6.04(b) (other than
Section 6.04(b)(i)); and

(vi) in the case of Refinancing Indebtedness constituting Replacement Debt, (A) such Indebtedness is pari passu or junior in
right of payment and secured by the Collateral on a pari passu or junior basis with respect to the remaining Obligations hereunder, or is
unsecured; provided that any such Refinancing Indebtedness that is pari passu or junior with respect to the Collateral shall be subject to
an Intercreditor Agreement, (B) if the Indebtedness being refinanced, refunded or replaced is secured, it is not secured by any asset that
does not constitute Collateral; it being understood that the proceeds of any such Refinancing Indebtedness may be funded into Escrow
pursuant to customary (in the good faith determination of the Borrower) escrow arrangements, (C) if the Indebtedness being refinanced,
refunded or replaced is Guaranteed, it shall not be Guaranteed by any Restricted Subsidiary of the Borrower other than one or more Loan
Parties (it being understood that the obligation of any Person with respect to any Escrow arrangement into which the proceeds of such
Refinancing Indebtedness are deposited shall not constitute a Guarantee) and (D) such Refinancing Indebtedness is incurred under (and
pursuant to) documentation other than this Agreement;

(p) Indebtedness of the Borrower and/or any Restricted Subsidiary under any Derivative Transaction not entered into for speculative
purposes;

(q) Indebtedness of the Borrower and/or any Restricted Subsidiary representing (i) deferred compensation to current or former
directors, officers, employees, members of management, managers, and consultants of any Parent Company, the Borrower and/or any Restricted
Subsidiary in the ordinary course of business and (ii) deferred compensation or other similar arrangements in connection with the Transactions,
any Permitted Acquisition or any other Investment permitted hereby;
(r) Indebtedness of the Borrower and/or any Restricted Subsidiary in an aggregate outstanding principal amount not to exceed (x) prior to the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $12,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(s) Unsecured Indebtedness of the Borrower and/or any Restricted Subsidiary (any Indebtedness incurred pursuant to this Section 6.01(s), “Ratio Debt”) so long as:

(i) after giving effect thereto, including the application of the proceeds thereof (in each case, without “netting” the cash proceeds of the applicable Indebtedness being incurred), the outstanding principal thereof does not exceed an unlimited amount, so long as, in the case of this clause (w), on a Pro Forma Basis, the Total Rent Adjusted Net Leverage Ratio does not exceed (i) prior to the consummation of an IPO, 5.25:1.00 as of the last day of the most recently ended Test Period and (ii) following the consummation of any IPO, 5.75:1.00 as of the last day of the most recently ended Test Period;

(ii) the aggregate outstanding principal amount of Ratio Debt incurred in reliance on this Section 6.01(s) by Restricted Subsidiaries that are not Loan Parties shall not, at any time, exceed an amount equal to (x) prior to the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $9,600,000 and 40% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; and

(iii) if such Ratio Debt is issued or incurred by any Loan Party and consists of third party Indebtedness for borrowed money (other than Indebtedness among the Borrower and its Restricted Subsidiaries):

(A) the final maturity date of such Indebtedness (other than revolving loans) is no earlier than the Latest Maturity Date on the date of the issuance or incurrence thereof;

(B) [reserved], and

(C) if such Indebtedness constitutes revolving loans, such Indebtedness will not mature or have any mandatory commitment reductions prior to the Initial Revolving Credit Maturity Date;

(t) Indebtedness of the Borrower and/or any Restricted Subsidiary incurred in connection with any Sale and Lease-Back Transaction permitted pursuant to Section 6.07;

(u) any Incremental Equivalent Debt;

(v) Indebtedness (including obligations in respect of letters of credit, bank guarantees, bankers’ acceptances, surety bonds, performance bonds or similar instruments with respect to such Indebtedness) incurred by the Borrower and/or any Restricted Subsidiary in respect of workers compensation claims, unemployment, property, casualty or liability insurance (including premiums related thereto) or self-insurance, other reimbursement-type obligations regarding workers’ compensation claims, other types of social security, pension obligations, vacation pay or health, disability or other employee benefits;

(w) Indebtedness representing (i) deferred compensation to current or former directors, officers, employees, members of management, managers and consultants of any Parent Company, the
Borrower or any Subsidiary in the ordinary course of business and (ii) deferred compensation or other similar arrangements in connection with the Transactions, any acquisition or any other Investment permitted hereby;

(x) Indebtedness of the Borrower and/or any Restricted Subsidiary in respect of any letter of credit or bank guarantee issued in favor of any Issuing Bank or the Swingline Lender to support any Defaulting Lender’s participation in Letters of Credit issued, or Swingline Loans made, hereunder;

(y) Indebtedness of the Borrower or any Restricted Subsidiary supported by any Letter of Credit or any other letter of credit, bank guarantee or similar instrument permitted by this Section 6.01;

(z) unfunded pension fund and other employee benefit plan obligations and liabilities incurred by the Borrower and/or any Restricted Subsidiary in the ordinary course of business to the extent that the unfunded amounts would not otherwise cause an Event of Default under Section 7.01(i);

(aa) 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;

(bb) without duplication of any other Indebtedness, all premiums (if any), interest (including post-petition interest and payment in kind interest), accretion or amortization of original issue discount, fees, expenses and charges with respect to Indebtedness of the Borrower and/or any Restricted Subsidiary hereunder;

(cc) Indebtedness owed on a short-term basis to banks and other financial institutions in the ordinary course of business to manage cash balances;

(dd) Indebtedness in respect of earn-outs, seller notes or similar deferred purchase price obligations incurred in connection with any acquisition or other Investment permitted hereby; and

(ee) real estate-related Indebtedness incurred in the ordinary course of business (i) secured by a deed of trust, mortgage or other lien on the applicable Real Estate Asset of the Borrower or its Restricted Subsidiaries or (ii) constituting other nonrecourse Indebtedness that is customarily incurred or issued in connection with Real Estate Assets; provided that the aggregate principal amount of such Indebtedness under this clause (ee) at any time outstanding shall not exceed $30,000,000.

Section 6.02 Liens. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, create, incur, assume or permit or suffer to exist any Lien on or with respect to any property of any kind owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Liens securing the Secured Obligations;

(b) Liens for Taxes which (i) are not then due or (ii) are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(c) statutory Liens (and rights of set-off) of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by applicable Requirements of Law, in each case incurred in the ordinary course of business (i) for amounts not yet overdue by more than 60 days, (ii) for amounts that are overdue by more than 60 days and that are being contested in good faith by appropriate proceedings, so long as any reserves or other appropriate provisions required by GAAP have
been made for any such contested amounts or (iii) for amounts with respect to which the failure to make payment would not reasonably be
expected to have a Material Adverse Effect;

(d) Liens granted or arising (i) in the ordinary course of business in connection with workers’ compensation, unemployment insurance
and other types of social security laws and regulations, (ii) in the ordinary course of business to secure the performance of tenders, statutory
obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds
and other similar obligations (exclusive of obligations for the payment of borrowed money), (iii) pursuant to pledges and deposits of Cash or
Cash Equivalents in the ordinary course of business securing (A) any liability for reimbursement or indemnification obligations of insurance
carriers providing property, casualty, liability or other insurance to the Borrower and its subsidiaries or (B) leases or licenses of property
(excluding IP Rights) otherwise permitted by this Agreement and (iv) to secure obligations in respect of letters of credit, bank guaranties, surety
bonds, performance bonds or similar instruments posted with respect to the items described in clauses (i) through (iii) above;

(e) Liens consisting of survey exceptions, easements, rights-of-way, restrictions, encroachments, servitudes for railways, sewers,
drains, gas and oil and other pipelines, gas and water mains, electric light and power and telecommunication, telephone or telegraph or cable
television conduits, poles, wires and cables, covenants, conditions, declarations, encroachments, zoning restrictions and other defects or
irregularities in title or environmental deed restrictions, in each case, which do not, in the aggregate, materially interfere with the ordinary
conduct of the business of the Borrower and/or its Restricted Subsidiaries, taken as a whole;

(f) Liens consisting of any (i) interest or title of a lessor or sub-lessor under any lease of real estate permitted hereunder, (ii) landlord
lien permitted by the terms of any lease, (iii) restriction or encumbrance to which the interest or title of such lessor or sub-lessor may be subject
or (iv) subordination of the interest of the lessee or sub-lessee under such lease to any restriction or encumbrance referred to in the preceding
clause (iii);

(g) Liens (i) solely on any Cash earnest money deposits and/or arising in connection with any escrow arrangement made by the
Borrower and/or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Investment
permitted hereunder and (ii) consisting of (A) an agreement to Dispose of any property in a Disposition permitted under Section 6.07 and/or
(B) the pledge of Cash as part of an escrow arrangement required in any Disposition permitted under Section 6.07;

(h) (i) purported Liens evidenced by the filing of UCC financing statements or similar financing statements under applicable
Requirements of Law relating solely to operating leases or consignment or bailee arrangements entered into in the ordinary course of business,
(ii) Liens arising from precautionary UCC financing statements or similar filings and (iii) any Lien relating to the sale of accounts receivable for
which a UCC financing statement or similar financing statement is required;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the
importation of goods;

(j) Liens in connection with any zoning, building, environmental or similar Requirements of Law or right reserved to or vested in any
Governmental Authority to control or regulate the use or dimensions of any real property or the structures thereon, including Liens in connection
with any condemnation or eminent domain proceeding or compulsory purchase order;

(k) Liens securing Indebtedness permitted pursuant to Section 6.01(a) (solely with respect to the permitted refinancing of (1) secured
Indebtedness permitted pursuant to Sections 6.01(a), (b), (i), (l).
and/or (bb) and (2) Indebtedness that is secured in reliance on Section 6.02(t) (provided that the granting of the relevant Lien shall be without duplication of any Lien outstanding under Section 6.02(t) such that the amount available under Section 6.02(t) shall be reduced by the amount secured by the applicable Lien granted in reliance on this clause (2)); provided that (i) no such Lien extends to any asset not covered by the Lien securing (or permitted to secure) the Indebtedness that is being refinanced (it being understood that individual financings of the type permitted under Section 6.01(l) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates), (ii) if the Lien securing the Indebtedness being refinanced was subject to intercreditor arrangements, then (A) the Lien securing any refinancing Indebtedness in respect thereof shall be subject to intercreditor arrangements that are not materially less favorable to the Secured Parties, taken as a whole, than the intercreditor arrangements governing the Lien securing the Indebtedness that is refinanced or (B) the intercreditor arrangements governing the Lien securing the relevant refinancing Indebtedness shall be set forth in an Intercreditor Agreement, (iii) except as permitted by another provision of this Section 6.02, no such Lien shall be senior in priority as compared to the Lien securing the Indebtedness being refinanced and (iv) subject to clauses (i) through (iii) above, any such Lien may be subject to an Intercreditor Agreement to the extent the Lien securing the Indebtedness being refinanced was permitted to be subject to an Intercreditor Agreement;

(i) Liens in existence on the Closing Date and any modification, replacement, refinancing, renewal or extension thereof; provided that any such Lien securing Indebtedness having an aggregate principal amount outstanding on the Closing Date in excess of $1,000,000 shall be described on Schedule 6.02; provided, further that (i) no such Lien extends to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 6.01 and (B) proceeds and products thereof, replacements thereof, accessions or additions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(l) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates) and (ii) any such modification, replacement, refinancing, renewal or extension of the obligations secured or benefited by such Liens, if constituting Indebtedness, is permitted by Section 6.01;

(m) Liens arising out of Sale and Lease-Back Transactions permitted under Section 6.07;

(n) Liens securing Indebtedness permitted pursuant to Section 6.01(l); provided that any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness and proceeds thereof, replacements, accessions or additions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(l) 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(m) on the relevant acquired assets or on the Capital Stock and assets of the relevant newly acquired Restricted Subsidiary and/or any future subsidiary of such Restricted Subsidiary (including, for the avoidance of doubt, any after-acquired property of any such newly acquired subsidiary and/or any such subsidiary of such subsidiary); provided that no such Lien (i) extends to or covers any other assets (other than the proceeds or products thereof, replacements thereof, accessions or additions thereto and improvements thereon) (it being understood that individual financings of the type permitted under Section 6.01(l) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates and (B) any such Lien may extend to after-acquired property of any such Person) or (ii) was created in contemplation of the applicable acquisition of assets or Capital Stock;

(p) (i) Liens that are contractual rights of setoff or netting relating to (A) the establishment of depositary relations with banks not granted in connection with the issuance of Indebtedness, (B) pooled
deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary, (C) purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business and (D) commodity trading or other brokerage accounts incurred in the ordinary course of business, (ii) Liens encumbering reasonable customary initial deposits and margin deposits, (iii) bankers Liens and rights and remedies as to Deposit Accounts, (iv) Liens of a collection bank arising under Section 4-208 of the UCC on items in the ordinary course of business, (v) Liens in favor of banking or other financial institutions arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution’s general terms and conditions, (vi) Liens on the proceeds of any Indebtedness incurred in connection with any transaction permitted hereunder, which proceeds have been deposited into an escrow account on customary terms to secure such Indebtedness pending the application of such proceeds to finance such transaction and (vii) any general banking Lien over any bank account arising in the ordinary course of business;

(q) Liens on assets owned by, and/or Capital Stock of, Restricted Subsidiaries that are not Loan Parties (including Capital Stock owned by such Persons) securing Indebtedness of Restricted Subsidiaries that are not Loan Parties permitted pursuant to Section 6.01;

(r) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of the Borrower and/or its Restricted Subsidiaries;

(s) Liens securing Indebtedness incurred in reliance on, and subject to the provisions set forth in, Section 6.01(u); provided that any Lien that is granted on the Collateral in reliance on this clause (s) shall be subject to an Intercreditor Agreement;

(t) Liens on assets securing Indebtedness or other obligations in an aggregate principal amount at any time outstanding not to exceed

(x) prior to the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $12,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, in each case, subject, in the case of any Lien on the Collateral, at the request of the relevant lender, to an Intercreditor Agreement;

(u) (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;

(v) (i) leases, subleases licenses or sublicenses (other than with respect to IP Rights) in the ordinary course of business which do not secure any Indebtedness and (ii) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its subsidiaries are located;

(w) Liens on Securities that are the subject of repurchase agreements constituting Investments permitted under Section 6.06 arising out of such repurchase transaction;

(x) Liens securing obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments permitted under Sections 6.01(c), (d), (f), (v) and (z);

(y) 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);

(z) Liens (i) in favor of any Loan Party and/or (ii) granted by any non-Loan Party in favor of any Restricted Subsidiary that is not a Loan Party, in the case of clauses (i) and (ii), securing intercompany Indebtedness permitted (or not restricted) under Sections 6.01 or 6.09;

(aa) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(bb) (i) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof and (ii) Liens on specific items of inventory or other goods and the proceeds thereof securing the relevant Person’s obligations in respect of documentary letters of credit or banker’s acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(cc) Liens securing (i) obligations of the type described in Section 6.01(e) and/or (ii) obligations of the type described in Section 6.01(p);

(dd) (i) Liens on Capital Stock of (A) joint ventures securing capital contributions to, or obligations of, such Persons and/or (B) Unrestricted Subsidiaries and (ii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements and agreements with respect to non-Wholly Owned Subsidiaries;

(ee) Liens on cash or Cash Equivalents arising in connection with the defeasance, discharge or redemption of Indebtedness;

(ff) Liens consisting of the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(gg) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(hh) Liens consisting of (i) any reservation, limitation, proviso and/or condition, if any, expressed in any original grant from the Crown of any real property or any interest therein and/or (ii) any right of expropriation, access, or user or any other right conferred or vested by statutes of Canada or any applicable province;

(ii) Liens that do not secure Indebtedness for borrowed money and are customary in the operation of the business of the Borrower and its Restricted Subsidiaries;

(jj) 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;

(kk) Liens arising in connection with escrow arrangements established in connection with the Transactions; and

(ll) Liens on Real Estate Assets of the Borrower or its Restricted Subsidiaries securing Indebtedness permitted under Section 6.01(ee).
Notwithstanding anything to the contrary in this Section 6.02, if the proceeds of any Indebtedness the Liens securing which are required or permitted to be subject to an Intercreditor Agreement are funded into Escrow, at the election of the Borrower, either (x) the relevant Intercreditor Agreement shall not be required to be entered into or become effective until the release and/or termination of the relevant Escrow arrangement, so long as, prior to such release and/or termination, the relevant Indebtedness is secured only by a Lien on such proceeds so funded into Escrow or (y) the property subject to the applicable Escrow arrangement is not required to be subject to the relevant Intercreditor Agreement. Furthermore, notwithstanding anything to the contrary in this Section 6.02, no Liens (other than Liens permitted pursuant to Section 6.02(ll)) on Real Estate Assets shall be permitted to secure any Indebtedness.

Section 6.03  [Reserved].

Section 6.04  Restricted Payments; Restricted Debt Payments.

(a) The Borrower shall not pay or make any Restricted Payment, except that:

(i) the Borrower may make, directly or indirectly, Restricted Payments to the extent necessary to permit any Parent Company:

(A) to pay general administrative and operating costs and expenses (including corporate overhead, legal or similar expenses and customary salary, bonus and other benefits payable to any director, officer, employee, member of management, manager and/or consultant of any Parent Company) and franchise Taxes, and similar fees and expenses required to maintain the organizational existence or qualification to do business of such Parent Company, in each case, which are reasonable and customary and incurred in the ordinary course of business, plus the amount of any reasonable and customary indemnification claim made by any director, officer, member of management, manager, employee and/or consultant of any Parent Company, in each case, to the extent attributable to the ownership or operations of any Parent Company and/or its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such amount, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries);

(B) any distribution to any Parent Company to pay the aggregate amount of consolidated, combined, unitary or similar group tax liabilities attributable to the income of the Borrower and its subsidiaries; provided that the amount of such payments does not exceed the amounts that the Borrower, and its subsidiaries would have been required to pay had the Borrower, and its subsidiaries been a stand-alone group for applicable tax purposes; provided that any amounts distributed in respect of any taxes attributable to the income of Unrestricted Subsidiaries may be made only to the extent that (x) such subsidiaries have made cash payments to any Loan Party or Restricted Subsidiary in at least the amount of such taxes or (y) the Borrower and its Restricted Subsidiaries with respect to making such a distribution are treated as deemed to have made an Investment in the amount of such taxes in the relevant Unrestricted Subsidiary and such Investment complies with the requirements of Section 6.06;

(C) to pay audit and other accounting and reporting expenses of any Parent Company to the extent such expenses are attributable to such Parent Company, the Borrower and its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such expenses, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries);
(D) for the payment of any insurance premium that is payable by or attributable to any Parent Company, the Borrower and/or its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such premium, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries);

(E) to pay (1) any fee and/or expense related to any debt and/or equity offering, investment or acquisition (whether or not consummated) and/or any expense of, or indemnification obligation in favor of, any trustee, agent, arranger, underwriter or similar role, and (2) Public Company Costs;

(F) to finance any Investment permitted under Section 6.06 (other than Section 6.06(t)) (provided that (x) any Restricted Payment under this clause (a)(i)(F) shall be made substantially concurrently with the closing of such Investment (except with respect to any deferred purchase price or other contingent consideration, the Restricted Payments in respect of which may be made after the closing of such Investment) and (y) the relevant Parent Company shall, promptly following the closing thereof, cause (I) all property acquired to be contributed to the Borrower or one or more of its Restricted Subsidiaries, or (II) the merger, consolidation or amalgamation of the Person formed or acquired into the Borrower or one or more of its Restricted Subsidiaries, in order to consummate such Investment in compliance with the applicable requirements of Section 6.06 as if the relevant Investment was undertaken as a direct Investment by the Borrower or the relevant Restricted Subsidiary); and

(G) to pay customary salary, bonus, severance and other benefits payable to current or former directors, officers, members of management, managers, employees or consultants of any Parent Company (or any Immediate Family Member of any of the foregoing) to the extent such salary, bonuses, severance and other benefits are attributable and reasonably allocated to the operations of the Borrower and/or its subsidiaries,

in each case, so long as such Parent Company applies the amount of any such Restricted Payment for such purpose;

(ii) the Borrower may pay (or make Restricted Payments to allow any Parent Company) to repurchase, redeem, retire or otherwise acquire or retire for value the Capital Stock of the Borrower (or any Parent Company) or any subsidiary held by any future, present or former employee, director, member of management, officer, manager or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company, the Borrower or any subsidiary:

(A) with Cash and Cash Equivalents (and including, to the extent constituting a Restricted Payment, amounts paid in respect of promissory notes issued to evidence any obligation to repurchase, redeem, retire or otherwise acquire or retire for value the Capital Stock of any Parent Company, the Borrower or any subsidiary held by any future, present or former employee, director, member of management, officer, manager or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company, the Borrower or any subsidiary) in an amount not to exceed, in any Fiscal Year, (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, in each case, which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding...
Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year);

(B) with the proceeds of any sale or issuance of, or any capital contribution in respect of, the Capital Stock of the Borrower or any Parent Company that are Not Otherwise Applied (to the extent such proceeds are contributed in respect of Qualified Capital Stock to the Borrower or any Restricted Subsidiary); and/or

(C) with the net proceeds of any key-man life insurance policy;

(iii) so long as no Event of Default exists, the Borrower may make Restricted Payments in an amount not to exceed (A) the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (iii)(A) and/or (B) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrower elects to apply to this clause (iii)(B);

(iv) the Borrower may make Restricted Payments:

(A) to make Cash payments (or to any Parent Company to enable such Parent Company to make Cash payments) in lieu of the issuance of fractional shares in connection with any dividend, split or combination thereof in connection with any Investment permitted hereunder or the exercise or vesting of warrants, options, restricted stock units or similar incentive interests or other securities convertible into or exchangeable for Capital Stock of the Borrower (or such Parent Company) or otherwise to honor a conversion requested by a holder thereof or

(B) consisting of (1) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former officers, directors, employees, members of management, managers or consultants of the Borrower, any subsidiary of the Borrower or Parent Company or any of their respective Immediate Family Members, (2) payments or other adjustments to outstanding Capital Stock in accordance with any management equity plan, stock option plan or any other similar employee benefit or incentive plan, agreement or arrangement in connection with any Restricted Payment and/or (3) repurchases of Capital Stock in consideration of the payments described in clauses (1) and/or (2) above, including demand repurchases, in connection with the exercise or vesting of stock options, restricted stock units or similar incentive interests;

(v) the Borrower may repurchase (or make Restricted Payments to any Parent Company to enable it to repurchase) Capital Stock upon the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock if such Capital Stock represents all or a portion of the exercise price of, or tax withholdings with respect to, such warrants, options or other securities convertible into or exchangeable for Capital Stock;

(vi) the Borrower may make Restricted Payments, the proceeds of which are applied (A) to effect the consummation of the Transactions and (B) to pay Transaction Costs;

(vii) the Borrower may make Restricted Payments to (i) redeem, repurchase, retire or otherwise acquire any (A) Capital Stock ("Treasury Capital Stock") of the Borrower and/or any Restricted Subsidiary or (B) Capital Stock of any Parent Company, in the case of each of subclauses (A) and (B), in exchange for, or out of the proceeds of the substantially concurrent sale (other than to the Borrower and/or any Restricted Subsidiary) of, Qualified Capital Stock of the
Borrower or any Parent Company to the extent any such proceeds are contributed to the capital of the Borrower and/or any Restricted Subsidiary in respect of Qualified Capital Stock ("Refunding Capital Stock") to the extent such proceeds are Not Otherwise Applied and (ii) declare and pay dividends on any Treasury Capital Stock out of the proceeds of the substantially concurrent sale (other than to the Borrower or a Restricted Subsidiary) of any Refunding Capital Stock;

(viii) 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/or Section 6.09 (other than Sections 6.09(d) and (i));

(ix) so long as no Event of Default exists, the Borrower may make Restricted Payments in an aggregate amount not to exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(x) so long as no Event of Default exists, the Borrower may make Restricted Payments so long as the Total Rent Adjusted Net Leverage Ratio, calculated on a Pro Forma Basis, would not exceed (i) prior to the consummation of an IPO, 3.50:1.00 as of the last day of the most recently ended Test Period and (ii) following the consummation of any IPO, 4.00:1.00 as of the last day of the most recently ended Test Period;

(xi) the Borrower may declare and make dividend payments or other Restricted Payments payable solely in the Capital Stock of the Borrower or of any Parent Company;

(xii) the Borrower may make Restricted Payments (other than in the form of Cash and Cash Equivalents) in connection with and/or relating to any internal reorganization or restructuring activities (including related to tax planning); provided that such activities do not result in any Capital Stock of the Borrower becoming an Excluded Asset;

(xiii) the Borrower may make payments or distributions to satisfy dissenters’ or appraisal rights, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of assets that complies with Section 6.07;

(xiv) Restricted Payments constituting any part of any PCT Reorganization Transaction shall be permitted;

(xv) following the consummation of the first IPO, the Borrower may (or may make Restricted Payments to any Parent Company to enable it to) make Restricted Payments with respect to any equity interests in an annual amount not to exceed an amount equal to 7.00% of the Net Proceeds received by or contributed to the Borrower from any IPO; and

(xvi) so long as no Event of Default exists, the Borrower may make Restricted Payments in an aggregate amount not to exceed $1,000,000 in any Fiscal Year to pay management fees and other fees and expenses to be paid to the Permitted Holders.

It is understood and agreed that, for purposes of this Section 6.04(a), any determination of the value of any asset other than Cash shall be made by the Borrower in good faith.

(b) The Borrower shall not, nor shall it permit any Restricted Subsidiary to make any voluntary prepayment in respect of principal outstanding of Restricted Debt, including any sinking fund or similar
deposit, on account of the voluntary prepayment, repurchase, purchase, redemption, retirement, acquisition, cancellation or termination of any Restricted Debt, in each case, more than one year prior to the scheduled maturity date thereof (collectively, “Restricted Debt Payments”), except:

(i) with respect to any purchase, defeasance, redemption, refinancing repurchase, repayment or other acquisition or retirement thereof made by exchange for, or out of the proceeds of, Indebtedness permitted by Section 6.01 that constitutes Restricted Debt;

(ii) as part of an applicable high yield discount obligation catch-up payment;

(iii) payments of regularly scheduled principal or regularly scheduled interest (including any penalty interest, if applicable) and payments of fees, expenses and indemnification obligations as and when due (other than payments that are prohibited by the subordination provisions thereof);

(iv) so long as no Event of Default exists, Restricted Debt Payments in an aggregate amount not to exceed (A) (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, plus (B) at the election of the Borrower, the amount of Restricted Payments then permitted to be made by the Borrower in reliance on Section 6.04(a)(ix) (it being understood that any amount utilized under this clause (B) to make a Restricted Debt Payment shall result in a reduction in the amount available under Section 6.04(a)(ix));

(v) (A) Restricted Debt Payments in exchange for, or with proceeds of any issuance of, Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower and/or any capital contribution in respect of Qualified Capital Stock of the Borrower in each case, that are Not Otherwise Applied, (B) Restricted Debt Payments as a result of the conversion of all or any portion of any Restricted Debt into Qualified Capital Stock of the Borrower or the Capital Stock of any Parent Company and (C) to the extent constituting a Restricted Debt Payment, payment-in-kind interest with respect to any Restricted Debt that is permitted under Section 6.01;

(vi) so long as no Event of Default exists, Restricted Debt Payments in an aggregate amount not to exceed (A) the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (vi)(A) and/or (B) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrower elects to apply to this clause (vi)(B); and

(vii) so long as no Event of Default exists, Restricted Debt Payments in an unlimited amount; provided that after giving effect thereto the Total Rent Adjusted Net Leverage Ratio, calculated on a Pro Forma Basis, would not exceed (i) prior to the consummation of an IPO, 3.75:1.00 as of the last day of the most recently ended Test Period and (ii) following the consummation of any IPO, 4.25:1.00 as of the last day of the most recently ended Test Period.

Section 6.05 Burdensome Agreements. Except as provided herein or in any other Loan Document, any document with respect to any Incremental Equivalent Debt and/or in any agreement with respect to any refinancing, renewal or replacement of any such Indebtedness that is permitted by Section 6.01, the Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, enter into or cause to exist any agreement (any such agreement, a “Burdensome Agreement”) restricting the ability of any Loan Party to create, permit or grant a Lien on any of its properties or assets to secure the Secured
Obligations (after giving effect to the applicable anti-assignment provisions of the UCC and/or any other applicable Requirement of Law), except restrictions:

(a) set forth in any agreement governing (i) Indebtedness of a Restricted Subsidiary that is not a Loan Party permitted by Section 6.01, (ii) Indebtedness permitted by Section 6.01 that is secured by a Permitted Lien if the relevant restriction applies only to the Person obligated under such Indebtedness and its Restricted Subsidiaries or the assets intended to secure such Indebtedness and (iii) Indebtedness permitted pursuant to clauses (j), (m), (p) (as it relates to Indebtedness in respect of clauses (a), (l), (r), (s), (t), (u) and/or (cc) of Section 6.01);

(b) arising under customary provisions restricting assignments, subletting or other transfers (including the granting of any Lien) contained in leases, subleases, licenses, sublicenses, joint venture agreements and other agreements entered into in the ordinary course of business;

(c) that are or were created by virtue of any Lien granted upon, transfer of, agreement to transfer or grant of, any option or right with respect to any assets or Capital Stock not otherwise prohibited under this Agreement;

(d) that are assumed in connection with any acquisition of property or the Capital Stock of any Person, so long as the relevant encumbrance or restriction relates solely to the Person and its subsidiaries (including the Capital Stock of the relevant Person or Persons) and/or property so acquired and was not created in connection with or in anticipation of such acquisition;

(e) set forth in any agreement for any Disposition of any Restricted Subsidiary (or all or substantially all of the assets thereof) that restricts the payment of dividends or other distributions or the making of cash loans or advances by such Restricted Subsidiary pending such Disposition;

(f) set forth in provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any class of Capital Stock of a Person other than on a pro rata basis;

(g) imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements;

(h) on Cash, other deposits or net worth or similar restrictions imposed by any Person under any contract entered into in the ordinary course of business or for whose benefit such Cash, other deposits or net worth or similar restrictions exist;

(i) set forth in documents which exist on the Closing Date;

(j) arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be incurred after the Closing Date if the relevant restrictions, taken as a whole, are not materially less favorable to the Lenders than the restrictions contained in this Agreement, taken as a whole (as determined in good faith by the Borrower);

(k) arising under or as a result of applicable Requirements of Law or the terms of any license, authorization, concession or permit;

(l) arising in any Hedge Agreement and/or any agreement or arrangement relating to any Banking Services and/or any other obligation of the type permitted under Section 6.01(e);
(m) relating to any asset (or all of the assets) of and/or the Capital Stock of the Borrower and/or any Restricted Subsidiary which is imposed pursuant to an agreement entered into in connection with any Disposition of such asset (or assets) and/or all or a portion of the Capital Stock of the relevant Person that is permitted or not restricted by this Agreement or that would result in the occurrence of the Termination Date;

(n) set forth in any agreement relating to any Permitted Lien that limits the right of the Borrower and/or any Restricted Subsidiary to Dispose of or encumber the assets subject thereto;

(o) customary subordination and/or subrogation provisions set forth in guaranty or similar documentation (not relating to Indebtedness for borrowed money) that is entered into in the ordinary course of business;

(p) any restriction created in connection with any factoring program implemented in the ordinary course of business, so long as in the case of any prohibition on Liens, the relevant restriction relates solely to assets subject to such factoring program and the Capital Stock of any Person participating in such factoring program; and/or

(q) imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of any contract, instrument or obligation referred to in clauses (a) through (p) above; provided that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Borrower, more restrictive with respect to such restrictions, taken as a whole, than those in existence prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 6.06 Investments. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, make or own any Investment in any other Person except:

(a) Cash or Investments that were Cash Equivalents at the time made;

(b) (i) Investments existing on the Closing Date in the Borrower or in any subsidiary, (ii) Investments made after the Closing Date among the Borrower and/or one or more Restricted Subsidiaries; provided that the aggregate outstanding amount of Investments by any Loan Party in any Restricted Subsidiary that is not a Loan Party in reliance on this Section 6.06(b)(ii) shall not exceed (x) prior to the consummation of an IPO, the greater of $2,500,000 and 10% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, (iii) any Investment made after the Closing Date among the Borrower and/or one or more Restricted Subsidiaries in connection with cash management and (iv) Investments in any Restricted Subsidiary in the form of any contribution or Disposition of the Capital Stock of any Person that is not a Loan Party; provided that, in the case of this clause (iv), (x) there is a bona fide business purpose for such contribution or Disposition or (y) such contribution or Disposition is not consummated solely for the purpose of obtaining a release of the Collateral in respect of the Capital Stock in such Person, in the case of the foregoing clauses (x) and (y), as determined in good faith by the Borrower;

(c) Investments (i) constituting deposits, prepayments, trade credits and/or credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts or (iii) made in distributors, suppliers, licensors and licensees, in each case, in the ordinary course of business or, in the case of clause (iii), to the extent necessary to maintain the ordinary course of supplies to the Borrower or any Restricted Subsidiary;
(d) (i) Investments in joint ventures in an aggregate outstanding amount not to exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; provided that the Capital Stock of such joint venture shall be Collateral, and (ii) so long as no Event of Default under Section 7.01(a), (f) or (g) exists, Investments in Unrestricted Subsidiaries in an aggregate outstanding amount not to exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(e) (i) Permitted Acquisitions and (ii) any Investment in any Restricted Subsidiary that is not a Loan Party in an amount required to permit such Restricted Subsidiary to directly, or indirectly through one or more other Restricted Subsidiaries, consummate a Permitted Acquisition, which amount is applied, by such Restricted Subsidiary, directly or indirectly, through one or more other Restricted Subsidiaries to consummate such Permitted Acquisition;

(f) (i) Investments existing on, or contractually committed to or contemplated as of, the Closing Date; provided that, to the extent the outstanding amount (or contractually committed or contemplated amount) of any such Investment on the Closing Date exceeds $1,000,000 such Investment is described on Schedule 6.06 and (ii) any modification, replacement, renewal or extension of any Investment described in clause (i) above so long as no such modification, renewal or extension increases the amount of such Investment except by the terms thereof or as otherwise permitted by this Section 6.06;

(g) Investments received in lieu of Cash in connection with any Disposition permitted by Section 6.07 or any other disposition of assets not constituting a Disposition;

(h) loans or advances to present or former employees, directors, members of management, officers, managers or consultants or independent contractors (or their respective Immediate Family Members) of any Parent Company, the Borrower, its subsidiaries and/or any joint venture to the extent permitted by Requirements of Law, in connection with such Person’s purchase of Capital Stock of any Parent Company or the Borrower, either (i) in an aggregate principal amount not to exceed $2,000,000 at any one time outstanding or (ii) so long as the proceeds of such loan or advance are substantially contemporaneously contributed (or deemed to have been contributed) to the Borrower for the purchase of such Capital Stock;

(i) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business;

(j) Investments consisting of (or resulting from) Indebtedness permitted under Section 6.01 (other than Indebtedness permitted under Sections 6.01(b) and (g)), Permitted Liens, Restricted Payments permitted under Section 6.04 (other than Section 6.04(a)(viii)), Restricted Debt Payments permitted by Section 6.04 and mergers, consolidations, amalgamations, liquidations, windings up, dissolutions or Dispositions permitted by Section 6.07 (other than Section 6.07(a) (if made in reliance on subclause (ii)(B) of the proviso thereto), Section 6.07(b)(ii) (if made in reliance on clause (B) therein) and Section 6.07(g));

(k) Investments (i) in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers and/or (ii) in the ordinary course of business and/or consistent with industry practice consisting of loans or advances made to distributors;
(l) Investments (including debt obligations and Capital Stock) received (i) in connection with the bankruptcy or reorganization of any Person, (ii) in settlement of delinquent obligations of, or other disputes with, customers, suppliers and other account debtors arising in the ordinary course of business, (iii) upon foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment and/or (iv) as a result of the settlement, compromise, resolution of litigation, arbitration or other disputes;

(m) loans and advances of payroll payments or other compensation (including deferred compensation) to present or former employees, directors, members of management, officers, managers or consultants of the Borrower or any Parent Company (to the extent such payments or other compensation relate to services provided to such Parent Company (but excluding, for the avoidance of doubt, the portion of any such amount, if any, attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries)), the Borrower and/or any subsidiary in the ordinary course of business;

(n) Investments to the extent that payment therefor is made with Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower or any Restricted Subsidiary that are Not Otherwise Applied, in each case, to the extent not resulting in a Change of Control; provided that in connection with any such Investment, any payment (or portion thereof) not made with Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower or any Restricted Subsidiary must otherwise be permitted under this Section 6.06;

(o) (i) Investments of any Restricted Subsidiary acquired after the Closing Date, or of any Person acquired by, or merged into or consolidated or amalgamated with, the Borrower or any Restricted Subsidiary after the Closing Date, in each case as part of an Investment otherwise permitted by this Section 6.06 to the extent that such acquired Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of the relevant acquisition, merger, amalgamation or consolidation and (ii) any modification, replacement, renewal or extension of any Investment permitted under clause (i) of this Section 6.06 so long as no such modification, replacement, renewal or extension thereof increases the original amount of such Investment, except as otherwise permitted by this Section 6.06;

(p) Investments made in connection with the Transactions;

(q) Investments made after the Closing Date by the Borrower and/or any of its Restricted Subsidiaries in an aggregate amount at any time outstanding not to exceed:

(i) so long as no Event of Default under Section 7.01(a), (f) or (g) exists, (A) (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, plus (B) at the election of the Borrower, the amount of Restricted Payments then permitted to be made by the Borrower in reliance on Section 6.04(a)(ix) (it being understood that any amount utilized under this clause (B) to make an Investment shall result in a reduction in the amount available under Section 6.04(a)(ix)), plus (C) at the election of the Borrower, the amount of Restricted Debt Payments then permitted to be made by the Borrower or any Restricted Subsidiary in reliance on Section 6.04(b)(iv)(A) (it being understood that any amount utilized under this clause (C) to make an Investment shall result in a reduction in the amount available under Section 6.04(b)(iv)(A)), plus
(ii) in the event that (A) the Borrower or any of its Restricted Subsidiaries makes any Investment after the Closing Date in any Person that is not a Restricted Subsidiary and (B) such Person subsequently becomes a Restricted Subsidiary, an amount equal to 100% of the fair market value of such Investment as of the date on which such Person becomes a Restricted Subsidiary;

(r) so long as no Event of Default Exists, Investments made after the Closing Date by the Borrower and/or any of its Restricted Subsidiaries in an aggregate outstanding amount not to exceed (i) the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (r)(i) and/or (ii) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrower elects to apply to this clause (r)(ii);

(s) (i) Guarantees of leases (other than Capital Leases) or of other obligations of the Borrower and/or any Restricted Subsidiary not constituting Indebtedness and (ii) Guarantees of the lease obligations of suppliers, customers, franchisees and licensees of the Borrower and/or its Restricted Subsidiaries, in each case, in the ordinary course of business in an aggregate outstanding principal amount not to exceed the greater of $1,500,000 and 5% of Consolidated Adjusted EBITDA;

(t) Investments in any Parent Company in amounts and for purposes for which Restricted Payments to such Parent Company are permitted under Section 6.04(a) (other than Section 6.04(a)(i)(F)); provided that any Investment made as provided above in lieu of any such Restricted Payment shall reduce availability under the applicable Restricted Payment basket under Section 6.04(a);

(u) Investments in Similar Businesses in an aggregate outstanding amount not to exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(v) Investments in the Borrower and/or anyRestricted Subsidiary in connection with internal reorganizations and/or restructurings and/or activities related to tax planning; provided that, after giving effect to any such reorganization, restructuring or activity, in the good faith determination of the Borrower, neither the Loan Guaranty, taken as a whole, nor the security interest of the Administrative Agent in the Collateral, taken as a whole, is materially impaired;

(w) Investments under Derivative Transactions of the type permitted under Section 6.01(p);

(x) 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;

(y) 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;

(z) Investments in the Borrower, any Restricted Subsidiary and/or joint venture in connection with intercompany cash management arrangements and related activities in the ordinary course of business;

(aa) so long as no Event of Default under Section 7.01(a), (f) or (g) exists, any Investment so long as, after giving effect thereto on a Pro Forma Basis, the Total Rent Adjusted Net Leverage Ratio does not exceed (i) prior to the consummation of an IPO, 4.00:1.00 as of the last day of the most recently ended
Test Period and (ii) following the consummation of any IPO, 4.50:1.00 as of the last day of the most recently ended Test Period;

(bb) any Investment made or committed to be made by any Unrestricted Subsidiary prior to the date on which such Unrestricted Subsidiary is designated as a Restricted Subsidiary so long as the relevant Investment was not made or committed to be made in contemplation of the designation of such Unrestricted Subsidiary as a Restricted Subsidiary;

(cc) Investments consisting of the licensing, sublicensing or contribution of IP Rights, including pursuant to joint marketing, collaboration or joint development arrangements with other Persons in the ordinary course of business;

(dd) any loan and/or advance to any Parent Company not in excess of the amount (after giving effect to any other loan, advance or Restricted Payment in respect thereof) of Restricted Payments that are permitted to be made to such Parent Company in accordance with Section 6.04(a)(i), such Investment being treated for purposes of the applicable provision of Section 6.04(a), including any limitation, as a Restricted Payment made pursuant to such clause;

(ee) Investments in the ordinary course of business to secure performance of operating leases and other contractual obligations that do not constitute Indebtedness;

(ff) Investments consisting of prepaid expenses, negotiable instruments held for collection and lease, utility and workers’ compensation, performance and other similar deposits;

(gg) Investments in receivables owing to the Borrower and/or any Restricted Subsidiary in the ordinary course of business on customary trade terms, including such concessionary trade terms as the Borrower or the relevant Restricted Subsidiary may deem reasonable under the applicable circumstances;

(hh) any contribution to a “rabbi” trust for the benefit of any employee, director, consultant, independent contractor or other service provider or any other grantor trust;

(ii) Investments in franchisees in an aggregate outstanding amount not to exceed the greater of $2,500,000 and 10% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, in which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year); and/or

(jj) Investments made in connection with any PCT Reorganization Transaction.

Notwithstanding the foregoing, it is understood and agreed that this Section 6.06 shall not permit (x) an IP Separation Transaction or (y) an Investment by the Borrower or any Restricted Subsidiary in the form of a contribution of any Material Intellectual Property to any Unrestricted Subsidiary.

Section 6.07 Fundamental Changes; Disposition of Assets. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, merge, consolidate, amalgamate, or liquidate, wind up or dissolve themselves (or suffer any liquidation or dissolution), or make any voluntary Disposition of assets outside the ordinary course of business having a fair market value in excess of $2,000,000 in any single transaction or series of related transactions (including, in each case, pursuant to a Delaware LLC Division), except:

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(a) the Borrower or any Subsidiary Guarantor may be merged, consolidated or amalgamated with another Person or, if applicable, effect a Delaware LLC Division, or any Restricted Subsidiary may be merged, consolidated or amalgamated with or into the Borrower or any Restricted Subsidiary or, if applicable, effect a Delaware LLC Division; provided that:

   (i) in the case of any such merger, consolidation or amalgamation with or into the Borrower or any Delaware LLC Division relating to the Borrower, (A) the Borrower shall be the continuing or surviving Person or (B) if the Person formed by or surviving any such merger, consolidation, amalgamation or Delaware LLC Division is not the Borrower (any such Person, the “Successor Borrower”), (1) the Successor Borrower shall be an entity organized or existing under the law of the US, any state thereof or the District of Columbia, (2) the Successor Borrower shall expressly assume the Obligations of the Borrower in a manner reasonably satisfactory to the Administrative Agent and (3) except as the Administrative Agent may otherwise agree, each Guarantor, unless it is the other party to such merger, consolidation or amalgamation, shall have executed and delivered a reaffirmation agreement with respect to its obligations under the Loan Guaranty and the other Loan Documents; it being understood and agreed that if the foregoing conditions under clauses (1) through (3) are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents, and

   (ii) in the case of any such merger, consolidation or amalgamation with or into any Subsidiary Guarantor or any Delaware LLC Division relating to any Subsidiary Guarantor, either (A) the Borrower or a Subsidiary Guarantor shall be the continuing or surviving Person or the continuing or surviving Person (or, in the case of an amalgamation, the Person formed as a result thereof) shall expressly assume the obligations of such Subsidiary Guarantor in a manner reasonably satisfactory to the Administrative Agent or (B) the relevant transaction shall be treated as an Investment and shall comply with Section 6.06;

(b) Dispositions (including of Capital Stock) among the Borrower and/or any Restricted Subsidiary (upon voluntary liquidation or otherwise); provided that if the relevant Disposition is to a Restricted Subsidiary that is not a Loan Party, the relevant transaction shall be treated as an Investment and shall comply with Section 6.06;

(c) (i) the liquidation, dissolution or Delaware LLC Division of any Restricted Subsidiary if the Borrower determines in good faith that (A) such liquidation, dissolution or Delaware LLC Division is in the best interests of the Borrower and (B) is not materially disadvantageous to the Lenders (taken as a whole) and (ii) the Borrower or any Restricted Subsidiary receives the assets (if any) of the relevant liquidated, dissolved or divided Restricted Subsidiary; provided that in the case of any liquidation, dissolution or Delaware LLC Division of any Loan Party that results in a distribution of assets to any Restricted Subsidiary that is not a Loan Party, such distribution shall be treated as an Investment and shall comply with Section 6.06 (other than in reliance on clause (j) thereof); (ii) any merger, amalgamation, dissolution, liquidation, consolidation or Delaware LLC Division of any Loan Party that results in a distribution of assets to any Restricted Subsidiary that is not a Loan Party, such distribution shall be treated as an Investment and shall comply with Section 6.06 (other than in reliance on clause (j) thereof); (ii) any merger, amalgamation, dissolution, liquidation, consolidation or Delaware LLC Division, the purpose of which is to effect (A) any Disposition otherwise permitted under this Section 6.07 (other than clause (a), clause (b) or this clause (c)) or (B) any Investment permitted under Section 6.06 (other than Section 6.06(j)); and (iii) the conversion of the Borrower or any Restricted Subsidiary into another form of entity, so long as such conversion does not, in the good faith determination of the Borrower, adversely affect the value of the Loan Guaranty or Collateral, if any;

(d) (i) Dispositions of inventory or equipment or immaterial assets in the ordinary course of business (including on an intercompany basis) and (ii) the leasing or subleasing of real property in the ordinary course of business;
(e) Dispositions of surplus, obsolete, used or worn out property or other property that, in the good faith judgment of the Borrower, is (i) no longer useful in its business (or in the business of any Restricted Subsidiary of the Borrower) or (ii) otherwise economically impracticable to maintain, including any property abandoned in connection with the termination of any lease;

(f) Dispositions of Cash and/or Cash Equivalents and/or other assets that were Cash Equivalents when the relevant original Investment was made;

(g) Dispositions, mergers, amalgamations, consolidations or conveyances that constitute (or would result in) (i) Investments permitted pursuant to Section 6.06 (other than Section 6.06(j)), (ii) Permitted Liens and (iii) Restricted Payments permitted by Section 6.04(a) (other than Section 6.04(a)(viii));

(h) Dispositions for fair market value; provided that:

(i) with respect to any such Disposition (other than any Permitted Asset Swap) with a purchase price in excess of (x) prior to the consummation of an IPO, the greater of $1,250,000 and 5% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $2,500,000 and 10% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, at least 75% of the consideration for such Disposition (other than the portion of any such Disposition consisting of a Permitted Asset Swap) shall consist of Cash or Cash Equivalents;

(ii) for purposes of the 75% Cash consideration requirement described immediately above:

(A) the amount of any Indebtedness or other liabilities (other than Indebtedness or other liabilities that are subordinated to the Obligations or that are owed to the Borrower or any Restricted Subsidiary) of the Borrower or any Restricted Subsidiary (as shown on such Person’s most recent balance sheet or statement of financial position (or in the notes thereto)) that are assumed by the transferee of any such assets (or that are otherwise terminated or cancelled in connection with the transaction with such transferee) and for which the Borrower and/or its applicable Restricted Subsidiary have been validly released by all relevant creditors in writing,

(B) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such Disposition,

(C) any Security received by the Borrower or any Restricted Subsidiary from such transferee that will be converted by such Person into Cash or Cash Equivalents (to the extent of the Cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition, and

(D) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (D) that is at that time outstanding, not in excess of (x) prior to the consummation of an IPO, the greater of $2,500,000 and 10% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period,
in each case, shall be deemed to be Cash; and

(iii) the amount of Dispositions made pursuant to this clause (h), together with the amount of Dispositions made pursuant to Section 6.07(z) below, does not exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period in any Fiscal Year, which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year);

(i) Dispositions to the extent that (i) the relevant property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of the relevant Disposition are promptly applied to the purchase price of such replacement property;

(j) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, buy/sell arrangements between joint venture or similar parties set forth in the relevant joint venture arrangements and/or similar binding arrangements;

(k) Dispositions, discounting or forgiveness of notes receivable or accounts receivable in the ordinary course of business (including to insurers which have provided insurance as to the collection thereof) or in connection with the collection or compromise thereof (including sales to factors);

(l) Dispositions and/or terminations of leases, subleases, licenses or sublicenses, (i) the Disposition or termination of which will not materially interfere with the business of the Borrower and its Restricted Subsidiaries (taken as a whole) or (ii) which relate to closed facilities or the discontinuation of any product line;

(m) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business;

(n) Dispositions of property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding);

(o) Dispositions or consignments of equipment, inventory or other assets (including leasehold interests in real property) with respect to facilities that are temporarily not in use, held for sale or closed;

(p) Dispositions of non-core (as determined by the Borrower in good faith) assets acquired in connection with any acquisition or other Investment permitted hereunder and sales of Real Estate Assets acquired in any acquisition or other Investment permitted hereunder; provided that no Event of Default under Section 7.01(a), (f) or (g) exists on the date on which the definitive agreement governing the relevant Disposition is executed;

(q) exchanges or swaps, including transactions covered by Section 1031 of the Code (or any comparable provision of any foreign jurisdiction), of assets so long as any such exchange or swap is made for fair value (as determined by the Borrower in good faith) for like assets (including Related Business Assets);
(r) Dispositions of assets that do not constitute Collateral for fair market value;

(s) (i) any Disposition or non-exclusive licensing, sublicensing and/or cross-licensing arrangement involving any IP Right of the Borrower or any Restricted Subsidiary in the ordinary course of business, and (ii) any Disposition, abandonment, cancellation or lapse of any IP Right, or any issuance or registration, or application for issuance or registration, of any IP Right, which, in the good faith determination of the Borrower is not material to the conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, or is no longer economical to maintain in light of its use;

(t) any termination or unwind of Derivative Transactions or Banking Services Obligations;

(u) Dispositions of Capital Stock of, or sales of Indebtedness or other Securities of, Unrestricted Subsidiaries;

(v) Dispositions of Real Estate Assets and related assets in the ordinary course of business in connection with relocation activities for directors, officers, employees, members of management, managers or consultants of any Parent Company, the Borrower and/or any Restricted Subsidiary;

(w) Dispositions made to comply with any order of any Governmental Authority or any applicable Requirement of Law (including as a condition to, or in connection with, the consummation of the Transactions);

(x) any merger, consolidation, Disposition or conveyance the purpose of which is to reincorporate or reorganize (i) any Restricted Subsidiary in another jurisdiction in the US and/or (ii) any Foreign Subsidiary in the US or any other jurisdiction;

(y) any sale of motor vehicles and information technology equipment purchased at the end of an operating lease and resold thereafter;

(z) Dispositions involving assets having a fair market value in the aggregate, together with the amount of Dispositions made pursuant to clause (h) above, of not more than (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period in any Fiscal Year, which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year);

(aa) Dispositions in connection with reorganizations and/or restructurings and/or activities related to tax planning; provided that, after giving effect to any such reorganization, restructuring or activity, in the good faith determination of the Borrower, neither the Loan Guaranty, taken as a whole, nor the security interest of the Administrative Agent in the Collateral, taken as a whole, is materially impaired;

(bb) Dispositions of assets in connection with the closing or sale of an office in the ordinary course of business of the Borrower and the Restricted Subsidiaries, which consist of leasehold interests in the premises of such office, the equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such office; provided that any such sale shall be at a commercially reasonable price and on commercially reasonable terms in a bona fide arm’s-length transaction;
(cc) Sale and Lease-Back Transactions; provided that (i) the fair market value of all property so Disposed of after the Closing Date shall not exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period and (ii) the Borrower shall be in compliance with Section 6.10(a), Section 6.10(b) and Section 6.10(c) on a Pro Forma Basis;

(dd) so long as no Event of Default exists, Dispositions of any asset acquired with the proceeds of an Available Excluded Contribution Amount;

(ee) the granting of franchises with respect to restaurants (and Dispositions of property in connection therewith) made to franchisees meeting the Borrower’s reasonable qualifications; provided that (A) such Dispositions are made for fair market value, (B) any such granting of a franchise with respect to a restaurant then owned by any Loan Party shall be subject to the absence of any Event of Default on the date on which such Disposition is consummated, (C) the Borrower is in compliance with Section 6.10(a), Section 6.10(b) and Section 6.10(c) on a Pro Forma Basis, at the Borrower’s election, either (1) at the time of the execution of the definitive agreement governing such Disposition or (2) on the date on which such Disposition is consummated and (D) the aggregate amount of Dispositions made pursuant to this clause (kk) does not exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; and

(ff) any transaction in connection with any PCT Reorganization Transaction.

It is understood and agreed that (a) to the extent that any Collateral is Disposed of as permitted by this Section 6.07, such Collateral shall be Disposed of free and clear of the Liens created by the Loan Documents, which Liens shall be automatically released upon the consummation of such Disposition, and the Administrative Agent shall be authorized to take, and shall take, any action reasonably requested by the Borrower in order to effect the foregoing; provided that in the case of a Disposition made to any Loan Party, the relevant transferred assets shall become part of the Collateral of the transferee Loan Party (except to the extent such assets constitute Excluded Assets), (b) any determination of the fair market value of any asset other than Cash for purposes of this Section 6.07 shall be made by the Borrower in good faith at its election either (1) at the time of the execution of the definitive agreement governing such Disposition or (2) the date on which such Disposition is consummated and (c) notwithstanding the foregoing provisions of this Section 6.07, this Section 6.07 shall not permit (i) an IP Separation Transaction or (ii) a Disposition by the Borrower or any Restricted Subsidiary of any Material Intellectual Property to any Unrestricted Subsidiary.

Section 6.08 Amendments of or Waivers with Respect to Restricted Debt. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, amend or otherwise modify the subordination terms set forth in the documentation governing any Restricted Debt if the effect of such amendment or modification, together with all other amendments or modifications made, is, in the good faith determination of the Borrower, materially adverse to the interests of the Lenders (in their capacities as such); provided that, for purposes of clarity, it is understood and agreed that the foregoing limitation shall not otherwise prohibit any Refinancing Indebtedness or any other replacement, refinancing, amendment, supplement, modification, extension, renewal, restatement or refunding of any Restricted Debt, in each case, that is otherwise permitted to be incurred under this Agreement in respect thereof.

Section 6.09 Transactions with Affiliates. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, consummate any transaction with any Affiliate thereof that involves payment in excess of $4,800,000 and 20% of Consolidated Adjusted EBITDA as of the last day of the most recently
ended Test Period, on terms that are not at least as favorable (as determined by the Borrower in good faith at the time of the execution of the definitive agreement relating thereto) to the Borrower or such Restricted Subsidiary, as the case may be, as those that might be obtained at the time in a comparable arm’s-length transaction from a Person who is not an Affiliate (or, if in the good faith judgment of Borrower, there is no comparable transaction on the basis of which to make the comparison described above, such transaction is fair to the Borrower or its applicable Restricted Subsidiary from a financial point of view); provided that the foregoing requirement shall not apply to:

(a) any transaction between or among the Borrower and/or one or more Restricted Subsidiaries (or any entity that becomes a Restricted Subsidiary as a result of such transaction) to the extent permitted or not restricted by this Agreement (it being understood this clause (a) shall not permit any Restricted Subsidiary that is not a Wholly-Owned Subsidiary to make a distribution to, or repurchase of its Capital Stock from, any Affiliate (other than the Borrower and/or one or more Restricted Subsidiaries) to the extent the share of the foregoing made or paid to the Borrower or any of the Restricted Subsidiaries is not at least pro rata to the percentage of such class of Capital Stock in such Restricted Subsidiary that is not a Wholly-Owned Subsidiary owned by the Borrower and its other Restricted Subsidiaries);

(b) any issuance, sale or grant of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of employment arrangements, stock options and stock ownership plans approved by the board of directors (or equivalent governing body) of any Parent Company or of the Borrower or any Restricted Subsidiary;

(c) (i) any collective bargaining, employment or severance agreement or compensatory (including profit sharing) arrangement (including salary or guaranteed payment and bonuses) entered into by the Borrower or any of its Restricted Subsidiaries with their respective current or former officers, directors, members of management, managers, employees, consultants or independent contractors or those of any Parent Company, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Capital Stock pursuant to put/call rights or similar rights with current or former officers, directors, members of management, managers, employees, consultants or independent contractors and (iii) any transaction pursuant to any employee compensation, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers current or former officers, directors, members of management, managers, employees, consultants or independent contractors or any employment contract or arrangement;

(d) (i) transactions permitted by Sections 6.04 and 6.06 and (ii) issuances of Capital Stock, equity contributions and issuances and incurrences of Indebtedness not otherwise restricted by this Agreement;

(e) transactions in existence on the Closing Date and any amendment, modification or extension thereof to the extent such amendment, modification or extension, taken as a whole, is not (i) materially adverse to the Lenders or (ii) more disadvantageous in any material respect to the Lenders than the relevant transaction in existence on the Closing Date;

(f) the Transactions and the payment of Transaction Costs;

(g) customary compensation to, and reimbursement of expenses of, Affiliates in connection with financial advisory, financing, underwriting or placement services or in respect of other investment banking activities and other transaction fees, which payments are approved by the majority of the members of the board of directors (or similar governing body) or a majority of the disinterested members of the board of directors (or similar governing body) of the Borrower in good faith;
(h) Guarantees permitted by Section 6.01 or Section 6.06;

(i) transactions that are otherwise permitted (or not restricted) under Article VI;

(j) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, members of the board of directors (or similar governing body), officers, employees, members of management, managers, consultants and independent contractors of the Borrower and/or any of its Restricted Subsidiaries in the ordinary course of business and, in the case of payments to such Person in such capacity on behalf of any Parent Company, to the extent attributable to the operations of the Borrower or its subsidiaries;

(k) transactions with customers, clients, suppliers, joint ventures, purchasers or sellers of goods or services or providers of employees or other labor entered into in the ordinary course of business, which are (i) fair to the Borrower and/or its applicable Restricted Subsidiary in the good faith determination of the Borrower (or its board of directors (or similar governing body) or senior management) or (ii) on terms at least as favorable as might reasonably be obtained from a Person other than an Affiliate;

(l) the payment of reasonable out-of-pocket costs and expenses related to registration rights and customary indemnities provided to shareholders under any shareholder agreement;

(m) any intercompany loan made by the Borrower to any Restricted Subsidiary;

(n) any transaction (or series of related transactions) in respect of which the Borrower delivers to the Administrative Agent a letter addressed to the board of directors (or equivalent governing body) of the Borrower from an accounting, appraisal or investment banking firm of nationally recognized standing stating that such transaction or transactions, as applicable, is or are on terms that either (i) are no less favorable to the Borrower or the applicable Restricted Subsidiary than might be obtained at the time in a comparable arm’s length transaction from a Person who is not an Affiliate or (ii) fair to the Borrower or the relevant Restricted Subsidiary from a financial point of view;

(o) any issuance, sale or grant of securities or other payments, awards or grants in Cash, securities or otherwise pursuant to, or the funding of employment arrangements, stock options and stock ownership or incentive plans approved by a majority of the members of the board of directors (or similar governing body) or a majority of the disinterested members of the board of directors (or similar governing body) of the Borrower in good faith;

(p) any payment pursuant to any tax sharing agreement or arrangement (whether written or as a matter of practice), that would otherwise be permitted as a distribution pursuant to Section 6.04(a);

(q) the licensing of any IP Rights in the ordinary course of business to permit the commercial use of IP Rights between or among the Borrower and/or any subsidiary and/or Affiliate thereof (other than an Unrestricted Subsidiary);

(r) any transaction (or series of related transactions) approved by a majority of the disinterested directors (or members of any similar governing body) of the Borrower or an applicable Parent Company;

(s) any investment by any Permitted Holder or Parent Company in securities or Indebtedness of the Borrower and/or any Guarantor;
Section 6.10  Financial Covenants.

(a)  **Total Rent Adjusted Net Leverage Ratio**. On the last day of any Test Period (commencing with the Test Period ending December 26, 2021), the Borrower shall not permit the Total Rent Adjusted Net Leverage Ratio to be greater than (A) from the Test Period ending on December 26, 2021 to and including the Test Period ending on December 25, 2022, 6.50:1.00, (B) from the Test Period ending on April 16, 2023 to and including the Test Period ending on December 31, 2023, 5.75:1.00, and (C) from the Test Period ending on April 21, 2024 and each Test Period ending thereafter, 5.00:1.00.

(b)  **Fixed Charge Coverage Ratio**. On the last day of any Test Period (commencing with the Test Period ending December 26, 2021), the Borrower shall not permit the Fixed Charge Coverage Ratio to be less than (A) from the Test Period ending on December 26, 2021 to and including the Test Period ending on December 25, 2022, 1.15:1.00 and (B) from the Test Period ending on April 16, 2023 and each Test Period ending thereafter, 1.20:1.00.

(c)  **Liquidity**. On the last day of any Test Period (commencing with the Test Period ending December 26, 2021), the Borrower shall not permit Liquidity to be less than $15,000,000.

(d)  Notwithstanding anything to the contrary in this Agreement (including Article VII), upon any failure by the Borrower to comply with Section 6.10(a), Section 6.10(b) and/or Section 6.10(c) above for the Test Period ending on the last day of any Fiscal Quarter, the Borrower shall have the right (the "Cure"
"Cure Right") at any time during such Fiscal Quarter or thereafter until the date that is 15 Business Days after the date on which financial statements for such Fiscal Quarter are required to be delivered pursuant to Section 5.01(a) or (b), as applicable, to issue Qualified Capital Stock or other equity (such other equity to be on terms reasonably acceptable to the Administrative Agent) for Cash or otherwise receive Cash contributions in respect of its Qualified Capital Stock or other equity (such other equity to be on terms reasonably acceptable to the Administrative Agent) (the “Cure Amount”), and thereupon the Borrower’s compliance with Section 6.10(a), Section 6.10(b) and/or Section 6.10(c) shall be recalculated giving effect to (x) a pro forma increase in the amount of Consolidated Adjusted EBITDA in an amount equal to the Cure Amount (notwithstanding the absence of a related addback in the definition of “Consolidated Adjusted EBITDA”) solely for the purpose of determining compliance with Section 6.10(a) and/or Section 6.10(b) and (y) to increase Liquidity on a dollar-for-dollar basis solely for the purposes of determining compliance with Section 6.10(c), as applicable, as of the end of such Fiscal Quarter and for applicable subsequent periods that include such Fiscal Quarter. If, after giving effect to the foregoing recalculations (but not, for the avoidance of doubt, taking into account any immediate repayment of Indebtedness in connection therewith), the requirements of Section 6.10(a), Section 6.10(b) and/or Section 6.10(c), as applicable, would be satisfied, then the requirements of Section 6.10(a), Section 6.10(b) and/or Section 6.10(c), as applicable, shall be deemed to have been satisfied as of the end of the relevant Fiscal Quarter (and Test Period) with the same effect as though there had been no failure to comply therewith at such date. Notwithstanding anything herein to the contrary:

(i) in each four consecutive Fiscal Quarter period there shall be at least two Fiscal Quarters in which the Cure Right is not exercised (it being understood that, subject to clause (ii), the Cure Right may be exercised in consecutive Fiscal Quarters),

(ii) during the term of this Agreement, the Cure Right shall not be exercised more than five times (it being understood and agreed that the exercise of a Cure Right in any Fiscal Quarter with respect to any failure to comply with Section 6.10(a), Section 6.10(b) and Section 6.10(c) shall constitute a single exercise of the Cure Right),

(iii) the Cure Amount shall be no greater than the amount required for the purpose of complying with Section 6.10(a), Section 6.10(b) and/or Section 6.10(c), as applicable,

(iv) there shall be no pro forma or other reduction of the amount of Indebtedness by the amount of any Cure Amount for purposes of determining compliance with Section 6.10(a), Section 6.10(b) or Section 6.10(c) for the Fiscal Quarter in respect of which the Cure Right was exercised (other than, with respect to any future period, to the extent of any portion of such Cure Amount that is actually applied to prepay Indebtedness (including by way of buyback or repurchase)),

(v) any pro forma adjustment to Consolidated Adjusted EBITDA resulting from any Cure Amount shall be disregarded for purposes of determining (A) whether any financial ratio-based condition to the availability of any carve-out set forth in Article VI of this Agreement has been satisfied or (B) the Applicable Rate or the Commitment Fee Rate, in each case during each Fiscal Quarter in which the pro forma adjustment applies, and

(vi) no Revolving Lender or Issuing Bank shall be required to make any Revolving Loan or issue, amend or increase the face amount of any Letter of Credit from and after the date on which a Compliance Certificate demonstrating a failure to comply with Section 6.10(a), Section 6.10(b) or Section 6.10(c) for the Test Period ending on the last day of any Fiscal Quarter is (or would be required to be) delivered pursuant to Section 5.01(c) until the date on which the Borrower receives the relevant Cure Amount.
ARTICLE VII
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 Restricted Subsidiary to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness for borrowed money of the Borrower or such Restricted Subsidiary (other than (x) Indebtedness referred to in clause (a) above and (y) intercompany Indebtedness) with an individual outstanding principal amount exceeding the Threshold Amount, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by the Borrower or any Restricted Subsidiary with respect to any other term of (A) one or more items of third-party Indebtedness for borrowed money of the Borrower or such Restricted Subsidiary (other than (x) Indebtedness referred to in clause (a) above and (y) intercompany Indebtedness) with an individual outstanding principal amount exceeding the Threshold Amount or (B) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness (other than, for the avoidance of doubt, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of the relevant Hedge Agreement which are not the result of any default thereunder by the Borrower or any Restricted Subsidiary), in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (with the giving of notice, if required) such Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; provided that (I) clause (ii) of this paragraph (b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property securing such Indebtedness if such sale or transfer is permitted hereunder, (II) any failure described under clauses (i) or (ii) above is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to this Article VII and (III) it is understood and agreed that the occurrence of any event described in this clause (b) that would, prior to the expiration of any applicable grace period, permit the holder or holders of the relevant Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (with the giving of notice, if required) such Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be, will not result in a Default or Event of Default under this Agreement prior to the expiration of such grace period; or

(c) Breach of Certain Covenants. Failure of any Loan Party, as required by the relevant provision, to perform or comply with Section 5.01(d)(i), Section 5.02 (as it applies to the preservation of the existence of the Borrower), or Article VI; provided that,

(i) any breach of Section 6.10(a), Section 6.10(b) or Section 6.10(c) is subject to cure as provided in Section 6.10(d); and

(ii) no Default or Event of Default may arise under Section 6.10(a), Section 6.10(b) or Section 6.10(c) until the 15th Business Day after the date on which financial statements are required to be delivered for the relevant Fiscal Quarter under Sections 5.01(a) or (b), as applicable (unless
the Cure Right has previously been exercised in excess of the aggregate cap on Cure Rights contemplated by Section 6.10(d) over the life of this Agreement and/or the Cure Right has previously been exercised twice in the applicable four consecutive Fiscal Quarter period), and then only to the extent the Cure Amount has not been received on or prior to such date; or

(d) Breach of Representations, Etc. Any representation, warranty or certification made or deemed made by any Loan Party in any Loan Document or in any certificate required to be delivered in connection herewith or therewith (including, for the avoidance of doubt, any Perfection Certificate) being untrue in any material respect as of the date made or deemed made; it being understood and agreed that (i) any breach of any representation, warranty or certification resulting from the failure of the Administrative Agent to file any Uniform Commercial Code financing statement, amendment and/or continuation statement or the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it shall not result in an Event of Default under this Section 7.01(d) or any other provision of any Loan Document and (ii) if the relevant representation and warranty is capable of being cured (including by the delivery of a restated certification or calculation or restated financial statements), no Default or Event of Default may arise under this Section 7.01(d) with respect to such representation and warranty unless such representation and warranty remains incorrect in any material respect for a period of 30 days following the delivery of a written notice by the Administrative Agent of the relevant inaccuracy to the Borrower; or

(e) Other Defaults Under Loan Documents. Default by any Loan Party in the performance of or compliance with any term contained herein or any of the other Loan Documents, other than any such term referred to in any other Section of this Article VII, which default has not been remedied or waived within 30 days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) The entry by a court of competent jurisdiction of a decree or order for relief in respect of the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) in an involuntary case under any Debtor Relief Law now or hereafter in effect, which decree or order is not stayed; or any other similar relief in respect of the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) shall be granted under any applicable Requirements of Law, which relief is not stayed; or (ii) the commencement of an involuntary case against the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) under any Debtor Relief Law; the entry by a court having jurisdiction in the premises of a decree or order for the appointment of a receiver, receiver and manager, (preliminary) insolvency receiver, liquidator, sequestrator, trustee, administrator, custodian or other officer having similar powers over the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary), or over all or a material part of its property; or the involuntary appointment of an interim receiver, trustee or other custodian of the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) for all or a material part of its property, which remains, in any case under this Section 7.01(f), undischarged, unvacated, unbounded or unstayed pending appeal for 60 consecutive days; provided that it is understood and agreed that the occurrence of any event described in this clause (f) will not result in a Default or Event of Default under this Agreement prior to the expiration of such 60 consecutive day period; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) The entry against the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of an order for relief in, or the commencement by the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of, a voluntary case under any Debtor Relief Law, or the consent by the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case, under any Debtor Relief Law, or the consent by the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) to the appointment of or taking possession by a receiver, receiver and manager, insolvency receiver, liquidator, sequestrator, trustee,
administrator, custodian or other like official for or in respect of itself or for all or a material part of the property of the Borrower and any Restricted Subsidiary (other than any Immaterial Subsidiary), taken as a whole or (ii) the making by the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of a general assignment for the benefit of creditors; or

(h) **Judgments and Attachments.** The entry or filing of one or more final money judgments, writs or warrants of attachment or similar process against the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) individually or any of its assets involving in the aggregate at any time an amount in excess of the Threshold Amount (in either case, to the extent not adequately covered by indemnity from a third party (including any escrow arrangement), by self-insurance (if applicable) or by insurance as to which, in the case of any such third party insurance, the relevant third party insurance company has been notified and not denied coverage), which judgment, writ, warrant or similar process remains unpaid, undischarged, unvacated, unbonded or unstayed pending appeal for a period of 60 consecutive days; provided that it is understood and agreed that the occurrence of any event described in this clause (h) will not result in a Default or Event of Default under this Agreement prior to the expiration of such 60 consecutive day period; or

(i) **Employee Benefit Plans.** The occurrence of one or more ERISA Events with respect to the Borrower or any Restricted Subsidiary, which individually or in the aggregate result in liability of any Loan Party in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(j) **Change of Control.** The occurrence of a Change of Control; or

(k) **Guaranties, Collateral Documents and Other Loan Documents.** At any time after the execution and delivery thereof, (i) any material Loan Guaranty for any reason, other than the occurrence of the Termination Date, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared, by a court of competent jurisdiction, to be null and void or any Loan Guarantor shall repudiate in writing its obligations thereunder (in each case, other than as a result of the discharge of such Loan Guarantor in accordance with the terms thereof and other than as a result of any act or omission by the Administrative Agent or any Lender), (ii) this Agreement or any material Collateral Document ceases to be in full force and effect or shall be declared, by a court of competent jurisdiction, to be null and void or any Lien on a material portion of the Collateral created under any Collateral Document ceases to be perfected with respect to a material portion of the Collateral (other than solely by reason of (1) such perfection not being required pursuant to the Collateral and Guarantee Requirement, the Collateral Documents, this Agreement or otherwise, (2) the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it or the failure of the Administrative Agent to file Uniform Commercial Code financing statements, amendments or continuation statements, (3) a release of Collateral in accordance with the terms hereof or thereof or (4) the occurrence of the Termination Date or any other termination of such Collateral Document in accordance with the terms thereof or (iii) other than in any bona fide, good faith dispute as to the scope of Collateral or whether any Lien has been, or is required to be released, any Loan Party shall contest in writing, the validity or enforceability of any material provision of any Loan Document (or any Lien purported to be created by the Collateral Documents on any material portion of the Collateral or any Loan Guaranty) or deny in writing that it has any further liability (other than by reason of the occurrence of the Termination Date or any other termination of any other Loan Document in accordance with the terms thereof), including with respect to future advances by the Lenders, under any Loan Document to which it is a party; it being understood and agreed that the failure of the Administrative Agent to file any Uniform Commercial Code financing statement, amendment or continuation statement and/or maintain possession of any physical Collateral shall not result in an Event of Default under this Section 7.01(k) or any other provision of any Loan Document;
(I) **Subordination.** The Obligations ceasing or the assertion in writing by any Loan Party that the Obligations cease to constitute senior indebtedness under the subordination provisions of any document or instrument evidencing any Restricted Debt that is required to be subordinated pursuant to the terms of this Agreement or any such subordination provision being invalidated by a court of competent jurisdiction in a final non-appealable order, or otherwise ceasing, for any reason, to be valid, binding and enforceable obligations of the parties thereto;

then, and in every such event (other than an event described in Section 7.01(f) or Section 7.01(g)) at any time thereafter during the continuance of such event, the Administrative Agent may and at the request of the Required Lenders, shall by notice to the Borrower, take any of the following actions, at the same or different times: (i) terminate the Revolving Credit Commitments, and thereupon such Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and (iii) require that the Borrower deposit in the LC Collateral Account an additional amount in Cash as reasonably requested by the Issuing Banks (not to exceed 102% of the relevant face amount) of the then outstanding LC Exposure (minus the amount then on deposit in the LC Collateral Account); provided that upon the occurrence of an event described in Section 7.01(f) or Section 7.01(g), any such Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accured 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 VIII**

**THE ADMINISTRATIVE AGENT**

Section 8.01 **Authorization and Action.**

(a) Each Lender, on behalf of itself and any of its Affiliates that are Secured Parties and each Issuing Bank hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the United States, each Lender and each Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender’s or such Issuing Bank’s behalf. Without limiting the foregoing, each Lender and each Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents.
(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Bank; provided, however, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and an Issuing Banks with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors, provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. 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, any other Loan Party, any subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, any Issuing Bank, any other Secured Party or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term “agent” (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby; and

(ii) nothing in this Agreement or any Loan Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account;

(d) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their
respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article VIII 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 pursuant to this Agreement. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(e) The Arranger shall not have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Loan Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) 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, LC Disbursements 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 under Sections 2.12, 2.13, 2.15, 2.17 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 in accordance with the Loan Documents;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender, each Issuing Bank and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, the any Issuing Banks or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 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.

(g) The provisions of this Article VIII are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and, except solely to the extent of the Borrower’s rights to consent pursuant to and subject to the conditions set forth in this Article VIII, none of the Borrower or any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations provided under the Loan Documents, to have agreed to the provisions of this Article VIII.

Section 8.02 Administrative Agent's Reliance, Limitation of Liability, Etc.
(a) Neither the Administrative Agent nor any of its Related Parties shall be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (including, for the avoidance of doubt, in connection with the Administrative Agent’s reliance on any Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(b) The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 5.01 unless and until written notice thereof stating that it is a “notice under Section 5.01” in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a “notice of Default” or a “notice of an Event of Default”) is given to the Administrative Agent by the Borrower, a Lender or an Issuing Bank. Further, 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 thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (vi) the creation, perfection or priority of Liens on the Collateral or (vii) compliance by Affiliated Lenders with the terms hereof relating to Affiliated Lenders.

(c) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.05, (ii) may rely on the Register to the extent set forth in Section 9.05(b), (iii) may consult with legal counsel (including counsel to the Borrower), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or any Issuing Bank and shall not be responsible to any Lender or any Issuing Bank for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) 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 an Issuing Bank, may presume that such condition is satisfactory to such Lender or any Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or any Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which

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writing may be a fax, any electronic message, internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Section 8.03 Posting of Communications.

(a) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Banks by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic system chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”).

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Closing Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, each of the Issuing Banks and the Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, each of the Issuing Banks and the Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, THE ARRANGER OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, “APPLICABLE PARTIES”) HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, 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 OR THE APPROVED ELECTRONIC PLATFORM.

“Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(d) Each Lender and each Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall
constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and each Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender’s or each Issuing Bank’s (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, each of the Issuing Banks and the Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent’s generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or any Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 8.04 The Administrative Agent Individually. With respect to its Commitment, Loans (including Swingline Loans) and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms “Issuing Banks”, “Lenders”, “Required Lenders” and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, an Issuing Bank or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with, any Loan Party, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Banks.

Section 8.05 Successor Administrative Agent.

(a) The Administrative Agent may resign at any time by giving 30 days’ prior written notice thereof to the Lenders, the Issuing Banks and the Borrower, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within thirty (30) days after the retiring Administrative Agent’s giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, such appointment shall be subject to the prior written approval of the Borrower (which approval may not be unreasonably withheld and shall not be required while an Event of Default under Section 7.01(a), (f) or (g) has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent’s resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within thirty (30) days after
the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Banks and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties, and continue to be entitled to the rights set forth in such Collateral Document and Loan Document, and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Security Document, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall directly be given or made to each Lender and each Issuing Bank. Following the effectiveness of the Administrative Agent’s resignation from its capacity as such, the provisions of this Article VIII, Section 2.17(c) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

Section 8.06 Acknowledgements of Lenders and Issuing Banks.

(a) Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any Arranger or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.
(b) Each Lender, by delivering its signature page to this Agreement on the Closing Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Closing Date or the effective date of any such Assignment and Assumption or any other Loan Document pursuant to which it shall have become a Lender hereunder.

(c) (i) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “Payment”) were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.06(c) shall be conclusive, absent manifest error.

(ii) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “Payment Notice”) or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) in accordance with banking industry rules on interbank compensation from time to time in effect.

(iii) The Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party.

(iv) Each party’s obligations under this Section 8.06(c) shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the
replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

(d) Each Lender hereby agrees that (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties’ books and records, as well as on representations of the Loan Parties’ personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender’s participation in, or the indemnifying Lender’s purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys’ fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 8.07 Collateral Matters.

(a) Except with respect to the exercise of setoff rights in accordance with Section 9.09 or with respect to a Secured Party’s right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In its capacity, the Administrative Agent is a “representative” of the Secured Parties within the meaning of the term “secured party” as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(b) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services the obligations under which constitute Secured Obligations and no Hedge Agreement the obligations under which constitute Secured Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Banking Services or Hedge Agreement, as applicable, shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

(c) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under
any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(b). The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent’s Lien thereon or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

Each Lender and each other Secured Party irrevocably authorizes and instructs the Administrative Agent to, and the Administrative Agent shall, subject to Section 9.22, release (or evidence the release of) any Subsidiary Guarantor from its obligations under the Loan Guaranty (i) if such Person ceases to be a Restricted Subsidiary (or is or becomes an Excluded Subsidiary as a result of a single transaction or series of related transactions not prohibited hereunder), (ii) on the Termination Date and/or (iii) in the case of any Discretionary Guarantor, at the election of the Borrower, upon notice from the Borrower to the Administrative Agent at any time; provided that if any Subsidiary Guarantor ceases to constitute a Wholly-Owned Subsidiary, such Subsidiary Guarantor shall not be released from its Loan Guaranty unless (A) such Subsidiary Guarantor is no longer a direct or indirect subsidiary of the Borrower, (B) after giving pro forma effect to such release and the consummation of the relevant transaction, the Borrower is deemed to have made a new Investment in such Person (as if such Person was then newly acquired) and such Investment is permitted by the Loan Documents or (C) such Dispositions of Capital Stock is a good faith Disposition to a bona fide unaffiliated third party (as determined by the Borrower in good faith) for fair market value and for a bona fide business purpose (as determined by the Borrower in good faith); it being understood that this proviso shall not limit the release of any Subsidiary Guarantor that otherwise constitutes an Excluded Subsidiary for any reason other than not constituting a Wholly-Owned Subsidiary of the Borrower (this proviso, the “Specified Guarantor Release Provision”).

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 VIII. In each case as specified in this Article VIII, the Administrative Agent will (and each Lender, and each Issuing Bank hereby authorizes the Administrative Agent to), without recourse or warranty (other than as to the Administrative Agent’s authority to execute and deliver the same) and at the Borrower’s expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents, to subordinate its interest therein, or to release such Loan Party from its obligations under the Loan Guaranty, in each case in accordance with the terms of the Loan Documents and this Article VIII; provided that, upon the request of the Administrative Agent, the Borrower shall deliver a certificate of a Responsible Officer certifying that the relevant transaction has been consummated in compliance with the terms of this Agreement.

Notwithstanding anything to the contrary in this Section 8.07 or in any other provision of any Loan Document, each Lender and each other Secured Party hereby authorizes the Administrative Agent to, and the Administrative Agent shall, execute and deliver any instruments, documents, consents, acknowledgments, and agreements necessary or desirable to evidence, effectuate or confirm the release of any Subsidiary Guarantor or Collateral or the subordination of any Lien pursuant to the provisions of this Section 8.07.

Section 8.08 Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale
thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles (ii) of each of the Secured Parties’ ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 9.02 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership interests, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

Section 8.09 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:
(i) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or any Arranger or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees,
fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker’s acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

Section 8.10. Intercreditor Agreements. The Administrative Agent is authorized by the Lenders and each other Secured Party to, and shall, enter into any Intercreditor Agreement and any other intercreditor, subordination, collateral trust or similar agreement contemplated hereby with respect to any (a) Indebtedness (i) that is (A) required or permitted hereunder to be subordinated in right of payment or with respect to security and/or (B) secured by any Lien and (ii) which contemplates an intercreditor, subordination, collateral trust or similar agreement and/or (b) Secured Hedging Obligations and/or Banking Services Obligations, whether or not constituting Indebtedness (any such other intercreditor, subordination, collateral trust and/or similar agreement an “Additional Agreement”), and the Secured Parties party hereto acknowledge that any Intercreditor Agreement and any other Additional Agreement is binding upon them. Each Lender and each other Secured Party hereto hereby (a) agrees that it will be bound by, and will not take any action contrary to, the provisions of any Intercreditor Agreement or any other Additional Agreement and (b) authorizes and instructs the Administrative Agent to enter into any Intercreditor Agreement and/or any other Additional Agreement and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof. The foregoing provisions are intended as an inducement to the Lenders and the other Secured Parties to extend credit to the Borrower, and the Lenders and the other Secured Parties are intended third-party beneficiaries of such provisions and the provisions of any Intercreditor Agreement and/or any other Additional Agreement.

ARTICLE IX
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 email, as follows:

(i) if to any Loan Party, to such Loan Party in the care of the Borrower at:
    
    Cava Group, Inc.
    702 H Street NW, Second Floor
    Washington, DC 20001
    Attention: [***]
    Email: [***]

    with copies to (which shall not constitute notice to any Loan Party):

    Weil, Gotshal & Manges LLP
    767 Fifth Avenue
    New York, New York 10153
    Attention: [***]
    Email: [***]

(ii) if to the Administrative Agent or the Swingline Lender, at:

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(iii) if to any Issuing Bank, at:

    if to any other Issuing Bank that is an Issuing Bank on the Closing Date, the relevant address specified in Schedule 9.01;
    or

    if to any other Issuing Bank, such address as may be specified in the documentation pursuant to which such Issuing
    Bank is appointed in its capacity as such; and

(iv) if to any Lender, to it at its physical address or email address set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be
deemed to have been given when delivered in person or by courier service and signed for against receipt thereof or three Business Days after
dispatch if sent by certified or registered mail, in each case, delivered, sent or mailed (properly addressed) to the relevant party as provided in
this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01 or (B) sent by
facsimile shall be deemed to have been given when sent and when receipt has been confirmed by telephone; provided that notices and other
communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the
recipient, such notices or other communications shall be deemed to have been given at the opening of business on the next Business Day for the
recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below shall be
effective as provided in such clause (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications
(including e-mail and Internet or intranet websites) pursuant to procedures set forth herein or otherwise approved by the Administrative Agent.
The Administrative Agent or the Borrower (on behalf of any Loan Party) may, in its discretion, agree to accept notices and other communications
to it hereunder by electronic communications pursuant to procedures set forth herein or otherwise approved by it; provided that approval of such
procedures may be limited to particular notices or communications. All such notices and other communications (i) sent to an e-mail address shall
be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested”
function, as available, return e-mail or other written acknowledgement); provided that any such notice or communication not given during the
normal business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day for the recipient
or (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address
as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address
therefor.
(c) Any party hereto may change its address or facsimile number or other notice information hereunder by notice to the other parties hereto; it being understood and agreed that the Borrower may provide any such notice to the Administrative Agent as recipient on behalf of itself, the Swingline Lender, each Issuing Bank and each Lender.

(d) The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders and the Issuing Banks materials and/or information provided by, or on behalf of, the Borrower hereunder (collectively, the “Borrower Materials”) by posting the Borrower Materials on the Platform and (b) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material nonpublic information within the meaning of the US federal securities laws with respect to the Borrower or their respective securities) (each, a “Public Lender”). At the reasonable request of the Administrative Agent, the Borrower hereby agrees that (i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC”, (ii) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as information of a type that (A) is publicly available or (B) would not be material with respect to the Borrower, their respective subsidiaries, any of their respective securities or the Transactions, as determined in good faith by the Borrower, for purposes of the US federal securities laws and (iii) the Administrative Agent shall be required to treat Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not marked as “Public Investor.” Notwithstanding the foregoing, (i) the Loan Documents shall be deemed to be marked “PUBLIC,” unless the Borrower notifies the Administrative Agent promptly that any such document contains material nonpublic information (it being understood that the Borrower shall have a reasonable opportunity to review the same prior to distribution and comply with SEC or other applicable disclosure obligations) and (ii) in no event shall any financial budget delivered pursuant to Section 5.01(g) be made available to Public Lenders.

Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable law, including US federal and state securities laws, to make reference to communications that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of US federal or state securities laws.

THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS ON, OR THE ADEQUACY OF, THE PLATFORM, AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN ANY SUCH COMMUNICATION. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL ANY PARTY HERETO OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY OTHER PARTY HERETO OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN A FINAL RULING BY A COURT OF COMPETENT
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 hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any party hereto therefrom shall in any event be effective unless the same is permitted by this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. Without limiting the generality of the foregoing, to the extent permitted by applicable Requirements of Law, neither the making of any Loan nor the issuance of any Letter of Credit shall be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default or Event of Default at the time.

(b) Except as expressly provided in this Section 9.02 (or otherwise in this Agreement or the applicable Loan Document), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified, except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders (or the Administrative Agent with the consent of the Required Lenders) or (ii) in the case of any other Loan Document (other than any waiver, amendment or modification to effectuate any modification thereto expressly contemplated by the terms of such other Loan Document), pursuant to an agreement or agreements in writing entered into by the Administrative Agent and each Loan Party that is party thereto, with the consent of the Required Lenders; provided that, notwithstanding the foregoing:

(A) the consent of each Lender directly and adversely affected thereby (but not the consent of the Required Lenders) shall be required for any waiver, amendment or modification that:

(1) increases the Commitment of such Lender (other than with respect to any Incremental Facility pursuant to Section 2.22 in respect of which such Lender has agreed to be an Incremental Lender); it being understood that no amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall constitute an increase of any Commitment of such Lender;

(2) (x) extends the scheduled final maturity of any Loan or (y) postpones 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);

(3) reduces the rate of interest (other than to waive any Default or Event of Default or any obligation of the Borrower to pay interest to such Lender at the default rate of interest under Section 2.13(d), which shall only require the
consent of the Required Lenders) or the amount of any fee or premium owed to such Lender; it being understood that no change in the definition of “Total Rent Adjusted Net Leverage Ratio” or any other ratio used in the calculation of the Applicable Rate or the Commitment Fee Rate, or in the calculation of any other interest, fee or premium due hereunder (including any component definition thereof) shall constitute a reduction in any rate of interest or fee hereunder;

(4) extends the expiry date of such Lender’s Commitment; it being understood that no amendment, modification or waiver of, or consent to depart 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

(5) waives, amends or modifies the provisions of Sections 2.18(b) or (c) of this Agreement in a manner that would by its terms alter the pro rata sharing of payments required thereby (except in connection with any transaction permitted under Sections 2.22, 2.23 and/or 9.02(c) or as otherwise provided in this Section 9.02 or otherwise in this Agreement);

(B) no such agreement shall:

(1) change any of the provisions of Section 9.02(a) or (b) or the definition of “Required Lenders”, in each case to reduce any voting percentage required to waive, amend or modify any right thereunder or make any determination or grant any consent thereunder, without the prior written consent of each Lender;

(2) (A) release all or substantially all of the Collateral from the Lien granted pursuant to the Collateral Documents (except as otherwise permitted herein or in the other Loan Documents, including pursuant to Article VIII or Section 9.22), without the prior written consent of each Lender or (B) subordinate the Lien on a material portion of the Collateral, taken as a whole (as determined by the Borrower in good faith), securing the Secured Obligations or subordinate the Obligations in right of payment, in either case, to any other Indebtedness for borrowed money (in each case, other than in connection with (1) any Acceptable Debtor-In-Possession Financing, (2) the implementation of an “asset-based” revolving credit facility, any permitted securitization, receivables facility, factoring facility, receivables financing or any similar financing and/or (3) any other financing with respect to which each relevant Lender has been offered the opportunity to provide such financing), in each case, without the prior written consent of each Lender; or

(3) release all or substantially all of the value of the Guarantees under the Loan Guaranty (except as otherwise permitted herein or in the other Loan Documents, including pursuant to Article VIII or Section 9.22), without the prior written consent of each Lender;

(C) solely with the consent of the relevant Issuing Bank, any such agreement may (x) increase or decrease the Letter of Credit Sublimit, (y) waive, amend or modify any condition precedent set forth in Section 4.02 as it pertains to the issuance of any Letter of Credit or (z) amend or modify the provisions of Section 2.05 or any letter of credit
application and any bilateral agreement between the Borrower and any Issuing Bank regarding such Issuing Bank’s LC Exposure or the respective rights and obligations between the Borrower and such Issuing Bank in connection with the issuance of Letters of Credit; and

(D) solely with the consent of the Swingline Lender, any such agreement may increase or decrease the amount of Swingline Loans available under Section 2.04;

(E) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, any Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, such Issuing Bank or the Swingline Lender, as the case may be.

(c) Notwithstanding the foregoing, this Agreement may be amended:

with the written consent of the Borrower and the Lenders providing the relevant Revolver Replacement Facility to permit the refinancing or replacement of all or any portion of any Revolving Credit Commitment of any Class (any such Revolving Credit Commitment being refinanced or replaced, a “Replaced Revolving Facility”) with a replacement revolving facility and/or replacement term loans hereunder (a “Revolver Replacement Facility”) pursuant to a Refinancing Amendment; provided that:

(i) the aggregate maximum amount of any Revolver Replacement Facility shall not exceed the aggregate maximum amount of the commitments in respect of the relevant Replaced Revolving Facility plus (x) any additional amount permitted to be incurred under Section 6.01 and, to the extent any such additional amount is secured, the related Lien is permitted under Section 6.02, plus (y) the amount of accrued interest, penalties and premium thereon, any committed but undrawn amounts and underwriting discounts, fees (including upfront fees, original issue discount or initial yield payments, commissions and expenses associated therewith and/or any underwriting discount, fees and/or initial yield payment associated with the applicable Revolver Replacement Facility);

(ii) no Revolver Replacement Facility may have a final maturity date (or require commitment reductions) prior to the final maturity date of the relevant Replaced Revolving Facility at the time of such refinancing;

(iii) any Revolver Replacement Facility may be pari passu with or junior to any then-existing Revolving Commitment in right of payment and pari passu with or junior to any then-existing Revolving Commitment with respect to the Collateral or may be unsecured; provided that any Revolver Replacement Facility that is junior to the then-existing Revolving Credit Commitments in right of payment or security shall be subject to an Intercreditor Agreement; provided, further, that if any Revolver Replacement Facility is not in the form of a loan constituting First Lien Debt, such Revolver Replacement Facility will be documented pursuant to separate documentation from the Loan Documents;

(iv) any Revolver Replacement Facility that is secured may not be secured by any asset other than Collateral;

(v) any Revolver Replacement Facility that is guaranteed may not be guaranteed by any subsidiary of the Borrower other than one or more Loan Parties;
(vi) (1) if the relevant Revolver Replacement Facility is a revolving facility, such Revolver Replacement Facility may provide for the borrowing and repayment of Revolving Loans with respect to any Revolving Facility after the effective date of such Revolver Replacement Facility on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that any Revolver Replacement Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in repayments on a pro rata basis with such Revolving Facilities and that in the event of any Revolver Replacement Facility that must participate in borrowings on a less than pro rata basis as compared to other Revolving Facilities, such Revolver Replacement Facility shall participate in repayments on a less than pro rata basis as compared to such other Revolving Facilities (in each case, except, in any case, for (x) payments of interest and fees at different rates on the Revolving Facilities (and related outstandings), (y) repayments required on the Maturity Date of any Revolving Facility and (z) repayments made in connection with a permanent repayment and termination of the Revolving Credit Commitments under any Revolving Facility (subject to clause (3) below)), (2) if the relevant Revolver Replacement Facility is a revolving facility, all Letters of Credit and Swingline Loans shall be participated on a pro rata basis by all Revolving Lenders and (3) if the relevant Revolver Replacement Facility is a revolving facility, any permanent repayment of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, any Revolver Replacement Facility after the effective date of such Revolver Replacement Facility shall be made on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that a Revolver Replacement Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in permanent repayments of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, such Revolving Facility on a pro rata basis with the other Revolving Facilities and that in the event of any Revolver Replacement Facility that must participate in repayments of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, such other Revolving Facility on a less than pro rata basis as compared to such other Revolving Facilities; provided that, in each case, notwithstanding the foregoing, to the extent any such Revolving Commitments are terminated in full and refinanced or replaced with another Revolver Replacement Facility or Replacement Debt, such Revolving Commitments may be terminated on a greater than pro rata basis);

(vii) any Revolver Replacement Facility may have pricing (including “MFN” or other pricing terms), interest, fees, rate margins, rate floors, premiums (including prepayment premiums), funding discounts, and, subject to the preceding clause (F), optional prepayment and redemption terms as the Borrower and the lenders providing such Revolver Replacement Facility may agree;

(viii) the other terms of any Revolver Replacement Facility (excluding as set forth above) shall be substantially consistent with the Replaced Revolving Facility (or any other then-existing Revolving Facility) or be reasonably satisfactory to the Administrative Agent; provided that such terms and conditions shall be deemed to be satisfactory to the Administrative Agent so long as any such terms and conditions (i)(1) that are not substantially consistent with those applicable to the relevant Replaced Revolving Facility are applicable only to periods after the latest Maturity Date of such Replaced Revolving Facility (in each case, as of the date of implementation of such Revolver Replacement Facility), (2) are substantially identical to, or (taken as a whole) no more favorable (as determined by the Borrower in good faith) to the lenders providing such Revolver Replacement Facility than those applicable to the relevant Replaced Revolving Facility (other than such terms to which clause (1) is applicable), (3) reflect then-current market terms and conditions (as determined by the Borrower in good faith) for the applicable type of Indebtedness or are reasonably acceptable to the Administrative Agent or (4) are more favorable to the lenders
or the agent of such Revolver Replacement Facility than those contained in the Loan Documents and are then conformed (or added) to the Loan Documents pursuant to the applicable Refinancing Amendment) or (ii) in the case of a Revolver Replacement Facility that consists of replacement term loans, consistent with the provisions of Section 9.02(c)(i)(H);

(ix) the commitments in respect of the relevant Replaced Revolving Facility (or the relevant portion thereof) shall be terminated, and all loans outstanding in respect of such Replaced Revolving Facility and all accrued but unpaid interest and fees then due and payable in connection therewith shall be paid in full, in each case on the date any Revolver Replacement Facility is implemented; and

(x) any Revolver Replacement Facility may be provided by any existing Lender and/or any other Eligible Assignee; provided that the Administrative Agent (and, in the case of any Revolver Replacement Facility that constitutes a revolving facility, any Issuing Bank) shall have a right to consent (such consent not to be unreasonably withheld, conditioned or delayed) to the relevant Person’s provision of a Revolver Replacement Facility if such consent would be required under Section 9.05(b) for an assignment of Loans to the relevant Person;

provided, further, that, in respect of each of subclauses (i) and (ii) of this clause (c), any Affiliated Lender shall (x) be permitted without the consent of the Administrative Agent to provide any Revolver Replacement Facility in the form of a term loan, it being understood that in connection therewith, the Affiliated Lender shall be subject to the restrictions applicable to such Person under Section 9.05 and (y) no Affiliated Lender may provide any Revolver Replacement Facility in the form of revolving facility.

Each party hereto hereby agrees that this Agreement may be amended by the Borrower, the Administrative Agent and the lenders providing the relevant Revolver Replacement Facility, as applicable, to the extent (but only to the extent) necessary to reflect the existence and terms of such Revolver Replacement Facility, incurred or implemented pursuant thereto (including any amendment necessary to treat the loans and commitments subject thereto as a separate “tranche” and “Class” of Loans and/or commitments hereunder). It is understood that any Lender approached to provide all or a portion of any Revolver Replacement Facility, may elect or decline, in its sole discretion, to provide such Revolver Replacement Facility.

(d) Notwithstanding anything to the contrary contained in this Section 9.02 or any other provision of this Agreement or any provision of any other Loan Document:

(i) the Borrower and the Administrative Agent may, without the input or consent of any Lender, amend, supplement and/or waive this Agreement and/or any guaranty, collateral security agreement, pledge agreement and/or related document (if any) executed in connection with this Agreement to (A) comply with any Requirement of Law or the advice of counsel or (B) cause any such guaranty, collateral security agreement, pledge agreement or other document to be consistent with this Agreement and/or the relevant other Loan Documents,

(ii) the Borrower and the Administrative Agent may, without the input or consent of any other Lender (other than the relevant Lenders providing Loans under such Sections), effect amendments to this Agreement and the other Loan Documents as may be necessary or advisable in the reasonable opinion of the Borrower and the Administrative Agent to (A) effect the provisions of Sections 2.22, 2.23, 5.12, 5.17, 5.18 and/or 9.02(c), or any other provision of this Agreement or any other Loan Document specifying that any waiver, amendment or modification may be made with the consent or approval of the Administrative Agent and/or (B) add terms (including representations and warranties, conditions, prepayments, covenants or events of default) that are
favorable to the then-existing Lenders, as reasonably determined by the Administrative Agent (it being understood that, where applicable, any such amendment may be effectuated as part of an Incremental Facility Amendment, an Extension Amendment and/or a Refinancing Amendment),

(iii) if the Administrative Agent and the Borrower have jointly identified any ambiguity, mistake, defect, inconsistency, obvious error or any error or omission of a technical nature or any necessary or desirable technical change, in each case, in any provision of any Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend such provision solely to address such matter as reasonably determined by them,

(iv) the Administrative Agent and the Borrower may amend, restate, amend and restate or otherwise modify any Intercreditor Agreement and/or any other Additional Agreement as provided therein,

(v) the Administrative Agent may amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.05. Commitment reductions or terminations pursuant to Section 2.09, implementations of Additional Commitments or incurrences of Additional Loans pursuant to Sections 2.22, 2.23 or 9.02(c) and reductions or terminations of any such Additional Commitments or Additional Loans,

(vi) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except as permitted pursuant to Section 2.21(b),

(vii) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit any extension of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the relevant benefits of this Agreement and the other Loan Documents and/or (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion,

(viii) any amendment, waiver or modification of any term or provision that solely affects Lenders under one or more Classes and does not directly and adversely affect Lenders under one or more other Classes (including any waiver or modification of any condition to any extension of credit under any Class of Commitments, pricing or other modification) may be effected with the consent of Lenders owning more than 50% of the aggregate commitments or Loans of such directly affected Class in lieu of the consent of the Required Lenders, so long as such amendment, waiver or modification is not of the type that would require the consent each Lender directly and adversely affected thereby or each Lender,

(ix) this Agreement may be amended in the manner prescribed in Sections 2.14(c) and/or 2.05(h),

(x) this Agreement may be amended in the manner prescribed in Sections 2.22(i) and 2.23(c); it being understood and agreed that any such amendment may provide that with respect to any Class of Loans and/or Commitments that is structured as a “delayed draw” or similar facility, (i) any condition precedent to the funding of any Loan thereunder and/or (ii) any Event of Default arising as a result of any inaccuracy of any representation and/or warranty (including any certification) made in connection with the satisfaction of any such condition precedent, in each case, may be waived, amended or modified solely with the consent of a majority of the holders of such Loans and/or Commitments (or such other percentage of such holders as may be required in
the amendment implementing such Class of Loans and/or Commitments (and without the consent of the Required Lenders or any other Lenders),

(xi) for the avoidance of doubt, any “MFN” provision may be amended solely with the consent of the Borrower and the Required Lenders, and

(xii) the Required Lenders, without the consent of any other Lender, may (A) rescind any acceleration of the Loans and/or any other Obligation pursuant to Article VII hereof and/or (B) agree that the Administrative Agent and the Lenders will forbear from exercising any remedy provided under any Loan Document with respect to any Event of Default.

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 material jurisdiction to all such Persons, taken as a whole) in connection with the syndication and distribution (including via the Internet or through a service such as Intralinks) of the Revolving Facility, the preparation, execution, delivery and administration of the Loan Documents and any related documentation, including in connection with any amendment, modification or waiver of any provision of any Loan Document (whether or not the transactions contemplated thereby are consummated, but only to the extent the preparation of any such amendment, modification or waiver was requested by the Borrower and except as otherwise provided in a separate writing between the Borrower, the relevant Arranger and/or the Administrative Agent) and (ii) without duplication of the obligation set forth in Section 9.03(b), all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Arrangers, the Issuing Banks or the Lenders or any of their respective Affiliates (but limited, in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such Persons taken as a whole and, if necessary, of one local counsel in any relevant material jurisdiction to all such Persons, taken as a whole) in connection with the 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 upon receipt by the Borrower of an invoice setting forth such expenses in reasonable detail, together with backup documentation supporting the relevant reimbursement request.

(b) The Borrower shall indemnify each Arranger, the Administrative Agent, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages and liabilities (but limited, in the case of any such loss, claim, damage and/or liability constituting legal fees and expenses to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, one local counsel in any relevant material jurisdiction to all Indemnitees, taken as a whole) 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 upon receipt by the Borrower of an invoice setting forth such expenses in reasonable detail, together with backup documentation supporting the relevant reimbursement request.
arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby and/or the enforcement of the Loan Documents, (ii) the use of the proceeds of the Loans or any Letter of Credit, (iii) any actual or alleged Release or presence of Hazardous Materials on, at, under or from any property currently or formerly owned, leased or operated by the Borrower, any of its Restricted Subsidiaries or any other Loan Party or any Environmental Liability related to the Borrower, any of its Restricted Subsidiaries or any other Loan Party and/or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by or against a third party or by or against the Borrower, any Loan Party or any of their respective Affiliates); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that any such loss, claim, damage, or liability (i) is determined by a final and non-appealable judgment of a court of competent jurisdiction (or documented in any settlement agreement referred to below) to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or, to the extent such judgment finds (or any such settlement agreement acknowledges) that any such loss, claim, damage, or liability has resulted from such Person’s (or such Person’s Related Party’s) material breach of the Loan Documents (other than, with the written consent of the Borrower in its sole discretion, the Administrative Agent, in its capacity as such, in respect of obligations not owed to the Loan Parties) or (ii) arises out of any claim, litigation, investigation or proceeding brought by such Indemnitee against another Indemnitee (other than any claim, litigation, investigation or proceeding that is brought by or against the Administrative Agent, any Issuing Bank or any Arranger, acting in its capacity as the Administrative Agent, as an Issuing Bank or as an Arranger) that does not involve any act or omission of the Borrower or any of its subsidiaries. Each Indemnitee shall be obligated to refund or return any and all amounts paid by the Borrower pursuant to this Section 9.03(b) to such Indemnitee for any fees, expenses, or damages to the extent such Indemnitee is not entitled to payment thereof in accordance with the terms hereof. Any amount due under this Section 9.03(b) shall be payable by the Borrower (x) within 30 days 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, upon receipt by the Borrower of an invoice setting forth such costs and expenses in reasonable detail, together with reasonable backup documentation supporting the relevant reimbursement request. This Section 9.03(b) shall not apply to Taxes other than any Taxes that represent losses, claims, damages or liabilities in respect of a non-Tax claim.

(c) The Borrower shall not be liable for any settlement of any proceeding effected without its written consent (which consent shall not be unreasonably withheld, delayed or conditioned) or any other losses, claims, damages, liabilities and/or expenses incurred in connection therewith, but if any proceeding is settled with the written consent of the Borrower, or if there is a final judgment against any Indemnitee in any such proceeding, the Borrower agrees to indemnify and hold harmless each Indemnitee to the extent and in the manner set forth above. The Borrower shall not, without the prior written consent of the affected Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened proceeding in respect of which indemnity could have been sought hereunder by such Indemnitee unless (i) such settlement includes an unconditional release of such Indemnitee from all liability or claims that are the subject matter of such proceeding and (ii) such settlement does not include any statement as to any admission of fault or culpability.

Section 9.04 Waiver of Claim. To the extent permitted by applicable Requirements of Law, no party to this Agreement nor any Secured Party shall assert, and each hereby waives on behalf of itself and its Related Parties, any claim against any other party hereto, any Loan Party and/or any Related Party of any thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or any Letter of Credit or the use
of the proceeds thereof, except, in the case of any claim by any Indemnitee against the Borrower, to the extent such damages would otherwise be subject to indemnification pursuant to, and in accordance with, the terms of Section 9.03.

Section 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 permitted under Section 6.07, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with the terms of this Section (any attempted assignment or transfer not complying with the terms of this Section shall be null and void (other than an assignment or transfer to a Disqualified Institution, which shall be subject to Section 9.05(f)). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and permitted assigns, to the extent provided in Section 9.05(c)), Participants and, to the extent expressly contemplated hereby, the Related Parties of each of the Arrangers, the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of any Loan or Additional Commitment added pursuant to Sections 2.22, 2.23 or 9.02(c) at the time owing to it) with the prior written consent of:

(A) the Borrower (such consent not to be unreasonably withheld, conditioned or delayed); provided that the consent of the Borrower shall not be required for any assignment (1) at any time when an Event of Default under Section 7.01(a) or Section 7.01(f) or (g) exists, or (2) of Revolving Loans or Revolving Credit Commitments to any other Revolving Lender; it being understood and agreed that the Borrower may withhold its consent (in its sole discretion) to any assignment to any Person that is known by it to be an Affiliate of a Disqualified Institution and/or an Affiliate of a Competitor (other than a Competitor Debt Fund Affiliate, unless the Borrower has other reasonable grounds on which to withhold its consent);

(B) the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed); provided that no consent of the Administrative Agent shall be required for any assignment to another Lender, any Affiliate of a Lender or any Approved Fund; and

(C) in the case of any Revolving Facility, each Issuing Bank and the Swingline Lender (such consent not to be unreasonably withheld, conditioned or delayed); provided that no consent of any Issuing Bank or the Swingline Lender shall be required for any assignment to a Revolving Lender or an Affiliate of a Revolving Lender.

(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

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(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 $5,000,000 unless the Borrower and the Administrative Agent otherwise consent;

(B) any partial assignment shall be made as an assignment of a proportionate part of all the relevant assigning Lender’s rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment Agreement via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent); and

(D) the relevant Eligible Assignee, if it is not a Lender, shall deliver on or prior to the effective date of such assignment, to the Administrative Agent (1) an Administrative Questionnaire and (2) any IRS form required under Section 2.17.

(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 a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the US a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders and their respective successors and assigns, and the commitment of, and principal amount of and interest on the Loans and LC Disbursements owing to, each Lender or Issuing Bank pursuant to the terms hereof from time to time (the “Register”). Failure to make any such recordation, or any error in such recordation, shall not affect the Borrower’s obligations in respect of such Loans and LC Disbursements. The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, each Issuing Bank and each Lender (but only as to its own holdings), at any reasonable time and from time to time upon reasonable prior notice.
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.

By executing and delivering an Assignment Agreement, the assigning Lender and the Eligible Assignee thereunder shall be deemed to confirm and agree with each other and the other parties hereto as follows: (A) the assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that the amount of its commitments, and the outstanding balances of its Loans, in each case without giving effect to any assignment thereof which has not become effective, are as set forth in such Assignment Agreement, (B) except as set forth in clause (A) above, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statement, warranty or representation made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of the Borrower or any Restricted Subsidiary or the performance or observance by the Borrower or any Restricted Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (C) the assignee represents and warrants that it is (1) an Eligible Assignee and (2) not a Disqualified Institution or an Affiliate of any Disqualified Institution, legally authorized to enter into such Assignment Agreement; (D) the assignee confirms that it has received a copy of this Agreement and each applicable Intercreditor Agreement, together with copies of the financial statements referred to in Section 4.01(c) or the most recent financial statements delivered pursuant to Section 5.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment Agreement; (E) the assignee will independently and without reliance upon the Administrative Agent, the assigning Lender or any other Lender and based on such documents and information as it deems appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (F) the assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent, by the terms hereof, together with such powers as are reasonably incidental thereto; and (G) the assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

Any Lender may, without the consent of the Borrower, the Administrative Agent, any Issuing Bank or any other Lender, sell participations to any bank or other entity (other than to any Disqualified Institution, any natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons) or the Borrower or any of its Affiliates) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its commitments and the Loans owing to it); provided, that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such
Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the relevant Participant, agree to any amendment, modification or waiver described in (x) clause (A) of the first proviso to Section 9.02(b) that directly and adversely affects the Loans or commitments in which such Participant has an interest and (y) clauses (B)(1), (2) or (3) of the first proviso to Section 9.02(b); it being understood and agreed that no Lender may enter into any agreement or other arrangement with any Participant that provides such Participant with the right to agree to or approve (or direct such Lender to agree, approve, consent or not to agree, approve or consent) any other amendment, modification or waiver in respect of any Loan Document, and any such agreement or arrangement shall be deemed to be null and void and of no force or effect. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the limitations and requirements of such Sections and Section 2.19) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section and it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender, and if additional amounts are required to be paid pursuant to Section 2.17(a) or Section 2.17(c), to the Borrower and the Administrative Agent). To the extent permitted by applicable Requirements of Law, each Participant also shall be entitled to the benefits of Section 9.09 as though it were a Lender; provided that such Participant shall be subject to Section 2.18(c) as though it were a Lender.

(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 participation is made with the prior written consent of the Borrower (in its sole discretion), expressly acknowledging that such Participant’s entitlement to benefits under Sections 2.15, 2.16 and 2.17 is not limited to what the participating Lender would have been entitled to receive absent the grant to such Participant.

Each Lender that sells a participation or makes a grant to an SPC (as defined in Section 9.05(e)) shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and each SPC and their respective successors and registered assigns, and the principal of and interest amounts on each Participant’s and each SPC’s interest in the Loans or other obligations under the Loan Documents (a “Participant/SPC Register”); provided that no Lender shall have any obligation to disclose all or any portion of any Participant/SPC Register (including the identity of any Participant or SPC or any information relating to any Participant’s or SPC’s interest in any Commitment, Loan, Letter of Credit or any other obligation under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) of the Treasury Regulations (or any amended or successor version). The entries in the Participant/SPC Register shall be conclusive absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant/SPC Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant/SPC Register.

(d) (i) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to any Disqualified Institution or any natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons)) to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to any Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section 9.05 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release any Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.
(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 (any such swap or other derivative instrument, an “Obligations Derivative Instrument”) with any counterparty that is a Disqualified Institution.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a “Granting Lender”) may grant to a special purpose funding vehicle (an “SPC”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of any Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 2.15, 2.16 or 2.17) and no SPC shall be entitled to any greater amount under Section 2.15, 2.16 or 2.17 or any other provision of this Agreement or any other Loan Document that the Granting Lender would have been entitled to receive, unless the grant to such SPC is made with the prior written consent of the Borrower (in its sole discretion), expressly acknowledging that such SPC’s entitlement to benefits under Sections 2.15, 2.16 and 2.17 is not limited to what the Granting Lender would have been entitled to receive, unless the grant to such SPC is made with the prior written consent of the Borrower (in its sole discretion).

(f) (i) Any assignment, participation, entry into an Obligations Derivative Instrument or pledge by a Lender (A) to or with any Disqualified Institution or (B) in the case of any assignment and/or participation, without the Borrower’s consent to the extent the Borrower’s consent is required under this Section 9.05, 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.

(ii) Any Lender may at any time enter into a total return swap, total rate of return swap, credit default swap or other derivative instrument under which any Secured Obligation is a reference obligation (any such swap or other derivative instrument, an “Obligations Derivative Instrument”) with any counterparty that is a Disqualified Institution.
available to the Borrower at law or in equity; it being understood and agreed that 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 or participation to a Disqualified Person, any entry into any Obligations Derivative Instrument with any Disqualified Person, the pledge or assignment of any security interest in any Loan or Commitment to a Disqualified Person and/or any assignment or participation of, or pledge or assignment of a security interest in, any Loan or Commitment to any Person to whom the Borrower’s consent is required but not obtained. Nothing in this Section 9.05(f) shall be deemed to prejudice any right or remedy that the Borrower may otherwise have at law or equity. The Administrative Agent may make the list of Disqualified Institutions available on a confidential basis in accordance with Section 9.13 to any Lender who specifically requests a copy thereof, and such Lender may provide such list of Disqualified Institutions to any potential assignee or participant or counterparty to any Obligations Derivative Instrument who agrees to keep such list confidential in accordance with Section 9.13 solely for the purpose of permitting such Person to verify whether such Person (or any Affiliate thereof) constitutes a Disqualified Institution.

(ii) If any assignment or participation under this Section 9.05 is made to any Disqualified Institution and/or any Affiliate of any Disqualified Institution (other than any Competitor Debt Fund Affiliate) and/or any other Person to whom the Borrower’s consent is required but not obtained, in each case, without the Borrower’s prior written consent (any such person, a “Disqualified Person”), then the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Person and the Administrative Agent, (A) terminate any Commitment of such Disqualified Person and repay all obligations of the Borrower owing to such Disqualified Person and/or (B) require such Disqualified Person to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.05), all of its interests, rights and obligations under this Agreement to one or more Eligible Assignees; provided that (I) in the case of clause (B), the applicable Disqualified Person has received payment of an amount equal to the lesser of (1) par and (2) the amount that such Disqualified Person paid for the applicable Loans and participations in Letters of Credit and Swingline Loans, plus accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the Borrower, (II) in the case of clauses (A) and (B), the Borrower shall not be liable to the relevant Disqualified Person under Section 2.16 if any Term Benchmark 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 no registration and processing fee required under this Section 9.05 shall be required with any assignment pursuant to this paragraph) and (IV) in no event shall such Disqualified Person be entitled to receive amounts to which it would otherwise be entitled under Section 2.13(d). Further, whether or not the Borrower has taken any action described in the preceding sentence, (A) no Disqualified Person identified by the Borrower to the Administrative Agent shall be permitted to (x) receive information (including financial statements) provided by any Loan Party, the Administrative Agent or any Lender, (B) (x) for purposes of determining whether the Required Lenders or the majority Lenders under any Class have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, have a right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action; it being understood that all Loans held by any Disqualified Person shall be deemed to be not outstanding for all purposes of calculating whether the Required Lenders, majority Lenders under any Class, all Lenders or all affected Lenders, as the case may be, have taken any action, and (y) shall be
deemed to vote in the same proportion as Lenders that are not Disqualified Persons (1) in any proceeding under any Debtor Relief Law commenced by or against the Borrower or any other Loan Party and/or (2) for purposes of any matter requiring the consent of each Lender or each affected Lender and (C) shall not be entitled to receive the benefits of Section 9.03. For the sake of clarity, the provisions in this Section 9.05(f) shall not apply to any Person that is an assignee of any Disqualified Person, if such assignee is not a Disqualified Person.

(iii) Notwithstanding anything to the contrary herein, the Borrower and each Lender acknowledges and agrees that the Administrative Agent shall not (x) have any liability for any assignment or participation made to any Disqualified Institution or Affiliated Lender (regardless of whether the consent of the Administrative Agent is required thereto) or (y) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Lender, and none of the Borrower, any Lender or any of their respective Affiliates will bring any claim to that effect.

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 VIII 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 Intercreditor Agreement and the Fee Letter constitute the entire agreement among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it has been executed by the Borrower and the Administrative Agent and when the Administrative Agent has received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by email as a “.pdf” or “.tif” attachment shall be effective as delivery of a manually executed counterpart of this Agreement. It is understood and agreed that, subject to any Requirement of Law, the words “execution”, “signed”, “signature”, “delivery” and words of like import in or relating to any Loan Document shall be deemed to include any Electronic Signature, delivery or the keeping of any record in electronic form, each of which shall have the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system to the extent and as provided for in any applicable Requirement of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state laws based on the Uniform Electronic Transactions Act.

Section 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, the Administrative Agent and, upon the written consent of the Administrative Agent, each Issuing Bank and each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations (in any currency) at any time owing by the Administrative Agent, such Issuing Bank or such Lender, respectively, to or for the credit or the account of any Loan Party against any of and all the Secured Obligations held by the Administrative Agent, such Issuing Bank or such Lender, irrespective of whether or not the Administrative Agent, such Issuing Bank or such Lender shall have made any demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch or office of such Lender or Issuing Bank different than the branch or office holding such deposit or obligation on such Indebtedness. The Administrative Agent shall promptly notify the Borrower and any applicable Lender or Issuing Bank shall promptly notify the Borrower and the Administrative Agent of such set-off or application, as applicable; provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender, each Issuing Bank and the Administrative Agent under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender, such Issuing Bank or the Administrative Agent may have. For the avoidance of doubt, the term “Lender” shall, for all purposes of this paragraph, include the Swingline Lender.

Section 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), WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY US FEDERAL OR NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK (OR ANY APPELLATE COURT THEREFROM) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL (EXCEPT AS PERMITTED BELOW) BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, FEDERAL COURT. EACH PARTY HERETO AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY REGISTERED MAIL ADDRESSED TO SUCH PERSON SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PERSON FOR ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH PARTY HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE REQUIREMENTS OF LAW. EACH PARTY HERETO AGREES THAT THE ADMINISTRATIVE AGENT RETAINS THE RIGHT TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION SOLELY IN CONNECTION WITH THE EXERCISE OF ITS RIGHTS UNDER ANY COLLATERAL DOCUMENT.
(c) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY CLAIM OR DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION, SUIT OR PROCEEDING IN ANY SUCH COURT.

(d) TO THE EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 9.01. EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY LOAN DOCUMENT THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW.

Section 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 and its Affiliates’ members, partners, directors (or equivalent managers), officers, managers, employees, agents, independent auditors, or other experts and advisors, including accountants, legal counsel and other advisors (collectively, the “Representatives”) on a “need to know” basis solely in connection with the transactions contemplated hereby and who are informed of the confidential nature of the Confidential Information and are or have been advised of their obligation to keep the Confidential Information of this type confidential; provided that such Person shall be responsible for its Affiliates’ and
their Representatives’ compliance with this paragraph; provided, further, that unless the Borrower otherwise consents, no such disclosure shall be made by the Administrative Agent, any Issuing Bank, any Arranger, any Lender or any Affiliate or Representative thereof to any Affiliate or Representative of the Administrative Agent, any Issuing Bank, any Arranger, or any Lender that is a Disqualified Institution,

(b) to the extent compelled by legal process in, or reasonably necessary to, the defense of such legal, judicial or administrative proceeding, in any legal, judicial or administrative proceeding or otherwise as required by applicable Requirements of Law (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any governmental, regulatory or self-regulatory authority exercising examination or regulatory authority, (i) to the extent practicable and permitted by applicable Requirements of Law, inform the Borrower promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment),

(c) upon the demand or request of any Governmental Authority (including any self-regulatory body) purporting to have jurisdiction over such Person or its Affiliates (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any Governmental Authority or regulatory or self-regulatory authority exercising examination or regulatory authority, to the extent permitted by applicable Requirements of Law, (i) to the extent practicable and permitted by applicable Requirements of Law, inform the Borrower promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any information so disclosed is accorded confidential treatment),

(d) to the extent provided by or on behalf of the Borrower to the Administrative Agent for distribution to the Issuing Banks and/or Lenders, by the Administrative Agent to any Lender or Issuing Bank party to this Agreement, as applicable,

(e) subject to an acknowledgment and agreement by the relevant recipient that the Confidential Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as otherwise reasonably acceptable to the Borrower and the Administrative Agent) in accordance with the standard syndication process of the Arrangers or market standards for dissemination of the relevant type of information, which shall in any event require “click through” or other affirmative action on the part of the recipient to access the Confidential Information and acknowledge its confidentiality obligations in respect thereof, to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or prospective Participant in, any of its rights or obligations under this Agreement, including any SPC (in each case other than a Disqualified Institution and/or any Person to whom the Borrower has, at the time of disclosure, affirmatively declined to consent to any assignment or participation), (ii) any pledgee referred to in Section 9.05 and/or (iii) any actual or prospective, direct or indirect contractual counterparty (or its advisors) to any Derivative Transaction (including any credit default swap) or similar derivative product to which any Loan Party is a party,

(f) subject to the Borrower’s prior approval of the information to be disclosed, to the CUSIP Service Bureau or any similar agency on a confidential basis in connection with the issuance and monitoring of CUSIP numbers with respect to the facilities or

(g) (i) the existence of this Agreement (but not the terms hereof) and the existence of the Revolving Facility (but not the terms thereof) and (ii) certain other limited generic information regarding the Revolving Facility (but not any other Confidential Information), may be disclosed to market data collectors and other similar service providers to the lending industry and, in the case of the Administrative Agent, to service providers to the Administrative Agent in connection with the administration of the Revolving Facility,
(h) to the extent the Confidential Information becomes publicly available other than as a result of a breach of this Section by such Person, its Affiliates or their respective Representatives, and

(i) with the prior written consent of the Borrower.

For purposes of this Section, “Confidential Information” means all information relating to 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 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 the Borrower or any of its subsidiaries and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. For the avoidance of doubt, in no event shall any disclosure of any Confidential Information be made to any Person that is a Disqualified Institution at the time of disclosure.

Section 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 “Credit Parties”), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their respective affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Credit Party, on the one hand, and such Loan Party, its respective stockholders or its respective affiliates, on the other. Each Loan Party acknowledges and agrees that: (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Credit Parties, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Credit Party, in its capacity as such, has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its respective stockholders or its respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Credit Party has advised, is currently advising or will advise any Loan Party, its respective stockholders or its respective Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (y) each Credit Party, in its capacity as such, is acting solely as principal and not as the agent or fiduciary of such Loan Party, its respective management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that such Loan Party has consulted its own legal, tax and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto.

Section 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 and the requirements of the Beneficial Ownership Regulation hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such
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 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 such Loan or Letter 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 Intercreditor Agreements. REFERENCE IS MADE TO EACH INTERCREDITOR AGREEMENT. EACH SECURED PARTY HEREUNDER AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTION CONTRARY TO THE PROVISIONS OF EACH INTERCREDITOR AGREEMENT AND AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO EACH APPLICABLE INTERCREDITOR AGREEMENT AS “FIRST LIEN AGENT” (OR EQUIVALENT) AND ON BEHALF OF SUCH SECURED PARTY. THE PROVISIONS OF THIS SECTION 9.20 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF ANY INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO EACH INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH SECURED PARTY IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF EACH INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY SECURED PARTY AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN ANY INTERCREDITOR AGREEMENT. THE FOREGOING PROVISIONS ARE INTENDED AS AN INDUCEMENT TO THE LENDERS OR HOLDERS OF ANY OTHER INDEBTEDNESS SUBJECT TO ANY APPLICABLE INTERCREDITOR AGREEMENT TO EXTEND CREDIT THEREUNDER AND SUCH LENDERS AND/OR HOLDERS ARE INTENDED THIRD
PARTY BENEFICIARIES OF SUCH PROVISIONS AND THE PROVISIONS OF EACH APPLICABLE INTERCREDITOR AGREEMENT.

Section 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; provided that, in the case of any conflict or inconsistency between any Intercreditor Agreement and any Loan Document, the terms of such Intercreditor Agreement shall govern and control.

Section 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 and any Lien granted by such Subsidiary Guarantor pursuant to any Collateral Document shall be automatically released) (i) upon the consummation of any transaction or series of related transactions not prohibited hereunder if as a result thereof such Subsidiary Guarantor ceases to be a Restricted Subsidiary (or is or becomes an Excluded Subsidiary as a result of a single transaction or series of related transactions not prohibited hereunder), subject, if applicable, to the Specified Guarantor Release Provision, (ii) upon the occurrence of the Termination Date and/or (iii) in the case of any Discretionary Guarantor, at the election of the Borrower, upon notice from the Borrower to the Administrative Agent at any time and (b) any Subsidiary Guarantor that meets the definition of an “Excluded Subsidiary” shall be released by the Administrative Agent promptly following the request therefor by the Borrower, subject, if applicable, to the Specified Guarantor Release Provision. In connection with any such release, the Administrative Agent shall promptly execute and deliver to the relevant Loan Party, at such Loan Party’s expense, all documents that such Loan Party shall reasonably request to evidence termination or release; provided that, upon the request of the Administrative Agent, the Borrower shall deliver a certificate of a Responsible Officer certifying that the relevant transaction has been consummated in compliance with the terms of this Agreement. Any execution and delivery of any document pursuant to the preceding sentence of this Section 9.22 shall be without recourse to or warranty by the Administrative Agent (other than as to the Administrative Agent’s authority to execute and deliver such documents).

Section 9.23  Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding of the parties hereto, each such party acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 9.24  [Reserved].

Section 9.25  Judgment Currency. If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Requirements of Law).

Section 9.26  Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Derivative Transactions or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “US Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the US or any other state of the US):

(a)  In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a US Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the US Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the US or a state of the US. In the event a Covered Party or a BHC ACT Affiliate of a Covered Party becomes subject to a proceeding under a US Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the US Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the US or a state of the US. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.
(b) As used in this Section 9.26, the following terms have the following meanings:

“BHC ACT Affiliate” means an “affiliate” (as defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)).

“Covered Entity” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

Section 9.27 Marketing Consent. The Borrowers hereby authorize JPMorgan and its affiliates (collectively, the “JPM Parties”), at their respective sole expense, and without any prior approval by the Borrower, to include the Borrower’s name and logo in advertising, marketing, tombstones, case studies and training materials, and to give such other publicity to this Agreement as JPM Parties may from time to time determine in their sole discretion. The JPM Parties agree to consult with the Borrower prior to the publication of any such advertising, marketing or tombstones. The foregoing authorization shall remain in effect unless the Borrower notifies JPM in writing that such authorization is revoked.

[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.

CAVA GROUP, INC.,
as the Borrower

By: /s/ Tricia Tolivar
   Name: Tricia Tolivar
   Title: CFO

Signature Page to Credit Agreement
JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, an Issuing Bank, an Initial
Revolving Lender and the Swingline Lender

By: /s/ Craig Bogle
Name: Craig Bogle
Title: Authorized Officer

Signature Page to Credit Agreement
Citibank N.A., as an Initial Revolving Lender

By: /s/ Anthony Scalfaro
    Name: Anthony Scalfaro
    Title: Vice President

Signature Page to Credit Agreement
Capital One National Association, as an Initial Revolving Lender

By: /s/ Jack Kelleher

Name: Jack Kelleher
Title: Sr. Manager

Signature Page to Credit Agreement
ROYAL BANK OF CANADA, as an Initial Revolving Lender

By: /s/ John Flores
   Name: John Flores
   Title: Authorized Signatory

Signature Page to Credit Agreement
[FORM OF]
AFFILIATED LENDER
ASSIGNMENT AND ASSUMPTION

This Affiliated Lender Assignment and Assumption (this “Affiliated Lender Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the “Assignor”) and [Insert name of Affiliated Lender] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Affiliated Lender Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable Requirements of Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). In the case where the Assigned Interest covers all of the Assignor’s rights and obligations under the Credit Agreement, the Assignor shall cease to be a party thereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03 of the Credit Agreement with respect to facts and circumstances occurring on or prior to the Effective Date and subject to its obligations hereunder and under Section 9.13 of the Credit Agreement. Such sale and assignment is (i) subject to acceptance and recording thereof in the Register by the Administrative Agent pursuant to Section 9.05(b)(v) of the Credit Agreement, (ii) without recourse to the Assignor and (iii) except as expressly provided in this Affiliated Lender Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: [__________].
2. Assignee: [__________] and is an Affiliated Lender that is the Borrower or a subsidiary thereof.
4. Administrative Agent: JPMorgan Chase Bank, N.A., as administrative agent under the Credit Agreement.
5. Credit Agreement: That certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral...
agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender.

6. Assigned Interest:

<table>
<thead>
<tr>
<th>Aggregate Amount of Loans</th>
<th>Class of Loans Assigned</th>
<th>Amount of Loans Assigned</th>
<th>Percentage Assigned of Loans under Relevant Class</th>
</tr>
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<tbody>
<tr>
<td>$[__________]</td>
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</tbody>
</table>

7. Effective Date: [__________] [__, 20[__]] [TO BE INSERTED BY THE ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR].

[The][Each] Assignee, if not already a Lender, agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which [the][such] Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information) will be made available and who may receive such information in accordance with [the][such] Assignee’s compliance procedures and applicable law, including U.S. federal, state and foreign securities laws.

[Signature Page Follows]

1 Complete the appropriate terminology for the types of Loans/Commitments under the Credit Agreement that are being assigned pursuant to this Affiliated Lender Assignment and Assumption (e.g., “Revolving Loans”, etc.).

2 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, not to be less than $5,000,000 in the case of Revolving Loans and Revolving Credit Commitments, in each case, unless the Borrower and the Administrative Agent otherwise consent.

3 Set forth, to at least 9 decimals, as a percentage of the Loans of all Lenders thereunder.
The terms set forth in this Affiliated Lender Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: ____________________________
   Name: _________________________
   Title: _________________________

ASSIGNEE

[NAME OF ASSIGNEE]

By: ____________________________
   Name: _________________________
   Title: _________________________

A-1-3
[Consented to:

CAVA GROUP, INC.,
as the Borrower

By: ________________________________
    Name: ____________________________
    Title: ___________]

^To be added only if the consent of the Borrower is required by Section 9.05(b)(i)(A) of the Credit Agreement.
STANDARD TERMS AND CONDITIONS FOR
AFFILIATED LENDER ASSIGNMENT AND ASSUMPTION

1. **Representations and Warranties.**

1.1. **Assignor.** The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Affiliated Lender Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) [it is][it is not] a Defaulting Lender; and (b) makes no representation or warranty and assumes no responsibility with respect to (i) any statement, warranty or representation made in or in connection with the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant thereto (other than this Affiliated Lender Assignment and Assumption) or any collateral thereunder, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Restricted Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower or any of its Restricted Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document. The Assignor acknowledges and agrees that in connection with this Affiliated Lender Assignment and Assumption, (1) the Assignee makes no representation or warranty as to whether it has or does not have MNPI (as defined below), (2) the applicable Affiliated Lender and/or any of its Affiliates may have, and later may come into possession of, material nonpublic information with respect to the Borrower and/or any subsidiary thereof and/or their respective Securities (“MNPI”), (3) the Assignor has independently, without reliance on the applicable Affiliated Lender, the Investors, the Borrower, any of their respective subsidiaries or Affiliates, the Administrative Agent, the Arrangers or any of their respective Affiliates, made its own analysis and determination to participate in such assignment notwithstanding the Assignor’s lack of knowledge of MNPI (if any), (4) none of the applicable Affiliated Lenders, the Investors, the Borrower, any of their respective subsidiaries and Affiliates, the Administrative Agent, the Arrangers or any of their respective Affiliates shall have any liability to the Assignor, and the Assignor hereby waives and releases, to the extent permitted by applicable Requirements of Law, any claims it may have against the applicable Affiliated Lender, the Investors, the Borrower, each of their respective subsidiaries and Affiliates, the Administrative Agent, the Arrangers and their respective Affiliates, under applicable Requirements of Law or otherwise, with respect to the nondisclosure of any MNPI and (5) the锰PI may not be available to the Administrative Agent, the Arrangers or the other Lenders.

1.2. **Assignee.** The Assignee (a) represents and warrants that (i) it is an Affiliated Lender and has full power and authority, and has taken all action necessary, to execute and deliver this Affiliated Lender Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement and the other Loan Documents as a Lender (including as an Affiliated Lender) thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender (including as an Affiliated Lender) thereunder, (iv) it has received a copy of the Credit Agreement and each Intercreditor Agreement, together with copies of the most recent financial statements referred to in Section 4.01(c) of the Credit Agreement or delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Affiliated Lender Assignment and Assumption and to purchase the Assigned Interest on the
basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender and (v) attached to the Affiliated Lender Assignment and Assumption is any documentation required to be delivered by it pursuant to Section 2.17 of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor 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 the Loan Documents, (ii) it appoints and authorizes the Administrative Agent to take such action on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent, by the terms thereof, together with such powers as are reasonably incidental thereto, and (iii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender. The Assignee agrees that, solely in its capacity as an Affiliated Lender, it will not be entitled to (a) attend (including by telephone) or participate in any meeting or discussions (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 (b) 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 material has been made available by the Administrative Agent or any Lender to any Loan Party or its representatives. The Assignee acknowledges and agrees that the Assignor makes no representation or warranty as to whether it has or does not have MNPI.

2. **Payments.** From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (other than Assigned Interests assigned to the Borrower or any of its Restricted Subsidiaries) (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. **General Provisions.** This Affiliated Lender Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Affiliated Lender Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Affiliated Lender Assignment and Assumption by facsimile or by email as a “.pdf” or “.tif” attachment shall be effective as delivery of a manually executed counterpart of this Affiliated Lender Assignment and Assumption. It is understood and agreed that, subject to any Requirement of Law, the words “execution”, “signed”, “signature”, “delivery” and words of like import in or relating to this Affiliated Lender Assignment and Assumption shall be deemed to include any Electronic Signature, delivery or the keeping of any record in electronic form, each of which shall have the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system to the extent and as provided for in any applicable Requirements of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state laws based on the Uniform Electronic Transactions Act. This Affiliated Lender Assignment and Assumption and any claim, controversy or dispute arising under or related to this Affiliated Lender Assignment and Assumption, whether in tort, contract (at law or in equity) or otherwise, shall be governed by, and construed in and interpreted in accordance with, the laws of the State of New York.
This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the “Assignor”) and [Insert name of Assignee] (the “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees] hereunder are several and not joint.] Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit included in such facilities) and (ii) to the extent permitted to be assigned under applicable Requirements of Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). In the case where the Assigned Interest covers all of the Assignor’s rights and obligations under the Credit Agreement, the Assignor shall cease to be a party thereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03 of the Credit Agreement with respect to facts and circumstances occurring on or prior to the Effective Date and subject to its obligations hereunder and under Section 9.13 of the Credit Agreement. Such sale and assignment is (i) subject to acceptance and recording thereof in the Register by the Administrative Agent pursuant to Section 9.05(b)(v) of the Credit Agreement, (ii) without recourse to the Assignor and (iii) except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: [__________].
2. Assignee: [__________] [and is an Affiliate/Approved Fund of [identify Lender]5].
4. Administrative Agent: JPMorgan Chase Bank, N.A., as administrative agent under the Credit Agreement.
5. Credit Agreement: That certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto

5 Include bracketed language and select, as applicable.
and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender.

6. Assigned Interest:

<table>
<thead>
<tr>
<th>Aggregate Amount of Commitments/Loans</th>
<th>Class of Commitments/Loans Assigned²</th>
<th>Amount of Commitments/Loans Assigned²</th>
<th>Percentage Assigned of Commitments/Loans under Relevant Class²</th>
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<tbody>
<tr>
<td>$[__________]</td>
<td>[__________]</td>
<td>$[__________]</td>
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<td>$[__________]</td>
<td>[__________]</td>
<td>$[__________]</td>
<td>[__________]%</td>
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</tbody>
</table>

7. THE PARTIES HERETO ACKNOWLEDGE THAT ANY ASSIGNMENT TO ANY DISQUALIFIED INSTITUTION WITHOUT OBTAINING THE REQUIRED CONSENT OF THE BORROWER OR, TO THE EXTENT THE BORROWER’S CONSENT IS REQUIRED UNDER SECTION 9.05 OF THE CREDIT AGREEMENT, TO ANY OTHER PERSON, SHALL BE NULL AND VOID (UNLESS, SOLELY IN THE CASE OF ANY ASSIGNMENT, SOLELY TO THE EXTENT THAT THERE HAS BEEN ANY SUBSEQUENT ASSIGNMENT BY A DISQUALIFIED INSTITUTION OR ANY SUCH OTHER PERSON TO AN ELIGIBLE ASSIGNEE THAT COMPLIES WITH THE REQUIREMENTS OF SECTION 9.05(B) OF THE CREDIT AGREEMENT, IN WHICH CASE, SUCH SUBSEQUENT ASSIGNMENT WILL BE DEEMED TO BE A VALID AND ENFORCEABLE ASSIGNMENT FOR THE PURPOSES THEREOF), AND, IN THE EVENT OF ANY SUCH ASSIGNMENT (AND ANY ASSIGNMENT TO ANY AFFILIATE OF ANY DISQUALIFIED INSTITUTION (OTHER THAN A COMPETITOR DEBT FUND AFFILIATE)), THE BORROWER SHALL BE ENTITLED TO PURSUE THE REMEDIES DESCRIBED IN SECTION 9.05 OF THE CREDIT AGREEMENT.

8. Effective Date: [__________] [__, 20[__] [TO BE INSERTED BY THE ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR].

[The][Each] Assignee, if not already a Lender, agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which [the][such] Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information) will be made available and who may receive such information in accordance with [the][such] Assignee’s compliance procedures and applicable law, including U.S. federal, state and foreign securities laws.

[Signature Page Follows]

6 Complete the appropriate terminology for the types of Loans/Commitments under the Credit Agreement that are being assigned pursuant to this Assignment and Assumption (e.g. “Revolving Loans”, etc.).

7 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, not to be less than $5,000,000 in the case of Revolving Loans and Revolving Credit Commitments, in each case, unless the Borrower and the Administrative Agent otherwise consent.

8 Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.
The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: ________________________________
    Name: __________________________
    Title: ___________________________
ASSIGNEE HAS EXAMINED THE LIST OF DISQUALIFIED INSTITUTIONS AND (I) REPRESENTS AND WARRANTS THAT (A) IT IS NOT IDENTIFIED ON SUCH LIST AND (B) IT IS NOT AN AFFILIATE OF ANY INSTITUTION IDENTIFIED ON SUCH LIST [[OTHER THAN, IN THE CASE OF THIS CLAUSE (B), A COMPETITOR DEBT FUND AFFILIATE]]\(^9\) AND (II) ACKNOWLEDGES THAT ANY ASSIGNMENT MADE TO A DISQUALIFIED INSTITUTION (OTHER THAN, IN THE CASE OF THIS CLAUSE (B), A COMPETITOR DEBT FUND AFFILIATE) SHALL BE SUBJECT TO SECTION 9.05 OF THE CREDIT AGREEMENT.\(^{10}\)

ASSIGNEE

[NAME OF ASSIGNEE]

By: 

Name: 
Title: 

---

\(^9\) Include bracketed language if Assignee is a Competitor Debt Fund Affiliate.

\(^{10}\) To be completed by Assignee.
[Consented to and Accepted:]

[JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: ____________________________________________
Name: 
Title:]\textsuperscript{11}

[[ISSUING BANK],
as Issuing Bank

By: ____________________________________________
Name: 
Title:]\textsuperscript{12}

[JPMORGAN CHASE BANK, N.A.,
as Swingline Lender

By: ____________________________________________
Name: 
Title:]\textsuperscript{13}

\textsuperscript{11} To be added only if the consent of the Administrative Agent is required.

\textsuperscript{12} To be added only with respect to an assignment under the Revolving Facility.

\textsuperscript{13} To be added only with respect to an assignment under the Revolving Facility.
[Consented to:

CAVA GROUP, INC.,
as the Borrower

By: ______________________________________
Name: 
Title:]14

14 To be added only if the consent of the Borrower is required by Section 9.05(h)(ii)(A) of the Credit Agreement.
STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) its Commitment, and the outstanding balances of its Loans, in each case without giving effect to assignments thereof which have not become effective, are as set forth herein, (iv) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (v) [it is][it is not] a Defaulting Lender; and (b) makes no representation or warranty and assumes no responsibility with respect to (i) any statement, warranty or representation made in or in connection with the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant thereto (other than this Assignment and Assumption) or any collateral thereunder, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Restricted Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Restricted Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it is an Eligible Assignee and has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement and the other Loan Documents as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder and (iv) it has received a copy of the Credit Agreement and each Intercreditor Agreement, together with copies of the most recent financial statements referred to in Section 4.01(c) of the Credit Agreement or the most recent financial statements delivered pursuant to Section 5.01 of the Credit Agreement, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, (v) it has examined the list of Disqualified Institutions and it is not (A) a Disqualified Institution or (B) an Affiliate of a Disqualified Institution [(other than, in the case of this clause (B), a Competitor Debt Fund Affiliate)] and (vi) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to Section 2.17 of the Credit Agreement, duly completed and executed by the Assignee and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor 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 the Loan Documents, (ii) it appoints and authorizes the Administrative Agent to take such action on its behalf and to exercise such powers and discretion under the Credit Agreement, the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are

15 Insert bracketed language if Assignee is a Competitor Debt Fund Affiliate and not otherwise identified on the list of Disqualified Institutions.

Annex I to Exhibit A-2-1
reasonably incidental thereto, and (iii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender. [The Assignee acknowledges and agrees that in connection with this Assignment and Assumption, (1) the Assignor is an Affiliated Lender, (2) the Assignor makes no representation or warranty as to whether it has or does not have material nonpublic information with respect to the Borrower and/or any subsidiary thereof and/or their respective Securities (“MNPI”), (3) the Assignor and/or any of its Affiliates may have, and later may come into possession of, MNPI, (4) the Assignee has independently, without reliance on the Assignor, the Investors, the Borrower, any of their respective subsidiaries or Affiliates, the Administrative Agent, the Arrangers or any of their respective Affiliates, made its own analysis and determination to participate in this assignment notwithstanding the Assignee’s lack of knowledge of the MNPI (if any), (5) none of the Assignor, the Investors, the Borrower, any of their respective subsidiaries or Affiliates, the Administrative Agent, the Arrangers or any of their respective Affiliates shall have any liability to the Assignor, and the Assignee hereby waives and releases, to the extent permitted by applicable Requirements of Law, any claims it may have against the Assignor, the Investors, the Borrower, each of their respective subsidiaries and Affiliates, the Administrative Agent, the Arrangers and their respective Affiliates, under applicable Requirements of Law or otherwise, with respect to the nondisclosure of any MNPI and (6) the MNPI may not be available to the Administrative Agent, the Arrangers or the other Lenders.]16

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or by email as a “.pdf” or “.tif” attachment shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. It is understood and agreed that, subject to any Requirement of Law, the words “execution”, “signed”, “signature”, “delivery” and words of like import in or relating to this Assignment and Assumption shall be deemed to include any Electronic Signature, delivery or the keeping of any record in electronic form, each of which shall have the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system to the extent and as provided for in any applicable Requirements of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state laws based on the Uniform Electronic Transactions Act. This Assignment and Assumption and any claim, controversy or dispute arising under or related to this Assignment and Assumption, whether in tort, contract (at law or in equity) or otherwise, shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

16 Insert bracketed language if Assignor is an Affiliated Lender.
[FORM OF]
BORROWING REQUEST

JPMorgan Chase Bank, N.A.,
as Administrative Agent for the Lenders referred to below [and as Swingline Lender]17
10 S. Dearborn St.
Chicago, IL 60603
Attention: [***]
Tel: [***]
Fax [***]
Email: [***]

Ladies and Gentlemen:

Reference is hereby made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

The undersigned hereby gives you notice pursuant to Section [2.03][2.04] of the Credit Agreement that it requests a Borrowing and in that connection sets forth below the terms on which the Borrowings are requested to be made:

1. Date of Borrowing (which shall be a Business Day)    [__________] __, 20__

17 Include bracketed language for Borrowing of Swingline Loans.

18 The Administrative Agent must be notified in writing by hand delivery, fax or other electronic transmission (including “.pdf” or “.tif”) not later than (i) 10:00 a.m. three Business Days prior to the requested day of any Borrowing of Term Benchmark Loans (or, if after the effectiveness of a Benchmark Replacement, five Business Days prior to the requested day of any Borrowing of RFR Loans) (or one Business Day in the case of any Borrowing of Term Benchmark Loans to be made on the Closing Date) and (ii) 12:00 p.m. on the requested date of any Borrowing of or conversion to ABR Loans (other than Swingline Loans) (or, in each case, such later time as is reasonably acceptable to the Administrative Agent); provided, however, that if the Borrower wishes to request Term Benchmark Loans having an Interest Period other than one, three or six months in duration or such shorter period as provided in the definition of “Interest Period”, (A) the applicable notice from the Borrower must be received by the Administrative Agent not later than 12:00 p.m. four Business Days prior to the requested date of the relevant Borrowing (or such later time as is reasonably acceptable to the Administrative Agent), whereupon the Administrative Agent shall give prompt notice to the appropriate Lenders of such request, (B) the relevant requested Interest Period shall be deemed to be available to each appropriate Lender unless such Lender has delivered written notice to the Administrative Agent indicating that such Interest Period is not available to such Lender within one Business Day following the date on which the notice described in clause (A) above is posted by the Administrative Agent and (C) not later than 10:00 a.m. three Business Days before the requested date of the relevant Borrowing, the Administrative Agent shall notify the Borrower whether or not the requested Interest Period is available to the appropriate Lenders. With respect to Swingline Loans, the Swingline Lender and the Administrative Agent must be notified in writing by hand delivery, fax or other electronic transmission (including “.pdf” or “.tif”) not later than 12:00 p.m. on the day of the proposed Swingline Loan.
2. Aggregate Amount of Borrowing $[__________]^{19}
3. Type of Borrowing [__________]^{20}
4. Class of Borrowing [__________]
5. Interest Period (in the case of Term Benchmark Borrowing) [__________]^{21}
6. Amount, Account Number and Location

<table>
<thead>
<tr>
<th>Wire Transfer Instructions:</th>
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<tbody>
<tr>
<td>Amount: $[__________]</td>
</tr>
<tr>
<td>Bank: [__________]</td>
</tr>
<tr>
<td>ABA No.: [__________]</td>
</tr>
<tr>
<td>Account No.: [__________]</td>
</tr>
<tr>
<td>Account Name: [__________]</td>
</tr>
</tbody>
</table>

The undersigned hereby certifies, as a Responsible Officer of the Borrower, in such capacity and not in an individual capacity, that the following statements will be true on the date of the Borrowing:

(a) [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 date of the Borrowing with the same effect as though such representations and warranties had been made on and as of the date of such Borrowing; provided that, to the extent that any representation and warranty specifically refers to an earlier date or a given period, it is true and correct in all material respects as of such earlier date or for such period; provided, further, that, any representation and warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates or for such periods.]^{22}

(b) [At the time of and immediately after giving effect to the Borrowing, no Default or Event of Default has occurred and is continuing.]^{23}

^{19} Subject to Sections 2.02(c) and 2.04(a) of the Credit Agreement.

^{20} State whether a Term Benchmark Borrowing or ABR Borrowing. If no Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. A Borrowing consisting of Swingline Loans shall be an ABR Borrowing.

^{21} Must be a period contemplated by the definition of “Interest Period”. If no Interest Period is specified, then the Interest Period shall be of one-month’s duration.

^{22} Include bracketed language only for Borrowings after Closing Date (subject to applicable provisions of the Credit Agreement).

^{23} Include bracketed language only for Borrowings after Closing Date (subject to applicable provisions of the Credit Agreement).
CAVA GROUP, INC.

By: ____________________________
   Name: _________________________
   Title: _________________________

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INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT is entered into as of [__________] [____], 20[__] (this “Agreement”), by [__________] (each, a) [the] “Grantor” in favor of the Administrative Agent referred to below.

Reference is made to that certain Pledge and Security Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), among the Loan Parties party thereto and the Administrative Agent. The Lenders and Issuing Banks have extended credit to the Borrower subject to the terms and conditions set forth in that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Consistent with the requirements set forth in Sections 4.01 and 5.12 of the Credit Agreement and Section 4.03(c) of the Security Agreement, the parties hereto agree as follows:

SECTION 1. Terms. Capitalized terms used but not defined herein shall have the meanings given to them in the Security Agreement or the Credit Agreement, as applicable, as in effect on the date hereof.

SECTION 2. Grant of Security Interest. As security for the prompt and complete payment or performance, as the case may be, in full of the Secured Obligations, [each][the] Grantor, pursuant to the Security Agreement, did and hereby does pledge, collaterally assign, mortgage, transfer and grant to the Administrative Agent, its successors and permitted assigns, on behalf of and for the ratable benefit of the Secured Parties, a continuing security interest in all of its right, title or interest in, to or under all of the following assets, whether now owned or at any time hereafter acquired by or arising in favor of [such][the] Grantor and regardless of where located (collectively, the “IP Collateral”):

A. all Trademarks, including the Trademark registrations and registration applications in the United States Patent and Trademark Office listed on Schedule I hereto;

B. all Patents, including the issued Patents and pending applications in the United States Patent and Trademark Office listed on Schedule II hereto;

C. all Copyrights, including the Copyright registrations and pending applications for registration in the United States Copyright Office listed on Schedule III; and

D. all Proceeds of the foregoing;

in each case to the extent the foregoing items constitute Collateral.

SECTION 3. Security Agreement. The security interests granted to the Administrative Agent herein are granted in furtherance, and not in limitation of, the security interests granted to the Administrative Agent pursuant to the Security Agreement. [Each][The] Grantor hereby acknowledges and affirms that the rights and remedies of the Administrative Agent with respect to the IP Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are hereby incorporated herein by reference as

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if fully set forth herein. In the event of any conflict between the terms of this Agreement and the Security Agreement, the terms of the Security Agreement shall govern.

SECTION 4. **Termination or Release.** In connection with any termination or release pursuant to Section 7.12 of the Security Agreement, the Administrative Agent shall promptly execute and deliver to [each][the] Grantor, at [such][the] Grantor’s expense, such documents that [such][the] Grantor shall reasonably request to evidence and/or effectuate the termination or release of the security interest granted herein.

SECTION 5. **Governing Law.** This Agreement, and any claim, controversy or dispute arising under or related to this Agreement, whether in tort, contract (at law or in equity) or otherwise, shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

[SECTION 6. **Counterparts.** 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. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by email as a “.pdf” or “.tif” attachment or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement. It is understood and agreed that, subject to any Requirement of Law, the words “execution”, “signed”, “signature”, “delivery” and words of like import in or relating to this Agreement shall be deemed to include any Electronic Signature, delivery or the keeping of any record in electronic form, each of which shall have the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system to the extent and as provided for in any applicable Requirements of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state laws based on the Uniform Electronic Transactions Act.]²⁴

[Signature Pages Follow]

²⁴ Include bracketed language only if multiple Grantors are signing Agreement.
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

[_________]  

By: ________________________________  
Name:  
Title:  

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## SCHEDULE I

### TRADEMARKS

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### TRADEMARK APPLICATIONS

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## SCHEDULE II

### PATENTS

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### PATENT APPLICATIONS

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Schedule II to Exhibit C
### SCHEDULE III

#### COPYRIGHTS

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<tr>
<th>REGISTERED OWNER</th>
<th>REGISTRATION NO.</th>
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#### COPYRIGHT APPLICATIONS

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Schedule III to Exhibit C
To: The Administrative Agent and each of the Lenders parties to the

Credit Agreement described below

This Compliance Certificate is furnished pursuant to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

THE UNDERSIGNED HEREBY CERTIFIES, AS A RESPONSIBLE OFFICER OF THE BORROWER, IN SUCH CAPACITY AND NOT IN AN INDIVIDUAL CAPACITY, THAT:

1. I am the duly elected [__________] of the Borrower and a Responsible Officer of the Borrower;

2. I have reviewed the terms of the Credit Agreement and I have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of the Borrower and its Restricted Subsidiaries, on a consolidated basis, during the [Fiscal Quarter][Fiscal Year] covered by the attached financial statements;

3. [The attached financial statements fairly present, in all material respects, in accordance with GAAP, the consolidated financial position of the Borrower as at the dates indicated and its consolidated operations and cash flows for the periods indicated, subject to the absence of footnotes and changes resulting from audit and normal year-end adjustments.]25

4. [Except as described in the disclosure set forth below, the][The] examinations described in paragraph 2 did not disclose, and I have no knowledge of the existence of any condition or event which constitutes a Default or Event of Default that exists as of the date of this Compliance Certificate[ and the disclosure set forth below specifies, in reasonable detail, the nature of any such condition or event and any action taken or proposed to be taken with respect thereto]26.

5. [Attached as Schedule [1] hereto is a list of each Unrestricted Subsidiary of the Borrower as of the last day of the period covered by this Compliance Certificate.[As of the last day of the period covered by this Compliance Certificate, there has been no change in the list of Unrestricted Subsidiaries

---

25 Include to the extent the relevant Compliance Certificate is delivered in connection with unaudited quarterly financials.

26 Select, as applicable.
since the later of the Closing Date and the date of the last Compliance Certificate delivered pursuant to Section 5.01(c) of the Credit Agreement.\textsuperscript{27}

6. Attached as Schedule [2] hereto is a summary of the pro forma adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from the attached financial statements.\textsuperscript{28}

7. Attached as Schedule [3] hereto are calculations in reasonable detail demonstrating the Total Rent Adjusted Net Leverage Ratio as of the last day of the [Fiscal Quarter][Fiscal Year] covered by the attached financial statements. [As of the last day of the [Fiscal Quarter][Fiscal Year] covered by the attached financial statements, the Borrower and its Restricted Subsidiaries on a consolidated basis [are][are not] in compliance with the covenant set forth in Section 6.10(a) of the Credit Agreement.]\textsuperscript{29}

8. Attached as Schedule [4] hereto are calculations in reasonable detail demonstrating the Fixed Charge Coverage Ratio as of the last day of the [Fiscal Quarter][Fiscal Year] covered by the attached financial statements. [As of the last day of the [Fiscal Quarter][Fiscal Year] covered by the attached financial statements, the Borrower and its Restricted Subsidiaries on a consolidated basis [are][are not] in compliance with the covenant set forth in Section 6.10(b) of the Credit Agreement.]\textsuperscript{30}

9. Attached as Schedule [5] hereto are calculations in reasonable detail demonstrating the Liquidity as of the last day of the [Fiscal Quarter][Fiscal Year] covered by the attached financial statements. [As of the last day of the [Fiscal Quarter][Fiscal Year] covered by the attached financial statements, the Borrower and its Restricted Subsidiaries on a consolidated basis [are][are not] in compliance with the covenant set forth in Section 6.10(c) of the Credit Agreement.]\textsuperscript{31}

10. Attached as Schedule [6] hereto is consolidating financial information that is fairly presented in all material respects summarizing in reasonable detail the information regarding the Parent Company to which the attached financial statements relate, on the one hand, and the information relating to the Borrower, on the other hand.\textsuperscript{32}

[Signature Page Follows]

\textsuperscript{27} Include bracketed language and select, as applicable, only if a subsidiary of the Borrower has been designated as an Unrestricted Subsidiary as of the last day of the period covered by this Compliance Certificate.

\textsuperscript{28} Include bracketed language only if a subsidiary of the Borrower has been designated as an Unrestricted Subsidiary as of the last day of the period covered by this Compliance Certificate.

\textsuperscript{29} Include bracketed language and select, as applicable, starting with the Compliance Certificate delivered with respect to the Fiscal Quarter ending on December 31, 2021.

\textsuperscript{30} Include bracketed language and select, as applicable, starting with the Compliance Certificate delivered with respect to the Fiscal Quarter ending on December 31, 2021.

\textsuperscript{31} Include bracketed language and select, as applicable, starting with the Compliance Certificate delivered with respect to the Fiscal Quarter ending on December 31, 2021.

\textsuperscript{32} To the extent required by the penultimate paragraph of Section 5.01 of the Credit Agreement.
The foregoing certifications, together with the information set forth in the Schedules hereto and the financial statements delivered with this Compliance Certificate in support hereof, are made and delivered as of the date first written above.

CAVA GROUP, INC.

By: __________________________________________

Name: ________________________________

Title: ________________________________

33 Please note the deadlines for satisfaction of the following requirements correspond with the delivery of each Compliance Certificate (unless otherwise indicated):

1. The delivery of documents and deliverables required under Section 4.02(a) of the Security Agreement relating to any (i) certificated Securities and/or (ii) Instruments having a face amount in excess of $3,000,000, in each case acquired during the Fiscal Quarter covered by the attached financial statements.

2. The delivery of documents and deliverables required under Section 4.03(c) of the Security Agreement relating to any registration (or any application for registration of) any Patent, Trademark or Copyright with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, filed or acquired during the Fiscal Quarter covered by the attached financial statements.

3. The delivery of the documents required to be delivered under Section 5.12(a) of the Credit Agreement as a result of (i) the formation or acquisition after the Closing Date of any Restricted Subsidiary, (ii) the designation of any Unrestricted Subsidiary as a Restricted Subsidiary or (iii) any Restricted Subsidiary that was an Excluded Subsidiary ceasing to be an Excluded Subsidiary, in each case during the Fiscal Quarter covered by the attached financial statements.
List of Unrestricted Subsidiaries

Include schedule if applicable.

Schedule [1] to Exhibit D
Summary of Pro Forma Adjustments for Unrestricted Subsidiaries

35 Include schedule if applicable.

Schedule [2] to Exhibit D
Total Rent Adjusted Net Leverage Ratio

Schedule [3] to Exhibit D
Fixed Charge Coverage Ratio

Schedule [4] to Exhibit D
Liquidity

Schedule [5] to Exhibit D
Consolidating Financial Information\textsuperscript{36}

\footnotesize{\textsuperscript{36} Include schedule if applicable.}

Schedule [6] to Exhibit D
[Reserved]
[FORM OF]
INTERCOMPANY NOTE

[__________] [__], 20[__]

FOR VALUE RECEIVED, each of the undersigned, to the extent a borrower from time to time from any other entity listed on a signature page hereto (each, in such capacity, a “Payor”){37} hereinbelow promises to pay on demand to such other entity listed below (each, in such capacity, a “Payee”){38}, in lawful money of the United States of America, or in such other currency as agreed to by such Payor and such Payee, in immediately available funds, at such location as a Payee shall from time to time designate, the unpaid principal amount of all loans and advances constituting Indebtedness made by such Payee to such Payor. Each Payor promises also to pay interest, if any, on the unpaid principal amount of all such loans and advances in like money at said location from the date of such loans and advances until paid at such rate per annum as shall be agreed upon from time to time by such Payor and such Payee.

Reference is made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used in this Intercompany Note (this “Note”) but not defined herein shall have the meanings given to them in the Credit Agreement. This Note is the Intercompany Note referred to in the Credit Agreement. Each Payee hereby acknowledges and agrees that the Administrative Agent may exercise all rights provided in the applicable Loan Documents with respect to this Note.

Notwithstanding anything to the contrary contained in this Note, each Payee understands and agrees that no Payor shall be required to make, and shall not make, any payment of principal, interest or other amounts on this Note to the extent that such payment is prohibited by, or would give rise to a default or an event of default under, the terms of any Senior Indebtedness (as defined below) (each, a “Credit Agreement Default”). The failure to make such payment because such payment would result in any Credit Agreement Default shall not constitute a default hereunder.

Anything in this Note to the contrary notwithstanding, the Indebtedness evidenced by this Note owed by any Payor to any Payee shall be subordinated and junior in right of payment, to the extent and in the manner hereinafter set forth, to all of the Obligations of such Payor; provided that each Payor may make payments to the applicable Payee so long as no Event of Default under and as defined in the Credit Agreement shall have occurred and be continuing (such Obligations and, in each case, other indebtedness and obligations in connection with any renewal, refunding, restructuring or refinancing thereof, including interest, fees and expenses thereon accruing after the commencement of any proceeding referred to in clause (i) below, whether or not such interest, fees and expenses is an allowed claim in such proceeding, being hereinafter collectively referred to as “Senior Indebtedness”):

(i) In the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization or other similar proceedings in connection therewith, relative to any Payor (each such Payor, an “Affected Payor”) or to its property, and in the event of any proceeding

{37} To be Loan Parties.
{38} To be Restricted Subsidiaries that are not Loan Parties.
for voluntary liquidation, dissolution or other winding up of such Affected Payor (except as expressly permitted by the Loan Documents), whether or not involving insolvency or bankruptcy, if an Event of Default has occurred and is continuing (x) the holders of Senior Indebtedness shall be paid in full in the manner sufficient to cause the Termination Date to occur before any Payee (each such Payee, an “Affected Payee”) is entitled to receive (whether directly or indirectly), or make any demand for, any payment on account of this Note and (y) until the Termination Date, any payment or distribution to which such Affected Payee would otherwise be entitled (other than equity or debt securities of such Affected Payor that are subordinated, to at least the same extent as this Note, to the payment of all Senior Indebtedness then outstanding (such securities being hereinafter referred to as “Restructured Securities”)) shall be made to the holders of Senior Indebtedness;

(ii) if (x) any Event of Default under Sections 7.01(a), 7.01(f) or 7.01(g) of the Credit Agreement occurs and is continuing and (y) subject to any Intercreditor Agreement, the Administrative Agent delivers notice to the Borrower instructing the Borrower that the Administrative Agent is thereby exercising its rights pursuant to this clause (ii) (provided that no such notice shall be required to be given in the case of any Event of Default arising under Sections 7.01(f) or 7.01(g) of the Credit Agreement), then, unless otherwise agreed in writing by the Administrative Agent in its reasonable discretion, no payment or distribution of any kind or character shall be made by or on behalf of any Affected Payor or any other Person on its behalf, and no payment or distribution of any kind or character shall be received by or on behalf of any Affected Payee or any other Person on its behalf, with respect to this Note until the earlier of (A) the Termination Date and (B) the date such Event of Default has been cured or waived;

(iii) if any payment or distribution of any character, whether in cash, securities or other property (other than Restructured Securities), in respect of this Note shall (despite these subordination provisions) be received by any Affected Payee in violation of the foregoing clause (i) or (ii), such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered in accordance with the relevant Collateral Documents, the Administrative Agent, on behalf of the Secured Parties, subject to the terms of any Intercreditor Agreement; and

(iv) each Affected Payee agrees to file all claims against each relevant Affected Payor in any bankruptcy or other proceeding in which the filing of claims is required by law in respect of any Senior Indebtedness and the Administrative Agent shall be entitled to all of such Affected Payee’s rights thereunder. If for any reason an Affected Payee fails to file such claim at least ten days prior to the last date on which such claim should be filed, such Affected Payee hereby irrevocably appoints the Administrative Agent as its true and lawful attorney-in-fact and the Administrative Agent is hereby authorized to act as attorney-in-fact in such Affected Payee’s name to file such claim or, in the Administrative Agent’s discretion, to assign such claim to and cause proof of claim to be filed in the name of the Administrative Agent or its nominee. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the Administrative Agent the full amount payable on the claim in the proceeding, and, to the full extent necessary for that purpose, each Affected Payee hereby assigns to the Administrative Agent all of such Affected Payee’s rights to any payments or distributions to which such Affected Payee otherwise would be entitled. If the amount so paid is greater than such Affected Payor’s liability hereunder, the Administrative Agent shall pay the excess amount to the party entitled thereto under the Intercreditor Agreement and applicable law. In addition, upon the occurrence and during the continuance of an Event of Default, each Affected Payee hereby irrevocably appoints the Administrative Agent as its attorney-in-fact to exercise all of such Affected Payee’s voting rights in connection with any bankruptcy proceeding or any plan for the reorganization of each relevant Affected Payor.
Except as otherwise set forth in clauses (i) and (ii) above, any Payor is permitted to pay, and any Payee is entitled to receive, any payment or prepayment of principal and interest on the Indebtedness evidenced by this Note.

To the fullest extent permitted by Requirements of Law, no present or future holder of Senior Indebtedness shall at any time or in any way be prejudiced or impaired in its right to enforce the subordination of this Note by any act or failure to act on the part of any Affected Payor or Affected Payee or by any act or failure to act on the part of such holder or any trustee or agent for such holder, or by any noncompliance by the Payor with the terms and provisions of the Note, regardless or any knowledge thereof which any such holder may have or be otherwise charged with. Each Affected Payee and each Affected Payor hereby agrees that the subordination of this Note is for the benefit of the Administrative Agent and the ratable benefit of the Secured Parties. The Administrative Agent is an obligee under this Note to the same extent as if its name was written herein as such and the Administrative Agent (or other applicable Representative) may, on behalf of itself, and the Secured Parties, proceed to enforce the subordination provisions herein, in each case, subject to the terms of any Intercreditor Agreement.

The holders of the Senior Indebtedness may, without in any way affecting the obligations of the holder of the Note with respect hereto, at any time or from time to time and in their absolute discretion, change the manner, place or terms of payment of, change or extend the time of payment of, or renew or alter, any Senior Indebtedness or amend, modify or supplement any agreement or instrument governing or evidencing such Senior Indebtedness or any other document referred to therein, or exercise or refrain from exercising any other of their rights under the Senior Indebtedness including, without limitation, the waiver of default thereunder and the release of any collateral securing such Senior Indebtedness, all without notice to or assent from any Payor or Payee.

Nothing contained in the subordination provisions set forth above is intended to or will impair, as between each Payor and each Payee, the obligations of such Payor, which are absolute and unconditional, to pay to such Payee the principal of and interest on this Note as and when due and payable in accordance with its terms, or is intended to or will affect the relative rights of such Payee and other creditors of such Payor other than the holders of Senior Indebtedness.

Each Payee is hereby authorized (but not required) to record all loans and advances made by it to any Payor (all of which shall be evidenced by this Note), and all repayments or prepayments thereof, in its books and records, such books and records constituting prima facie evidence of the accuracy of the information contained therein. For the avoidance of doubt, this Note shall not in any way replace, or affect the principal amount of, any intercompany loan outstanding between any Payor and any Payee prior to the execution hereof, and to the extent permitted by applicable law, from and after the date hereof, each such intercompany loan shall be deemed to incorporate the terms set forth in this Note to the extent applicable and shall be deemed to be evidenced by this Note together with any documents and instruments executed prior to the date hereof in connection with such intercompany Indebtedness.

Each Payor hereby waives presentment, demand, protest or notice of any kind in connection with this Note. Except to the extent of any taxes required by law to be withheld, all payments under this Note shall be made without offset, counterclaim or deduction of any kind.

This Note shall be binding upon each Payor and its successors and assigns, and the terms and provisions of this Note shall inure to the benefit of each Payee and their respective successors and assigns, including subsequent holders hereof.

If, at any time, all or part of any payment with respect to Senior Indebtedness theretofore made by the Payor or any other Person or entity is rescinded or must otherwise be returned by the holders of the
Senior Indebtedness for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of the Payor or such other Person or entity), the subordination provisions set forth herein shall continue to be effective or be reinstated, as the case may be, all as though such payment had not been made.

If any Payee shall acquire by indemnification, subrogation or otherwise, any lien, estate, right or other interest in any of the assets or properties of any Payor, that lien, estate, right or other interest shall be subordinate in right of payment to the Senior Indebtedness and the lien of the Senior Indebtedness as provided herein, and each Payee hereby waives any and all rights it may acquire by subrogation or otherwise to any lien of the Senior Indebtedness or any portion thereof until the Termination Date.

From time to time after the date hereof, additional subsidiaries of the Borrower may become parties hereto (as Payor and/or Payee, as the case may be) by executing a counterpart signature page hereto, which shall be automatically incorporated into this Note (each additional Subsidiary, an “Additional Party”). Upon delivery of such counterpart signature page to the Payees, notice of which is hereby waived by the other Payors, each Additional Party shall be a Payor and/or a Payee, as the case may be, and shall be as fully a party hereto as if such Additional Party were an original signatory hereof. Each Payor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Payor or Payee hereunder. This Note shall be fully effective as to any Payor or Payee that is or becomes a party hereto regardless of whether any other person becomes or fails to become or ceases to be a Payor or Payee hereunder.

Indebtedness governed by this Note shall be maintained in “registered form” within the meaning of Section 163(f) of the Internal Revenue Code of 1986, as amended. The Payor or its designee (which shall at the Administrative Agent’s request, be the Administrative Agent acting solely for this purpose as non-fiduciary agent of the Payor) shall record the transfer of the right to payments of principal and interest on the Indebtedness governed by this Note to holders of the Senior Indebtedness in a register (the “Register”), and no such transfer shall be effective until entered in the Register.

Any Payor shall be automatically released from this Note in the event that such Payor ceases to be a Loan Party pursuant to Article 8 or Section 9.22 of the Credit Agreement. Any Payee shall be automatically released from this Note in the event that such Payee ceases to be a Restricted Subsidiary that is a Wholly-Owned Subsidiary of the Borrower pursuant to a transaction permitted by the Credit Agreement unless such Payee otherwise agrees in writing to remain bound by the terms of this Note in its sole discretion.

It is understood and agreed that this Note is only intended to govern Indebtedness evidenced by this Note owed by any Payor to any Payee in reliance on Section 6.01(b) of the Credit Agreement.

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

[Signature Pages Follow]
[FORM OF]
INTEREST ELECTION REQUEST

JPMorgan Chase Bank, N.A.,
as Administrative Agent for the Lenders referred to below
10 S. Dearborn St.
Chicago, IL 60603
Attention: [***]
Tel: [***]
Fax [***]
Email: [***]

[__________] [__, 20__]

Ladies and Gentlemen:

Reference is hereby made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

The undersigned hereby gives you notice pursuant to Section 2.08 of the Credit Agreement of an interest rate election, and in that connection sets forth below the terms thereof:

1. [on [__________] [__, 20__] (which is a Business Day), the undersigned will convert $[__________] of the aggregate outstanding principal amount of the Revolving Loans, bearing interest at

39 The Administrative Agent must be notified in writing, which must be received by the Administrative Agent (by hand delivery, fax or other electronic transmission (including “.pdf” or “.tif”) not later than (i) 10:00 a.m. three Business Days prior to the requested day of any conversion or continuation of Term Benchmark Loans (or, if after the effectiveness of a Benchmark Replacement, five Business Days prior to the requested day of any Borrowing of, conversion to or continuation of RFR Loans) and (ii) 12:00 p.m. on the requested date of any conversion to ABR Loans (other than Swingline Loans) (or, in each case, such later time as is reasonably acceptable to the Administrative Agent); provided, however, that if the Borrower wishes to request Term Benchmark Loans having an Interest Period other than one, three or six months in duration or such shorter period as provided in the definition of “Interest Period”, (A) the applicable notice from the Borrower must be received by the Administrative Agent not later than 12:00 p.m. four Business Days prior to the requested date of the relevant conversion or continuation (or such later time as is reasonably acceptable to the Administrative Agent), whereupon the Administrative Agent shall give prompt notice to the appropriate Lenders of such request, (B) the relevant requested Interest Period shall be deemed to be available to each appropriate Lender unless such Lender has delivered written notice to the Administrative Agent indicating that such Interest Period is not available to such Lender within one Business Day following the date on which the notice described in clause (A) above is posted by the Administrative Agent and (C) not later than 10:00 a.m. three Business Days before the requested date of the relevant conversion or continuation, the Administrative Agent shall notify the Borrower whether or not the requested Interest Period is available to the appropriate Lenders.

40 Subject to Section 2.02(c) of the Credit Agreement.
the [ABR][Term Benchmark], into a [Term Benchmark][ABR] Loan [and, in the case of a Term Benchmark Loan, having an Interest Period of
[___] month(s)]41[; and][.]

2. [on [_______] [___], 20[___] (which is a Business Day), the undersigned will continue $[_________] of the aggregate outstanding principal amount of the Revolving Loans bearing interest at the Term Benchmark, as Term Benchmark Loans having an Interest Period of [___]month(s)42.]

[Signature Page Follows]

41 Must be a period contemplated by the definition of “Interest Period”.

42 Must be a period contemplated by the definition of “Interest Period”.

H-2
CAVA GROUP, INC.

By: ________________________________
   Name:
   Title:

H-3
[FORM OF]
LOAN GUARANTY

[See attached]
LOAN GUARANTY

THIS LOAN GUARANTY (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “Loan Guaranty”) is entered into as of March 11, 2022, by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Subsidiary Guarantors (as defined in the Credit Agreement) from time to time party hereto, and JPMorgan Chase Bank, N.A., in its capacity as administrative agent for the Lenders and collateral agent for the Secured Parties referred to in the Credit Agreement referred to below (in such capacities and together with its successors and assigns, the “Administrative Agent”).

PRELIMINARY STATEMENT

Reference is hereby made to that certain Credit Agreement, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among, inter alios, the Borrower, the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and the Administrative Agent.

The Loan Guarantors are entering into this Loan Guaranty in order to induce the Lenders to enter into and extend credit to the Borrower under the Credit Agreement and to guarantee the Secured Obligations.

Each Loan Guarantor will obtain benefits from the incurrence of Loans by the Borrower and the issuance of, and participation in, Letters of Credit for the account of the Borrower and its subsidiaries and the incurrence by the Loan Parties of Secured Hedging Obligations and Banking Services Obligations.

ACCORDINGLY, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

SECTION 1.01 Definitions of Certain Terms Used Herein. As used in this Loan Guaranty, in addition to the terms defined in the preamble and Preliminary Statement above, the following terms shall have the following meanings:

“Accommodation Payments” has the meaning assigned to such term in Section 2.09(a).

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

“Article” means a numbered article of this Loan Guaranty, unless another document is specifically referenced.

“Borrower” has the meaning assigned to such term in the preamble.

“Borrower Primary Obligations” means the Obligations of the Borrower under the Credit Agreement.

“Credit Agreement” has the meaning assigned to such term in the preliminary statement.

“Exhibit” refers to a specific exhibit to this Loan Guaranty, unless another document is specifically referenced.
“Guaranteed Obligations” means (a) with respect to the Borrower, the Other Guaranteed Obligations of each Loan Party other than the Borrower and (b) with respect to any Loan Guarantor other than the Borrower, the Borrower Primary Obligations and the Other Guaranteed Obligations of each other Loan Guarantor, including, in the case of both clauses (a) and (b), amounts that would become due but for the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a) or any other Debtor Relief Law (excluding, for the avoidance of doubt, any Excluded Swap Obligation) together with any expenses which may be incurred by the Administrative Agent in collecting any of the Guaranteed Obligations that are reimbursable in accordance with Section 9.03 of the Credit Agreement and excluding, in any event, any Excluded Swap Obligation.

“Guarantor Percentage” has the meaning assigned to such term in Section 2.09(a).

“Loan Guarantor” means the Borrower and each Subsidiary Guarantor.

“Loan Guaranty” has the meaning assigned to such term in the preamble.

“Maximum Liability” has the meaning assigned to such term in Section 2.09(a).

“Non-ECP Guarantor” means each Loan Guarantor other than a Qualified ECP Guarantor.

“Non-Paying Guarantor” has the meaning assigned to such term in Section 2.09(a).

“Obligated Party” has the meaning assigned to such term in Section 2.02.

“Other Guaranteed Obligations” means, with respect to the Loan Guaranty provided by any Loan Party, any Banking Services Obligations and/or any Secured Hedging Obligation of any other Loan Party.

“Paying Guarantor” has the meaning assigned to such term in Section 2.09(a).

“Qualified ECP Guarantor” means in respect of any Swap Obligation, each Loan Party that, at the time the relevant guarantee (or grant of the relevant security interest, as applicable) becomes or would become effective with respect to such Swap Obligation, has total assets exceeding $10,000,000 or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and which may cause another person to qualify as an “eligible contract participant” with respect to such Swap Obligation at such time by entering into a keepwell pursuant to section 1a(18)(A)(v)(II) of the Commodity Exchange Act (or any successor provision thereto).

“Section” means a numbered section of this Loan Guaranty, unless another document is specifically referenced.

“UFCA” has the meaning assigned to such term in Section 2.09(a).

“UFTA” has the meaning assigned to such term in Section 2.09(a).

The terms of Section 1.03 of the Credit Agreement shall apply to this Loan Guaranty, mutatis mutandis. Capitalized terms used in this Loan Guaranty and not otherwise defined herein shall have the meanings set forth in the Credit Agreement.
ARTICLE 2

LOAN GUARANTY

SECTION 2.01 Guaranty. Except as otherwise provided for herein (including under Section 3.15), each Loan Guarantor hereby agrees that it is jointly and severally liable for, and, as primary obligor and not merely as surety, and absolutely and unconditionally and irrevocably guarantees to the Administrative Agent (acting as agent for the Secured Parties, pursuant to Article 8 of the Credit Agreement) for the ratable benefit of the Secured Parties, the full and prompt payment, when and as the same become due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Guaranteed Obligations. Each Loan Guarantor further agrees that the Guaranteed Obligations may be increased, extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. In addition, if any or all of the Guaranteed Obligations become due and payable hereunder, each Loan Guarantor, unconditionally and irrevocably, promises to pay such Guaranteed Obligations to the Administrative Agent for the benefit of the Secured Parties when and as the same shall become due. Without limiting the generality of the foregoing, each Loan Guarantor unconditionally and irrevocably guarantees the payment of any and all of the Guaranteed Obligations whether or not due or payable by the Borrower upon the occurrence of any of the Events of Default specified in Sections 7.01(f) or 7.01(g) of the Credit Agreement and thereafter irrevocably and unconditionally promises to pay such Guaranteed Obligations to the Administrative Agent for the benefit of the Secured Parties. This Loan Guaranty is a continuing one and shall remain in full force and effect until the Termination Date (or, with respect to any Loan Guarantor, until the release of such Loan Guarantor from its obligations hereunder in accordance with Section 3.15), and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon.

SECTION 2.02 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent or any Lender to sue the Borrower, any Loan Guarantor, any other guarantor, or any other Person obligated for all or any part of the Guaranteed Obligations (the Borrower, each Loan Guarantor, each other guarantor or such other Person, an “Obligated Party”), or otherwise to enforce its rights in respect of any Collateral securing all or any part of the Guaranteed Obligations. The Administrative Agent may enforce this Loan Guaranty in accordance with the provisions of the Credit Agreement.

SECTION 2.03 No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise provided for herein (including under Section 3.15), the obligations of each Loan Guarantor hereunder are unconditional, irrevocable and absolute and not subject to any reduction, limitation, impairment or termination for any reason, including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Obligated Party; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any other Obligated Party, or their assets or any resulting release or discharge of any obligation of any Obligated Party; (iv) the existence of any claim, setoff or other right which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, any Lender or any other Person, whether in connection herewith or in any unrelated transaction; (v) any direction as to application of payments by the Borrower or by any other party; (vi) any other continuing or other guaranty, undertaking or maximum liability of a guarantor or of any other party as to the Guaranteed Obligations; (vii) any payment on or in reduction of any such other guaranty or undertaking; (viii) any dissolution, termination or increase, decrease or change in personnel by the Borrower or (ix) any payment made to any Secured Party on the Guaranteed Obligations which any such Secured Party repays to the Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other
debtor relief proceeding, and each Loan Guarantor waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

(b) Except for termination of such Loan Guarantor’s obligations hereunder or as permitted by Section 3.15, the obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any Requirement of Law purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for all or any part of the Guaranteed Obligations or any obligations of any other guarantor of or other Person liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent with respect to any Collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity, in each case other than as set forth in Section 3.15.

SECTION 2.04 Defenses Waived. To the fullest extent permitted by applicable Requirements of Law, and except for termination of a Loan Guarantor’s obligations hereunder or as otherwise provided for herein (including under Section 3.15), each Loan Guarantor hereby waives any defense based on or arising out of any defense of the Borrower or any other Loan Guarantor or arising out of the disability of the Borrower or any other Loan Guarantor or any other party or the unenforceability of all or any part of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower or any other Loan Guarantor. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by applicable Requirements of Law, any notice not provided for herein or in any other Loan Document, including any notice of nonperformance, notice of protest, notice of dishonor, notice of acceptance of this Loan Guaranty, and any notice of the existence, creation or incurrence of new or additional Guaranteed Obligations, as well as any requirement that at any time any action be taken by any Person against any Obligated Party, or any other Person, including any right (except as may be required by applicable Requirements of Law and to the extent the relevant requirement cannot be waived) to require the Administrative Agent to (i) proceed against the Borrower, any other guarantor or any other party, (ii) proceed against or exhaust any Lien from the Borrower, any other relevant Loan Guarantor or any other party or (iii) pursue any other remedy in the Administrative Agent’s power whatsoever. The Administrative Agent may, at its election and in accordance with the terms of the applicable Loan Documents, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent permitted by applicable Requirements of Law), accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any Collateral securing all or a part of the Guaranteed Obligations, and the Administrative Agent may, at its election, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, or any security, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty, except as otherwise provided in Section 3.15. To the fullest extent permitted by applicable Requirements of Law, each Loan Guarantor waives any defense arising out of any such election even though such election may operate, pursuant to applicable

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Requirements of Law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

SECTION 2.05 Authorization. Each Loan Guarantor authorizes the Administrative Agent without notice or demand (except as may be required by applicable Requirements of Law and to the extent the relevant requirement cannot be waived), and without affecting or impairing its liability hereunder (except as set forth in Section 3.15), from time to time, subject to each applicable Intercreditor Agreement and the terms of the referenced Loan Documents, to:

(a) change the manner, place or terms of payment of, and/or change or extend the time of payment of, renew, increase, accelerate or alter, any of the Guaranteed Obligations (including any increase or decrease in the principal amount thereof or the rate of interest or fees thereon), any Lien therefor, or any liability incurred directly or indirectly in respect thereof, and this Loan Guaranty shall apply to the Guaranteed Obligations as so changed, extended, renewed or altered;

(b) take and hold any Lien for the payment of the Guaranteed Obligations and sell, exchange, release, impair, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset there against;

(c) exercise or refrain from exercising any rights against the Borrower, any other Loan Party or others or otherwise act or refrain from acting;

(d) release or substitute any endorser, any guarantor, the Borrower, any other Loan Party and/or any other obligor;

(e) settle or compromise any of the Guaranteed Obligations, any Lien therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Borrower to its creditors other than the Secured Parties;

(f) apply any sum by whomsoever paid or howsoever realized to any liability or liabilities of the Borrower to the Secured Parties regardless of what liability or liabilities of the Borrower remain unpaid;

(g) consent to or waive any breach of, or any act, omission or default under, this Loan Guaranty, the Credit Agreement, any other Loan Document, any agreement relating to Banking Services Obligations, any Hedge Agreement with respect to any Secured Hedging Obligation or any of the instruments or agreements referred to herein or therein, or otherwise amend, modify or supplement this Loan Guaranty, the Credit Agreement, any other Loan Document, any agreement relating to Banking Services Obligations, any Hedge Agreement with respect to any Secured Hedging Obligation or any of such other instruments or agreements; and/or

(h) take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of the Loan Guarantors from their respective liabilities under this Loan Guaranty.

SECTION 2.06 Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including any claim of subrogation, contribution or indemnification that it has against any Loan Party in respect of this Loan Guaranty until the occurrence of the Termination Date (or the release
of such Loan Party from its obligations hereunder in accordance with Section 3.15); provided that if any amount is paid to such Loan Guarantor on account of such subrogation rights at any time prior to the Termination Date (or such date on which such Loan Guarantor is released from its obligations hereunder in accordance with Section 3.15), then unless such payment would cause such Loan Guarantor’s liabilities under this Loan Guaranty to exceed such Loan Guarantor’s Maximum Liability as of such date, such amount shall be held by the recipient Loan Guarantor in trust for the benefit of the Secured Parties and shall forthwith be paid by the recipient Loan Guarantor to the Administrative Agent (for the benefit of the Secured Parties) to be credited and applied to the Guaranteed Obligations, whether matured or unmatured, in accordance with Section 2.18(b) of the Credit Agreement.

SECTION 2.07 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of the Borrower or otherwise, each Loan Guarantor’s obligations under this Loan Guaranty with respect to such payment shall be reinstated at such time as though the payment had not been made. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the other Loan Guarantors forthwith on demand by the Administrative Agent.

SECTION 2.08 Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrower’s financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, any Lender or any other Secured Party shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

SECTION 2.09 Contribution; Subordination; Maximum Liability.

(a) In the event that any Loan Guarantor (a “Paying Guarantor”) makes any payment or payments under this Loan Guaranty or suffers any loss as a result of any realization upon any Collateral granted by it to secure its obligations under this Loan Guaranty (each such payment or loss, an “Accommodation Payment”), each other Loan Guarantor (each a “Non-Paying Guarantor”) shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor’s “Guarantor Percentage” of such Accommodation Payment by such Paying Guarantor. For purposes of this Article 2, each Non-Paying Guarantor’s “Guarantor Percentage” with respect to any Accommodation Payment by a Paying Guarantor shall be determined as of the date on which such Accommodation Payment was made by reference to the ratio of (a) such Non-Paying Guarantor’s Maximum Liability (as defined below) as of such date to (b) the aggregate Maximum Liability of all Loan Guarantors hereunder (including such Paying Guarantor) as of such date. As of any date of determination, the “Maximum Liability” of each Loan Guarantor shall be equal to the maximum amount of liability which could be asserted against such Loan Guarantor hereunder and under the Credit Agreement without (i) rendering such Loan Guarantor “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act (“UFTA”) or Section 2 of the Uniform Fraud Conveyance Act (“UFCA”), (ii) leaving such Loan Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA or Section 5 of the UFCA, or (iii) leaving such Loan Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA or Section 5 of the UFCA. Nothing in this provision shall affect any Loan Guarantor’s several liability for the entire amount of the Guaranteed Obligations (up to such Loan Guarantor’s Maximum Liability). Each of the Loan Guarantors covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Non-Paying Guarantor shall be
subordinate and junior in right of payment to the Secured Obligations until the Termination Date (or until the date on which such Loan Guarantor is released from its obligations hereunder in accordance with Section 3.15). If, prior to the Termination Date, any such contribution payment is received by a Paying Guarantor at any time when an Event of Default has occurred and is continuing, such contribution payment shall be collected, enforced and received by such Loan Guarantor as trustee for the Secured Parties and be paid over to the Administrative Agent on account of the Secured Obligations, but without affecting or impairing in any manner the liability of such Loan Guarantor under the other provisions of this Loan Guaranty. This provision is for the benefit of the Administrative Agent, the Lenders and the other Secured Parties.

(b) It is the desire and intent of the Loan Guarantors and the Secured Parties that this Loan Guaranty shall be permitted to be enforced against the Loan Guarantors to the fullest extent permissible under the Requirements of Law and public policies applied in each jurisdiction in which enforcement is sought. The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, Federal or foreign bankruptcy, insolvency, reorganization or other Requirements of Law affecting the rights of creditors generally, if the obligations of any Loan Guarantor under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Loan Guarantor’s liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Loan Guarantors or the Secured Parties, be automatically limited and reduced to such Loan Guarantor’s Maximum Liability. Each Loan Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the Maximum Liability of such Loan Guarantor without impairing this Loan Guaranty or affecting the rights and remedies of the Administrative Agent hereunder; provided that nothing in this sentence shall be construed to increase any Loan Guarantor’s obligations hereunder beyond its Maximum Liability.

SECTION 2.10 Representations and Warranties. As, when (including on the date hereof) and to the extent required in accordance with the terms of the Credit Agreement, each Loan Guarantor hereby makes each applicable representation and warranty made in the Loan Documents by the Borrower with respect to such Loan Guarantor, and each Loan Guarantor hereby further acknowledges and agrees that such Loan Guarantor has, independently and without reliance upon any Secured Party and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Loan Guaranty and each other Loan Document to which it is or is to be a party, and such Loan Guarantor has established adequate means of obtaining from each other Loan Guarantor on a continuing basis information pertaining to the business, condition (financial or otherwise), operations, performance, properties and prospects of each other Loan Guarantor.

SECTION 2.11 Covenants. Each Loan Guarantor covenants and agrees that, until the Termination Date, such Loan Guarantor will perform and observe, and cause each of its subsidiaries that constitutes a Restricted Subsidiary to perform and observe, all of the applicable terms, covenants and agreements set forth in the Loan Documents that the Borrower has agreed to cause such Loan Guarantor or such subsidiary to perform or observe. Until the Termination Date, no Loan Guarantor shall, without the prior written consent of the Administrative Agent, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding against the Borrower or any other Loan Guarantor (it being understood and agreed, for the avoidance of doubt, that nothing in this Section 2.11 shall prohibit any Guarantor from commencing or joining with the Borrower or any Loan Guarantor as a co-debtor in any bankruptcy, reorganization or insolvency case or proceeding).
ARTICLE 3
GENERAL PROVISIONS

SECTION 3.01 Liability Cumulative. The liability of each Loan Guarantor under this Loan Guaranty is in addition to and shall be cumulative with all liabilities of such Loan Guarantor to the Secured Parties under the Credit Agreement and the other Loan Documents to which such Loan Guarantor is a party or in respect of any obligations or liabilities of the other Loan Guarantors, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

SECTION 3.02 No Waiver; Amendments. No delay or omission of the Administrative Agent in exercising any right or remedy granted under this Loan Guaranty shall impair such right or remedy or be construed to be a waiver of any Default or Event of Default or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Loan Guaranty whatsoever shall be valid unless in writing signed by the Loan Guarantors and the Administrative Agent in accordance with Section 9.02 of the Credit Agreement and then only to the extent specifically set forth in such writing.

SECTION 3.03 Severability of Provisions. To the extent permitted by applicable Requirements of Law, any provision of this Loan Guaranty that is 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 of this Loan Guaranty; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 3.04 Additional Subsidiaries. Restricted Subsidiaries of the Borrower may be required to enter into this Loan Guaranty as Subsidiary Guarantors pursuant to and in accordance with Section 5.12 of the Credit Agreement. Upon execution and delivery by any such Restricted Subsidiary of a Joinder Agreement, such Restricted Subsidiary shall become a Subsidiary Guarantor hereunder with the same force and effect as if originally named as a Subsidiary Guarantor herein. The execution and delivery of any such instrument shall not require the consent of any other Loan Guarantor hereunder or any other Person. The rights and obligations of each Loan Guarantor hereunder shall remain in full force and effect notwithstanding the addition of any new Loan Guarantor as a party to this Loan Guaranty.

SECTION 3.05 Headings. The titles of and section headings in this Loan Guaranty are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Loan Guaranty.

SECTION 3.06 Entire Agreement. This Loan Guaranty and the other Loan Documents 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.

SECTION 3.07 CHOICE OF LAW. THIS LOAN GUARANTY AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS LOAN GUARANTY, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.
SECTION 3.08 CONSENT TO JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) 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 LOAN GUARANTY 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 SUCH JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE REQUIREMENTS OF LAW.

(b) 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 LOAN GUARANTY AND BROUGHT IN ANY COURT REFERRED TO IN PARAGRAPH (a) 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.

(c) 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 PROVIDED 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 LOAN GUARANTY WILL AFFECT THE RIGHT OF ANY PARTY TO THIS LOAN GUARANTY TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

SECTION 3.09 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 LOAN GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY 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 LOAN GUARANTY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 3.10 Indemnity. Each Loan Guarantor hereby agrees to indemnify the Administrative Agent and the other Indemnitees, as set forth in Section 9.03 of the Credit Agreement.

SECTION 3.11 Counterparts. This Loan Guaranty may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Loan Guaranty by facsimile or by email as a “.pdf” or “.tif” attachment shall be effective as delivery of a manually executed counterpart of this Loan Guaranty. It is understood and agreed that, subject to any Requirement of Law, the words “execution,” “signed,” “signature,” and words of like import in this Loan Guaranty shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.


SECTION 3.13 Successors and Assigns. Whenever in this Loan Guaranty any party hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party; and all covenants, promises and agreements by or on behalf of any Loan Guarantor or the Administrative Agent that are contained in this Loan Guaranty shall bind and inure to the benefit of their respective successors and permitted assigns. Except in a transaction permitted (or not restricted) under the Credit Agreement, no Loan Guarantor may assign any of its rights or obligations hereunder without the written consent of the Administrative Agent.

SECTION 3.14 Survival of Agreement. Without limitation of any provision of the Credit Agreement or Section 3.10, all covenants, agreements, indemnities, representations and warranties made by the Loan Guarantors in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Loan Guaranty or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the execution and delivery of the Loan Documents and the making of any Loan, regardless of any investigation made by any such Lender or on its behalf notwithstanding that the Administrative Agent or any Lender 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 under the Credit Agreement, and shall continue in full force and effect until the Termination Date, or with respect to any individual Loan Guarantor until such Loan Guarantor is otherwise released from its obligations under this Loan Guaranty in accordance with Section 3.15.

SECTION 3.15 Release of Loan Guarantors. A Subsidiary Guarantor shall automatically be released from its obligations hereunder and its Loan Guaranty shall be automatically released in the
circumstances described in Article 8 and Section 9.22 of the Credit Agreement. In connection with any such release, the Administrative Agent shall promptly execute and deliver to any Loan Guarantor, at such Loan Guarantor’s expense, all documents that such Loan Guarantor shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to the preceding sentence of this Section 3.15 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 3.16 Payments. All payments made by any Loan Guarantor hereunder will be made without setoff, counterclaim or other defense and on the same basis as payments are made by the Borrower under Sections 2.17 and 2.18 of the Credit Agreement.

SECTION 3.17 Notice, etc. All notices and other communications provided for hereunder 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:

(a) if to any Loan Guarantor, addressed to it in care of the Borrower at its address specified in Section 9.01 of the Credit Agreement;

(b) if to the Administrative Agent or any Lender, at its address specified in Section 9.01 of the Credit Agreement;

(c) if to any Secured Party in respect of any Secured Hedging Obligations, at its address specified in the Hedge Agreement to which it is a party; or

(d) if to any Secured Party in respect of any Banking Services Obligations, at its address specified in the relevant documentation to which it is a party.

SECTION 3.18 Set Off. In addition to any right now or hereafter granted under applicable Requirements of Law and not by way of limitation of any such right, while an Event of Default is continuing, the Administrative Agent, each Lender and each Issuing Bank shall be entitled to rights of setoff to the extent provided in Section 9.09 of the Credit Agreement.

SECTION 3.19 Waiver of Consequential Damages, Etc. To the extent permitted by applicable Requirements of Law, none of the Loan Guarantors nor the Secured Parties shall assert, and each hereby waives, any claim against each other or any Related Party 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 Loan Guaranty or any agreement or instrument contemplated hereby, except, in the case of any claim by any Indemnitee against any of the Loan Guarantors, to the extent such damages would otherwise be subject to indemnification pursuant to the terms of Section 3.10.

SECTION 3.20 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each Non-ECP Guarantor to honor all of its obligations under this Loan Guaranty in respect of Swap Obligations that would otherwise be Excluded Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 3.20 for the maximum amount of such liability that can be hereby incurred, and otherwise subject to the limitations on the obligations of Loan Guarantors contained in this Loan Guaranty, without rendering its obligations under this Section 3.20, or otherwise under this Loan Guaranty, voidable under applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). This
Section 3.20 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each Non-ECP Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

[Signature Page Follows]
IN WITNESS WHEREOF, each Loan Guarantor and the Administrative Agent have executed this Loan Guaranty as of the date first above written.

CAVA GROUP, INC.

By:  
Name: Tricia Tolivar  
Title: CFO

CAVA HOLDING COMPANY
CAVA FOODS, LLC
CAVA MEZZE GRILL, LLC
CAVA MEZZE GRILL REAGAN, LLC
CAVA BEVERAGE HOLDING COMPANY LLC
CAVA BEVERAGE COMPANY LLC
CAVA TABLE, LLC
ZOE’S KITCHEN, INC.
SOHO FRANCHISING LLC
ZOE’S KITCHEN USA, LLC
ZOE’S KITCHEN HOLDING COMPANY, LLC
ZOE’S ANNAPOLIS, LLC
ZOE’S ARIZONA, LLC
ZOE’S ARKANSAS, LLC
ZOE’S COLORADO, LLC
ZOE’S FLORIDA, LLC
ZOE’S LOUISIANA, LLC
ZOE’S MISSOURI, LLC
ZOE’S NEW JERSEY, LLC
ZOE’S NORTH CAROLINA, LLC
ZOE’S OKLAHOMA, LLC
ZOE’S PENNSYLVANIA, LLC
ZOE’S SOUTH CAROLINA, LLC
ZOE’S VIRGINIA, LLC
ZOE’S KANSAS, LLC
ZOE’S MARYLAND, LLC
ZOE’S RESTAURANTS, LLC
ZOE’S TEXAS, LLC
ZK KANSAS BEVERAGE, LLC
ZOE’S HOWARD COUNTY, LLC
ZOE’S RESTAURANTS NASHVILLE, LLC
ZK TEXAS HOLDINGS, LLC
ZK TEXAS MANAGEMENT, LLC
ZK TEXAS BEVERAGES, LLC

By:  
Name: Tricia Tolivar  
Title: CFO

[Signature Page to Loan Guaranty]
JPMORGAN CHASE BANK, N.A.,

as Administrative Agent

By:

Name: 
Title: 

[Signature Page to Loan Guaranty]
[FORM OF]
PERFECTION CERTIFICATE
[See attached]

J-1
[FORM OF]
PERFECTION CERTIFICATE

[●] [●], 20[●]

Reference is hereby made to (i) that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender and (ii) that certain Pledge and Security Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), by and among the Borrower, the other Grantors (as defined in the Security Agreement) from time to time party thereto and the Administrative Agent. Capitalized terms used but not defined herein have the meanings assigned to such terms in the Security Agreement or the Credit Agreement, as applicable.

As used herein, the term “Company” means [each][the] signatory hereto.

As of the date hereof, the undersigned hereby represents and warrants to the applicable Administrative Agent as follows:

1. **Names.** (a) The exact legal name of [each][the] Company, as such name appears in its [respective] Organizational Documents filed with the Secretary of State of [such][the] Company’s jurisdiction of organization is set forth in Schedule 1(a). [Each][The] Company is the type of entity disclosed next to its name in Schedule 1(a). Also set forth in Schedule 1(a) is jurisdiction of organization of [each][the] Company.

   (b) Except as otherwise disclosed in Schedule 1(c) or Schedule 1(d), set forth in Schedule 1(b) hereto is any other legal name that [any][the] Company has had, together with the date of the relevant change in the past five years.

   (c) Set forth in Schedule 1(c) is a list of the information required by Section 1(a) of this certificate for any other Person (i) to which [any][the] Company became the successor by merger, consolidation or acquisition or (ii) that has been liquidated into, or transferred all or substantially all of its assets to, [any][the] Company, at any time within the past five years.

   (d) Except as set forth in Schedule 1(d), or as otherwise disclosed in Schedule 1(c), [no Company has][the Company has not] changed its jurisdiction of organization or form of entity at any time during the past four months.

2. **Locations.** The chief executive office of [each][the] Company is currently located at the address set forth in Schedule 2.

3. **Stock Ownership and Other Equity Interests.** Attached hereto as Schedule 3 is a true and correct list of all of the issued and outstanding stock, partnership interests, limited liability company membership interests or other equity interests owned by [any][the] Company other than Excluded Assets, the beneficial owners of such stock, partnership interests, membership interests or other equity interests and the percentage of the total issued and outstanding stock, partnership interests, membership interests or other equity interests of the relevant issuer represented thereby.

4. **Instruments.** Attached hereto as Schedule 4 is a true and correct list of all Instruments (other than (i) checks to be deposited in the ordinary course of business, (ii) Instruments owed by any
Person who is a Loan Party and (iii) Excluded Assets) having an outstanding principal amount exceeding $10,000,000, held by [any] [the] Company as of the date hereof, including the names of the obligors, the amounts owing and the due dates.

5. **Intellectual Property.** (a) Attached hereto as Schedule 5(a) is a schedule setting forth all of [each][the] Company’s Patents and Trademarks, in each case, registered with and published by (or applied for in) the United States Patent and Trademark Office (excluding, for the avoidance of doubt, any Patent or Trademark that has expired or been abandoned and any Excluded Assets), including the name of the registered owner and the registration or publication number (or, if applicable, the applicant and the application number) of each such Patent and Trademark.

(b) Attached hereto as Schedule 5(b) is a schedule setting forth all of [each] [the] Company’s Copyrights registered with (or applied for in) the United States Copyright Office (excluding, for the avoidance of doubt, any Copyright that has expired or been abandoned and any Excluded Asset), including the name of the registered owner and the registration number (or, if applicable, the applicant and the application number) of each such Copyright.

[Signature Page Follows]
IN WITNESS WHEREOF, the undersigned has hereunto signed this Perfection Certificate as of the date first written of above.

[●]

By:

Name: [●]
Title: [●]

J-4
### SCHEDULE 1(a)

**LEGAL NAMES**

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<thead>
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**SCHEDULE 1(A) TO EXHIBIT J**
### SCHEDULE 1(b)

**PRIOR ORGANIZATIONAL NAMES**

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<th>Date of Change</th>
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**SCHEDULE 1(B) TO EXHIBIT J**
# SCHEDULE 1(c)

**PREDECESSOR ENTITIES**

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**SCHEDULE 1(C) TO EXHIBIT J**
SCHEDULE 1(d)

CHANGES IN JURISDICTION OR FORM

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SCHEDULE 1(D) TO EXHIBIT J
SCHEDULE 2
CHIEF EXECUTIVE OFFICE ADDRESSES

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SCHEDULE 2 TO EXHIBIT J
## Schedule 3

### Pledged Stock

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<th>Holder</th>
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<th>No. Shares/Interest Owned</th>
<th>% of Issued and Outstanding Shares Pledged</th>
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**Schedule 3 to Exhibit J**
**SCHEDULE 4**  
**INSTRUMENTS**

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**SCHEDULE 4 TO EXHIBIT J**
## SCHEDULE 5(a)

### PATENTS AND TRADEMARKS

#### PATENTS

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#### TRADEMARKS

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#### TRADEMARK APPLICATIONS

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SCHEDULE 5(A) TO EXHIBIT J
## SCHEDULE 5(b)

### COPYRIGHTS

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### COPYRIGHT APPLICATIONS

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*SCHEDULE 5(B) TO EXHIBIT J*
[FORM OF]

JOINER AGREEMENT

SUPPLEMENT NO. [__] dated as of [__________] [__], 20[__] (this “Supplement”), to [(a) the Pledge and Security Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), by and among the Loan Parties (as defined in the Credit Agreement referenced below) from time to time party thereto (the foregoing, collectively, the “Grantors”) and the Administrative Agent (as defined below), and (b)]43 the Loan Guaranty, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Loan Guaranty”), by and among the Borrower (as defined below), the Subsidiary Guarantors (as defined in the Credit Agreement referenced below) from time to time party thereto and the Administrative Agent (as defined below).

A. Reference is made to the Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender.

B. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement[, the Security Agreement or the Loan Guaranty, as applicable.

C. The applicable Loan Parties have entered into [the Security Agreement and] the Loan Guaranty in order to induce the Lenders to make Loans. [Section 7.10 of the Security Agreement,] Section 3.04 of the Loan Guaranty and Section 5.12 of the Credit Agreement provide that additional subsidiaries of the Borrower may become Subsidiary Guarantors under [the Security Agreement and] the Loan Guaranty by executing and delivering an instrument in the form of this Supplement. [The][Each] undersigned Restricted Subsidiary ([the][each] “New Subsidiary”) is executing this Supplement in accordance with the requirements of the Credit Agreement to become [a Grantor under the Security Agreement] and a Subsidiary Guarantor under the Loan Guaranty in order to induce the Lenders to make additional Loans and as consideration for Loans previously made and to Guaranty and secure the Secured Obligations, including [its][their] obligations under the Loan Guaranty, each Hedge Agreement (the obligations under which constitute Secured Hedging Obligations) and agreements relating to Banking Services (the obligations under which constitute Banking Services Obligations).

Accordingly, the [the][each] New Subsidiary agrees as follows:

SECTION 1. [In accordance with Section 7.10 of the Security Agreement, [the][each] New Subsidiary by its signature below becomes a Subsidiary Guarantor and a Grantor under the Security Agreement with the same force and effect as if originally named therein as a Grantor, and [the][each] New Subsidiary hereby (a) agrees to all the terms and provisions of the Security Agreement applicable to it as a Grantor thereunder and (b) makes the representations and warranties applicable to it as a Grantor under the Security Agreement[, subject to Schedule A hereto,] on and as of the date hereof; it being understood and agreed that any representation or warranty that expressly relates to an earlier date shall be deemed to refer to the date hereof. In furtherance of the foregoing, [the][each] New Subsidiary, as security for the payment and performance in full of the Secured Obligations, does hereby create and grant to the Administrative Agent, its successors and permitted assigns, for the benefit of the Secured Parties, their successors and

43 Include bracketed references to Security Agreement if New Subsidiary is a Domestic Subsidiary.
SECTION 2.  [The][Each] New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, [the] [each] New Subsidiary will be deemed to be a Loan Guarantor under the Loan Guaranty and a Loan Guarantor for all purposes of the Credit Agreement and shall have all of the rights, benefits, duties and obligations of a Loan Guarantor thereunder as if it had executed the Loan Guaranty. [The][Each] New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Loan Guaranty. Without limiting the generality of the foregoing terms of this Section[2], [the][each] New Subsidiary hereby absolutely and unconditionally guarantees, jointly and severally with the other Loan Guarantors, to the Administrative Agent and the Secured Parties, the prompt payment of the Guaranteed Obligations in full when due (whether at stated maturity, upon acceleration or otherwise) to the extent of and in accordance with the Loan Guaranty. [The][Each] New Subsidiary hereby waives acceptance by the Administrative Agent and the Secured Parties of the guaranty by [the][such] New Subsidiary upon the execution of this Agreement by [the][such] New Subsidiary. [The][Each] New Subsidiary hereby (x) makes, as of the date hereof, the representation and warranty set forth in Section 2.10 of the Loan Guaranty[, except as set forth on Schedule A hereto,]45 and (y) agrees to perform and observe, and to cause each of its Restricted Subsidiaries to perform and observe, the covenant set forth in Section 2.11 of the Loan Guaranty.

SECTION 3.  [The][Each] New Subsidiary represents and warrants to the Administrative Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to the Legal Reservations.

SECTION 4.  This Supplement 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 Supplement shall become effective when the Administrative Agent shall have received a counterpart of this Supplement that bears the signature of [the][each] New Subsidiary. Delivery of an executed signature page to this Supplement by facsimile transmission or by email as a “.pdf” or “.tif” attachment shall be as effective as delivery of a manually signed counterpart of this Supplement. It is understood and agreed that, subject to any Requirement of Law, the words “execution”, “signed”, “signature”, “delivery” and words of like import in or relating this Supplement shall be deemed to include any Electronic Signature, delivery or the keeping of any record in electronic form, each of which shall have the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system to the extent and as provided for in any applicable Requirements of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state laws based on the Uniform Electronic Transactions Act.

SECTION 5.  [Attached hereto is a duly prepared, completed and executed Perfection Certificate, which includes information with respect to [the][each] New Subsidiary, and [the][each] New Subsidiary is a Domestic Subsidiary.

44 Include bracketed language if New Subsidiary is a Domestic Subsidiary.
45 Subject to Section 5.12(c)(x) of the Credit Agreement.
hereby represents and warrants that the information set forth therein with respect to itself is true and correct in all material respects as of the date hereof.  

SECTION 6.  Except as expressly supplemented hereby, the Loan Guaranty [and the Security Agreement] shall remain in full force and effect.

SECTION 7.  THIS SUPPLEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENT, WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 8.  In case any one or more of the provisions contained in this Supplement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein[, in the Security Agreement] and in the Loan Guaranty shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The Borrower and the Administrative Agent shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.  All communications and notices hereunder shall be in writing and given as provided in Section 9.01 of the Credit Agreement.

SECTION 10.  [The][Each] New Subsidiary agrees to reimburse the Administrative Agent for its expenses in connection with this Supplement, including the fees, other charges and disbursements of counsel in accordance with Section 9.03(a) of the Credit Agreement.

SECTION 11.  This Supplement shall constitute a Loan Document under and as defined in, the Credit Agreement.

[Signature Pages Follow]

46 Include bracketed language if New Subsidiary is a Domestic Subsidiary.
IN WITNESS WHEREOF, [the][each] New Subsidiary has duly executed this Joinder Agreement as of the day and year first above written.

[NAME OF NEW SUBSIDIARY]
By: ____________________________
   Name: _________________________
   Title: __________________________

K-4
[SCHEDULE A
CERTAIN EXCEPTIONS]

Schedule A to Exhibit K
[FORM OF]
PROMISSORY NOTE

$[__________] New York, New York [__________] [ ], 20[__]

FOR VALUE RECEIVED, the undersigned Cava Group, Inc., a Delaware corporation (the “Borrower”), hereby promises to pay on demand to [__________] (the “Lender”) or its registered permitted assign, at the office of JPMorgan Chase Bank, N.A. at [__________], Revolving Loans in the principal amount of $[__________] or such lesser amount as is outstanding from time to time, on the dates and in the amounts set forth in that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. The Borrower also promises to pay interest from the date of such Loans on the principal amount thereof from time to time outstanding, in like Dollars, at such office, in each case, in the manner and at the rate or rates per annum and payable on the dates provided in the Credit Agreement. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

The Borrower promises to pay interest on any overdue principal and, to the extent permitted by applicable Requirements of Law, overdue interest from the relevant due dates, in each case, in the manner, at the rate or rates and under the circumstances provided in the Credit Agreement.

The Borrower hereby waives diligence, presentment, demand, protest and notice of any kind to the extent possible under any applicable Requirements of Law. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All Borrowings evidenced by this promissory note and all payments and prepayments of the principal hereof and interest hereon and the respective dates thereof shall be endorsed by the holder hereof on the schedules attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in its internal records; provided, however, that the failure of the holder hereof to make such a notation or any error in such notation shall not affect the obligations of the Borrower under this promissory note.

This promissory note is one of the promissory notes referred to in the Credit Agreement that, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional and mandatory prepayment of the principal hereof prior to the maturity hereof and for the amendment or waiver of certain provisions of the Credit Agreement, all upon the terms and conditions therein specified. This promissory note is entitled to the benefit of the Credit Agreement, and the obligations hereunder are guaranteed and secured as provided therein and in the other Loan Documents referred to in the Credit Agreement.

If any assignment by the Lender holding this promissory note occurs after the date of the issuance hereof, the Lender agrees that it shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender this promissory note to the Administrative Agent for cancellation

L-1
THE ASSIGNMENT OF THIS PROMISSORY NOTE AND ANY RIGHTS WITH RESPECT THERETO ARE SUBJECT TO THE PROVISIONS OF THE CREDIT AGREEMENT, INCLUDING THE PROVISIONS GOVERNING THE REGISTER AND THE PARTICIPANT REGISTER.

THIS PROMISSORY NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

[Remainder of Page Intentionally Left Blank]
CAVA GROUP, INC.

By: ________________________________

Name: ________________________________

Title: ________________________________

L-3
## LOANS, CONVERSIONS AND REPAYMENTS OF ABR LOANS

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Schedule A to Exhibit L-1
## LOANS, CONTINUATIONS, CONVERSIONS AND REPAYMENTS OF TERM BENCHMARK LOANS

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schedule A to Exhibit L-2
[FORM OF]
PLEDGE AND SECURITY AGREEMENT
[See attached]

M-1
PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “Security Agreement”) is entered into as of March 11, 2022, by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), each other subsidiary of the Borrower listed on the signature pages hereto or that becomes a party hereto pursuant to Section 7.10 (the Borrower and each such subsidiary, collectively, the “Grantors”), and JPMorgan Chase Bank, N.A. (“JPMorgan”), in its capacity as administrative agent for the Lenders and collateral agent for the Secured Parties (as defined below) (in such capacities and together with its successors and assigns, the “Administrative Agent”).

PRELIMINARY STATEMENT

The Borrower, the Lenders from time to time party thereto, the Administrative Agent and others are entering into that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”). The Grantors are entering into this Security Agreement in order to induce the Lenders to enter into and extend credit to the Borrower under the Credit Agreement and to secure the Secured Obligations, including their obligations under the Loan Guaranty, each Hedge Agreement, the obligations under which constitute Secured Hedging Obligations, and each agreement relating to Banking Services, the obligations under which constitute Banking Services Obligations.

ACCORDINGLY, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. Terms Defined in Credit Agreement. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement. The terms of Section 1.03 of the Credit Agreement shall apply to this Security Agreement, mutatis mutandis.

Section 1.02. Terms Defined in UCC. Terms defined in the UCC that are not otherwise defined in this Security Agreement or the Credit Agreement are used herein as defined in Articles 8 or 9 of the UCC, as the context may require (including without limitation, as if such terms were capitalized in Article 8 or 9 of the UCC, as the context may require, the following terms: “Account”, “Chattel Paper”, “Document”, “Electronic Chattel Paper”, “Equipment”, “Fixture”, “General Intangible”, “Goods”, “Instruments”, “Inventory”, “Investment Property”, “Letter-of-Credit Right”, “Securities Entitlement”, “Supporting Obligation” and “Tangible Chattel Paper”).

Section 1.03. Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the preamble and Preliminary Statement above, the following terms shall have the following meanings:

“Account Debtor” means any Person obligated on an Account.

“Administrative Agent” has the meaning set forth in the preamble.

“Borrower” has the meaning specified in the preamble.

“Collateral” has the meaning set forth in Article 2.
“Contract Rights” means all rights of any Grantor under any Contract, including, without limitation, (i) any and all rights to receive and demand payments under such Contract, (ii) any and all rights to receive and compel performance under such Contract and (iii) any and all other rights, interests and claims now existing or in the future arising in connection with such Contract.

“Contracts” means all contracts between any Grantor and one or more additional parties (including, without limitation, any Hedge Agreement, licensing agreement and any partnership agreement, joint venture agreement and/or limited liability company agreement).

“Control” has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“Credit Agreement” has the meaning set forth in the Preliminary Statement.

“Domain Names” means all Internet domain names and associated URL addresses in or to which any Grantor now or hereafter has any right, title or interest.

“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 Intercreditor Agreement, such Lien is senior in priority to any other Lien to which such Collateral is subject, other than any Permitted Lien.

“Grantors” has the meaning set forth in the preamble.

“Intellectual Property Collateral” means, collectively, all intellectual property, including Copyrights, Patents, Trademarks, Trade Secrets, Domain Names, Licenses and Software.

“JPMorgan” has the meaning set forth in the preamble.

“Licenses” means, with respect to any Grantor, all of such Grantor’s right, title, and interest in and to (a) any and all licensing agreements or similar arrangements, whether as licensor or licensee, in intellectual property, (b) 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 breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

“Permits” shall mean, all licenses, permits, rights, orders, variances, franchises or authorizations of or from any Governmental Authority or agency.

“Pledged Collateral” means all Pledged Stock, including all stock certificates, options or rights of any nature whatsoever in respect of the Pledged Stock that may be issued or granted to, or held by, any Grantor, all Instruments owned by any Grantor, whether or not physically delivered to the Administrative Agent pursuant to this Security Agreement, whether now owned or hereafter acquired by such Grantor and any and all Proceeds thereof.

“Pledged Stock” means, with respect to any Grantor, the shares of Capital Stock held by such Grantor, together with any other shares of Capital Stock as are hereafter acquired by such Grantor.

“Proceeds” has the meaning assigned in Article 9 of the UCC and, in any event, shall also include but not be limited to (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Administrative Agent or any Grantor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the
Collateral by any Governmental Authority, (iii) any and all Stock Rights and (iv) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

“Receivables” means any Account, Chattel Paper, Document, Instrument and/or any General Intangible, in each case, that is a right or claim to receive money (whether or not earned by performance).

“Security Agreement” has the meaning set forth in the preamble.

“Software” means computer programs, source code, object code and supporting documentation including “software” as such term is defined in Article 9 of the UCC, as well as computer programs that may be construed as included in the definition of Goods.

“Stock Rights” means all dividends, options, warrants, instruments or other distributions and any other right or property which any Grantor shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any Capital Stock constituting Collateral, any right to receive any Capital Stock constituting Collateral and any right to receive earnings, in which such Grantor now has or hereafter acquires any right, issued by an issuer of such Capital Stock.

“Trade Secrets” means, with respect to any Grantor, all of such Grantor’s right, title and interest in and to the following: (a) confidential and proprietary information, including unpatented inventions, invention disclosures, engineering or other data, information, production procedures, know-how, financial data, customer lists, supplier lists, business and marketing plans, processes, schematics, algorithms, techniques, analyses, proposals, source code, data, databases and data collections; (b) 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 misappropriations or infringements thereof; (c) all rights to sue for past, present and future misappropriations and infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (d) all rights corresponding to any of the foregoing.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

ARTICLE 2
GRANT OF SECURITY INTEREST

Section 2.01. Grant of Security Interest.

(a) As security for the prompt and complete payment or performance, as the case may be, in full of the Secured Obligations, each Grantor hereby pledges, collaterally assigns, mortgages, transfers and grants to the Administrative Agent, its successors and permitted assigns, on behalf of and for the ratable benefit of the Secured Parties, a continuing security interest in all of its right, title and interest in, to all of the following personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor, and regardless of where located (all of which are collectively referred to as the “Collateral”):

(i) all Accounts;

(ii) all Chattel Paper (including, without limitation, all Tangible Chattel Paper and all Electronic Chattel Paper);

(iii) all Intellectual Property Collateral;
(iv) all Documents;
(v) all Equipment;
(vi) all Fixtures;
(vii) all General Intangibles;
(viii) all Goods;
(ix) all Instruments;
(x) all Inventory;
(xi) all Investment Property, Pledged Stock and other Pledged Collateral;
(xii) all letters of credit and Letter-of-Credit Rights;
(xiii) all Permits;
(xiv) all Software and all recorded data of any kind or nature, regardless of the medium of recording;
(xv) all Contracts, together with all Contract Rights arising thereunder;
(xvi) all Securities Entitlements in any or all of the foregoing;
(xvii) all other personal property not constituting Excluded Assets not otherwise described in clauses (i) through (xvi) above;
(xviii) all Supporting Obligations; and
(xix) all accessions to, substitutions and replacements for and Proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

(b) Notwithstanding the foregoing, the term “Collateral” (and any component definition thereof) shall not include any Excluded Asset. Notwithstanding anything to the contrary contained herein, immediately upon the ineffectiveness, lapse or termination of any restriction or condition set forth in the definition of “Excluded Assets” in the Credit Agreement that prevented the grant of a security interest in any right, interest or other asset that would have, but for such restriction or condition, constituted Collateral, the Collateral shall include, and the relevant Grantor shall be deemed to have automatically granted a security interest in, such previously restricted or conditioned right, interest or other asset, as the case may be, as if such restriction or condition had never been in effect.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

The Grantors, jointly and severally, represent and warrant to the Administrative Agent as and when required under the Credit Agreement, for the benefit of the Secured Parties, that:
Section 3.01.  Title, Perfection and Priority; Filing Collateral. Subject to the Legal Reservations, this Security Agreement is effective to create a legal, valid and enforceable Lien on and security interest in the Collateral in favor of the Administrative Agent for the benefit of the Secured Parties and, subject to the limitations in the Credit Agreement and the satisfaction of the Perfection Requirements, the Administrative Agent will have a fully perfected First Priority Lien on such Collateral securing the Secured Obligations to the extent perfection can be achieved by the Perfection Requirements.

Section 3.02.  Intellectual Property. As of the date hereof, (i) no Grantor has actual knowledge of any pending third-party claim (A) that any of its owned Patent, Trademark or Copyright registrations or applications is invalid or unenforceable, or (B) challenging such Grantor’s rights to such registrations and applications and (ii) the operation of each Grantor’s business does not infringe, misappropriate or otherwise violate the intellectual property rights other than Patents (or to each grantor’s knowledge of Patents) of any third party, other than, in each case, as would not reasonably be expected to have a Material Adverse Effect.

Section 3.03.  Pledged Collateral. As of the Closing Date, except as provided in Section 5.15 of the Credit Agreement, (i) all Pledged Stock has been duly authorized and validly issued (to the extent such concepts are relevant with respect to such Pledged Stock) by the issuer thereof and is fully paid and non-assessable, (ii) each Grantor is the direct owner, beneficially and of record, of the Pledged Stock described in Schedule 3 to the Perfection Certificate as held by such Grantor and (iii) each Grantor holds the Pledged Stock described in Schedule 3 to the Perfection Certificate as held by such Grantor free and clear of all Liens (other than Permitted Liens).

ARTICLE 4
COVENANTS

From the date hereof, and thereafter until the Termination Date:

Section 4.01.  General.

(a)  Authorization to File Financing Statements; Ratification. Each Grantor hereby (i) authorizes the Administrative Agent to file (A) all financing statements (including fixture filings) and amendments thereto with respect to the Collateral naming such Grantor as debtor and the Administrative Agent as secured party, in form appropriate for filing under the UCC of the relevant jurisdiction and (B) filings with the United States Patent and Trademark Office and the United States Copyright Office (including any Intellectual Property Security Agreement) for the purpose of perfecting, enforcing, maintaining or protecting the Lien of the Administrative Agent in United States issued, registered and applied for Patent, Trademark, Copyrights and exclusive Licenses of United States registered Copyrights (in each case, to the extent constituting Collateral) and naming such Grantor as debtor and the Administrative Agent as secured party and (ii) subject to the terms of the Loan Documents, agrees to take such other actions, in each case as may from time to time be necessary and reasonably requested by the Administrative Agent (and authorizes the Administrative Agent to take any such other actions, which it has no obligation to take) in order to establish and maintain a First Priority, valid, enforceable (subject to the Legal Reservations) and perfected security interest in and subject, in the case of Pledged Collateral, to Section 4.02, Control of, the Collateral. Each Grantor shall pay any applicable filing fees, recordation fees and related expenses relating to its Collateral in accordance with Section 9.03(a) of the Credit Agreement. Any financing statement filed by the Administrative Agent may (i) indicate the Collateral (A) as “all assets” of the applicable Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of such jurisdiction, or (B) by any other description which reasonably approximates the description contained in this Security Agreement and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including, in each case to the extent applicable,
whether the Grantor is an organization, the type of organization and any organization identification number issued to the Grantor. Each Grantor agrees to furnish any such information to the Administrative Agent promptly upon request.

(b) Further Assurances. Each Grantor agrees, at its own expense, to take any and all actions reasonably necessary to defend title to the Collateral against all Persons (other than Persons holding Permitted Liens on such Collateral that have priority over the Administrative Agent’s Lien) and to defend the security interest of the Administrative Agent in the Collateral and the priority thereof against any Lien that is not a Permitted Lien.

(c) Limitations on Actions. Notwithstanding anything to the contrary in this Security Agreement, no Grantor shall be required to take any action in connection with Collateral pledged hereunder (and no security interest in such Collateral shall be required to be perfected) except to the extent consistent with Sections 5.12(c) and 5.14 of the Credit Agreement, the Collateral and Guarantee Requirement and the Perfection Requirements or expressly required hereunder and except in accordance with Requirements of Law.

Section 4.02. Pledged Collateral.

(a) Delivery of Certificated Securities and Instruments. Each Grantor will, after the Closing Date, hold in trust for the Administrative Agent upon receipt and on or before the date on which a Compliance Certificate is required to be delivered pursuant to Section 5.01(c) of the Credit Agreement for the Fiscal Quarter in which the relevant event occurred (or such longer period as the Administrative Agent may reasonably agree), deliver to the Administrative Agent for the benefit of the Secured Parties any (1) certificated Security representing or evidencing Pledged Collateral and (2) Instrument owing from a Person who is not a Loan Party (A) in each case under this clause (2), having an outstanding balance in excess of $3,000,000 and (B) in each case under clauses (1) and (2), constituting Collateral received after the date hereof, accompanied by undated instruments of transfer or assignment duly executed in blank. Notwithstanding anything to the contrary in this Security Agreement or any other Loan Document, it being understood and agreed that the Grantors are not required to deliver any Tangible Chattel Paper or Document to the Administrative Agent or for the benefit of any Secured Party.

(b) Uncertificated Securities and Pledged Collateral. With respect to any partnership interest or limited liability company interest owned by any Grantor which is required to be pledged to the Administrative Agent pursuant to the terms hereof (other than a partnership interest or limited liability company interest held by a Clearing Corporation, Securities Intermediary or other financial intermediary of any kind) which is not represented by a certificate and which is not a Security for purposes of the UCC, such Grantor shall not permit any issuer of such partnership interest or limited liability company interest to allow such partnership interest or limited liability company interest (as applicable) to become a Security unless such Grantor complies with the procedures set forth in Section 4.02(a) within the time period prescribed therein. Each Grantor which is an issuer of any uncertificated Pledged Collateral described in this Section 4.02(b) hereby agrees to comply with all instructions from the Administrative Agent without such Grantor’s further consent, in each case subject to the notice requirements set forth in Section 5.01(a)(iv).

(c) Registration in Nominee Name; Denominations. The Administrative Agent, on behalf of the Secured Parties, shall hold certificated Pledged Collateral required to be delivered to the Administrative Agent under clause (a) above in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Administrative Agent, but at any time when an Event of Default has occurred and is continuing, and upon at least three Business Days’ notice to the Borrower, the Administrative Agent shall have the right (in its sole and absolute discretion, but subject to the last paragraph of Section 7.01 of the Credit Agreement)
to hold the Pledged Collateral in its own name as pledgee, or in the name of its nominee (as pledgee or as sub-agent). At any time when an Event of Default has occurred and is continuing, but subject to the last paragraph of Section 7.01 of the Credit Agreement, the Administrative Agent shall have the right to exchange the certificates representing Pledged Collateral for certificates of smaller or larger denominations for any purpose consistent with this Security Agreement.

(d) Exercise of Rights in Pledged Collateral. It is agreed that:

(i) without in any way limiting the foregoing and subject to clause (ii) below, each Grantor shall have the right to exercise all voting rights and other rights relating to the Pledged Collateral for any purpose that does not violate this Security Agreement, the Credit Agreement or any other Loan Document;

(ii) each Grantor will permit the Administrative Agent or its nominee at any time when an Event of Default has occurred and is continuing to exercise the rights and remedies provided under Section 5.01(a)(iv) (subject to the notice requirements set forth therein); and

(iii) subject to Section 5.01(a)(iv), each Grantor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent permitted under the Credit Agreement; provided that any non-cash dividend or other distribution that would constitute Pledged Collateral, whether resulting from a subdivision, combination or reclassification of the outstanding Capital Stock of the issuer of any Pledged Collateral or received in exchange for Pledged Collateral or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall, to the extent constituting Collateral, be and become part of the Pledged Collateral, and, if received by any Grantor and subject to clause (a) above, shall be delivered to the Administrative Agent as and to the extent required by clause (a) above.

(e) Return of Pledged Collateral. The Administrative Agent shall promptly deliver to the applicable Grantor (without recourse and without any representation or warranty) any Pledged Collateral in its possession if requested to be delivered to the issuer or holder thereof in connection with any action or transaction that is permitted or not restricted by the Credit Agreement in accordance with Article 8 of the Credit Agreement.

Section 4.03. Intellectual Property.

(a) At any time when an Event of Default has occurred and is continuing, and upon the written request of the Administrative Agent, each Grantor will (i) use its commercially reasonable efforts to obtain all consents and approvals necessary for the assignment to or for the benefit of the Administrative Agent of any License held by such Grantor in the U.S. to enable the Administrative Agent to enforce the security interests granted hereunder and (ii) to the extent required pursuant to any material License in the U.S. under which such Grantor is the licensee, deliver to the licensor thereunder any notice of the grant of security interest hereunder or such other notices required to be delivered thereunder in order to permit the security interest created or permitted to be created hereunder pursuant to the terms of such License.

(b) Each Grantor shall notify the Administrative Agent promptly if it knows that any application for or registration of any Patent, Trademark or Copyright included in the Collateral (now or hereafter existing) has been abandoned or dedicated to the public, or of any determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) abandoning such
Grantor’s ownership of any such Patent, Trademark or Copyright included in the Collateral, its right to register the same, or to keep and maintain the same, except, in each case, (i) to the extent the same is permitted or not restricted by the Credit Agreement or (ii) where the same, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) In the event that any Grantor files an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office or the United States Copyright Office, acquires any such application or registration by purchase or assignment or files an accepted “Statement of Use”, a “Declaration of Use” or an “Amendment to Allege Use” with respect to any intent-to-use Trademark application owned by such Grantor, or becomes party to an exclusive License to a United States registered Copyright, in each case, after the Closing Date and to the extent the same constitutes Collateral (and other than as a result of an application that is then subject to an Intellectual Property Security Agreement becoming registered), it shall, on or before the date on which a Compliance Certificate is required to be delivered pursuant to Section 5.01(c) of the Credit Agreement for the Fiscal Quarter in which the relevant event occurred (or such longer period as the Administrative Agent may reasonably agree), execute and deliver to the Administrative Agent, at such Grantor’s sole cost and expense, any Intellectual Property Security Agreement or other instrument as the Administrative Agent may reasonably request and require to evidence the Administrative Agent’s security interest in such registered Patent, Trademark, Copyright (or application therefor) or License, and the General Intangibles of such Grantor relating thereto or represented thereby.

(d) Each Grantor shall take all actions reasonably necessary to (i) maintain and pursue each application and to obtain and maintain the registration of each Patent, Trademark, Domain Name and, to the extent consistent with past practices, Copyright included in the Collateral (now or hereafter existing), including by filing applications for renewal, affidavits of use, affidavits of noncontestability and, if reasonably necessary (taking into account the projected cost of such proceedings versus the expected benefit thereof), by initiating opposition and interference and cancellation proceedings against third parties, (ii) maintain and protect the secrecy or confidentiality of its Trade Secrets and (iii) otherwise protect and preserve such Grantor’s rights in, and the validity or enforceability of, its Intellectual Property Collateral, in each case except where failure to do so (A) could not reasonably be expected to result in a Material Adverse Effect, or (B) is otherwise permitted under or not restricted by the Credit Agreement.

(e) Each Grantor shall promptly notify the Agent of any material infringement or misappropriation of such Grantor’s Intellectual Property Collateral of which it becomes aware and shall take such actions that, in the Grantors’ commercially reasonable business judgment, are reasonable and appropriate under the circumstances to protect same, except where such infringement, misappropriation or dilution could not reasonably be expected to cause a Material Adverse Effect.

Section 4.04. Grantors Remain Liable.

(a) Each Grantor (rather than the Administrative Agent or any Secured Party) shall remain liable (as between itself and any relevant counterparty) to observe and perform all the conditions and obligations to be observed and performed by it under any Contract relating to the Collateral, all in accordance with the terms and conditions thereof. Neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any Contract by reason of or arising out of this Security Agreement or the receipt by the Administrative Agent or any other Secured Party of any payment relating to such Contract pursuant hereto, nor shall the Administrative Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or sufficiency of any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times.
(b) Each Grantor assumes all liability and responsibility in connection with the Collateral acquired by it, and the liability of such Grantor to pay the Secured Obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to such Grantor.

(c) Notwithstanding anything herein to the contrary, each Grantor (rather than the Administrative Agent or any Secured Party) shall remain liable under each of the Accounts to observe and perform all of the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to such Accounts. Neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any Account (or any agreement giving rise thereto) by reason of or arising out of this Security Agreement or the receipt by the Administrative Agent or any other Secured Party of any payment relating to such Account pursuant hereto, nor shall the Administrative Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Account (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by them or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times.

ARTICLE 5
REMEDIES

Section 5.01. Remedies.

(a) Each Grantor agrees that, at any time when an Event of Default has occurred and is continuing, the Administrative Agent may exercise any or all of the following rights and remedies (in addition to the rights and remedies existing under applicable Requirements of Law):

(i) the rights and remedies provided in this Security Agreement, the Credit Agreement, or any other Loan Document; provided that this Section 5.01(a) shall not limit any rights available to the Administrative Agent prior to the occurrence of an Event of Default;

(ii) the rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable Requirements of Law (including, without limitation, any law governing the exercise of a bank’s right of setoff or bankers’ Lien) when a debtor is in default under a security agreement;

(iii) without notice (except as specifically provided in Section 7.01 or elsewhere herein), demand or advertisement of any kind to any Grantor or any other Person, but subject to the terms of any applicable lease agreement, personally, or by agents or attorneys, enter the premises of any Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at one or more public or private sales (which sales may be adjourned or continued from time to time with or without notice and may take place at such Grantor’s premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Administrative Agent may deem commercially reasonable;

(iv) upon at least three Business Days’ written notice to the Borrower, (A) transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral,
(B) exercise the voting and all other rights as a holder with respect thereto (whereupon the voting and other rights of such Grantor described in Section 4.02(d)(i) above shall immediately cease such that the Administrative Agent shall have the sole right to exercise such voting and other rights while the relevant Event of Default is continuing), (C) to collect and receive all cash dividends, interest, principal and other distributions made thereon (it being understood that, following the taking of any action described in this clause (iv), all Stock Rights received by any Grantor while the relevant Event of Default is continuing shall be received in trust for the benefit of the Administrative Agent and forthwith paid over to the Administrative Agent in the same form as so received (with any necessary endorsements)) and (D) to otherwise act with respect to the Pledged Collateral as though the Administrative Agent was the outright owner thereof; and

(v) take possession of the Collateral or any part thereof, by directing such Grantor in writing to deliver the same to the Administrative Agent at any reasonable place or places designated by the Administrative Agent, in which event such Grantor shall at its own expense forthwith cause the same to be moved to the place or places so designated by the Administrative Agent and there delivered to the Administrative Agent.

(b) Each Grantor acknowledges and agrees that compliance by the Administrative Agent, on behalf of the Secured Parties, with any applicable state or federal Requirement of Law in connection with a disposition of the Collateral will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(c) Any Secured Party shall have the right in any public sale and, to the extent permitted by applicable Requirements of Law, in any private sale, to purchase all or any part of the Collateral so sold, free of any right of equity redemption that Grantor is permitted to release and waive pursuant to applicable Requirements of Law, and each Grantor hereby expressly releases such right to equity redemption to the extent permitted by applicable Requirements of Law.

(d) Until the Administrative Agent is able to effect a sale, lease, transfer or other disposition of any particular Collateral under this Section 5.01, the Administrative Agent shall have the right to hold or use such Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving such Collateral or the value of such Collateral or for any other purpose deemed reasonably appropriate by the Administrative Agent. At any time when an Event of Default has occurred and is continuing, the Administrative Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of the Administrative Agent’s remedies (for the benefit of the Administrative Agent and Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(e) Notwithstanding the foregoing, the Administrative Agent shall not be required to (i) make any demand upon, or pursue or exhaust any of their rights or remedies against, the Grantors, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

(f) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof. Each Grantor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that no such private sale shall be deemed to have been made in a commercially unreasonable manner solely by virtue of
such sale being private. The Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit any Grantor or the issuer of any Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities Requirements of Law, even if any Grantor and the issuer would agree to do so.

(g) The Administrative Agent and each Secured Party (by its acceptance of the benefits of this Security Agreement) acknowledge and agree that notwithstanding any other provision in this Security Agreement or any other Loan Document, the exercise of rights or remedies with respect to certain Collateral and the enforcement of any security interests therein may be limited or restricted by, or require any consent, authorization, approval or license under, any Requirement of Law.

(h) Notwithstanding the foregoing, any rights and remedies provided in this Section 5.01 shall be subject to each applicable Intercreditor Agreement.

Section 5.02. Grantors' Obligations Upon Default. Upon the request of the Administrative Agent at any time when an Event of Default has occurred and is continuing, each Grantor will:

(a) at its own cost and expense (i) assemble and make available to the Administrative Agent, the Collateral and all books and records relating thereto at any place or places reasonably specified by the Administrative Agent, whether at such Grantor’s premises or elsewhere, (ii) deliver all tangible evidence of its Accounts and Contract Rights (including, without limitation, all documents evidencing the Accounts and all Contracts) and such books and records to the Administrative Agent or to its representatives (copies of which evidence and books and records may be retained by such Grantor) and (iii) if the Administrative Agent so directs and in a form and in a manner reasonably satisfactory to the Administrative Agent, add a legend to the Accounts and the Contracts, as well as books, records and documents (if any) of such Grantor evidencing or pertaining to such Accounts and Contracts, which legend shall include an appropriate reference to the fact that such Accounts and Contracts have been assigned to the Administrative Agent and that the Administrative Agent has a security interest therein; and

(b) subject to the terms of any applicable lease agreement, permit the Administrative Agent and/or its representatives and/or agents, to enter, occupy and use any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral, without any obligation to pay any Grantor for such use and occupancy.

Section 5.03. Intellectual Property Remedies.

(a) For the purpose of enabling the Administrative Agent to exercise the rights and remedies under this Article 5 at any time when an Event of Default has occurred and is continuing, and at such time as the Administrative Agent is lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Administrative Agent a power of attorney to sign any document which may be required by the United States Patent and Trademark Office, the United States Copyright Office, domain name registrar or similar registrar in order to effect an absolute assignment of all right, title and interest in each registered Patent, Trademark, Domain Name and Copyright and each application for any such registration, and record the same. At any time when an Event of Default has occurred and is continuing, the Administrative Agent may (i) declare the entire right, title and interest of such Grantor in and to each item of Intellectual Property Collateral to be vested in the Administrative Agent for the benefit of the Secured Parties, in which event such right, title and interest shall immediately vest in the Administrative Agent for the benefit of the Secured Parties, and the Administrative Agent shall be entitled to exercise the power of attorney referred to in this Section 5.03 to execute, cause to be acknowledged and notarized and record such absolute assignment with
the applicable agency or registrar; (ii) sell any Grantor’s Inventory directly to any Person, including without limitation Persons who have previously purchased any Grantor’s Inventory from such Grantor and in connection with any such sale or other enforcement of the Administrative Agent’s rights under this Security Agreement and subject to any restrictions contained in applicable third party licenses entered into by such Grantor, sell Inventory which bears any Trademark owned by or licensed to any Grantor and any Inventory that is covered by any Intellectual Property Collateral owned by or licensed to any Grantor, and the Administrative Agent may finish any work in process and affix any relevant Trademark owned by or licensed to such Grantor, and sell such Inventory as provided herein; (iii) direct such Grantor to refrain, in which event such Grantor shall refrain, from using any Intellectual Property Collateral in any manner whatsoever, directly or indirectly; and (iv) assign or sell any Patent, Trademark, Copyright, Domain Name, and/or Trade Secret, in each case to the extent constituting Collateral, as well as the goodwill of such Grantor’s business symbolized by any such Trademark and the right to carry on the business and use the assets of such Grantor in connection with which any such Trademark or Domain Name has been used.

(b) Each Grantor hereby grants to the Administrative Agent an irrevocable (until the Termination Date), nonexclusive, royalty-free, worldwide license to its right to use, license or sublicense any Intellectual Property Collateral now owned or hereafter acquired by such Grantor, wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and (to the extent not prohibited by any applicable license) to all computer software and programs used for compilation or printout thereof. The use of the license granted to the Administrative Agent pursuant to the preceding sentence may be exercised, at the option of the Administrative Agent, only when an Event of Default has occurred and is continuing; provided, however, that such licenses to be granted hereunder with respect to Trademarks shall be subject to, with respect to the goods and/or services on which such Trademarks are used, the maintenance of quality standards that are sufficient to preserve the validity of such Trademarks and are consistent with past practices.

Section 5.04. Application of Proceeds.

(a) Subject to each applicable Intercreditor Agreement, the Administrative Agent shall apply the proceeds of any collection, sale, foreclosure or other realization of any Collateral as set forth in Section 2.18(b) of the Credit Agreement.

(b) Except as otherwise provided herein or in any other Loan Document, the Administrative Agent shall have absolute discretion as to the time of application of any such proceeds, money or balance in accordance with this Security Agreement. Upon any sale of Collateral by the Administrative Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), a receipt by the Administrative Agent or of the officer making the sale of such proceeds, moneys or balances shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Administrative Agent or such officer or be answerable in any way for the misapplication thereof. It is understood that the Grantors shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations.

ARTICLE 6
ACCOUNT VERIFICATION; ATTORNEY IN FACT; PROXY

Section 6.01. Account Verification. The Administrative Agent may at any time and from time to time when an Event of Default has occurred and is continuing and upon three Business Days’ notice to the relevant Grantor, in the Administrative Agent’s own name, in the name of a nominee of the Administrative Agent, or in the name of any Grantor, communicate (by mail, telephone, facsimile or otherwise) with the Account Debtors of such Grantor, parties to Contracts with such Grantor and obligors
in respect of Instruments of such Grantor to verify with such Persons, to the Administrative Agent’s reasonable satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Contracts, Instruments, Chattel Paper, payment intangibles and/or other Receivables that constitute Collateral.

Section 6.02. Authorization for the Administrative Agent to Take Certain Action.

(a) Each Grantor hereby irrevocably authorizes the Administrative Agent and appoints the Administrative Agent (and all officers, employees or agents designated by the Administrative Agent) as its true and lawful attorney in fact at any time that an Event of Default has occurred and is continuing, in the sole discretion of the Administrative Agent (in the name of such Grantor or otherwise), (i) to contact and enter into one or more agreements with the issuers of uncertificated securities that constitute Pledged Collateral or with securities intermediaries holding Pledged Collateral as may be necessary or advisable to give the Administrative Agent Control over such Pledged Collateral in accordance with the terms hereof, (ii) to endorse and collect any cash proceeds of the Collateral and to apply the proceeds of any Collateral received by the Administrative Agent to the Secured Obligations as provided herein or in the Credit Agreement or any other Loan Document, in any event subject to the terms of any applicable Intercreditor Agreement, (iii) to demand payment or enforce payment of any Receivable in the name of the Administrative Agent or such Grantor and to endorse any check, draft and/or any other instrument for the payment of money relating to any Receivable, (iv) to sign such Grantor’s name on any invoice or bill of lading relating to any Receivable, any draft against any Account Debtor of such Grantor, and/or any assignment and/or verification of any Receivable, (v) to exercise all of any Grantor’s rights and remedies with respect to the collection of any Receivable and any other Collateral, (vi) to settle, adjust, compromise, extend or renew any Receivable, (vii) to settle, adjust or compromise any legal proceeding brought to collect any Receivable, (viii) to prepare, file and sign such Grantor’s name on a proof of claim in bankruptcy or similar document against any Account Debtor of such Grantor, (ix) to prepare, file and sign such Grantor’s name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with any Receivable, (x) to change the address for delivery of mail addressed to such Grantor to such address as the Administrative Agent may designate and to receive, open and dispose of all mail addressed to such Grantor (provided copies of such mail are provided to such Grantor), (xi) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for Permitted Liens), (xii) to make, settle and adjust claims in respect of Collateral under policies of insurance and endorse the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance, (xiii) to obtain or maintain the policies of insurance of the types referred to in Section 9.03(a) of the Credit Agreement or to pay any premium in whole or in part relating thereto and (xiv) to do all other acts and things or institute any proceeding which the Administrative Agent may reasonably deem to be necessary (pursuant to this Security Agreement and the other Loan Documents and in accordance with applicable Requirements of Law) to carry out the terms of this Security Agreement and to protect the interests of the Secured Parties (subject to any limitation set forth herein or in any other Loan Document); and, when and to the extent required pursuant to Section 9.03(a) of the Credit Agreement, such Grantor agrees to reimburse the Administrative Agent for any payment made in connection with this paragraph or any expense (including reasonable and documented attorneys’ fees, court costs and out-of-pocket expenses) and other changes related thereto incurred by the Administrative Agent in connection with any of the foregoing (it being understood that any such sums shall constitute additional Secured Obligations); provided that this authorization shall not relieve such Grantor of any of its obligations under this Security Agreement or under the Credit Agreement.

(b) The powers conferred on the Administrative Agent, for the benefit of the Administrative Agent and Secured Parties, under this Section 6.02 are solely to protect the Administrative Agent’s interests in the Collateral and shall not impose any duty upon the Administrative Agent or any Secured Party to exercise any such powers.
Section 6.03. **Proxy.** Each Grantor hereby irrevocably (until the Termination Date) constitutes and appoints the Administrative Agent as its proxy and attorney-in-fact (as set forth in Section 6.02 above) with respect to the Pledged Collateral, including, during the continuation of an Event of Default and subject to any notice requirements set forth herein, the right to vote such Pledged Collateral, with full power of substitution to do so. In addition to the right to vote any such Pledged Collateral, the appointment of the Administrative Agent as proxy and attorney-in-fact shall include the right, upon the occurrence and continuation of an Event of Default and subject to any notice requirement set forth herein, to exercise all other rights, powers, privileges and remedies to which a holder of such Pledged Collateral would be entitled (including giving or withholding written consents of Shareholders, calling special meetings of Shareholders and voting at such meetings). Such proxy shall be effective, automatically and without the necessity of any action (including any transfer of any such Pledged Collateral on the record books of the issuer thereof) by any person (including the issuer of such pledged collateral or any officer or agent thereof), in each case only when an Event of Default has occurred and is continuing and upon three business days’ prior written notice to the Borrower.

Section 6.04. **Nature of Appointment; Limitation of Duty.** The appointment of the Administrative Agent as proxy and attorney-in-fact in this Article 6 is coupled with an interest and shall be irrevocable until the Termination Date. Notwithstanding anything contained herein, neither the Administrative Agent, nor any Secured Party, nor any of their respective Affiliates, Officers, Directors, Employees, Agents or Representatives shall have any duty to exercise any right or power granted hereunder or otherwise or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so, except to the extent such damages are attributable to bad faith, gross negligence or willful misconduct on the part of such person as finally determined by a court of competent jurisdiction in a final and non-appealable decision subject to Section 7.20; provided that the foregoing exception shall not be construed to obligate the Administrative Agent to take or refrain from taking any action with respect to the Collateral.

ARTICLE 7
GENERAL PROVISIONS

Section 7.01. **Waivers.** To the maximum extent permitted by applicable Requirements of Law, each Grantor hereby waives notice of the time and place of any judicial hearing in connection with the Administrative Agent’s taking possession of the Collateral or of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made, including without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies. To the extent such notice may not be waived under applicable Requirements of Law, any notice made shall be deemed commercially reasonable if sent to any Grantor, addressed as set forth in Article 8, at least 10 days prior to (a) the date of any such public sale or (b) the time after which any such private disposition may be made. To the maximum extent permitted by applicable Requirements of Law, each Grantor waives all claims, damages, and demands against the Administrative Agent arising out of the repossession, retention or sale of the Collateral, except those arising out of bad faith, gross negligence or willful misconduct on the part
of the Administrative Agent as determined by a court of competent jurisdiction in a final and non-appealable judgment. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Administrative Agent, any valuation, stay (other than an automatic stay under any applicable Debtor Relief Law), appraisal, extension, moratorium, redemption or similar law and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest, any notice (to the maximum extent permitted by applicable Requirements of Law) of any kind or all other requirements as to the time, place and terms of sale in connection with this Security Agreement or any Collateral.

Section 7.02. Limitation on Administrative Agent’s Duty with Respect to the Collateral. The Administrative Agent shall not have any obligation to clean or otherwise prepare the Collateral for sale. The Administrative Agent shall use reasonable care with respect to the Collateral in its possession; provided that the Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to which it accords its own property. The Administrative Agent shall not have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Administrative Agent, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable Requirements of Law impose duties on the Administrative Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it would be commercially reasonable for the Administrative Agent, subject to Section 7.06, (a) to elect not to incur expenses to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (b) to elect not to obtain third party consents for access to Collateral to be disposed of (unless expressly required under any applicable lease agreement), or to obtain or, if not otherwise required by any Requirement of Law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to elect not to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (d) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (k) to purchase insurance or credit enhancements to insure the Administrative Agent against risks of loss in connection with any collection or disposition of Collateral or to provide to the Administrative Agent a guaranteed return from the collection or disposition of Collateral or (l) to the extent deemed appropriate by the Administrative Agent to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Administrative Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 7.02 is to provide non-exhaustive indications of what actions or omissions by the Administrative Agent would be commercially reasonable in the Administrative Agent’s exercise of remedies with respect to the Collateral and that other actions or omissions by the Administrative Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7.02. Without limitation upon the foregoing, nothing contained in this Section 7.02 shall be construed to grant any rights to any
Grantor or to impose any duties on the Administrative Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 7.02.

Section 7.03. Compromises and Collection of Collateral. Each Grantor and the Administrative Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to any Receivable. In view of the foregoing, each Grantor agrees that the Administrative Agent may at any time and from time to time, if an Event of Default has occurred and is continuing and upon five Business Days’ written notice to the relevant Grantor, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Administrative Agent in its sole and reasonable discretion shall determine or abandon any Receivable, and any such action by the Administrative Agent shall be commercially reasonable so long as the Administrative Agent acts reasonably in good faith based on information known to it at the time it takes any such action.

Section 7.04. Administrative Agent Performance of Debtor Obligations. Without having any obligation to do so, the Administrative Agent may, at any time when an Event of Default has occurred and is continuing and upon three Business Days’ prior written notice to the Borrower, perform or pay any obligation which any Grantor has agreed to perform or pay under this Security Agreement and which obligation is due and unpaid and not being contested by such Grantor in good faith, and such Grantor shall reimburse the Administrative Agent for any amounts paid by the Administrative Agent pursuant to this Section 7.04 as a Secured Obligation payable in accordance with Section 9.03(a) of the Credit Agreement.

Section 7.05. No Waiver; Amendments; Cumulative Remedies. No delay or omission of the Administrative Agent (subject to the provisions of Section 8.01 of the Credit Agreement) to exercise any right or remedy granted under this Security Agreement shall impair such right or remedy or be construed to be a waiver of any Default or an acquiescence therein, and no single or partial exercise of any such right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by the Grantors and the Administrative Agent with the concurrence or at the direction of the Lenders to the extent required under Section 9.02 of the Credit Agreement and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or afforded by law shall be cumulative and all shall be available to the Administrative Agent until the Termination Date.

Section 7.06. Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable Requirement of Law, and all of the provisions of this Security Agreement are intended to be subject to all applicable Requirements of Law that may be controlling and to be limited to the extent necessary so that such provisions do not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. To the extent permitted by applicable Requirements of Law, any provision of this Security Agreement 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 of this Security Agreement; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. If the exercise of rights or remedies with respect to certain Collateral and the enforcement of any security interest therein require any consent, authorization, approval or license under any Requirement of Law, no such action shall be taken unless and until all requisite consents, authorizations approvals or licenses have been obtained.
Section 7.07. **Security Interest Absolute.** All rights of the Administrative Agent hereunder, the security interests granted hereunder and all obligations of each Grantor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument relating to the foregoing, (c) any exchange, release or non-perfection of any Lien on any Collateral, or any release or amendment or waiver of or consent under or departure from any guaranty, securing or guaranteeing all or any of the Secured Obligations, (d) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Grantor, (e) any exercise or non-exercise, or any waiver of, any right, remedy, power or privilege under or in respect of this Security Agreement or any other Loan Document or (f) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Security Agreement (other than a termination of any Lien contemplated by Section 7.12 or the occurrence of the Termination Date).

Section 7.08. **Benefit of Security Agreement.** The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of each Grantor, the Administrative Agent and the Secured Parties and their respective successors and permitted assigns (including all Persons who become bound as a debtor to this Security Agreement). No sale of any participation, assignment, transfer, or other disposition of any agreement governing the Secured Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to the Administrative Agent hereunder for the benefit of the Administrative Agent and the Secured Parties.

Section 7.09. **Survival of Representations.** All representations and warranties of each Grantor contained in this Security Agreement shall survive the execution and delivery of this Security Agreement until the Termination Date.

Section 7.10. **Additional Subsidiaries.** Upon the execution and delivery by any Restricted Subsidiary of a Joinder Agreement, such Restricted Subsidiary shall become a Grantor hereunder with the same force and effect as if such Restricted Subsidiary was originally named as a Grantor herein. The execution and delivery of any such instrument shall not require the consent of any other Grantor or any other Person. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Security Agreement.

Section 7.11. **Headings.** The titles of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

Section 7.12. **Termination or Release.**

(a) This Security Agreement shall continue in effect until the Termination Date, and the Liens on the Collateral or the relevant portion of the Collateral, as applicable, granted hereunder shall automatically be released in the circumstances described in and in accordance with Sections 8.07 and 9.22 of the Credit Agreement.

(b) In connection with any termination or release pursuant to paragraph (a) above, the Administrative Agent shall promptly execute (if applicable) and deliver to any Grantor, at such Grantor’s expense, (i) all UCC termination statements and/or UCC amendments and similar documents that such Grantor shall reasonably request to evidence and/or effectuate such termination or release and (ii) all or the...
relevant portion of, as applicable, the Pledged Collateral. Any execution and delivery of any document pursuant to this Section 7.12 shall be without recourse to or representation or warranty by the Administrative Agent or any Secured Party. The Borrower shall reimburse the Administrative Agent for all reasonable and documented costs and out-of-pocket expenses, including the fees and expenses of one outside counsel (and, if necessary, of one local counsel in any relevant jurisdiction), incurred by it in connection with any action contemplated by this Section 7.12 pursuant to and to the extent required by Section 9.03(a) of the Credit Agreement.

(c) The Administrative Agent shall have no liability whatsoever to any other Secured Party as the result of any release of the Collateral (or the relevant portion thereof) by it in accordance with (or which the Administrative Agent in good faith believes to be in accordance with) the terms of this Section 7.12.

Section 7.13. Entire Agreement. This Security Agreement, together with the other Loan Documents and, to the extent applicable, each Intercreditor Agreement, embodies the entire agreement and understanding between each Grantor and the Administrative Agent relating to the Collateral and supersedes all prior agreements and understandings between any Grantor and the Administrative Agent relating to the Collateral.

Section 7.14. CHOICE OF LAW. THIS SECURITY AGREEMENT, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SECURITY AGREEMENT, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 7.15. CONSENT TO JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) 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 SECURITY AGREEMENT 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 IN RESPECT OF SPECIFIC COLLATERAL UNDER THIS SECURITY AGREEMENT.

(b) 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 SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS SECURITY AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW.

Section 7.16.  **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 SECURITY AGREEMENT 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 SECURITY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 7.17.  **Indemnity.**  Each Grantor hereby agrees to indemnify the Indemnitees, as, and to the extent, set forth in Section 9.03 of the Credit Agreement.

Section 7.18.  **Counterparts.**  This Security 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. Delivery of an executed counterpart of a signature page of this Security Agreement by facsimile or by email as a “.pdf” or “.tif” attachment or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Security Agreement. It is understood and agreed that, subject to any Requirement of Law, the words “execution”, “signed”, “signature”, “delivery” and words of like import in or relating to this Security Agreement shall be deemed to include any Electronic Signature, delivery or the keeping of any record in electronic form, each of which shall have the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Requirements of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 7.19.  **INTERCREDITOR AGREEMENT GOVERSNS.**  NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIENS AND SECURITY INTERESTS GRANTED TO THE ADMINISTRATIVE AGENT FOR THE BENEFIT OF THE SECURED PARTIES PURSUANT TO THIS SECURITY AGREEMENT AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE ADMINISTRATIVE AGENT WITH RESPECT TO ANY COLLATERAL HEREUNDER ARE SUBJECT TO THE PROVISIONS OF EACH APPLICABLE INTERCREDITOR AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE PROVISIONS OF ANY INTERCREDITOR AGREEMENT AND THIS SECURITY AGREEMENT, THE PROVISIONS OF SUCH INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

Section 7.20.  **Waiver of Consequential Damages, Etc.**  To the extent permitted by applicable law, none of the Grantors or Secured Parties shall assert, and each hereby waives, any claim against each other or any Related Party 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 Security Agreement or any agreement or instrument contemplated hereby, except, in the case of any claim
by any Indemnitee against any of the Grantors, to the extent such damages would otherwise be subject to indemnification pursuant to the terms of Section 7.17.

Section 7.21. **Successors and Assigns.** Whenever in this Security Agreement any party hereto is referred to, such reference shall be deemed to include the successors and permitted assigns of such party; and all covenants, promises and agreements by or on behalf of any Grantor or the Administrative Agent in this Security Agreement shall bind and inure to the benefit of their respective successors and permitted assigns. Except in a transaction expressly permitted under the Credit Agreement, no Grantor may assign any of its rights or obligations hereunder without the written consent of the Administrative Agent.

Section 7.22. **Survival of Agreement.** Without limiting any provision of the Credit Agreement or Section 7.17 hereof, all covenants, agreements, indemnities, representations and warranties made by the Grantors in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Security Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such Lender or on its behalf and notwithstanding that the Administrative Agent or any Lender 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 under the Credit Agreement, and shall continue in full force and effect until the Termination Date, or with respect to any individual Grantor until such Grantor is otherwise released from its obligations under this Security Agreement in accordance with the terms hereof.

**ARTICLE 8**

**NOTICES**

Section 8.01. **Sending Notices.** Any notice required or permitted to be given under this Security Agreement shall be delivered in accordance with Section 9.01 of the Credit Agreement (it being understood and agreed that references in such Section to “herein”, “hereunder” and other similar terms shall be deemed to be references to this Security Agreement).

**ARTICLE 9**

**THE ADMINISTRATIVE AGENT**

JPMorgan has been appointed Administrative Agent for the Lenders hereunder pursuant to Article 8 of the Credit Agreement. It is expressly understood and agreed by the parties to this Security Agreement that any authority conferred upon the Administrative Agent hereunder is subject to the terms of the delegation of authority made by the Lenders to the Administrative Agent pursuant to the Credit Agreement, and that the Administrative Agent has agreed to act (and any successor Administrative Agent shall act) as such hereunder only on the express conditions contained in such Article 8. Any successor Administrative Agent appointed pursuant to Article 8 of the Credit Agreement shall be entitled to all the rights, interests and benefits of the Administrative Agent hereunder.

By accepting the benefits of this Security Agreement and any other Loan Document, each Secured Party expressly acknowledges and agrees that this Security Agreement and each other Loan Document may be enforced only by the action of the Administrative Agent, and that such Secured Party shall not have any right individually to seek to enforce or to enforce this Security Agreement or to realize upon the security to be granted hereby, it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent for the benefit of the Secured Parties upon the terms of this Security Agreement and the other Loan Documents.

[Signature Pages Follow]
IN WITNESS WHEREOF, each Grantor and the Administrative Agent have executed this Security Agreement as of the date first above written.

CAVA GROUP, INC.

By: 
Name: Tricia Tolivar 
Title: CFO

CAVA HOLDING COMPANY

CAVA FOODS, LLC
CAVA MEZZE GRILL, LLC
CAVA MEZZE GRILL REAGAN, LLC
CAVA BEVERAGE HOLDING COMPANY LLC
CAVA BEVERAGE COMPANY LLC
CAVA TABLE, LLC
ZOE’S KITCHEN, INC.
SOHO FRANCHISING, LLC
ZOE’S KITCHEN USA, LLC
ZOE’S KITCHEN HOLDING COMPANY, LLC
ZOE’S ANNAPOLIS, LLC
ZOE’S ARIZONA, LLC
ZOE’S ARKANSAS, LLC
ZOE’S COLORADO, LLC
ZOE’S FLORIDA, LLC
ZOE’S LOUISIANA, LLC
ZOE’S MISSOURI, LLC
ZOE’S NEW JERSEY, LLC
ZOE’S NORTH CAROLINA, LLC
ZOE’S OKLAHOMA, LLC
ZOE’S PENNSYLVANIA, LLC
ZOE’S SOUTH CAROLINA, LLC
ZOE’S VIRGINIA, LLC
ZOE’S KANSAS, LLC
ZOE’S MARYLAND, LLC
ZOE’S RESTAURANTS L.L.C.
ZOE’S TEXAS, LLC
ZK KANSAS BEVERAGE, LLC
ZOE’S HOWARD COUNTY, LLC
ZOE’S RESTAURANTS NASHVILLE, LLC
ZK TEXAS HOLDINGS, LLC
ZK TEXAS MANAGEMENT, LLC
ZK TEXAS BEVERAGES, LLC

By:

Name: Tricia Tolivar
Title: CFO

[Signature Page to Pledge and Security Agreement]
JPMORGAN CHASE BANK, N.A.,

as Administrative Agent

By:  

Name:  
Title:  

[Signature Page to Pledge and Security Agreement]
[Insert name of Issuing Bank],
as Issuing Bank
Attn: [__________]

with a copy to: JPMorgan Chase Bank, N.A.
as Administrative Agent for the Lenders referred to below
10 S. Dearborn St.
Chicago, IL 60603
Attention: [***]
Tel: [***]
Fax [***]
Email: [***]

Ladies and Gentlemen:

We hereby request that [Insert name of Issuing Bank], as an Issuing Bank, in its individual capacity, [issue, amend, renew, extend] [a][an][existing] Letter of Credit on [__________] [__], 20[__]48 (the “Date of Issuance”), which Letter of Credit shall be in the aggregate amount of $[__________]49 and shall be for the account of [__________]50. The beneficiary of the requested Letter of Credit is [__________]51, and such Letter of Credit will have a stated expiration date of [__________] [__], 20[__]52. Capitalized terms used but not defined herein shall have the meanings given to them in that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplanted or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender.

[The undersigned hereby certifies, as a Responsible Officer of the Borrower, in such capacity and not in an individual capacity, that:

1. 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 Date of Issuance with the same effect as though such representations and warranties had been made on and as of the Date of

47 Must be delivered to the applicable Issuing Bank and the Administrative Agent at least three Business Days in advance of the requested date of issuance, amendment, extension or renewal (or such shorter period as is acceptable to the applicable Issuing Bank).

48 Insert date of issuance, amendment, renewal or extension, which must be a Business Day.

49 Insert aggregate initial amount of Letter of Credit.

50 Insert name of account party.

51 Insert name and address of beneficiary.

52 Date may not be later than the date referred to in Section 2.05(b) of the Credit Agreement.
Issuance; provided that, to the extent that a representation and warranty specifically refers to an earlier date or a given period, it is true and correct in all material respects as of such earlier date or for such period; provided, further, that, any representation and warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates or for such periods.

2. As of the Date of Issuance and immediately after giving effect to the requested Letter of Credit, no Default or Event of Default has occurred and is continuing.]53

[Signature Page Follows]

53 Include bracketed language only for issuances, amendments, modifications, extensions of renewals of Letters of Credit after Closing Date.
CAVA GROUP, INC.

By: __________________________

Name: ________________________

Title: _________________________

N-3
[FORM OF]

TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 2.17(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Promissory Notes evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (iv) it is not a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code and (v) no payments in connection with any Loan Document are effectively connected with the undersigned’s conduct of a U.S. trade or business.

The undersigned has furnished the Administrative Agent and the Borrower with a duly executed certificate of its non-U.S. person status on IRS Form W-8BEN or W-8BEN-E (as applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any respect, the undersigned shall promptly so inform each of the Borrower and the Administrative Agent in writing and deliver promptly to the Borrower and the Administrative Agent an updated certificate 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, and (2) the undersigned shall have at all times furnished each of the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: ____________________________

Name: __________________________

Title: ___________________________

Date: [______] [__], 20[__]
[FORM OF]
TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 2.17(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (iv) it is not a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (v) no payments in connection with any Loan Document are effectively connected with the undersigned’s conduct of a U.S. trade or business.

The undersigned has furnished its participating Lender with a duly executed certificate of its non-U.S. person status on IRS Form W-8BEN or W-8BEN-E (as applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any respect, the undersigned shall promptly so inform such Lender in writing and deliver promptly to such Lender an updated certificate or other appropriate documentation (including any new documentation reasonably requested by such Lender) or promptly notify such Lender in writing of its legal ineligibility to do so, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: ________________________________

Name: ________________________________

Title: ________________________________

Date: [__][__], [__][__]

O-2-1
[FORM OF]
TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 2.17(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Promissory Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Promissory Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (v) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (vi) no payments in connection with any Loan Document are effectively connected with the undersigned’s or any of its direct or indirect partners/members’ conduct of a U.S. trade or business.

The undersigned has furnished the Administrative Agent and the Borrower with a duly executed IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E (as applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E (as applicable) from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any respect, the undersigned shall promptly so inform the Borrower and the Administrative Agent in writing and deliver promptly to the Borrower and the Administrative Agent an updated certificate 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, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[Signature Page Follows]
[NAME OF LENDER]

By: 

Name: 
Title: 

Date: [_______] [__], 20[__]

O-3-2
[FORM OF]
TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

Pursuant to the provisions of Section 2.17(f) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, (v) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code, and (vi) no payments in connection with any Loan Document are effectively connected with the undersigned’s or any of its direct or indirect partners/members’ conduct of a U.S. trade or business.

The undersigned has furnished its participating Lender with a duly executed IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E (as applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E (as applicable) from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, or if a lapse in time or change in circumstances renders the information on this certificate obsolete, expired or inaccurate in any respect, the undersigned shall promptly so inform such Lender in writing and deliver promptly to such Lender an updated certificate or other appropriate documentation (including any new documentation reasonably requested by such Lender) or promptly notify such Lender in writing of its legal ineligibility to do so, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[Signature Page Follows]
[FORM OF]
SOLVENCY CERTIFICATE

[__________] [__], 20[__]

This Solvency Certificate is being executed and delivered pursuant to Section 4.01(i) of that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

I, [__________], the [Chief Financial Officer/equivalent officer] of the Borrower, in such capacity and not in an individual capacity, hereby certify as follows:

1. I am generally familiar with the businesses and assets of the Borrower and its Restricted Subsidiaries, taken as a whole, and am duly authorized to execute this Solvency Certificate on behalf of the Borrower pursuant to the Credit Agreement; and

2. As of the date hereof and after giving effect to the Transactions and the incurrence of the indebtedness and obligations being incurred in connection with the Credit Agreement, that, (i) the sum of the debt (including contingent liabilities) of the Borrower and its Restricted Subsidiaries, taken as a whole, does not exceed the fair value of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) the capital of the Borrower and its Restricted Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, contemplated as of the date hereof; and (iii) the Borrower and its Restricted Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debts as they mature in accordance with their terms. For the purposes hereof, (A) it is assumed that the indebtedness and other obligations under the Credit Facilities will come due at their respective maturities and (B) the amount of any contingent liability at any time will be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

[Signature Page Follows]
IN WITNESS WHEREOF, I have executed this Solvency Certificate on the date first written above.

CAVA GROUP, INC.,

By: ____________________________
   Name: _________________________
   Title: _________________________

P-2
NOTICE OF LOAN PREPAYMENT

JPMorgan Chase Bank, N.A.,
as Administrative Agent for the Lenders referred to below
10 S. Dearborn St.
Chicago, IL 60603
Attention: [***]
Tel: [***]
Fax: [***]
Email: [***]

[__________] [__], 20[__]54

Ladies and Gentlemen:

Reference is hereby made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

The Borrower hereby notifies the Administrative Agent that on the date(s) referenced below, pursuant to the terms of Section 2.11 of the Credit Agreement, the Borrower intends to voluntarily [prepay][repay] the following Loans on [__________] [__], 20[__] (the “Prepayment Date”) as more specifically set forth below:55

Revolving Loans:

<table>
<thead>
<tr>
<th>Amount to be Repaid</th>
<th>Term Benchmark Borrowing or ABR Borrowing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

54 All prepayments submitted under a single Notice of Loan Prepayment must be effective on the same date. If multiple effective dates are needed, multiple Notice of Loan Prepayment will need to be prepared and signed.

55 The Administrative Agent must be notified in writing, which must be received by the Administrative Agent (by hand delivery, fax or other electronic transmission (including “.pdf” or “.tif”) not later than (i) 10:00 a.m. three Business Days prior to the Prepayment Date in the case of any prepayment of a Term Benchmark Borrowing (or, if after the effectiveness of a Benchmark Replacement, five Business Days before the date of prepayment of an RFR Borrowing), (ii) 10:00 a.m. on the Prepayment Date in the case of any prepayment of an ABR Borrowing and (iii) 11:00 a.m. on the Prepayment Date in the case of any prepayment of any Swingline Loans (or, in each case, such later time as to which the Administrative Agent may reasonably agree).

56 Complete a new row for each Borrowing being prepaid.

Q-1
Swingline Loans:

<table>
<thead>
<tr>
<th>Amount to be Repaid</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

[Signature Page Follows]

Q-2
AMENDMENT NO. 1 TO THE CREDIT AGREEMENT

AMENDMENT NO. 1 TO THE CREDIT AGREEMENT, dated as of April 22, 2022 (this “Amendment”), to the Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time the “Credit Agreement” and the Credit Agreement, as in effect prior to giving effect hereto, the “Existing Credit Agreement”), among CAVA GROUP, INC. (the “Borrower”), the lenders from time to time party thereto (the “Lenders”) and JPMORGAN CHASE BANK, N.A., as administrative agent (in such capacity, the “Administrative Agent”).

WITNESSETH:

WHEREAS, pursuant to the Existing Credit Agreement, the Lenders have agreed to make, and have made, certain loans and other extensions of credit to the Borrower;

WHEREAS, in accordance with Section 9.02 of the Credit Agreement, the Borrower has requested that effective as of the Amendment Effective Date (as defined below) the Required Lenders agree to amend certain provisions of the Existing Credit Agreement as provided herein; and

WHEREAS, the Borrower, the Administrative Agent, and the Required Lenders are willing to agree to this Amendment on the terms set forth herein.

NOW THEREFORE, in consideration of the premises and mutual covenants hereinafter set forth, the parties hereto agree as follows:

SECTION 1. Definitions. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

SECTION 2. Amendment Effective Date. This Amendment shall become effective as of the date (the “Amendment Effective Date”) on which the Administrative Agent shall have received counterparts to this Amendment, duly executed by the Borrower, the Administrative Agent and the Required Lenders.

SECTION 3. Representations and Warranties. The Borrower represents and warrants to each of the Lenders and the Administrative Agent that:

3.1. no Default or Event of Default exists pursuant to the Credit Agreement as of the Amendment Effective Date, and immediately after giving effect to the Amendment; and

3.2. each of the representations and warranties made by any Loan Party set forth in Article III of the Credit Agreement, and in any Loan Document, are true and correct in all material respects on and as of the Amendment Effective Date with the same effect as though made on and as of such date, provided that, (i) to the extent that any representation and warranty specifically refers to a given date or period, it was true and correct in all material respects as of such date or for such period and (ii) to the extent that any representation and warranty is qualified by or subject to a “material adverse effect”, “material adverse change” or similar term or qualification, such representation and warranty is true and correct in all respects.

SECTION 4. Amendments. Effective as of the Amendment Effective Date, the Existing Credit Agreement is hereby amended as follows:
4.1. Section 5.01(a) of the Existing Credit Agreement is hereby amended by amending and restating it in its entirety as follows:

(a) **Quarterly Financial Statements.** Within 45 days (or, with respect to the Fiscal Quarters ending April 17, 2022, July 10, 2022 and October 2, 2022, 60 days) after the end of each of the first three Fiscal Quarters of each Fiscal Year, the consolidated balance sheet of the Borrower as at the end of such Fiscal Quarter and the related consolidated statements of income or operations and cash flows of the Borrower for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, and setting forth, in reasonable detail, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail; provided that any comparison against the corresponding figures from the corresponding period in any prior Fiscal Year may reflect the financial results of any applicable predecessor entity;

4.2. Section 5.01(b) of the Existing Credit Agreement is hereby amended by amending and restating it in its entirety as follows:

(b) **Annual Financial Statements.** Within 120 days after the end of each Fiscal Year (or, with respect to the Fiscal Year ended December 26, 2021, by May 25, 2022), (i) the consolidated balance sheet of the Borrower as at the end of such Fiscal Year and the related consolidated statements of income or operations and cash flows of the Borrower for such Fiscal Year and setting forth, in reasonable detail, in comparative form the corresponding figures for the previous Fiscal Year (it being understood and agreed that no such comparison shall be required if (A) the relevant independent certified public accountant is not willing to provide the same or (B) the corresponding figures from the previous Fiscal Year are not available) and (ii) with respect to such consolidated financial statements, a report thereon of Deloitte & Touche, LLP or other independent certified public accountant of recognized national standing (which report shall not be subject to (A) a “going concern” qualification (but not a “going concern” explanatory paragraph or like statement) (except as resulting from, in the good faith determination of the Borrower, (1) the impending maturity of any Indebtedness, (2) the breach or anticipated breach of any financial covenant and/or (3) the activities, operations, financial results, assets or liabilities of any Unrestricted Subsidiary) or (B) a qualification as to the scope of the relevant audit), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower as at the dates indicated and its results of operations and cash flows for the periods indicated in conformity with GAAP;

SECTION 5. Effect of Amendment; Reaffirmation.

5.1. Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Administrative Agent under the Existing Credit Agreement or any other Loan Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Existing Credit Agreement or any other provision of the Existing Credit Agreement or of any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

5.2. This Amendment shall constitute a Loan Document for purposes of the Credit Agreement. On and after the Amendment Effective Date, each reference in any Loan Document to the “Credit Agreement” and each reference in the Credit Agreement to “this Agreement”, “hereunder”,

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“hereof” or “herein” shall mean and be a reference to the Credit Agreement as amended by this Amendment. Nothing herein shall be deemed to entitle the Borrower to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document in similar or different circumstances. Nothing in this Amendment shall be deemed to be a novation of any Obligations under the Credit Agreement or any other Loan Document.


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

6.2. 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. This Amendment shall become effective when it has been executed by the Borrower, the Required Lenders 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 Amendment by facsimile or by email as a “.pdf” or “.tif” attachment shall be effective as delivery of a manually executed counterpart of this Amendment. It is understood and agreed that, subject to any Requirement of Law, the words “execution”, “signed”, “signature”, “delivery” and words of like import in or relating to this Amendment shall be deemed to include any Electronic Signature, delivery or the keeping of any record in electronic form, each of which shall have the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system to the extent and as provided for in any applicable Requirement of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state laws based on the Uniform Electronic Transactions Act.

6.3. Headings. The headings of this Amendment are used for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

[remainder of page intentionally left blank]
IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers as of the day and year first above written.

CACAVA GROUP, INC., as the Borrower

By: /s/ Tricia Tolivar
Name: Tricia Tolivar
Title: CFO

[Signature Page to Amendment No. 1 to the Credit Agreement]
JPMORGAN CHASE BANK, N.A., as Administrative Agent

By: /s/ Craig Bogle
Name: Craig Bogle
Title: Authorized Officer

[Signature Page to Amendment No. 1 to the Credit Agreement]
CITIBANK N.A., as a Lender

By: /s/ Anthony Scalfaro

Name: Anthony Scalfaro
Title: Vice President

[Signature Page to Amendment No. 1 to the Credit Agreement]
Capital One, National Association, as a Lender

By:  /s/ Jack Kelleher

Name: Jack Kelleher
Title: Sr. Manager

[Signature Page to Amendment No. 1 to the Credit Agreement]
ROYAL BANK OF CANADA, as a Lender

By: /s/ Gordon MacArthur

Name: Gordon MacArthur
Title: Authorized Signatory

[Signature Page to Amendment No. 1 to the Credit Agreement]
AMENDMENT NO. 2
Dated as of February 15, 2023
to
CREDIT AGREEMENT
Dated as of March 11, 2022

THIS AMENDMENT NO. 2 to CREDIT AGREEMENT (this “Amendment”) is made as of February 15, 2023 by and among Cava Group, Inc. (the “Borrower”), the financial institutions listed on the signature pages hereof and JPMorgan Chase Bank, N.A., as Administrative Agent (the “Administrative Agent”), under that certain Credit Agreement dated as of March 11, 2022 by and among the Borrower, the Lenders from time to time party thereto and the Administrative Agent (as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Existing Credit Agreement” and, as amended by this Amendment, the “Amended Credit Agreement”). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Amended Credit Agreement.

WHEREAS, the Borrower has requested, and certain of the Lenders party hereto (such Lenders, collectively, the “2023 Delayed Draw Lenders” and individually, each a “2023 Delayed Draw Lender”) have agreed to provide, a commitment for a series of delayed draw term loans as set forth on Annex A attached hereto (such commitment, the “2023 Delayed Draw Term Loan Commitment”) in an aggregate principal amount of $30,000,000 (the delayed draw term loans under the 2023 Delayed Draw Term Loan Commitment, the “2023 Delayed Draw Term Loans”);

WHEREAS, the Administrative Agent and Lenders party hereto (which constitute all the 2023 Delayed Draw Leaders) and all Lenders are agreeable to such changes, among others, on the terms, and subject to the conditions, described below; and

WHEREAS, the Borrower, the Lenders party hereto and the Administrative Agent have so agreed on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Lenders party hereto and the Administrative Agent hereby agree to enter into this Amendment.

1. **2023 Delayed Draw Term Loan Commitment.** Each 2023 Delayed Draw Lender hereby agrees, severally and not jointly, to provide a 2023 Delayed Draw Term Loan Commitment on the Amendment No. 2 Effective Date (as defined below) in an aggregate principal amount equal to the amount set forth opposite such 2023 Delayed Draw Lender’s name on Annex A attached hereto, subject to the conditions set forth in Section 3 below.

2. **Amendments to the Existing Credit Agreement.** Effective as of the Amendment No. 2 Effective Date (as defined below), the parties hereto agree as follows:

   (a) the Existing Credit Agreement is hereby amended to delete the stricken text (indicated in the same manner as the following example: stricken text) and to add the double-underlined text (indicated in the same manner as the following example: double-underlined text) as set forth in the conformed copy of the Amended Credit Agreement attached as Exhibit A hereto.
(b) Schedule 1.01(a) (Commitment Schedule) is hereby deleted in its entirety and replaced with the corresponding schedule attached as Exhibit B hereto.

(c) Each of the following exhibits to the Existing Credit Agreement are hereby deleted in their entirety and replaced with the corresponding exhibits attached as Exhibit C hereto:

(i) Exhibit B (Form of Borrowing Request);
(ii) Exhibit H (Form of Interest Election Request);
(iii) Exhibit L (Form of Promissory Note); and
(iv) Exhibit Q (Form of Loan Prepayment Notice).

3. Conditions of Effectiveness. The effectiveness of the 2023 Delayed Draw Term Loan Commitments and this Amendment (the “Amendment No. 2 Effective Date”) is subject to the satisfaction of the following conditions precedent:

(a) Amendment and Reaffirmation. The Administrative Agent (or its counsel) shall have received a counterpart of (i) this Amendment signed on behalf of the Borrower, each Lender (including each Lender that will hold a Delayed Draw Term Loan Commitment immediately after giving effect to this Amendment), and the Administrative Agent (which, subject to Section 9.07 of the Amended Credit Agreement, may include any Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) and (ii) the Reaffirmation Agreement signed by the Borrower and the other Loan Parties.

(b) Secretary’s Certificate; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of the Borrower, dated the Amendment No. 2 Effective Date and executed by its Secretary, Assistant Secretary or other Responsible Officer, which shall (A) certify the resolutions of its board of members or other governing body authorizing the execution and delivery of this Amendment and performance of this Amendment and the Amended Credit Agreement, (B) identify by name and title and bear the signatures of the officers of the Borrower authorized to sign this Amendment and the other Loan Documents to which it is a party, and (C) attach thereto (x) the certificate of incorporation of the Borrower certified as of a recent date by the relevant authority of the jurisdiction of organization of the Borrower and (y) a true and correct copy of its bylaws together with all amendments thereto as of the Amendment No. 2 Effective Date, and (ii) a customary good standing certificate for the Borrower from its jurisdiction of organization.

(c) Legal Opinion. The Administrative Agent (or its counsel) shall have received, on behalf of itself, the Lenders and each Issuing Bank on the Amendment No. 2 Effective Date, a customary written opinion of Weil, Gotshal & Manges LLP, in its capacity as special counsel for the Borrower, dated the Amendment No. 2 Effective Date, addressed to the Administrative Agent, the Lenders and each Issuing Bank, and addressing the Amendment, the Amended Credit Agreement and such other customary matters reasonably requested by the Administrative Agent.

(d) Representations and Warranties; No Default. On and as of the Amendment No. 2 Effective Date and immediately after giving effect (including giving effect on a Pro Forma Basis) thereto and the transactions contemplated hereby to occur on such date, (i) no Default or Event of Default shall then exist or would result therefrom and (ii) the representations and warranties of the Loan Parties set forth in this Amendment, the Amended Credit Agreement and the other Loan Documents shall be true and correct in all material respects; provided that (A) to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such
date or for such period and (B) to the extent that any representation and warranty is qualified by or subject to a “material adverse effect”, “material adverse change” or similar term or qualification, the same shall be true and correct in all respects.

(e) **Pro Forma Compliance Certificate.** The Administrative Agent shall have received a compliance certificate, substantially in the form attached as Exhibit D to the Amended Credit Agreement (or otherwise in form and substance reasonably satisfactory to the Administrative Agent) and signed by a financial officer of the Borrower, dated as of the Amendment No. 2 Effective Date, certifying that, as of the Amendment No. 2 Effective Date and after giving effect (including on a Pro Forma Basis in accordance with Section 1.11 of the Amended Credit Agreement, but based on the unaudited consolidated financial statements of the Borrower for the period ended October 2, 2022) to the transactions to occur on the Amendment No. 2 Effective Date, the Borrower is in pro forma compliance with the financial covenants set forth in Section 6.10 of the Amended Credit Agreement.

(f) **Fees.** The Administrative Agent shall have received (i) all fees required to be paid by the Borrower on the Amendment No. 2 Effective Date as separately agreed between the Borrower and JPMorgan Chase Bank, N.A. pursuant to that certain Fee Letter dated as of February 15, 2023, between the Borrower and JPMorgan Chase Bank, N.A. 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 Amendment No. 2 Effective Date or such later date to which the Borrower may agree (including the reasonable fees and expenses of legal counsel in accordance with Section 9.03(a) of the Amended Credit Agreement), in each case on or before the Amendment No. 2 Effective Date.

4. **Representations and Warranties of the Borrower.** The Borrower hereby represents and warrants as follows:

(a) The execution and delivery by the Borrower of this Amendment and the performance by the Borrower of this Amendment and the Amended Credit Agreement (a) are within the Borrower’s corporate power and (b) have been duly authorized by all necessary corporate action of the Borrower. This Amendment has been duly executed and delivered by the Borrower and each of the Amendment and Amended Credit Agreement is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to the Legal Reservations.

(b) The Borrower is (a) duly incorporated and validly existing and (b) in good standing (to the extent such concept exists in the relevant jurisdiction) under the Requirements of Law of its jurisdiction of organization.

5. **Reference to and Effect on the Existing Credit Agreement.**

(a) Upon the effectiveness hereof, each reference to the Existing Credit Agreement in the Existing Credit Agreement or any other Loan Document shall mean and be a reference to the Amended Credit Agreement.

(b) The Borrower hereby (i) agrees that this Amendment and the transactions contemplated hereby shall not limit or diminish its obligations arising under or pursuant to the Loan Documents to which it is a party and (ii) acknowledges and agrees that the Existing Credit Agreement and each other Loan Document executed by it remains in full force and effect and is hereby reaffirmed, ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Lenders or the Administrative Agent under the Existing Credit Agreement or any of the other Loan Documents, nor constitute a waiver of any provision of any of
the Loan Documents or any other documents, instruments and agreements executed and/or delivered in connection therewith.

(d) This Amendment is a Loan Document.

6. **Governing Law.** THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK. THE PARTIES HERETO AGREE THAT PROVISIONS OF SECTIONS 9.10(B) THROUGH (D) AND 9.11 OF THE AMENDED CREDIT AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE, MUTATIS MUTANDIS.

7. **Headings.** Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

8. **Counterparts.** This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Amendment shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided, that, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature, and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart.

9. **Reaffirmation.** The Borrower, as debtor, grantor, pledgor, guarantor, or another similar capacity in which the Borrower grants liens or security interests in its properties or otherwise acts as a guarantor, joint or several obligor or other accommodation party, as the case may be, in each case under the “Loan Documents” as defined in the Existing Credit Agreement, hereby (a) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the “Loan Documents” as defined in the Existing Credit Agreement to which it is a party and (b) to the extent the Borrower granted liens on or security interests in any of its properties pursuant to any of the “Loan Documents” as defined in the Existing Credit Agreement, hereby ratifies and reaffirms such grant of security (and any filings with Governmental Authorities made in connection therewith) and confirms that such liens and security interests continue to secure the obligations hereunder as further provided in the Collateral Documents.

10. **No Novation.** Neither the execution, delivery and acceptance of this Amendment nor any of the terms, covenants, conditions or other provisions set forth herein are intended, nor shall they be deemed or construed, to effect a novation of any liens or Obligations under the Existing Credit Agreement or to pay, extinguish, release, satisfy or discharge (a) the Obligations under the Existing Credit Agreement, (b) the liability of any Loan Party under the Existing Credit Agreement or the other Loan Documents executed and delivered in connection therewith or any Obligations or other obligations.
evidenced thereby, or (c) any mortgages, deeds of trust, liens, security interests or contractual or legal rights securing all or any part of such Obligations.

[Signature Pages Follow]
IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

CAVA GROUP, INC.,
as the Borrower

By: /s/ Tricia Tolivar
Name: Tricia Tolivar
Title: CFO

Signature Page to Amendment No. 2 to
Credit Agreement dated as of March 11, 2022
Cava Group, Inc.
JPMORGAN CHASE BANK, N.A.,
individually as a Lender and as Administrative Agent

By: /s/ Craig Bogle
Name: Craig Bogle
Title: Authorized Officer

Signature Page to Amendment No. 2 to
Credit Agreement dated as of March 11, 2022
Cava Group, Inc.
CITIBANK, N.A.,
as a Lender

By: /s/ Anthony Scalfaro
Name: Anthony Scalfaro
Title: Authorized Signer

Signature Page to Amendment No. 2 to
Credit Agreement dated as of March 11, 2022
Cava Group, Inc.
CAPITAL ONE, N.A.,
as a Lender

By: /s/ Andrew Seymour
Name: Andrew Seymour
Title: Duly Authorized Signer

Signature Page to Amendment No. 2 to
Credit Agreement dated as of March 11, 2022
Cava Group, Inc.
CREDIT AGREEMENT
dated as of March 11, 2022, as amended by that certain Amendment No. 1 to Credit Agreement, dated as of April 22, 2022 and as amended by that certain Amendment No. 2 to Credit Agreement, dated as of February 15, 2023

among

CAVA GROUP, INC.,
as the Borrower,

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

and

JPMORGAN CHASE BANK, N.A.
as Administrative Agent, an Issuing Bank and Swingline Lender,

and

JPMORGAN CHASE BANK, N.A.
as Lead Arranger and Bookrunner
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CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of March 11, 2022 (this “Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party hereto, the Issuing Banks from time to time party hereto and JPMorgan Chase Bank, N.A. (“JPMorgan”), in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender.

RECITALS

A. Substantially concurrently with the occurrence of the Closing Date, all outstanding indebtedness for borrowed money of the Borrower and its subsidiaries under that certain Revolving Credit Agreement, dated as of November 21, 2018 (as amended by the First Amendment thereto, dated as of December 4, 2019, that certain Second Amendment and Waiver to Revolving Credit Agreement, dated as of April 29, 2020, that certain Third Amendment to Revolving Credit Agreement, dated as of June 18, 2020, and as further amended, supplemented or otherwise modified from time to time prior to the date hereof, the “Existing Credit Agreement”), among the Borrower, Cava Intermediate, Inc., the several financial institutions and lenders from time to time party thereto and Truist Bank (as successor by merger to Suntrust Bank), as administrative agent, will be repaid, redeemed, discharged, refinanced, replaced or terminated and in each case, the liens and guarantees in support thereof shall be released or terminated (the “Closing Date Refinancing”).

B. The Borrower has requested that the Lenders extend credit under this Agreement in the form of an Initial Revolving Facility with an available amount of $75,000,000 and a Delayed Draw Term Loan Facility with an available amount of $30,000,000.

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

“ACH” means automated clearing house transfers.

“Additional Agreement” has the meaning assigned to such term in Section 8.10.
“Additional Commitment” means any commitment hereunder added pursuant to Sections 2.22, 2.23 and/or 9.02(c).

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

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

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

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

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

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

(i) (A) any depreciation and/or amortization (including amortization of goodwill, software and other intangible assets), (B) any impairment Charge, including any bad debt expense, and (C) any asset write-off and/or write-down; plus

(ii) any amount that may be added back in the calculation of Consolidated Adjusted EBITDA for such period pursuant to clause (c)(viii) of the definition thereof.

“Adjusted Daily Simple SOFR” means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided, that if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Adjusted Term SOFR Rate” means for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%; provided, that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Adjustment Date” means the date that is three (3) days after the delivery of financial statements required to be delivered pursuant to Section 5.01(a) or Section 5.01(b), as applicable.

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

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

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

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

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

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

“Affiliated Lender” means the Borrower, any Affiliate of the Borrower and/or any subsidiary of the Borrower.

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

“Aggregate Credit Exposure” means, at any time, the aggregate Credit Exposure of all the Lenders at such time.

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

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

“ALTA” means the American Land Title Association.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1%, and (c) the Adjusted Term SOFR Rate for a one-month Interest Period as published two (2) U.S. Government Securities Business Days prior to such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, provided that, for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14(b)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.
“Amendment No. 2” means Amendment No. 2 to Credit Agreement, dated as of the Amendment No. 2 Effective Date, among the Borrower, the Lenders party thereto and the Administrative Agent.

“Amendment No. 2 Effective Date” means February 15, 2023.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Parties” has the meaning assigned to such term in Section 8.03(c).

“Applicable Percentage” means, at any time: (a) 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)(i)), when there is a Defaulting Lender, such Defaulting Lender’s Revolving Credit Commitment shall be disregarded for any relevant calculation; provided further that, 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; and (b) with respect to any Delayed Draw Term Lender, (i) solely for purposes of advancing any Delayed Draw Term Loans, a percentage equal to a fraction the numerator of which is such Lender’s unused Delayed Draw Term Loan Commitment and the denominator of which is the aggregate unused Delayed Draw Term Loan Commitments of all Delayed Draw Term Lenders and (ii) for all other purposes, a percentage equal to a fraction the numerator of which is such Lender’s Outstanding Amount of the Delayed Draw Term Loans and such Lender’s unused Delayed Draw Term Loan Commitment (if any) and the denominator of which is the aggregate Outstanding Amount of the Delayed Draw Term Loans of all Delayed Draw Term Lenders and the aggregate amount of unused Delayed Draw Term Loan Commitments (if any) of all Delayed Draw Term Lenders; provided that, in accordance with Section 2.21, so long as any Lender shall be a Defaulting Lender, such Defaulting Lender’s Delayed Draw Term Loans and Delayed Draw Term Loan Commitments shall be disregarded in the calculations under this clause (b).

“Applicable Rate” means, for any day, the rate per annum applicable to the relevant Class of Loans in the table set forth below under the caption “ABR Spread” or “Term Benchmark/RFR Spread”, as the case may be, based upon the Total Rent Adjusted Net Leverage Ratio; provided that, until the first Adjustment Date following the completion of at least one full Fiscal Quarter ending after the Closing Date, the “Applicable Rate” shall be the applicable rate per annum set forth below in Category 2 of the table set forth below:

<table>
<thead>
<tr>
<th>Total Rent Adjusted Net Leverage Ratio</th>
<th>ABR Spread (including Swingline Loans)</th>
<th>Term Benchmark/RFR Spread</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>1.50%</td>
<td>2.50%</td>
</tr>
<tr>
<td>Greater than or equal to 6.00 to 1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category 2</td>
<td>1.25%</td>
<td>2.25%</td>
</tr>
<tr>
<td>Greater or equal to than 4.50 to 1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Category 3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4
<table>
<thead>
<tr>
<th>Total Rent Adjusted Net Leverage Ratio</th>
<th>ABR Spread (including Swingline Loans)</th>
<th>Term Benchmark/RFR Spread</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater than or equal to 3.50 to 1.00 but less than 4.50 to 1.00</td>
<td>1.00%</td>
<td>2.00%</td>
</tr>
<tr>
<td>Category 4</td>
<td>Greater than or equal to 2.50 to 1.00 but less than 3.50 to 1.00</td>
<td>0.75%</td>
</tr>
<tr>
<td>Category 5</td>
<td>Less 2.50 to 1.00</td>
<td>0.50%</td>
</tr>
</tbody>
</table>

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

“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 VII), 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 VII), 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 Electronic Platform” has the meaning assigned to such term in Section 8.03(b).

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

“Arranger” means JPMorgan, in its capacity as lead arranger and bookrunner hereunder.

“Artal” means Artal International S.C.A.

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

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

(a) the sum of:

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

(ii) (A) the amount of any capital contribution in respect of Qualified Capital Stock or the proceeds of any issuance of Qualified Capital Stock after the Closing Date that are Not Otherwise Applied (other than any amount (1) constituting a Cure Amount or an Available Excluded Contribution Amount, (2) received from the Borrower or any Restricted Subsidiary or (3) consisting of the proceeds of any loan or advance made pursuant to Section 6.06(h)(ii)) received or deemed to be received as Cash equity by the Borrower or any of its Restricted Subsidiaries, plus (B) the fair market value, as determined by the Borrower in good faith, of Cash Equivalents, marketable securities or other property received or deemed to be received by the Borrower as a capital contribution in respect of Qualified Capital Stock or in return for any issuance of Qualified Capital Stock that are Not Otherwise Applied (other than any amount (1) constituting a Cure Amount or an Available Excluded Contribution Amount or (2) received from the Borrower or any Restricted Subsidiary), in each case, during the period from and including the day immediately following the Closing Date through and including such time; provided that, in connection with any utilization of the Available Amount pursuant to Section 6.04(a)(iii), the proceeds of any IPO shall not build the Available Amount pursuant to this clause (a)(iii); plus

(iii) the aggregate principal amount of any Indebtedness (including any Disqualified Capital Stock), of the Borrower or any Restricted Subsidiary issued after the Closing Date (other than Indebtedness or such Disqualified Capital Stock issued to the Borrower or any Restricted Subsidiary), which has been converted into or exchanged for Capital Stock of the Borrower or any Parent Company that does not constitute Disqualified Capital Stock, together with the fair market value of any Cash Equivalents and the fair market value (as determined by the Borrower in good faith) of any assets received by the Borrower or such Restricted Subsidiary upon such exchange or conversion, in each case, during the period from and including the day immediately following the Closing Date through and including such time; plus

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

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

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

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

(ix) the aggregate face amount of any Indebtedness of the Borrower and/or any Restricted Subsidiary that is cancelled,
released or otherwise terminated by virtue of the incurrence or assumption by any Unrestricted Subsidiary of any such
Indebtedness, including by way of an “exchange” or similar transaction; plus

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

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

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

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

(b) the sale or issuance of Qualified Capital Stock of the Borrower that are Not Otherwise Applied (other than (x) to any Restricted Subsidiary, (y) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or (z) with the proceeds of any loan or advance made pursuant to Section 6.06(h)(ii)); provided that, in connection with any utilization of the Available Excluded Contribution Amount pursuant to Section 6.04(a)(iii)(B), the proceeds of any IPO shall not build the Available Excluded Contribution Amount pursuant to this clause (b), in each case, designated by the Borrower as an Available Excluded Contribution Amount on or promptly after the date on which the relevant capital contribution is made (or deemed to be made) or the relevant proceeds are received (or deemed to be received), as the case may be, and which are excluded from the calculation of the Available Amount.

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

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

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

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

“Bankruptcy Code” means Title 11 of the United States Code (11 USC § 101 et seq.), as it has been, or may be, amended, from time to time.

“Benchmark” means, initially, with respect to any Term Benchmark Loan, the Term SOFR Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.14.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

1. the Adjusted Daily Simple SOFR; or

2. the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the
Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides (in consultation with the Borrower) may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary (in consultation with the Borrower) in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

1. in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

2. in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events.
set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

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

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

“Board” means the Board of Governors of the Federal Reserve System of the US.

“Borrower” has the meaning assigned to such term in the preamble to this Agreement and shall, for the avoidance of doubt, include any Successor Borrower.

“Borrower Materials” has the meaning assigned to such term in Section 9.01(d).

“Borrowing” means any Loans of the same Type and Class made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03 and substantially in the form attached hereto as Exhibit B or such other form that is reasonably acceptable to the Administrative Agent and the Borrower, including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and the Borrower, in each case, appropriately completed and signed by a Responsible Officer of the Borrower.

“Burdensome Agreement” has the meaning assigned to such term in Section 6.05.

“Business Day” means any day (other than a Saturday or a Sunday) on which banks are open for business in New York City or Chicago; provided that, in addition to the foregoing, a Business Day shall be any such day that is a U.S. Government Securities Business Day (a) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings of such RFR Loan, any such day that is a U.S. Government Securities Business Day, and (b) in relation to Loans referencing the Adjusted Term SOFR Rate and any interest rate settings, fundings, disbursements, settlements or payments of any such Loans referencing the Adjusted Term SOFR Rate or any other dealings of such Loans referencing the Adjusted Term SOFR Rate.

“Business Optimization Initiative” has the meaning assigned to such term in the definition of “Consolidated Adjusted EBITDA”.

“Capital Expenditures” means, with respect to the Borrower and its Restricted Subsidiaries for any period, the aggregate amount, without duplication, of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capital Leases) that would, in accordance with GAAP, be, or are required to be included as, capital expenditures on the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries for such period.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person; provided that for the avoidance of doubt, the amount of obligations attributable to any Capital Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“Capital Stock” means any and all shares, interests, participations, preferred equity certificates, convertible preferred equity certificates or other equivalents (however designated) of capital stock of a
corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership
interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, but excluding for
the avoidance of doubt any Indebtedness convertible into or exchangeable for any of the foregoing.

“Captive Insurance Subsidiary” means any Restricted Subsidiary of the Borrower that is subject to regulation as an insurance company
(or any Restricted Subsidiary thereof).

“Cash” means money, currency or a credit balance in any Deposit Account, in each case determined in accordance with GAAP.

“Cash Equivalents” means, as at any date of determination, (a) readily marketable securities (i) issued or directly and unconditionally
guaranteed or insured as to interest and principal by the US government or (ii) issued by any agency or instrumentality of the US the obligations
of which are backed by the full faith and credit of the US, in each case maturing within one year after such date and, in each case, repurchase
agreements and reverse repurchase agreements relating thereto, (b) readily marketable direct obligations issued by any state of the US or any
political subdivision of such state or any public instrumentality thereof or by any foreign government, in each case maturing within one year
after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody’s or at least “A”
from Fitch (or, if at any time none of S&P, Moody’s or Fitch rates such obligations, an equivalent rating from another nationally recognized
statistical rating agency) and, in each case, repurchase agreements and reverse repurchase agreements relating thereto, (c) commercial paper
maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-2 from
S&P, at least P-2 from Moody’s or at least “F2” from Fitch (or, if at any time none of S&P, Moody’s or Fitch rates such obligations, an
equivalent rating from another nationally recognized statistical rating agency), (d) deposits, money market deposits, time deposit accounts,
certificates of deposit or bankers’ acceptances (or similar instruments) maturing within one year after such date and issued or accepted by any
Lender or by any bank organized under, or authorized to operate as a bank under, the laws of the US, any state thereof or the District of
Columbia or any political subdivision thereof or any foreign bank or its branches or agencies in each case organized under, or authorized to
operate as bank under, the laws of any jurisdiction in which any subsidiary is organized or has operations and that has capital and surplus of not
less than $100,000,000 and, in each case, repurchase agreements and reverse repurchase agreements relating thereto, (e) securities with
maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank having capital
and surplus of not less than $100,000,000, (f) shares of any investment fund that has (i) substantially all of its assets invested in the types of
investments referred to in clauses (a) through (e) above, (ii) net assets of not less than $250,000,000 and (iii) a rating of at least A-2 from S&P, at
least P-2 from Moody’s or at least “A” from Fitch (or, if at any time either S&P, Moody’s or Fitch are not rating such fund, an equivalent rating
from another nationally recognized statistical rating agency) and (g) solely with respect to any Captive Insurance Subsidiary, any investment that
such Captive Insurance Subsidiary is not prohibited to make in accordance with applicable law. “Cash Equivalents” shall also include (x)
Investments of the type and maturity described in clauses (a) through (g) above of foreign obligors, which Investments or obligors (or the parent
companies thereof) have the ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (y) other short-
term Investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in Investments that are
analogous to the Investments described in clauses (a) through (g) and in this paragraph.

“Cash Interest Expense Amount” has the meaning assigned to such term in the definition of “Consolidated Fixed Charges”.

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“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 and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or US or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case described in clauses (a), (b) and (c) above, be deemed to be a Change in Law, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means (a) at any time prior to the consummation of an 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), common stock representing more than 50% of the total voting power of all of the outstanding voting common stock of the Borrower and (b) at any time after the consummation of an IPO, the acquisition of the beneficial ownership, directly or indirectly, beneficially or of record, by any Person or group (as used in this definition, within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) (including any group acting for the purpose of acquiring, holding or disposing of Securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), but excluding (i) any employee benefit plan and/or Person acting as the trustee, agent or other fiduciary or administrator therefor, (ii) one or more Permitted Holders and (iii) underwriters in connection with any offering of Capital Stock), of voting common stock representing more than 50% of the total voting power of all of the outstanding voting common stock of the Borrower; provided that notwithstanding the provisions of this clause (b), no “Change of Control” shall be deemed to have occurred under this clause (b) if the Permitted Holders have the right, by voting power, contract or otherwise, to elect or designate for election at least a majority of the board of directors of the Borrower.

For purposes of this definition, (1) a Person or group shall not be deemed to beneficially own Capital Stock or voting power subject to a stock or asset purchase agreement, merger agreement or similar agreement (or voting or similar agreement related thereto) until the consummation of the acquisition of the Capital Stock or voting power pursuant to the transactions contemplated by such agreement, (2) if any group (other than a Permitted Holder) includes one or more Permitted Holders, the issued and outstanding Capital Stock of the relevant Person that is directly or indirectly owned by the Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of this definition, (3) a Person or group (other than Permitted Holders) will not be deemed to beneficially own the Capital Stock of another Person as a result of its ownership of the Capital Stock or other securities of such other Person’s parent company (or any related contractual right) unless it beneficially owns or controls 50% or more of the total voting power of the Capital Stock entitled to vote for the election of directors of such Person’s parent company having a majority of the aggregate votes on the board of directors (or equivalent governing body) of such Person’s parent company and (4) the right to acquire voting stock (so long as such Person does not have the right to direct the voting stock subject to such right) or any veto power in connection with the acquisition or disposition of voting stock will not cause a party to be a beneficial owner.

“Charge” means any fee, charge, expense, cost, accrual, reserve or loss of any kind.
“Charged Amounts” has the meaning assigned to such term in Section 9.19.

“Class”, when used with respect to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Initial Revolving Loans, Additional Revolving Loans, Delayed Draw Term Loans, Incremental Term Loans of any series established as a separate “Class” pursuant to Section 2.22, 2.23 and/or 9.02(c)(ii) or Swingline Loans, (b) any Commitment, refers to whether such Commitment is an Initial Revolving Credit Commitment, a Delayed Draw Term Loan Commitment, an Additional Revolving Credit Commitment of any series established as a separate “Class” pursuant to Section 2.22, 2.23 and/or 9.02(c)(ii) or a commitment to make Swingline Loans, (c) any Lender, refers to whether such Lender has a Loan or Commitment of a particular Class and (d) any Revolving Credit Exposure, refers to whether such Revolving Credit Exposure is attributable to a Revolving Credit Commitment of a particular Class.

“Closing Date” means March 11, 2022, the date on which the conditions specified in Section 4.01 were satisfied (or waived in accordance with Section 9.02).

“Closing Date Refinancing” has the meaning assigned to such term in the recitals to this Agreement.

“CME Term SOFR Administrator” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

“CNI Growth Amount” means, at any date of determination, for the period (treated as one accounting period) from the first day of the Fiscal Quarter of the Borrower during which the Closing Date occurs and ending with the last Fiscal Quarter of the Borrower included in the most recently ended Test Period, an amount (which amount shall not be less than zero for any Fiscal Quarter) determined on a cumulative basis equal to 50% of Adjusted Consolidated Net Income for each such Fiscal Quarter included in such period (if Adjusted Consolidated Net Income for such Fiscal Quarter is positive).


“Collateral” means any and all property of any Loan Party subject (or purported to be subject) to a Lien under any Collateral Document and any and all other property of any Loan Party, now existing or hereafter acquired, that is or becomes subject (or purported to be subject) to a Lien pursuant to any Collateral Document to secure the Secured Obligations. For the avoidance of doubt, in no event shall “Collateral” include any Excluded Asset.

“Collateral and Guarantee Requirement” means, at any time, subject to (x) the applicable limitations set forth in this Agreement and/or any other Loan Document and the terms of any applicable Intercreditor Agreement and (y) the time periods (and extensions thereof) set forth in Section 5.12 and/or Section 5.15, as applicable, the requirement that:

(a) on the Closing Date, the Administrative Agent shall have received (A) each Collateral Document and Loan Guaranty listed on Schedule 1.01(b), duly executed by each Loan Party party thereto, (B) a pledge of all of the Capital Stock (together, in the case of Capital Stock that is certificated, with undated stock or similar powers for each such certificate executed in blank by a Responsible Officer of the pledgor thereof) listed on Schedule 3 to the Perfection Certificate, (C) each Material Debt Instrument listed on Schedule 4 to the Perfection Certificate, endorsed (without recourse) in blank or accompanied by executed transfer form in blank by the pledgor thereof, (D) Uniform Commercial Code financing statements in appropriate form for
filing in the jurisdiction of organization of each Loan Party and (E) an Intellectual Property Security Agreement in appropriate form for filing with the U.S. Patent and Trademark Office and the U.S. Copyright Office, as applicable; and

(b) after the Closing Date, in the case of any Restricted Subsidiary that is required to become (or otherwise becomes) a Loan Party after the Closing Date the Administrative Agent shall have received:

(i) (A) a Joinder Agreement, (B) if the respective Restricted Subsidiary required to comply with the requirements set forth in this definition pursuant to Section 5.12 owns registrations of or applications for US Patents, Trademarks and/or Copyrights that constitute Collateral, an Intellectual Property Security Agreement, (C) a completed Perfection Certificate, (D) Uniform Commercial Code financing statements in appropriate form for filing in such jurisdictions as the Administrative Agent may reasonably request and (E) an executed joinder to each applicable Intercreditor Agreement in substantially the form attached as an exhibit thereto or such other form to which the Administrative Agent may reasonably agree;

(ii) each item of Collateral that such Restricted Subsidiary is required to deliver under Section 4.02 of the Security Agreement (which, for the avoidance of doubt, shall be delivered within the time periods set forth in Section 5.12(a)); and

(iii) in the case of any subsidiary that has been designated as a Discretionary Guarantor (A) with respect to any such subsidiary that is a Domestic Subsidiary, the documents described in clause (b)(i) above and (B) with respect to any such subsidiary that is a Foreign Subsidiary, (1) a Joinder Agreement and (2) such other documentation relating to such categories of assets (other than Excluded Assets) as the Borrower and Administrative Agent may reasonably agree;

“Collateral Documents” means, collectively, (a) the Security Agreement (and any supplement thereto delivered to the Administrative Agent), (b) each Intellectual Property Security Agreement and (c) each of the other instruments and documents pursuant to which any Loan Party grants (or purports to grant) a Lien on any Collateral as security for payment of the Secured Obligations (including, without limitation, the Mortgage and Mortgage Instruments in respect of the Verona Property).

“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 Revolving Credit Commitment, Delayed Draw Term Loan Commitment and any Additional Commitment, as applicable, in effect as of such time.
“Commitment Fee Rate” means, on any date (a) with respect to the Initial Revolving Credit Commitments, the applicable rate per annum set forth below based upon the Total Rent Adjusted Net Leverage Ratio; provided that, until the first Adjustment Date following the completion of at least one full Fiscal Quarter ending after the Closing Date, “Commitment Fee Rate” shall be the applicable rate per annum set forth below in Category 2 and (b) with respect to Additional Revolving Credit Commitments of any Class, the rate or rates per annum specified in the applicable Refinancing Amendment, Incremental Facility Amendment or Extension Amendment:

<table>
<thead>
<tr>
<th>Total Rent Adjusted Net Leverage Ratio</th>
<th>Commitment Fee Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>0.35%</td>
</tr>
<tr>
<td>Greater than or equal to 6.00 to 1.00</td>
<td></td>
</tr>
<tr>
<td>Category 2</td>
<td>0.30%</td>
</tr>
<tr>
<td>Greater or equal to than 4.50 to 1.00 but less than 6.00 to 1.00</td>
<td></td>
</tr>
<tr>
<td>Category 3</td>
<td>0.25%</td>
</tr>
<tr>
<td>Greater than or equal to 3.50 to 1.00 but less than 4.50 to 1.00</td>
<td></td>
</tr>
<tr>
<td>Category 4</td>
<td>0.20%</td>
</tr>
<tr>
<td>Greater than or equal to 2.50 to 1.00 but less than 3.50 to 1.00</td>
<td></td>
</tr>
<tr>
<td>Category 5</td>
<td>0.20%</td>
</tr>
<tr>
<td>Less 2.50 to 1.00</td>
<td></td>
</tr>
</tbody>
</table>

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

“Commitment Schedule” means the Schedule attached hereto as Schedule 1.01(a).

“Commodity Exchange Act” means the Commodity Exchange Act (7 USC § 1 et seq.).

“Communications” has the meaning assigned to such term in Section 8.03(c).

“Company Competitor” means any competitor of the Borrower and/or any of its subsidiaries.

“Competitor Debt Fund Affiliate” means, with respect to any Company Competitor or any Affiliate thereof, any debt fund, investment vehicle, regulated bank entity or unregulated lending entity (in each case, other than any Disqualified Lending Institution or any Excluded Party) that is (a) primarily engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business for financial investment purposes (but not with a view towards (i) owning the borrower or issuer of any such loan or similar extension of credit or (ii)
investing in special or opportunistic situations) and (b) managed, sponsored or advised by any person that is controlling, controlled by or under common control with the relevant Company Competitor or Affiliate thereof, but only to the extent that no personnel involved with the investment in the relevant Company Competitor or its Affiliates, or the management, control or operation thereof, (i) makes (or has the right to make or participate with others in making) investment decisions on behalf of, or otherwise cause the direction of the investment policies of, such debt fund, investment vehicle, regulated bank entity or unregulated entity or (ii) has access to any information (other than information that is publicly available) relating to the Borrower and/or any entity that forms part of its business (including any of its subsidiaries).

“Compliance Certificate” means a Compliance Certificate substantially in the form of Exhibit D or such other form to which the Borrower and the Administrative Agent may reasonably agree.

“Confidential Information” has the meaning assigned to such term in Section 9.13.

“Consolidated Adjusted EBITDA” means, with respect to any Person on a consolidated basis for any period, the sum of:

(a) Consolidated Net Income for such period; plus

(b) to the extent not otherwise included in the determination of Consolidated Net Income for such period, the amount of any proceeds of any business interruption insurance policy (whether or not then received so long as such Person in good faith expects to receive such proceeds); plus

(c) without duplication, those amounts which, in the determination of Consolidated Net Income for such period, have been deducted for:

(i) Consolidated Interest Expense; plus

(ii) Tax expenses in respect of, and any provision for, federal, state, local and foreign income Taxes; plus

(iii) (A) all depreciation and amortization (including amortization of goodwill, software and other intangible assets), (B) all impairment Charges, including any bad debt expense, and (C) all asset write-offs and/or write-downs, including any amortization or write-off of (1) intangible assets and non-cash organization costs, (2) deferred financing and debt issuance fees, costs and expenses, (3) capitalized expenditures (including capitalized software expenditures), (4) the amortization of original issue discount resulting from the issuance or incurrence of Indebtedness at less than par and/or (5) the non-cash amortization of favorable or unfavorable lease assets or liabilities; plus

(iv) any earn-out and/or contingent consideration obligation (including those accounted for as bonuses, compensation or otherwise) and any adjustment thereof incurred in connection with the Transactions and/or any acquisition and/or other Investment (whether or not consummated) which is paid or accrued during such period and, in each case, adjustments thereof; plus

(v) any non-cash Charge, including the excess of GAAP rent expense over actual cash rent paid during such period due to the use of straight line rent for GAAP
purposes (provided that to the extent that any such non-cash Charge represents an accrual or reserve for any potential cash item in any future period, (A) such Person may elect not to add back such non-cash Charge in the current period and (B) to the extent such Person elects to add back such non-cash Charge in the current period, the cash payment in respect thereof in such future period shall be deducted from Consolidated Adjusted EBITDA to such extent in such future period); plus

(vi) any non-cash compensation Charge and/or any other non-cash Charge arising from the granting of any stock option or similar arrangement (including any profits interest), the granting of any stock appreciation right and/or similar arrangement (including any repricing, amendment, modification, substitution or change of any such stock option, stock appreciation right, profits interest or similar arrangement); plus

(vii) (A) Transaction Costs, (B) any non-recurring Charge incurred in connection with any transaction (in each case, whether or not consummated and whether or not permitted under this Agreement), including (1) any issuance and/or incurrence of Indebtedness (including any Charge that would constitute a Public Company Cost), and/or any issuance and/or offering of Capital Stock (including, in each case, by any Parent Company or in connection with an IPO), any acquisition or other Investment, any Disposition, any recapitalization, any merger, consolidation or amalgamation, any option buyout or any repayment, redemption, refinancing, amendment or modification of Indebtedness (including any amortization or write-off of debt issuance or deferred financing costs, premiums and prepayment penalties) or any similar transaction and/or (2) equipment leases and/or equipment financings, (C) the amount of any non-recurring Charge that is actually reimbursed or reimbursable by any third party pursuant to any indemnification or reimbursement provision or similar agreement (including any purchase price adjustment) or insurance; provided that in respect of any Charge that is added back in reliance on this clause (C), the relevant Person in good faith expects to receive reimbursement for such Charge and/or (D) non-recurring Public Company Costs; plus

(viii) without duplication of any amount referred to in clause (b) above, the amount of (A) any Charge to the extent that a corresponding amount is received in cash by such Person from a Person other than such Person or any Restricted Subsidiary of such Person under any agreement providing for reimbursement of such Charge or (B) any Charge with respect to any liability or casualty event, business interruption or any product recall, (i) so long as such Person has submitted in good faith, and reasonably expects to receive payment in connection with, a claim for reimbursement of such amounts under its relevant insurance policy or (ii) without duplication of any amount included in a prior period under clause (B)(i) above, to the extent such Charge is covered by insurance proceeds received in cash during such period; plus

(ix) (A) the amount of management fees permitted by Section 6.04(a)(xvi) and/or payments to outside directors of the Borrower or any Parent Company actually paid by or on behalf of, or accrued by, such Person or any of its subsidiaries; provided that, in each case, such payment is permitted under this Agreement and (B) to the extent the relevant payment is permitted hereunder, the amount of any payment to any holder of any option in respect of the Capital Stock of the Borrower and/or any Parent Company in lieu of a Restricted Payment, which payment is made to compensate such optionholder as if it was an equity holder at the time of the relevant Restricted Payment; plus
(x) any Charge attributable to the undertaking and/or implementation of new initiatives, business optimization
activities, cost savings initiatives, cost rationalization programs, operating improvements and/or expense reductions and/or
synergies and/or similar initiatives and/or programs (including, in connection with any integration, operational improvement,
restructuring or transition, any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for
alternative uses, including unused warehouse restaurant, store or Unit Locations), any inventory optimization program and/or
any curtailment, any business optimization Charge, any Charge relating to the destruction of equipment, any restructuring
Charge and/or integration Charge (including any Charge relating to any tax restructuring), any Charge relating to the closure,
consolidation or relocation of any facility, restaurant, store or Unit Location (including but not limited to rent termination costs,
moving costs and legal costs) any severance Charge, any systems implementation Charge, any Charge relating to entry into any
new market, any Charge relating to any strategic initiative, any signing Charge, any Charge relating to any retention or
completion bonus, any expansion and/or relocation Charge, any Charge associated with any modification to any pension and
post-retirement employee benefit plan, any Charge associated with system design, update and/or establishment, any upgrade
Charge, any platform optimization Charge, any new system implementation Charge, any startup and/or expansion Charge
(including administrative, overhead, staffing and related costs and expenses), any Charge in connection with new and/or
expanded operations, any Charge in connection with unused warehouse space, any Charge relating to a new contract, any
consulting Charge, or any corporate development Charge, any Charge incurred in connection with software, product and/or
intellectual property development, any Charge relating to any distribution network and/or sales channel, any Charge in
connection with any exit from, wind down or termination of any line of business, any Charge related to any customer dispute,
any Charge in connection with the implementation, replacement, development or upgrade of any operational, reporting and/or
information technology system and/or technology initiative, in each case, other than any such Charge incurred in the ordinary
course of business (as determined by the Borrower in good faith); provided that the amount included in Consolidated Adjusted
EBITDA in any four Fiscal Quarter period in reliance on this clause (c)(x), together with the amount included in Consolidated
Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 20%
Adjustments, shall not exceed 20% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified
Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of
the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial
Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X
under the Securities Act); plus
(xi) any Charge incurred or accrued in connection with any single or one-time event, including any such Charges
incurred or accrued in connection with (A) acquisitions or similar investments, (B) the consolidation or reconfiguration of any
facility, (C) litigation or other legal matter (including actual or prospective legal settlements, fines, judgments or orders) and/or
(D) Charges arising from insurance claims and settlements; provided that the amount included in Consolidated Adjusted
EBITDA in any four Fiscal Quarter period in reliance on this clause (c)(xi) (other than such Charges of the type described in the
foregoing clause (A) and/or any other one-time Disposition or issuance of debt or equity), together with the amount included in
Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as

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applicable, in reliance on the other Specified 15% Adjustments, shall not exceed 15% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(xii) any add-back, adjustment and/or exclusion reflected in the Financial Model delivered to the Administrative Agent (including, for the avoidance of doubt, in connection with any acquisition or similar investment prior to or after the Closing Date); plus

(xiii) any loss of operating income that is attributable to any facility, restaurant, store or Unit Location that is temporarily closed for a period not to exceed (or reasonably expected not to exceed) 12 months for remodeling, construction, refurbishment and/or rebuilds; provided that such losses shall be determined based on the store level profits and losses based on the average of six consecutive four-week reporting periods immediately preceding such closure; provided, further, that the amount included in Consolidated Adjusted EBITDA in any four Fiscal Quarter period in reliance on this clause (c)(xiii) shall not exceed 5% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(d) to the extent not included in Consolidated Net Income for such period, cash actually received (or any netting arrangement resulting in reduced cash expenditures) during such period in respect of any non-cash income or gain that was deducted in the calculation of Consolidated Adjusted EBITDA (including any component definition) pursuant to clause (h) below for any previous period and not added back; plus

(e) the full pro forma “run rate” expected cost savings, operating expense reductions, operational improvements, business optimization, restructurings, and/or cost synergies (collectively, “Run-Rate Synergies”) (net of actual amounts realized) that are reasonably identifiable (in the good faith determination of such Person) related to (i) the Transactions, (ii) any asset sale, merger or other business combination, Investment, Disposition, operating improvement, expense reduction, restructuring, cost savings initiative, and/or any initiative similar to any of the foregoing (including the entry into or renegotiation of, or in respect of which binding commitments have been entered for, any contract and/or other arrangement) and/or specified transaction (each, a “Business Optimization Initiative”), in each case, consummated or implemented prior to or on the Closing Date and (iii) any Business Optimization Initiative consummated or implemented after the Closing Date; provided that, with respect to this clause (iii), the relevant Business Optimization Initiative resulting in (or substantial steps toward the relevant Business Optimization Initiative that would result in) such Run-Rate Synergies (x) must either be taken or expected to be taken within 18 months following the applicable date of determination and (y) the amounts added back in any four Fiscal Quarter period in reliance on this clause (e)(iii), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the
other Specified 20% Adjustments, shall not exceed 20% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); plus

(f) Consolidated Restaurant Pre-Opening Costs; plus

(g) to the extent not otherwise included in calculating Consolidated Net Income, the amount of any distribution received by such Person from any Unrestricted Subsidiary; plus

(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 (including the excess of actual cash rent paid over GAAP rent expense during such period to the use of straight line rent for GAAP purposes), all as determined in accordance with GAAP; provided that if any non-cash income or non-cash gain represents an accrual or deferred income in respect of potential cash items in any future period, such Person may determine not to deduct the relevant non-cash gain or income in the then-current period; minus

(i) the amount of any cash payment made during such period in respect of any non-cash accrual, reserve or other non-cash Charge that (A) is accounted for in a prior period, (B) was added to Consolidated Net Income to determine Consolidated Adjusted EBITDA for such prior period and (C) does not otherwise reduce Consolidated Net Income for the current period; minus

(j) any tax benefit received during such period in respect of any federal, state, local and foreign income Taxes.

“Consolidated Adjusted EBITDAR” means, as of any date of determination, an amount equal to (without duplication) (a) Consolidated Adjusted EBITDA for such Test Period plus (b) Consolidated Cash Rental Expense for such Test Period.

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

“Consolidated First Lien Debt” means, as to any Person at any date of determination, the aggregate principal amount of Consolidated Total Debt outstanding on such date that is secured by a Lien on substantially all of the Collateral and that constitutes First Lien Debt.

“Consolidated Fixed Charges” means, as of any date of determination, the sum of the following determined on a consolidated basis for such period, without duplication, for the Borrower and its Restricted Subsidiaries in accordance with GAAP: (a)(i) consolidated cash interest expense relating to Consolidated Total Debt (excluding, among other things, (A) amortization of deferred financing fees,
any expense arising from any financing fee (including agency and commitment and ticking fees), (C) any expense arising from the discounting of indebtedness in connection with the application of recapitalization and/or acquisition accounting, (D) any penalty and/or interest relating to any tax and (E) any non-cash interest expense attributable to any movement in the mark-to-market valuation of any hedging or other derivative obligation and/or any payment obligation arising under any hedge agreement or other derivative instrument (other than any interest rate hedge agreement or other derivative instrument) (this clause (a)(i), the "Cash Interest Expense Amount") minus (ii) cash interest income, plus (b) Consolidated Cash Rental Expense plus (c) regularly scheduled cash payments of principal of any outstanding Indebtedness for borrowed money (with respect to any Test Period containing any period ended prior to the Closing Date, calculated excluding principal payments in respect of the Existing Credit Agreement, including the Closing Date Refinancing), other than any such payments financed with the proceeds of or refinanced through the incurrence of any additional Indebtedness permitted hereunder (other than any Revolving Loans).

“Consolidated Interest Expense” means, with respect to any Person for any period, the sum of (a) consolidated total interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued and whether or not capitalized, (including, without duplication, amortization of any debt issuance cost, original issue discount, any premium paid to obtain payment, financial assurance or similar bonds, any interest capitalized during construction, any non-cash interest payment, the interest component of any deferred payment obligation, the interest component of any payment under any Capital Lease (regardless of whether accounted for as interest expense under GAAP), any commission, discount and/or other fee or charge owed with respect to any letter of credit and/or bankers’ acceptance, any fee and/or expense paid to the Administrative Agent in connection with its services hereunder, any other bank, administrative agency (or trustee) and/or financing fee, to the extent not otherwise included in consolidated total interest expense, customary commissions, discounts, yield and other fees and charges (including interest expense) relating to any cost associated with any surety bond in connection with financing activities (whether amortized or immediately expensed)) plus (b) any cash dividend paid or payable in respect of Disqualified Capital Stock during such period other than to such Person or any Restricted Subsidiary, plus (c) any net losses or obligations arising from any Hedge Agreement and/or other derivative financial instrument issued by such Person for the benefit of such Person or its subsidiaries, in each case, determined on a consolidated basis for such period. For purposes of this definition, interest in respect of any Capital Lease shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capital Lease in accordance with GAAP.

“Consolidated Net Income” means, in respect of any period and as determined for any Person (the “Subject Person”) on a consolidated basis, an amount equal to the sum of net income, determined in accordance with GAAP, but excluding:

(a) (i) the income of any Person (other than the Subject Person or a Restricted Subsidiary of the Subject Person) in which any other Person (other than the Subject Person or any Restricted Subsidiary of the Subject Person) has a joint interest, except to the extent of the amount of dividends, distributions or other payments (including any ordinary course dividend, distribution or other payment) paid in cash (or to the extent converted into cash) to the Subject Person or any of its Restricted Subsidiaries by such Person during such period and (ii) the loss of any Person (other than the Subject Person or a Restricted Subsidiary of the Subject Person (or a Person who, if a subsidiary of the Subject Person, would be a Restricted Subsidiary of the Subject Person)) in which any other Person (other than the Subject Person or any of its Restricted Subsidiaries) has a joint interest, other than to the extent that the Subject Person or
any of its Restricted Subsidiaries has contributed Cash or Cash Equivalents to such Person in respect of such loss during such period;

(b) any gain or Charge attributable to any asset Dispositions (including asset retirement costs and including any abandonment of assets) or of returned surplus assets outside the ordinary course of business;

(c) (i) any Charge from (A) any extraordinary item (as determined in good faith by such Person) and/or (B) any unusual, non-recurring, infrequent and/or exceptional item (as determined in good faith by such Person) and/or (ii) any Charge attributable to and/or payment of any actual or prospective legal settlement, fine, judgment or order; provided that any Charges excluded from Consolidated Net Income pursuant to this clause (c), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 15% Adjustments, shall not exceed 15% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act);

(d) any net gain or Charge with respect to, or in connection with, (i) any disposed, abandoned, divested and/or discontinued asset, property or operation (other than, at the option of such Person, any gain or Charge relating to any asset, property or operation held for sale or pending the divestiture and/or termination thereof), (ii) any disposal, abandonment, divestiture and/or discontinuation of any asset, property or operation outside the ordinary course of business (including any asset retirement cost) (other than, at the option of such Person, any gain or Charge relating to assets or properties held for sale or pending the divestiture or termination thereof) and/or (iii) any facility that has been closed during such period; provided that any Charges excluded from Consolidated Net Income pursuant to this clause (d)(iii), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 20% Adjustments, shall not exceed 20% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act);

(e) (i) any write-off or amortization made of any deferred financing cost and/or premium paid and (ii) any Charge attributable to the early extinguishment of Indebtedness (and the termination of any associated Hedge Agreement);

(f) (i) any non-recurring Charge incurred as a result of, pursuant to or in connection with any management equity plan, bonus or other incentive plan, profits interest plan or stock option plan or any other management or employee benefit plan or agreement, pension plan or other long-term or post-employment plan (including any post-employment benefit scheme which has been agreed with the relevant pension trustee), any stock subscription or shareholder agreement, any employee benefit trust, any employment benefit scheme or any similar equity plan or agreement (including any deferred compensation arrangement) and (ii) any Charge incurred in connection with the rollover, acceleration or payout of Capital Stock held by
management; provided that, in the case of clause (ii), to the extent that any such Charge is a cash charge, such Charge shall only be excluded to the extent the same is funded with net cash proceeds contributed to relevant Person as a capital contribution or as a result of the sale or issuance of Qualified Capital Stock;

(g) any Charge (other than recurring Public Company Costs) that is established, adjusted and/or incurred, as applicable, (i) within 12 months after the Closing Date that is required to be established, adjusted or incurred, as applicable, as a result of the Transactions in accordance with GAAP, (ii) within 12 months after the closing of any other acquisition or similar Investment that is required to be established, adjusted or incurred, as applicable, as a result of such acquisition in accordance with GAAP or (iii) as a result of any change in, or the adoption or modification of, accounting principles and/or policies in accordance with GAAP;

(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, leases, rights fee arrangements, software, goodwill, intangible assets, in-process research and development, deferred revenue, advanced billing and debt line items thereof), resulting from the application of purchase accounting, recapitalization accounting and/or acquisition method accounting, as applicable, in relation to the Transactions or any consummated acquisition or other Investment or the amortization or write-off of any amount thereof, and (ii) the cumulative effect of changes (effected through cumulative effect adjustment or retroactive application) in, and/or any change resulting from the adoption or modification of, accounting principles or policies made in such period in accordance with GAAP which affect Consolidated Net Income (except that, if such Person determines in good faith that the cumulative effects thereof are not material to the interests of the Lenders, the effects of any change, adoption or modification of any such principles or policies may be included in any subsequent period after the Fiscal Quarter in which such change, adoption or modification was made);

(i) (i) any realized or unrealized gain and/or loss in the fair market value of (A) any obligation under any Hedge Agreement as determined in accordance with GAAP and/or (B) any other derivative instrument pursuant to, in the case of this clause (B), Financial Accounting Standards Board’s Accounting Standards Codification No. 815-Derivatives and Hedging, and/or (ii) any realized or unrealized foreign currency translation or transaction gain or loss (including any currency re-measurement of Indebtedness, any net gain or loss resulting from Hedge Agreements for currency exchange risk associated with the foregoing or any other currency related risk and any gain or loss resulting from any intercompany Indebtedness, any foreign currency translation or transaction or any other currency-related risk); provided that, notwithstanding anything to the contrary herein, any realized gain or loss in respect of any Designated Operational FX Hedge shall be included in the calculation of Consolidated Net Income;

(j) 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;

(k) any non-recurring non-cash (and, with respect to clause (ii), cash) Charge (including any implementation Charge) (other than any write-down of current assets) (including non-cash compensation expense and any amount representing any non-cash adjustment) required by the application of (i) FASB Statement No. 144, (ii) FASB Statement No. 141R, (iii) FASB
Statement No. 142 and (iv) Accounting Standards Update No. 2014-09, Revenue from Contracts with Customers;

(l) any non-recurring cash Charge required by the application of FASB Statement No. 141R to be expensed by such Person and/or any Restricted Subsidiary during the applicable period; provided that any Charges excluded from Consolidated Net Income pursuant to this clause (l), together with the amount included in Consolidated Adjusted EBITDA or excluded from Consolidated Net Income, as applicable, in reliance on the other Specified 15% Adjustments, shall not exceed 15% of Consolidated Adjusted EBITDA (calculated after giving effect to the Specified 15% Adjustments, the Specified 20% Adjustments) (it being understood that such cap will not apply to (A) except as provided in this proviso, any other provision of the definition of “Consolidated Adjusted EBITDA” or (B) any amount relating to (1) any adjustment identified in the Financial Model (without regard to the amounts or time periods therein) or (2) any pro forma adjustment consistent with Regulation S-X under the Securities Act); and

(m) (i) any one-time cumulative effect adjustment resulting from any change in accounting for revenue required by Accounting Standards Codification 606 or its replacement and/or (ii) any non-recurring Charge incurred in connection with the implementation of Accounting Standards Codification 606.

“Consolidated Restaurant Pre-Opening Costs” means “Start-up Costs” (as such term is defined in SOP 98-5 published by the American Institute of Certified Public Accountants) and other Charges related to the acquisition, opening, conversion and/or organizing of new facilities, stores, restaurants and/or other Unit Locations, including the cost of feasibility studies, opening marketing, branding and rent expenses, staff training and recruiting and travel costs for employees engaged in such start-up activities, in each case, to the extent such costs and/or Charges are classified as “pre-opening” or “Start-up Costs” in accordance with GAAP.

“Consolidated Secured Debt” means, as to any Person at any date of determination, the aggregate principal amount of Consolidated Total Debt outstanding on such date that is secured by a Lien on substantially all of the Collateral.

“Consolidated Total Assets” means, at any date, all amounts that would, in conformity with GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of the applicable Person at such date.

“Consolidated Total Debt” means, as to any Person at any date of determination, (x) the aggregate outstanding principal amount of all third party debt for borrowed money (including LC Disbursements that have not been reimbursed within three Business Days and excluding, for the avoidance of doubt, undrawn letters of credit), (y) to the extent constituting Indebtedness, obligations in respect of Capital Leases and (z) the aggregate outstanding principal amount of all purchase money Indebtedness, in each case, as such amount may be adjusted to reflect the effect (as determined by the Borrower in good faith) of any Debt FX Hedge, calculated on a mark-to-market basis; provided that “Consolidated Total Debt” shall be calculated (a) net of the Unrestricted Cash Amount (provided that the maximum amount of the Unrestricted Cash Amount permitted to be so deducted shall not exceed $20,000,000) and (b) excluding (i) any obligation, liability or indebtedness of such Person if, upon or prior to the maturity thereof, such Person has irrevocably deposited with the proper Person in trust or escrow the necessary funds (or evidences of indebtedness) for the payment, redemption or satisfaction of such obligation, liability or indebtedness; and thereafter such funds and evidences of such obligation, liability or indebtedness or other security so deposited are not included in the calculation of the Unrestricted Cash Amount, (ii) any debt the proceeds of which are held in Escrow and (iii) for the
avoidance of doubt, any amount owing under, or in respect of, any earn-out obligation and/or any purchase price adjustment.

“Contractual Obligation” means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Copyright” means the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright whether published or unpublished or registered or unregistered, copyright registrations and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (e) all rights corresponding to any of the foregoing.

“Corresponding Amount” has the meaning assigned to such term in Section 8.14(c).

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Covered Party” has the meaning assigned to such term in Section 9.26(a).

“Credit Exposure” means, as to any Lender at any time, the sum of (a) such Lender’s Revolving Credit Exposure at such time plus (b) an amount equal to the aggregate principal amount of its Term Loans outstanding at such time.

“Credit Extension” means each of (a) the making of a Revolving Loan or Swingline Loan (other than any Letter of Credit Reimbursement Loan or any Revolving Loan resulting from the application of Section 2.04(b)) or (b) the issuance, amendment, modification, renewal or extension of any Letter of Credit (other than any such amendment, modification, renewal or extension that does not increase the Stated Amount of the relevant Letter of Credit).

“Credit Party” has the meaning assigned to such term in Section 9.14.

“Cure Amount” has the meaning assigned to such term in Section 6.10(d).

“Cure Right” has the meaning assigned to such term in Section 6.10(d).

“Customary Bridge Loans” means bridge loans with a maturity date of not longer than one year; provided that the final maturity date of any loan, note, security or other Indebtedness which is exchanged for or otherwise replaces (or is to be exchanged for or otherwise replace) such bridge loans is not earlier than the Latest Maturity Date on the date of the issuance or incurrence thereof.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal to SOFR for the day (such day “SOFR Determination Date”) that is five (5) U.S. Government Securities
Business Days prior to (a) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (b) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

“Debt FX Hedge” means any Hedge Agreement entered into for the purpose of hedging currency related risks in respect of any Indebtedness of the type described in the definition of “Consolidated Total Debt”.

“Debtor Relief Laws” means the Bankruptcy Code of the US, and all other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the US or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition which upon notice, lapse of time or both would become an Event of Default.

“Defaulting Lender” means any Person that has (a) defaulted in (or is otherwise unable to perform) its obligations under this Agreement, including its obligations, (x) to make a Loan within two Business Days of the date required to be made by it hereunder or (y) to fund its participation in a Letter of Credit or Swingline Loan required to be funded by it hereunder within two Business Days of the date such obligation arose or such Loan or Letter of Credit or Swingline Loan was required to be made or funded, unless, in the case of subclause (x) above, such Person notifies the Administrative Agent in writing that such failure is the result of such Person’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) notified the Administrative Agent, any Issuing Bank or the Swingline Lender or the Borrower in writing that it does not intend to satisfy or perform any such obligation or has made a public statement to the effect that it does not intend to comply with its funding or other obligations under this Agreement or under agreements in which it commits to extend credit generally (unless such writing indicates that such position is based on such Person’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan cannot be satisfied), (c) failed, within two Business Days after the request of the Administrative Agent or the Borrower, to confirm in writing that it will comply with the terms of this Agreement relating to its obligations to fund any prospective Loan and/or any participation in any then outstanding Letter of Credit or Swingline Loans; provided that such Person shall cease to be a Defaulting Lender pursuant to this clause (e) 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) 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)(ii) become (or any parent company thereof has become) either the subject of (A) a bankruptcy or insolvency proceeding or (B) a Bail-In Action, (ii) has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or custodian, appointed for it, or (iii) has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment, unless in the case of any Person subject to this clause (e), the Borrower and the Administrative Agent have each determined that such Person intends, and has all approvals required to enable it (in form and substance satisfactory to the Borrower and the Administrative Agent), to continue to perform its obligations hereunder; provided that no Person shall be deemed to be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in such Person or its parent by any Governmental Authority; provided that such action does not result in or provide such Person with
immunity from the jurisdiction of courts within the US or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contract or agreement to which such Person is a party. In the event that the Administrative Agent determines that any Person is a Defaulting Lender pursuant to the foregoing, such determination shall be conclusive and binding absent manifest error, and such Person shall be deemed to be a Defaulting Lender (subject to Section 2.21(g)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, each Issuing Bank, the Swingline Lender and each Lender promptly following such determination.

“Delaware Divided LLC” means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

“Delaware LLC” means any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware LLC Division” means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Delayed Draw Term Lender” means a Lender having a Delayed Draw Term Loan Commitment or holding an outstanding Delayed Draw Term Loan, including for the avoidance of doubt, any 2023 Delayed Draw Lender (as defined in Amendment No. 2).

“Delayed Draw Term Loan” means a Loan made pursuant to Section 2.01(c).

“Delayed Draw Term Loan Availability Period” means the period from and including the Amendment No. 2 Effective Date to but excluding the earliest of (i) August 15, 2024, (ii) the date of the fifth (5th) (and final) funding of Delayed Draw Term Loans (immediately after giving effect to such funding) and (iii) the date of termination of the Delayed Draw Term Loan Commitments in accordance with this Agreement.

“Delayed Draw Term Loan Commitment” means (a) as to any Delayed Draw Term Lender, the aggregate commitment of such Delayed Draw Term Lender to make Delayed Draw Term Loans as set forth on the Commitment Schedule or in the most recent Assignment Agreement or other documentation or record (as such term is defined in Section 9-102(a)(70) of the UCC) as provided in Section 9.05, executed by such Term Lender, as applicable, as such commitment may be (i) reduced or terminated from time to time pursuant to Section 2.09 and (ii) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.05 and (b) as to all Delayed Draw Term Lenders, the aggregate commitment of all Delayed Draw Term Lenders to make Delayed Draw Term Loans. The aggregate amount of the Lenders’ Delayed Draw Term Loan Commitments on the Amendment No. 2 Effective Date is $30,000,000.

“Delayed Draw Term Loan Facility” means the Delayed Draw Term Loan Commitments and the Delayed Draw Term Loans and other extensions of credit thereunder.

“Delayed Draw Term Loan Maturity Date” means March 11, 2027.

“Deposit Account” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.
“Derivative Transaction” means (a) any interest-rate transaction, including any interest-rate swap, basis swap, forward rate agreement, interest rate option (including a cap, collar or floor), and any other instrument linked to interest rates that gives rise to similar credit risks (including when-issued securities and forward deposits accepted), (b) any exchange-rate transaction, including any cross-currency interest-rate swap, any forward foreign-exchange contract, any currency option, and any other instrument linked to exchange rates that gives rise to similar credit risks, (c) any equity derivative transaction, including any equity-linked swap, any equity-linked option, any forward equity-linked contract, and any other instrument linked to equities that gives rise to similar credit risk and (d) any commodity (including precious metal) derivative transaction, including any commodity-linked swap, any commodity-linked option, any forward commodity-linked contract, and any other instrument linked to commodities that gives rise to similar credit risks; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, members of management, managers or consultants of the Borrower or its subsidiaries shall be a Derivative Transaction.

“Designated Non-Cash Consideration” means the fair market value (as determined by the Borrower in good faith) of non-Cash consideration received by the Borrower or any Restricted Subsidiary in connection with any Disposition pursuant to Section 6.07(h) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower, setting forth the basis of such valuation (which amount will be reduced by the amount of Cash or Cash Equivalents received in connection with a subsequent sale or conversion of such Designated Non-Cash Consideration to Cash or Cash Equivalents).

“Designated Operational FX Hedge” means any Hedge Agreement (a) entered into for the purpose of hedging currency-related risks in respect of the revenues, cash flows or other balance sheet items of the Borrower and/or any of its subsidiaries and (b) designated at the time entered into (or on or prior to the Closing Date, with respect to any Hedge Agreement entered into on or prior to the Closing Date) as a Designated Operational FX Hedge by the Borrower in a writing delivered to the Administrative Agent.

“Discretionary Guarantor” has the meaning assigned to such term in Section 5.12(b).

“Disposition” or “Dispose” means the sale, lease, sublease, license, abandonment or other disposition of any property of any Person, including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division.

“Disqualified Capital Stock” means any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for Qualified Capital Stock), in whole or in part, on or prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued (it being understood that if any such redemption is in part, only such part coming into effect prior to the date that is 91 days following the Latest Maturity Date shall constitute Disqualified Capital Stock), (b) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Capital Stock that would constitute Disqualified Capital Stock, in each case at any time on or prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued or (c) contains any mandatory repurchase obligation (other than for Qualified Capital Stock), in whole or in part, which may come into effect prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued (it being understood that if any such repurchase obligation is in part, only such part coming into effect prior
to the date that is 91 days following the Latest Maturity Date shall constitute Disqualified Capital Stock); provided that any (x) Capital Stock that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Capital Stock upon the occurrence of any change of control or any other liquidity event or any Disposition occurring prior to the date that is 91 days following the Latest Maturity Date at the time such Capital Stock is issued shall not constitute Disqualified Capital Stock if the documentation governing such Capital Stock provides that the issuer thereof will not redeem any such Capital Stock pursuant to such provisions unless either (1) the relevant redemption is permitted by the terms of this Agreement or (2) the Termination Date has occurred and (y) for purposes of clauses (a) through (c) above, it is understood and agreed that if any such maturity, redemption conversion, exchange, repurchase obligation or scheduled payment is in part, only such part coming into effect prior to the date that is 91 days following the Latest Maturity Date (determined at the time such Capital Stock is issued) shall constitute Disqualified Capital Stock.

Notwithstanding the preceding sentence, (A) if such Capital Stock is issued pursuant to any plan for the benefit of directors, officers, employees, members of management, managers or consultants or by any such plan to such directors, officers, employees, members of management, managers or consultants, in each case in the ordinary course of business of the Borrower or any Restricted Subsidiary and/or any Parent Company, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the issuer thereof in order to satisfy applicable statutory or regulatory obligations and (B) no Capital Stock held by any future, present or former employee, director, officer, manager, member of management or consultant (or their respective Affiliates or Immediate Family Members) of the Borrower (or any Parent Company or any subsidiary) shall be considered Disqualified Capital Stock because such stock is redeemable or subject to repurchase pursuant to any management equity subscription agreement, stock option, stock appreciation right or other stock award agreement, stock ownership plan, put agreement, stockholder agreement or similar agreement that may be in effect from time to time.

“Disqualified Institution” means:

(a) (i) any Person identified in writing to the Arrangers on or prior to the Closing Date, (ii) any Person that is identified in writing to the Administrative Agent after the Closing Date (provided that any Person so identified after the Closing Date must be reasonably acceptable to the Administrative Agent), (iii) any Affiliate of any Person described in clauses (i) or (ii) above that is reasonably identifiable on the basis of such Person’s name as an Affiliate of such Person, and (iv) any other Affiliate of any Person described in clauses (i), (ii) or (iii) above that is identified in a written notice to the Administrative Agent (each such person, a “Disqualified Lending Institution”);

(b) (i) any Person that is or becomes a Company Competitor and/or any Affiliate of any Company Competitor (other than a Competitor Debt Fund Affiliate), in each case, that is identified in writing to the Administrative Agent, (ii) any Affiliate of any Person described in clause (i) above (other than any Competitor Debt Fund Affiliate) that is reasonably identifiable on the basis of such Person’s name as an Affiliate of such Person and (iii) any other Affiliate of any Person described in clauses (i) or (ii) above that is identified in a written notice to the Administrative Agent; it being understood and agreed that no Competitor Debt Fund Affiliate of any Company Competitor may be designated as a Disqualified Institution pursuant to this clause (iii); and

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(c) any Affiliate or Representative of any Arranger and/or any Initial Lender that is engaged as a principal primarily in private equity, mezzanine financing or venture capital (any Person described in this clause (c), an “Excluded Party”);

provided that no written notice delivered pursuant to clauses (a)(ii), (a)(iv), (b)(i) and/or (b)(iii) above shall apply retroactively to disqualify any person that has acquired or agreed to acquire prior to the delivery of such notice (i) an assignment of an interest in the Loans pursuant to a fully executed Assignment and Assumption (including any consents thereto required hereby) or (ii) a participation interest in the Loans pursuant to a fully executed participation agreement that provides for “participation” only (including any consents thereto required hereby).

The Borrower shall be permitted to remove any Person from the list of Disqualified Institutions; provided that at any time after the removal of such Person, the Borrower shall be permitted to re-designate such Person as a Disqualified Institution without the consent of the Administrative Agent or any other Person.

“Disqualified Lending Institution” has the meaning assigned to such term in the definition of “Disqualified Institution”.

“Disqualified Person” has the meaning assigned to such term in Section 9.05(f)(ii).

“Dollars” or “$” refers to lawful money of the US.

“Domestic Subsidiary” means any subsidiary of the Borrower incorporated or organized under the laws of the US, any state thereof or the District of Columbia.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country (or, to the extent that the United Kingdom is not an EEA Member Country, the United Kingdom), which is subject to the supervision of a Resolution Authority, (b) any entity established in an EEA Member Country (or, to the extent that the United Kingdom is not an EEA Member Country, the United Kingdom), which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country (or, to the extent that the United Kingdom is not an EEA Member Country, the United Kingdom), which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for the Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent or the Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.
“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; provided that, in any event, “Eligible Assignee” shall not include (i) any natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons), (ii) any Disqualified Institution or (iii) the Borrower or any of its Affiliates.

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, land surface and subsurface strata & natural resources such as wetlands, flora and fauna.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to the Environment.

“Environmental Laws” means any applicable Requirements of Law relating to (a) environmental matters, including those relating to any Hazardous Materials Activity; or (b) the generation, use, storage, transportation or disposal of or exposure to Hazardous Materials, in any manner applicable to the Borrower or any of its Restricted Subsidiaries or any Facility.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the Environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.


“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with the Borrower or any Restricted Subsidiary and is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“ERISA Event” means (a) a Reportable Event; (b) a withdrawal by the Borrower or any Restricted Subsidiary or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations at any facility of the Borrower or any Restricted Subsidiary or any ERISA Affiliate as described in Section 4062(e) of ERISA, in each case, resulting in liability pursuant to Section 4063 of ERISA; (c) a complete or partial withdrawal by the Borrower or any Restricted Subsidiary or any ERISA Affiliate from a Multiemployer Plan resulting in the imposition of Withdrawal Liability on the Borrower or any Restricted Subsidiary or any ERISA Affiliate, notification of the Borrower or any Restricted Subsidiary or any ERISA Affiliate concerning the imposition of Withdrawal Liability or notification that a Multiemployer Plan is “insolvent” within the meaning of Section 4245 of ERISA; (d) the filing of a notice of intent to terminate a Pension Plan under Section 4041(c) of ERISA, the treatment of a Pension Plan amendment as a termination under Section 4041(c) of ERISA, the commencement of proceedings by the PBGC to terminate a Pension Plan or the receipt by the Borrower or any Restricted Subsidiary or any ERISA Affiliate of notice of the treatment of a Multiemployer Plan.
amendment as a termination under Section 4041A of ERISA or of notice of the commencement of proceedings by the PBGC to terminate a Multiemployer Plan; (e) the occurrence of an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any Restricted Subsidiary or any ERISA Affiliate, with respect to the termination of any Pension Plan; or (g) the conditions for imposition of a Lien under Section 303(k) of ERISA have been met with respect to any Pension Plan.

“Escrow” has the meaning set forth in the definition of “Indebtedness”.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor thereof), as in effect from time to time.

“Event of Default” has the meaning assigned to such term in Article VII.

“Exchange Act” means the Securities Exchange Act of 1934 and the rules and regulations of the SEC promulgated thereunder (with respect to the definitions of “Change of Control” and “Permitted Holders” as in effect on the Closing Date).

“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 (to the extent such contract is binding on such asset at the time of its acquisition and not incurred in contemplation thereof); it being understood that the term “Excluded Asset” shall not include proceeds or receivables arising out of any contract described in this clause (a) to the extent that the assignment of such proceeds or receivables is expressly deemed to be effective under the UCC or other applicable Requirements of Law notwithstanding the relevant prohibition, violation or termination right;

(b) the Capital Stock of any (i) Captive Insurance Subsidiary, (ii) Unrestricted Subsidiary, (iii) not-for-profit subsidiary and/or (iv) Immaterial Subsidiary (other than an Immaterial Subsidiary that is a Loan Party);

(c) any intent-to-use Trademark application prior to the filing and acceptance by the U.S. Patent and Trademark Office of a “Statement of Use” or “Amendment to Allege Use” 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 or any registration issuing therefrom under applicable Requirements of Law;
(d) any asset (including Capital Stock), the grant or perfection of a security interest in which (i) would be prohibited under applicable Requirements of Law (including any rule and/or regulation of any Governmental Authority) (after giving effect to applicable anti-assignment provisions of the UCC or other applicable Requirements of Law), (ii) would require any governmental or regulatory consent, approval, license or authorization, in each case, to the extent such consent, approval, license or authorization has not been obtained (it being understood and agreed that no Loan Party shall have any obligation to procure any such consent, approval, license or authorization) (after giving effect to applicable anti-assignment provisions of the UCC or other applicable Requirements of Law); it being understood that the term “Excluded Asset” shall not include proceeds or receivables arising out of any asset described in clauses (d)(i) or (d)(ii) to the extent that the assignment of such proceeds or receivables is effective under the UCC or other applicable Requirements of Law notwithstanding the relevant requirement or prohibition or (iii) could be reasonably likely to result in material adverse tax consequences (including as a result of the application of Section 956 of the Code or any similar Requirement of Law) to the Borrower, any Parent Company and/or any of their respective subsidiaries as determined by the Borrower in good faith;

(e) (i) any leasehold Real Estate Asset, (ii) except to the extent a security interest therein can be perfected by the filing of a UCC-1 financing statement, any other leasehold interest, and (iii) any owned Real Estate Asset; provided that, notwithstanding the foregoing, in no event shall the Verona Property constitute an Excluded Asset;

(f) the Capital Stock of (i) any Person that is not the Borrower or a Wholly-Owned Subsidiary of the Borrower and/or (ii) any subsidiary of any non-Wholly Owned Subsidiary of the Borrower;

(g) any Margin Stock;

(h) the Capital Stock of (i) any Foreign Subsidiary and (ii) any FSHCO, in each case, (A) in excess of 65% of the issued and outstanding voting Capital Stock and 100% of the issued and outstanding non-voting Capital Stock of any such Foreign Subsidiary and/or FSHCO or (B) to the extent such Foreign Subsidiary or FSHCO is not a first-tier Subsidiary of any Loan Party;

(i) any Commercial Tort Claim;

(j) any Deposit Account, securities account and/or similar account (including any securities entitlement), escrow, fiduciary and/or trust account, payroll and other employee wage and benefit accounts, tax accounts (including, sales tax accounts), any cash collateral account, any Cash and Cash Equivalents and any funds and other property held or maintained in any such accounts (other than, in each case, proceeds of other Collateral as to which perfection may be accomplished by filing a UCC-1 financing statement or automatically in accordance with the UCC);

(k) assets subject to any purchase money security interest, Capital Lease obligation, sale-leaseback obligation or similar arrangement, in each case, that is permitted or otherwise not prohibited by the terms of this Agreement and to the extent the grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money or similar arrangement or create a right of termination in favor of any other party thereto; it being understood that the term “Excluded Asset” shall not include proceeds or receivables arising out of any asset described in this clause (k) to the extent that the assignment of such proceeds or
receivables is expressly deemed to be effective under the UCC or other applicable Requirements of Law notwithstanding the relevant violation or invalidation;

(l) any Letter-of-Credit Right that does not constitute a supporting obligation, except to the extent the security interest therein may be perfected by filing of a financing statement under the UCC of any applicable jurisdiction;

(m) motor vehicles and other assets subject to certificates of title, except to the extent the security interest therein may be perfected by filing of a financing statement under the UCC of any applicable jurisdiction;

(n) any asset of a Person acquired by the Borrower or any other Restricted Subsidiary that, at the time of the relevant acquisition, is encumbered to secure assumed Indebtedness permitted by this Agreement to the extent (and for so long as) the documentation governing the applicable assumed Indebtedness prohibits such asset from being pledged to secure the Secured Obligations and the relevant prohibition was not implemented in contemplation of the applicable acquisition;

(o) any asset with respect to which the Borrower has in good faith determined that the cost, burden, difficulty or consequence (including (i) any effect on the ability of the relevant Loan Party to conduct its operations and business in the ordinary course of business and (ii) the cost of mortgage, stamp, intangible or other taxes or expenses) of obtaining or perfecting a security interest therein outweighs, or is excessive in light of, the practical benefit of a security interest to the relevant Secured Parties afforded thereby (and the Lenders acknowledge that the Collateral that may be provided by any Loan Party may be limited to minimize stamp duty, notarization, registration or other applicable fees, taxes and duties where the benefit to the Secured Parties of increasing the secured amount is disproportionate to the level of such fees, taxes and duties);

(p) any governmental license or state or local franchise, charter or authorization, to the extent a security interest in any such license, franchise, charter or authorization would be prohibited or restricted thereby, after giving effect to the anti-assignment provisions of the UCC of any applicable jurisdiction, other than any proceeds or receivable thereof to the extent the assignment of the same is effective under the UCC of any applicable jurisdiction notwithstanding such consent or restriction; and

(q) aircraft, airframes, aircraft engines, helicopters and equipment and/or other assets that are affixed to, or otherwise constitute, such aircraft, airframes, aircraft engines and/or helicopters.

“Excluded Party” has the meaning assigned to such term in the definition of “Disqualified Institution”.

“Excluded Subsidiary” means:

(a) Any Restricted Subsidiary that is not a Wholly-Owned Subsidiary of Borrower;

(b) any Immaterial Subsidiary;

(c) any Restricted Subsidiary that (i) is prohibited or restricted from providing a Loan Guaranty by (A) any Requirement of Law or (B) any Contractual Obligation that exists on
the Closing Date or at the time such Restricted Subsidiary becomes a subsidiary (which Contractual Obligation was not entered into in contemplation of the acquisition of such Restricted Subsidiary (including pursuant to assumed Indebtedness)), (ii) would require a governmental (including regulatory) or third party consent, approval, license or authorization (including any regulatory consent, approval, license or authorization) to provide a Loan Guaranty (including under any financial assistance, corporate benefit, thin capitalization, capital maintenance, liquidity maintenance or similar legal principles), unless such consent, approval, license or authorization has been obtained (it being understood and agreed that none of the Borrower and/or any of their respective subsidiaries shall have any obligation to obtain (or seek to obtain) any such consent, approval, license or authorization) or (iii) with respect to which the provision of a Loan Guaranty could reasonably be expected to result in material and adverse tax consequences to the Borrower, any Parent Company and/or any of their respective subsidiaries as determined by the Borrower in good faith;

(d) any not-for-profit subsidiary;

(e) any Captive Insurance Subsidiary;

(f) any Foreign Subsidiary;

(g) any Domestic Subsidiary that (i) is a FSHCO or (ii) is a direct or indirect subsidiary of any Foreign Subsidiary or FSHCO;

(h) any Unrestricted Subsidiary;

(i) any Restricted Subsidiary acquired by the Borrower or any Restricted Subsidiary that, at the time of the relevant acquisition, is an obligor in respect of assumed Indebtedness permitted by Section 6.01 to the extent (and for so long as) the documentation governing the applicable assumed Indebtedness prohibits such subsidiary from providing a Loan Guaranty (which prohibition was not implemented in contemplation of such Restricted Subsidiary becoming a subsidiary in order to avoid the requirement of providing a Loan Guaranty);

(j) any other Restricted Subsidiary with respect to which the burden or cost of providing a Loan Guaranty outweighs, or would be excessive in light of, the practical benefits afforded thereby as determined by the Borrower in good faith in consultation with the Administrative Agent;

(k) solely in the case of any Swap Obligation that constitutes a “swap” within the meaning of section 1(a)(47) of the Commodity Exchange Act (which for the avoidance of doubt shall be determined after giving effect to any “keepwell, support or other agreement” (as such terms are used under the Commodity Exchange Act)), any Domestic Subsidiary that is not an “eligible contract participant” as defined under the Commodity Exchange Act and the regulations thereunder;

(l) any subsidiary where the provision by such subsidiary of a Loan Guaranty could reasonably be expected to conflict with the fiduciary duties of such subsidiary’s directors or result in, or could reasonably be expected to result in, a material risk of personal or criminal liability for such subsidiary or any of its officers or directors or to the extent it is not within the legal capacity of such subsidiary to provide a Loan Guaranty (whether as a result of financial
assistance, corporate benefit, thin capitalization, capital maintenance, liquidity maintenance or similar rules or otherwise); and

(m) any broker-dealer subsidiary;

(n) any subsidiary of any Person described in the foregoing clauses (a) through (m).

“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 or, or the grant by such Loan Guarantor of a security interest to secure, such Swap Obligation (or any Loan Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof, or any Governmental Authority succeeding to any or all of its functions) (a) by virtue of such Loan Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 3.20 of the Loan Guaranty and any other “keepwell”, support or other agreement for the benefit of such Loan Guarantor) at the time the Loan Guaranty of such Loan Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation or (b) in the case of any Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Loan Guarantor is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee provided by (or grant of such security interest by, as applicable) such Loan Guarantor becomes or would become effective with respect to such Swap Obligation. If any Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Loan Guaranty or security interest is or becomes illegal.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender or Issuing Bank, or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Loan Document, (a) any Taxes imposed on (or measured by) net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (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) in the case of a Lender, any US federal withholding Tax that is imposed on amounts payable to or for the account of such Lender (other than a Lender that became a Lender pursuant to an assignment under Section 2.19) with respect to an applicable interest in a Loan or Commitment pursuant to a Requirement of Law in effect on the date on which such Lender (i) acquired 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 acquired 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, (c) any Tax imposed as a result of a failure by such recipient to comply with Section 2.17(f) or (j) and (d) any Tax imposed under FATCA.

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

“Extended Revolving Credit Commitment” has the meaning assigned to such term in Section 2.23(a).
“Extended Revolving Loans” has the meaning assigned to such term in Section 2.23(a).

“Extension” has the meaning assigned to such term in Section 2.23(a).

“Extension Amendment” means an amendment to this Agreement that is reasonably satisfactory to the Administrative Agent (to the extent required by Section 2.23) and the Borrower executed by (a) the Borrower and the Subsidiary Guarantors, (b) the Administrative Agent and (c) each Lender that has accepted the applicable Extension Offer pursuant hereto and in accordance with Section 2.23.

“Extension Offer” has the meaning assigned to such term in Section 2.23(a).

“Extension” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or, except with respect to Articles 5 and 6, previously owned, leased, operated or used by the Borrower or any of its Restricted Subsidiaries or any of their respective predecessors or Affiliates.

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


“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that, if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Fee Letter” means the Fee Letter, dated January 25, 2022, among the Borrower and JPMorgan.

“Financial Model” means the final financial model made available by the Borrower to the Administrative Agent prior to the Closing Date.

“First Lien Debt” means (a) the Initial Revolving Loans and, (b) the Delayed Draw Term Loans and (c) any other indebtedness (other than any such Indebtedness among the Borrower and/or any of their respective subsidiaries) that is secured by a Lien on the Collateral that is pari passu with the Lien securing the Initial Revolving Loans and the Delayed Draw Term Loans.

“First Lien Rent Adjusted Net Leverage Ratio” means the ratio, as of any date of determination, of (a)(i) Consolidated First Lien Debt as of the last day of the most recently ended Test Period, plus (ii) the product of (A) Consolidated Cash Rental Expense for such Test Period and (B) eight to (b) Consolidated Adjusted EBITDAR for such Test Period, in each case, of the Borrower and its Restricted Subsidiaries on a consolidated basis.
“Fiscal Quarter” means a fiscal quarter of any Fiscal Year of the Borrower ending on a date set forth in the table below, which table may be amended by the Borrower and the Administrative Agent as permitted under Section 5.17 in the event of a change in the Fiscal Year of the Borrower.

<table>
<thead>
<tr>
<th>Quarter</th>
<th>End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1 2022</td>
<td>April 17, 2022</td>
</tr>
<tr>
<td>Q2 2022</td>
<td>July 10, 2022</td>
</tr>
<tr>
<td>Q3 2022</td>
<td>October 2, 2022</td>
</tr>
<tr>
<td>Q4 2022</td>
<td>December 25, 2022</td>
</tr>
<tr>
<td>Q1 2023</td>
<td>April 16, 2023</td>
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<tr>
<td>Q2 2023</td>
<td>July 9, 2023</td>
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<tr>
<td>Q4 2023</td>
<td>December 31, 2023</td>
</tr>
<tr>
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<td>April 21, 2024</td>
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<td>October 4, 2026</td>
</tr>
<tr>
<td>Q4 2026</td>
<td>December 27, 2026</td>
</tr>
</tbody>
</table>

“Fiscal Year” means each fiscal year of the Borrower ending on or about December 31 of each calendar year.

“Fitch” means Fitch Ratings, Inc.

“Fixed Amount” has the meaning assigned to such term in Section 1.11(c).

“Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a)(i) Consolidated Adjusted EBITDAR for the relevant Test Period minus (ii) Maintenance Capital Expenditures for such Test Period to (b) (i) Consolidated Fixed Charges for such Test Period plus (ii) to the extent added back in the calculation of “Consolidated Adjusted EBITDA” for such Test Period, the aggregate amount of federal, state, local and foreign income taxes paid or payable in cash plus (iii) the aggregate amount of Restricted Payments made in Cash in the relevant Test Period (other than Restricted Payments made pursuant to Sections 6.04(a)(i)(F), 6.04(a)(ii), 6.04(a)(iii)(A) (except to the extent made in reliance on clause (a)(i) of the definition of “Available Amount”), 6.04(a)(iii)(B), 6.04(a)(v), 6.04(a)(vi), 6.04(a)(viii), 6.04(a)(xi), 6.04(a)(xii) and/or 6.04(a)(xiii)).

“Flood Laws” means, collectively, (a) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (b) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (c) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (d) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.
“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt, the initial Floor for each of Adjusted Term SOFR Rate or Adjusted Daily Simple SOFR shall be 0.00%.

“Foreign Lender” means any Lender or Issuing Bank that is not a US Person.

“Foreign Subsidiary” means any subsidiary of the Borrower that is not a Domestic Subsidiary.

“FSHCO” means (a) any direct or indirect Domestic Subsidiary that has no material assets other than the Capital Stock and/or Indebtedness of one or more Foreign Subsidiaries and (b) any direct or indirect Domestic Subsidiary that has no material assets other than the Capital Stock and/or Indebtedness of one or more Persons of the type described in the immediately preceding clause (a) or in this clause (b).

“GAAP” means generally accepted accounting principles in the US in effect and applicable to the accounting period in respect of which reference to GAAP is made.

“Governmental Authority” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with the US, a foreign government or any political subdivision thereof, including any applicable supranational body (such as the European Union or the European Central Bank).

“Governmental Authorization” means any permit, license, authorization, approval, plan, directive, consent order or consent decree of or from any Governmental Authority.

“Granting Lender” has the meaning assigned to such term in Section 9.05(e).

“Guarantee” of or by any Person (the “Guarantor”) means any obligation, contingent or otherwise, of the Guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation of any other Person (the “Primary Obligor”) in any manner and including any obligation of the Guarantor (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other monetary obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the Primary Obligor so as to enable the Primary Obligor to pay such Indebtedness or other monetary obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or monetary obligation, (e) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (f) secured by any Lien on any assets of such Guarantor securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or monetary other obligation is assumed by such Guarantor (or any right, contingent or otherwise, of any holder of such Indebtedness or other monetary obligation to obtain any such Lien); provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition, Disposition or other transaction permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be
an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Guarantor” has the meaning assigned to such term in the definition of “Guarantee”.

“Hazardous Materials” means any chemical, material, substance or waste, or any constituent thereof, which is prohibited, limited or regulated under any Environmental Law or by any Governmental Authority or which poses a hazard to the Environment or to human health and safety, including without limitation, petroleum and petroleum by-products, asbestos and asbestos-containing materials, polychlorinated biphenyls, medical waste and pharmaceutical waste.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Material, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Material, and any corrective action or response action with respect to any of the foregoing.

“Hedge Agreement” means any agreement with respect to any Derivative Transaction (or any master agreement which is intended to govern multiple Derivative Transactions) between any Loan Party or any Restricted Subsidiary and any other Person.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under any Hedge Agreement.

“Immaterial Subsidiary” means, as of any date, any subsidiary of the Borrower the contribution to (a) Consolidated Adjusted EBITDA of which, when taken together with the contribution to Consolidated Adjusted EBITDA of all other subsidiaries that are Immaterial Subsidiaries, does not exceed 5.0% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period and (b) Consolidated Total Assets of which, when taken together with the contribution to Consolidated Total Assets of all other subsidiaries that are Immaterial Subsidiaries, does not exceed 5.0% of Consolidated Total Assets as of the last day of the most recently ended Test Period; provided that, at all times prior to the first delivery of financial statements pursuant to Section 5.01(a) or (b), this definition shall be applied based on the pro forma consolidated financial statements delivered pursuant to Section 4.01.

“Immediate Family Member” means, with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, domestic partner, former domestic partner, sibling, mother-in-law, father-in-law, son-in-law and/or daughter-in-law (including any adoptive relationship), any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals, such individual’s estate (or an executor or administrator acting on its behalf), heirs or legatees or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

“Impacted Loans” has the meaning assigned to such term in Section 2.14(a).
“Incremental Cap” means $25,000,000.

“Incremental Commitment” means any commitment made by a lender to provide all or any portion of any Incremental Facility or Incremental Loan.

“Incremental Equivalent Debt” means Indebtedness in the form of pari passu senior secured or unsecured notes or loans and/or junior secured or unsecured notes or loans and/or, in each case commitments in respect of any of the foregoing; provided that:

(a) the aggregate outstanding principal amount (or committed amount, if applicable under Section 1.11) thereof shall not exceed the Incremental Cap (as in effect at the time of determination);

(b) the final maturity date with respect to such notes or loans (other than Customary Bridge Loans and/or revolving Indebtedness) is no earlier than the Latest Maturity Date on the date of the issuance or incurrence, as applicable, thereof;

(c) subject to clause (b), such Indebtedness may otherwise have an amortization schedule as determined by the Borrower and the lenders providing such Incremental Equivalent Debt;

(d) the currency, pricing (including any “MFN” or other pricing terms), interest rate margins, rate floors, fees, premiums (including prepayment premiums), funding discounts and the maturity and amortization schedule applicable to any Incremental Equivalent Debt shall be determined by the Borrower and the lender or lenders providing such Incremental Equivalent Debt;

(e) such Incremental Equivalent Debt will be documented pursuant to separate documentation from the credit agreement governing the Revolving Facility;

(f) if such Indebtedness is (i) secured by the Collateral on a pari passu basis with the Secured Obligations that constitute First Lien Debt, (ii) secured by the Collateral on a junior basis as compared to the Secured Obligations that constitute First Lien Debt or (iii) subordinated to the Obligations in right of payment, then the holders of such Indebtedness (or a representative thereof) shall be party to an Intercreditor Agreement; and

(g) no such Indebtedness may be (A) issued or guaranteed by any subsidiary of the Borrower which is not a Loan Party (it being understood and agreed that the obligations of any Person with respect to any Escrow arrangement into which the proceeds of such Indebtedness are deposited shall not constitute a guarantee by any subsidiary that is not a Loan Party) or (B) secured by any asset that does not constitute Collateral; it being understood that any such Indebtedness that is funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements may be secured by the applicable funds and related assets held in Escrow (and the proceeds thereof) until the date on which such funds are released from Escrow.

“Incremental Facilities” has the meaning assigned to such term in Section 2.22(a).

“Incremental Facility Amendment” means an amendment to this Agreement that is reasonably satisfactory to the Administrative Agent (solely for purposes of giving effect to Section 2.22) and the Borrower executed by each of (a) 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 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 Lender” means a Lender having an Incremental Term Loan Commitment or holding an outstanding Incremental Term Loan.

“Incremental Term Loan” has the meaning assigned to such term in Section 2.22(a).

“Incurrence-Based Amount” has the meaning assigned to such term in Section 1.11(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 of such Person owed for all or any part of the deferred purchase price of property or services (excluding (i) any earn-out obligation or purchase price adjustment until such obligation (A) becomes a liability on the statement of financial position or balance sheet (excluding the footnotes thereto) in accordance with GAAP and (B) has not been paid within 30 days after becoming due and payable, (ii) any such obligation incurred under ERISA, (iii) accrued expenses and trade accounts payable in the ordinary course of business (including on an inter-company basis) and (iv) liabilities associated with customer prepayments and deposits), which purchase price is (A) due more than six months from the date of the incurrence of the obligation in respect thereof or (B) evidenced by a note or similar written instrument);

(e) any monetary obligation of any other Person secured by any Lien on any asset owned or held by such Person regardless of whether the Indebtedness secured thereby has been assumed by such Person or is non-recourse to the credit of such Person;

(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 any obligation under any Derivative Transaction be deemed to constitute “Indebtedness” for any calculation of the First Lien Rent Adjusted Net Leverage Ratio, the Total Rent Adjusted Net Leverage Ratio, or any other financial ratio under this Agreement, (ii) the amount of Indebtedness of any Person for purposes of clause (e) shall be deemed to be equal to the lesser of (A) the aggregate unpaid principal amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith and (iii) the term “Indebtedness” shall exclude (A) intercompany loans and/or advances arising from cash management, tax and accounting operations and (B) intercompany loans and/or advances made in the ordinary course of business that have a term that does not exceed 364 days.

For all purposes hereof, the Indebtedness of any Person shall (i) include the Indebtedness of any third person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venture) to the extent such Person would be liable therefor under applicable Requirements of Law or any agreement or instrument by virtue of such Person’s ownership interest in such Person, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor and (B) only to the extent the relevant Indebtedness is of the type that would be included in the calculation of Consolidated Total Debt; provided that, notwithstanding anything herein to the contrary, the term “Indebtedness” shall not include, and shall be calculated without giving effect to, (1) the effects of Accounting Standards Codification Topic 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose hereunder as a result of accounting for any embedded derivatives created by the terms of such Indebtedness (it being understood that any such amounts that would have constituted Indebtedness hereunder but for the application of this proviso shall not be deemed an incurrence of Indebtedness hereunder) and (2) the effects of Statement of Financial Accounting Standards No. 133 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivative created by the terms of such Indebtedness (it being understood that any such amounts that would have constituted Indebtedness hereunder but for the application of this sentence shall not be deemed to be an incurrence of Indebtedness under this Agreement) and (ii) exclude (A) obligations incurred in connection with the consummation of any transaction solely to the extent the proceeds thereof are and continue to be held in an escrow, trust, collateral or similar account or arrangement (collectively, an “Escrow”) and are not otherwise made available to such Person, (B) prepaid or deferred revenue and (C) obligations that constitute “Indebtedness” solely by virtue of a pledge of an Investment (without an accompanying guaranty) in any Unrestricted Subsidiary.

The amount of any Indebtedness that is issued at a discount to its initial principal amount shall be calculated based on the initial stated principal amount thereof without giving effect to any such discount.

“Indemnified Taxes” means (a) all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.
“Indemnitee” has the meaning assigned to such term in Section 9.03(b).

“Information” has the meaning assigned to such term in Section 3.11(a).

“Initial Lenders” means the Initial Revolving Lenders who are party to this Agreement as Lenders on the Closing Date.

“Initial Revolving Credit Commitment” means, with respect to any Person, the commitment of such Person to make Initial Revolving Loans (and acquire participations in Letters of Credit and Swingline Loans) hereunder as set forth on the Commitment Schedule, or in the Assignment Agreement pursuant to which such Person assumed its Initial Revolving Credit Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 or 2.19, (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.05 or (c) increased pursuant to Section 2.22. The aggregate amount of the Initial Revolving Credit Commitments as of the Closing Date is $75,000,000.

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

“Initial Revolving Credit Maturity Date” means the date that is five years after the Closing Date.

“Initial Revolving Facility” means the Initial Revolving Credit Commitments and the Initial Revolving Loans and other extensions of credit thereunder.

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

“Initial Revolving Loan” has the meaning assigned to such term in Section 2.01(a)(ii).

“Intellectual Property Security Agreement” means any agreement, or a supplement thereto, executed on or after the Closing Date confirming or effecting the grant of any Lien on IP Rights owned by any Loan Party to the Administrative Agent, for the benefit of the Secured Parties, required in accordance with this Agreement and the Security Agreement, including an Intellectual Property Security Agreement substantially in the form of Exhibit C.

“Intercompany Note” means a promissory note substantially in the form of Exhibit F or such other form to which the Borrower and the Administrative Agent may reasonably agree.

“Intercreditor Agreement” means, with respect to any Indebtedness, any intercreditor or subordination agreement or arrangement (which may take the form of a “waterfall” or similar provision), as applicable, the terms of which are (i) consistent with market terms (as determined by the Borrower and the Administrative Agent in good faith) governing arrangements for the sharing and/or subordination of liens and/or arrangements relating to the distribution of payments, as applicable, at the time the relevant intercreditor agreement is proposed to be established in light of the type of Indebtedness subject thereto and/or (ii) reasonably acceptable to the Borrower and the Administrative Agent.

“Interest Election Request” means a request by the Borrower in the form of Exhibit H hereto or another form reasonably acceptable to the Administrative Agent to convert or continue a Borrowing in accordance with Section 2.08.
“Interest Payment Date” means (a) with respect to any ABR Loan (other than a Swingline Loan), the first day of each calendar month and the Maturity Date (b) with respect to any RFR Loan (if after the effectiveness of a Benchmark Replacement), (1) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and (2) the Maturity Date, (c) with respect to any Term Benchmark Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing 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 and the Maturity Date and (d) with respect to any Swingline Loan, the day that such Loan is required to be repaid and the Maturity Date.

“Interest Period” means with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), 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, (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, and (iii) no tenor that has been removed from this definition pursuant to Section 2.14(e) shall be available for specification in such Borrowing Request or Interest Election Request. 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.

“Investment” means (a) any purchase or other acquisition for consideration by the Borrower or any of its Restricted Subsidiaries of any of the Capital Stock of any other Person (other than any Loan Party), (b) the acquisition for consideration by the Borrower or any of its Restricted Subsidiaries by purchase or otherwise (other than any purchase or other acquisition of inventory, materials, supplies and/or equipment in the ordinary course of business) of all or a substantial portion of the business, property or fixed assets of any other Person constituting an operating division or operating line of business or other operating business unit of such other Person and (c) any loan, advance (other than any advance to any current or former employee, officer, director, member of management, manager, consultant or independent contractor of the Borrower, any Restricted Subsidiary, or any Parent Company for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution in exchange for consideration by the Borrower or any of its Restricted Subsidiaries to any other Person. Subject to Section 5.10, the amount of any Investment shall be the original cost of such Investment, plus the cost of any addition thereto that otherwise constitutes an Investment, without any adjustment for any increase or decrease in value, or any write-up, write-down or write-off with respect thereto, but giving effect to (i) any repayment of principal and/or interest in the case of any Investment in the form of a loan or other debt instrument and (ii) any return of capital or return on Investment in the case of any equity Investment (whether as a distribution, dividend, redemption or sale but not in excess of the amount of the relevant initial Investment). It is understood and agreed that the term “Investment” shall exclude (A) intercompany advances arising from cash management, tax and accounting operations and (B) intercompany loans, advances or Indebtedness made in the ordinary course of business that have a term that does not exceed 364 days.

“Investors” means collectively, (i) Artal and its controlled affiliated funds, (ii) Act III Holdings LLC and its affiliated funds, (iii) Ronald M. Shaich, (iv) Ronald M. Shaich’s spouse, parents, siblings,
members of his immediate family (including adopted children and step children) and/or direct lineal descendants, and any trust, the beneficiaries of which, include only the foregoing persons, (v) Revolution Growth III, LP and its affiliated funds and (vi) SWaN & Legend Fund 3, LP and its affiliated funds.

“IP Rights” has the meaning assigned to such term in Section 3.05(b).

“IP Separation Transaction” means (a) any Disposition by the Borrower or any Restricted Subsidiary of any Material Intellectual Property to any Unrestricted Subsidiary (other than any non-exclusive licenses or bona fide operational joint venture established for legitimate business purposes) and/or (b) any Investment by the Borrower or any Restricted Subsidiary in the form of a contribution of Material Intellectual Property to any Unrestricted Subsidiary (other than any non-exclusive licenses or bona fide operational joint venture established for legitimate business purposes).

“IPO” means an initial public offering or any other transaction or series of related transactions that results in any of the common Capital Stock of the Borrower or any Parent Company being publicly traded on any U.S. national securities exchange or analogous public exchange in any other jurisdiction.

“IRS” means the US Internal Revenue Service.

“Issuing Bank” means, as the context may require, (a) JPMorgan and (b) each other Person that is or becomes a Revolving Lender, that, in the case of this clause (b), agrees to act as an Issuing Bank hereunder pursuant to Section 2.05(h)(ii), and in the case of clauses (a) and (b), each such Person in its capacity as an issuer of Letters of Credit hereunder. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by any branch or Affiliate of such Issuing Bank, in which case the term “Issuing Bank” shall include any such branch or Affiliate with respect to Letters of Credit issued by such branch or Affiliate.

“Joinder Agreement” means a Joinder Agreement substantially in the form of Exhibit K or such other form that is reasonably satisfactory to the Administrative Agent and the Borrower; it being understood and agreed that any Joinder Agreement executed by any Foreign Subsidiary may include such modifications as may be necessary to reflect the fact that such Foreign Subsidiary may not become party to the Security Agreement.

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

“JPM Parties” has the meaning assigned to such term in Section 9.27.

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

“Junior Lien Debt” means any Indebtedness (other than Indebtedness among the Borrower and/or any of their respective subsidiaries) that is secured by a Lien on the Collateral that is expressly junior or subordinated to the Lien on the Collateral securing the Initial Revolving Loans and the Delayed Draw Term Loans.

“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 Revolving Loan, Revolving Credit Commitment, Delayed Draw Term Loan or Incremental Term Loan.
“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.

“LC Collateral Account” has the meaning assigned to such term in Section 2.05(i).

“LC Disbursement” means a payment or disbursement made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit (other than any Letter of Credit that is subject to Letter of Credit Support at such time) at such time and (b) the aggregate principal amount of all LC Disbursements that have not yet been reimbursed at such time. The LC Exposure of any Revolving Lender at any time shall equal its Applicable Revolving Credit Percentage of the aggregate LC Exposure at such time.

“Legal Reservations” means the application of the relevant Debtor Relief Laws, general principles of equity and/or principles of good faith and fair dealing.

“Lenders” means the Revolving Lenders, Delayed Draw Term Lenders, any Incremental Term 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 letter of credit issued pursuant to this Agreement.

“Letter of Credit Commitment” means with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit in an aggregate amount to not exceed the amount set forth opposite such Person’s name on the Commitment Schedule.

“Letter of Credit Reimbursement Loan” has the meaning assigned to such term in Section 2.05(d)(i).

“Letter of Credit Request” means a request by the Borrower for a new Letter of Credit or an amendment to any existing Letter of Credit in accordance with Section 2.05 and substantially in the form of Exhibit N or such other form that is reasonably satisfactory to the relevant Issuing Bank and the Borrower.

“Letter-of-Credit Right” has the meaning set forth in Article 9 of the UCC.

“Letter of Credit Sublimit” means $10,000,000, subject to increase in accordance with Section 2.22.

“Letter of Credit Support” means, with respect to any Letter of Credit, that (a) such Letter of Credit has been Cash collateralized in an amount equal to 102% of the face amount of such Letter of Credit, (b) a separate letter of credit has been issued in favor of the Issuing Bank (or its designee) with respect to such Letter of Credit pursuant to arrangements reasonably satisfactory to such Issuing Bank and in an amount equal to 102% of the face amount of the applicable Letter of Credit issued hereunder, (c) such Letter of Credit has been deemed reissued under another agreement in a manner reasonably acceptable to the applicable Issuing Bank or (d) other arrangements reasonably acceptable to the relevant Issuing Bank with respect to such Letter of Credit.

“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, but excluding licenses of IP Rights), 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 (i) the Cash and Cash Equivalents of the Borrower and its subsidiaries plus (ii) Total Revolving Commitment less the aggregate Revolving Credit Exposure.

“Loan Documents” means this Agreement, any Promissory Note, each Loan Guaranty, the Collateral Documents, any Intercreditor Agreement (if any) to which the Borrower is a party, any Perfection Certificate, each Refinancing Amendment, each Incremental Facility Amendment, each Extension Amendment and any other document or instrument designated by the Borrower and the Administrative Agent as a “Loan Document”. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto.

“Loan Guarantor” means any Subsidiary Guarantor.

“Loan Guaranty” means the Loan Guaranty, substantially in the form of Exhibit I, executed by each Loan Party thereto and the Administrative Agent for the benefit of the Secured Parties, as supplemented in accordance with the terms of Section 5.12.

“Loan Parties” means the Borrower and each Loan Guarantor.

“Loans” means any Revolving Loan, any Swingline Loan, any Delayed Draw Term Loan, any Incremental Term Loan or any Additional Revolving Loan.

“Maintenance Capital Expenditures” means Capital Expenditures incurred for repair or replacement at, or otherwise to maintain, the Borrower’s Unit Locations, offices and related properties, whether in existence on or after the Closing Date, that are necessary to maintain a status quo level of operating performance as of or after the Closing Date, in each case other than capitalized software expenditures.

“Majority in Interest”, when used in reference to Lenders of any Class, means, at any time, (a) in the case of any Class of Revolving Lenders, Lenders of such Class having Revolving Credit Exposures of such Class and unused Revolving Credit Commitments of such Class representing more than 50% of the aggregate Revolving Credit Exposures of such Class and the aggregate unused Revolving Credit Commitments of such Class at such time, (b) in the case of any Delayed Draw Term Lender, Lenders holding Delayed Draw Term Loans and unused Delayed Draw Term Loan Commitments representing more than 50% of the aggregate principal amount of all Delayed Draw Term Loans and unused Delayed Draw Term Loan Commitments outstanding or in effect at such time, and (c) in the case of any Incremental Lenders of any Class, Lenders holding Incremental Loans of such Class and unused Incremental Commitments of such Class representing more than 50% of the aggregate principal amount of all Incremental Loans of such Class and unused Incremental Commitments of such Class outstanding or in effect at such time.

“Margin Stock” has the meaning assigned to such term in Regulation U.

“Material Adverse Effect” means a material adverse effect on (i) the business, assets or financial condition, in each case, of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) the rights and remedies (taken as a whole) of the Administrative Agent under the applicable Loan Documents or
(iii) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the applicable Loan Documents.

“Material Debt Instrument” means any physical instrument evidencing any Indebtedness for borrowed money owing from any Person other than any Loan Party which is required to be pledged and delivered to the Administrative Agent (or its bailee) pursuant to the Security Agreement.

“Material Intellectual Property” means any IP Rights owned by any Loan Party that is material to the operation of the business of the Borrower and its Restricted Subsidiaries, taken as a whole.

“Maturity Date” means (a) with respect to the Initial Revolving Facility, the Initial Revolving Credit Maturity Date, (b) with respect to any Revolver Replacement Facility, the final maturity date for such Revolver Replacement Facility, as the case may be, as set forth in the applicable Refinancing Amendment, (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, the final maturity date set forth in the applicable Extension Amendment, and (e) with respect to the Delayed Draw Term Loan Facility, the Delayed Draw Term Loan Maturity Date.

“Maximum Rate” has the meaning assigned to such term in Section 9.19.

“Minimum Extension Condition” has the meaning assigned to such term in Section 2.23(b).

“Moody’s” means Moody’s Investors Service, Inc.

“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 other Secured Parties, on real property of a Loan Party.

“Mortgage Instruments” means such title reports, ALTA title insurance policies (with endorsements), evidence of zoning compliance, property insurance, flood certifications and flood insurance (and, if applicable, FEMA form acknowledgements of insurance), opinions of counsel, ALTA surveys, appraisals, environmental assessments and reports, mortgage tax affidavits and declarations and other similar information and related certifications as are requested by, and in form and substance reasonably acceptable to, the Administrative Agent from time to time.

“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 Restricted Subsidiaries, or any of their respective ERISA Affiliates, makes or is obligated to make contributions or with respect to which any of them has any ongoing obligation or liability, contingent or otherwise.

“Net Proceeds” means:

(a) with respect to any Disposition, the Cash proceeds (including Cash Equivalents and Cash proceeds subsequently received (as and when received) in respect of non-cash consideration initially received), net of:

(i) selling costs and out-of-pocket expenses (including reasonable broker’s fees or commissions, legal fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary fees actually incurred in connection therewith and transfer and similar
Taxes and the Borrower’s good faith estimate of income Taxes paid or payable (including pursuant to any Tax sharing arrangement and/or any intercompany distribution) in connection with such Disposition; it being understood that the reduction in the amount of any net operating loss resulting from such Disposition shall be deemed to constitute an income Tax “paid or payable” for purposes of this clause (i);

(ii) amounts provided as a reserve in accordance with GAAP against any liabilities under any indemnification obligation or purchase price adjustment associated with such Disposition (provided that to the extent and at the time any such amount is released from such reserve, such amounts shall constitute Net Proceeds);

(iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness (other than the Loans and any other Indebtedness that constitutes First Lien Debt or Junior Lien Debt) which is secured by the asset sold in such Disposition and which is required to be repaid or otherwise comes due or would be in default and is repaid (other than any such Indebtedness that is assumed by the purchaser of such asset);

(iv) any Cash escrow (until released from escrow to the Borrower or any of its Restricted Subsidiaries) from the sale price for such Disposition;

(v) in the case of any Disposition by any non-Wholly-Owned Subsidiary, the pro rata portion of the Net Proceeds thereof (calculated without regard to this clause (v)) that is attributable to any minority interest and not available for distribution to or for the account of the Borrower or a Wholly-Owned Subsidiary as a result thereof; and

(vi) any amount used to repay or return any customer deposit required to be repaid or returned as a result of such Disposition;

(b) with respect to any issuance or incurrence of Indebtedness, issuance of Capital Stock and/or any contribution in respect of any Capital Stock, the Cash proceeds thereof, net of all Taxes and customary fees, commissions, costs, underwriting discounts and other fees and expenses incurred in connection therewith, including any cost associated with the unwinding of any Hedge Agreement in connection with such Indebtedness;

(c) with respect to any Prepayment Event not described in any of the foregoing clauses (a) or (b), (i) the Cash proceeds (including Cash Equivalents and Cash proceeds subsequently received (as and when received) in respect of non-cash consideration initially received) in respect of such event, including (A) any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments, but only as and when received, (B) in the case of a casualty, insurance proceeds and (C) in the case of a condemnation or similar event, condemnation awards and similar payments, net of (ii) the sum of (A) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (B) in the case of a Disposition of an asset (including pursuant to a casualty, taking by eminent domain or condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (C) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established 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).

“Non-Defaulting Revolving Lenders” has the meaning assigned to such term in Section 2.21(d)(i).

“Not Otherwise Applied” means, with respect to the proceeds of the issuance of Qualified Capital Stock or contribution with respect to Qualified Capital Stock, that as of any date of determination such proceeds have not previously been applied to permit a transaction in reliance on Sections 6.04(a)(ii)(B), (a)(iii)(A) (to the extent a Restricted Payment is made in reliance on clause (a)(ii) or (a)(x) of the definition of “Available Amount”), 6.04(a)(iii)(B), 6.04(a)(vii), 6.04(b)(v), (b)(vi)(A) (to the extent a Restricted Debt Payment is made in reliance on clause (a)(ii) or (a)(x) of the definition of “Available Amount”), 6.06(n), 6.06(r)(i) (to the extent an Investment is made in reliance on clause (a)(ii) or (a)(x) of the definition of “Available Amount”) and/or 6.06(r)(ii).

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit Q or such other form as may be approved by the Administrative Agent and the Borrower (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and the Borrower), appropriately completed and signed by a Responsible Officer.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB’s Website” means the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day which is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Obligations” means all unpaid principal of and accrued and unpaid interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses (including fees and expenses accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), reimbursements, indemnities and all other advances to, debts, liabilities and obligations of any Loan Party to the Lenders or to any Lender, the Administrative Agent, any Issuing Bank or any indemnified party arising under the Loan Documents in respect of any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute, contingent, due or to become due, now existing or hereafter arising.

“Obligations Derivative Instrument” has the meaning assigned to such term in Section 9.05(d)(ii).

“OFAC” means the Office of Foreign Assets Control of the U.S. Treasury Department.
“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation or organization and its by-laws, (b) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, (d) with respect to any limited liability company, its articles of organization or certificate of formation, and its operating agreement, and (e) with respect to any other form of entity, such other organizational documents required by local Requirements of Law or customary under such jurisdiction to document the formation and governance principles of such type of entity. In the event that any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

“Other 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 from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary Taxes or any intangible, recording, filing or other similar Taxes arising from any payment made under any Loan Document or from the execution, delivery, performance or enforcement or registration, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, but excluding any such Taxes that are Other Connection Taxes imposed with respect to an assignment or participation (other than an assignment made pursuant to Section 2.19).

“Outstanding Amount” means (a) with respect to any Revolving Loan and/or Swingline Loan on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowing and/or prepayment or repayment of such Revolving Loan and/or Swingline Loans, as the case may be, occurring on such date, (b) with respect to any Letter of Credit, the aggregate amount available to be drawn under such Letter of Credit after giving effect to any change in the aggregate amount available to be drawn under such Letter of Credit or the issuance or expiry of such Letter of Credit, including as a result of any LC Disbursement and (c) with respect to any LC Disbursement on any date, the amount of the aggregate outstanding amount of such LC Disbursement on such date after giving effect to any disbursement with respect to any Letter of Credit occurring on such date and any other change in the aggregate amount of such LC Disbursement as of such date, including as a result of any reimbursement by the Borrower of such unreimbursed LC Disbursement.

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Parent Company” means any Person of which the Borrower is a direct or indirect Wholly-Owned Subsidiary.

“Participant” has the meaning assigned to such term in Section 9.05(c)(i).

“Participant/SPC Register” has the meaning assigned to such term in Section 9.05(c).
“Patent” means the following: (a) any and all patents and patent applications; (b) all inventions described and claimed therein; (c) all reissues, divisionals, continuations, renewals, extensions and continuations in part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights corresponding to any of the foregoing.

“Payment” has the meaning assigned to such term in Section 8.06(c)(i).

“Payment Notice” has the meaning assigned to such term in Section 8.06(c)(ii).

“PBGC” means the Pension Benefit Guaranty Corporation.

“PCT Listco” means any Wholly-Owned Subsidiary of Borrower formed in contemplation of an IPO to become the Public Entity.

“PCT Reorganization Transaction” means, collectively, the transactions taken in connection with and reasonably related to consummating an IPO, including:

(a) formation and ownership of any PCT Shell Company;

(b) entry into, and performance of, (i) a reorganization or similar agreement among any of the Borrower, one or more of its subsidiaries, any Parent Company and/or any PCT Shell Company that implements a transaction described in this definition and any other reorganization transaction in connection with any IPO, so long as after giving effect to such agreement and the transactions contemplated thereby, in the good faith determination of the Borrower, in consultation with the Administrative Agent, the security interests of the Lenders in the Collateral and the Loan Guaranty, taken as a whole, would not be materially impaired and (ii) any customary underwriting agreement in connection with an IPO and any future follow-on underwritten public offering of common Capital Stock in the Public Entity, including the provision by such Public Entity and the Borrower of customary representations, warranties, covenants and indemnification to the underwriters thereunder;

(c) the merger of any PCT Subsidiary with one or more direct or indirect holders of Capital Stock in Borrower, with such PCT Subsidiary as the survivor of such merger, and holding Capital Stock in the Borrower and/or (ii) the dividend or other distribution by the Borrower of Capital Stock of any PCT Shell Company or other transfer of ownership to any holder of Capital Stock of the Borrower;

(d) the issuance of the Capital Stock of any PCT Shell Company to holders of Capital Stock of the Borrower in connection with any PCT Reorganization Transaction;

(e) the making of Restricted Payments to (or Investments in) any PCT Shell Company or any subsidiary to permit the Borrower to make distributions or other transfers, directly or indirectly, to PCT Listco, in each case, solely for the purpose of paying, and solely in the amount necessary for PCT Listco to pay, IPO-related expenses and the making of any such distribution by the Borrower;

(f) the repurchase by PCT Listco of its Capital Stock from the Borrower or any Restricted Subsidiary;
(g) the entry into any exchange agreement, pursuant to which holders of Capital Stock of the Borrower and certain non-economic/voting Capital Stock in PCT Listco will be permitted to exchange such interests for certain economic/voting Capital Stock of PCT Listco;

(h) any issuance, dividend or distribution of the Capital Stock of any PCT Shell Company or other Disposition of ownership thereof to any PCT Shell Company and/or the direct or indirect holders of Capital Stock of Borrower; and

(i) any other transaction reasonably incidental to, or necessary for the consummation of, an IPO so long as after giving effect to such transaction, in the good faith determination of the Borrower, in consultation with the Administrative Agent, the security interests of the Lenders in the Collateral and the Loan Guaranty, taken as a whole, would not be materially impaired.

“PCT Shell Company” means each of PCT Listco and any PCT Subsidiary.

“PCT Subsidiary” means any Wholly-Owned Subsidiary of PCT Listco formed in contemplation of, and to facilitate, any PCT Reorganization Transaction and any IPO.

“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 Restricted Subsidiaries, or any of their respective ERISA Affiliates, maintains or contributes to or has an obligation to contribute to, or otherwise has any liability, contingent or otherwise.

“Perfection Certificate” means a certificate substantially in the form of Exhibit J or such other form that is reasonably acceptable to the Administrative Agent and the Borrower.

“Perfection Requirements” means (a) with respect to any Loan Party (other than any Discretionary Guarantor that is a Foreign Subsidiary), the filing of appropriate financing statements with the office of the Secretary of State or other appropriate office of the state of organization of each Loan Party, the filing of Intellectual Property Security Agreements or other appropriate instruments or notices with the US Patent and Trademark Office and the US Copyright Office (solely as required under applicable Requirements of Law), the delivery to the Administrative Agent of, solely to the extent the same constitutes Collateral, any stock certificate or promissory note, together with instruments of transfer executed in blank, and, with respect to the Verona Property, the filing of a Mortgage with the appropriate office of the county in which the Verona Property is located, and (b) with respect to any Discretionary Guarantor that is a Foreign Subsidiary, any recording, filing, registration, notification or other action required to be taken in the applicable jurisdiction, in each case of the foregoing clauses (a) and (b), to the extent required by the applicable Loan Documents.
“Permitted Acquisition” means any acquisition made by the Borrower or any of its Restricted Subsidiaries, whether by purchase, merger or otherwise, of (i) all or substantially all of the assets, or any business line, unit or division, product line and/or the re-purchase of franchised Unit Locations (including research and development and related assets in respect of any product) of, any Person engaged in a Similar Business or (ii) a majority of the outstanding Capital Stock of any Person engaged in a Similar Business (it being understood and agreed that “Permitted Acquisition” shall include any Investment in (x) any Restricted Subsidiary the effect of which is to increase the Borrower’s or any Restricted Subsidiary’s equity ownership in such Restricted Subsidiary or (y) any joint venture for the purpose of increasing the Borrower’s or its relevant Restricted Subsidiary’s ownership interest in such joint venture, in each case if (1) such Person is or becomes a Restricted Subsidiary or (2) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys all or a substantial portion of its assets (or such division, business line, unit or product line) to, or is liquidated into, the Borrower and/or any Restricted Subsidiary as a result of such transaction); provided that:

(a) the Borrower is in compliance with Section 6.10(a), Section 6.10(b) and Section 6.10(c) on a Pro Forma Basis; and

(b) the total consideration paid by Loan Parties for (i) the Capital Stock of any Person that is not and does not become a Loan Party, (ii) with respect to any Investment of the type referred to in clauses (x) and (y) above after giving effect to which the relevant Restricted Subsidiary or joint venture is not and does not become a Loan Party or (iii) in the case of an asset acquisition, assets that are not acquired by any Loan Party, in each case, taken together with the total consideration for all such Persons and assets so acquired after the Closing Date, shall not exceed (x) prior to the consummation of an IPO, the greater of $2,500,000 and 10% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(c) the limitation described in the immediately preceding clause (b) shall not apply to any acquisition to the extent (i) any such consideration is financed with the proceeds of sales of the Qualified Capital Stock of, or common equity capital contributions to, the Borrower or any Restricted Subsidiary, other than any Cure Amount or Available Excluded Contribution Amount and/or (ii) the Person so acquired (or the Person owning the assets so acquired) becomes a Subsidiary Guarantor even though such Person is not otherwise required to become a Subsidiary Guarantor; and

(d) in the event the amount available under the immediately preceding clause (b) is reduced as a result of any acquisition of (i) any Restricted Subsidiary that does not become a Loan Party or (ii) any assets that are not transferred to a Loan Party and such Restricted Subsidiary subsequently becomes a Loan Party or such assets are subsequently transferred to a Loan Party respectively, the amount available under the immediately preceding clause (b) shall be proportionately increased as a result thereof.

“Permitted Asset Swap” means the concurrent purchase and sale or exchange of Related Business Assets or any combination of Related Business Assets between the Borrower and/or any Restricted Subsidiary, on the one hand, and any other Person, on the other hand.

“Permitted Holders” means (a) each of the Investors, their respective Affiliates and their respective investment entities, including funds, partnerships, co-investment vehicles and managed account arrangements established, operated, managed, advised or controlled directly or indirectly by the
foregoing or other entities under common control with such Investor or its Affiliates, (b) any Person who holds any Capital Stock of the Borrower as of the date of this Agreement, (c) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members and any member of such group; provided that, in the case of such group and any member of such group and without giving effect to the existence of such group or any other group, no Person or other group (other the Permitted Holders specified in clauses (a) or (b) of this definition) own, directly or indirectly, more than 50% of the total voting power of all of the outstanding voting common stock of the Borrower (or, for the avoidance of doubt, of any Public Entity) held by such 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 Restricted Subsidiary or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of its ERISA Affiliates, other than any Multiemployer Plan.

“Platform” has the meaning assigned to such term in Section 5.01.

“Prepayment Event” means:

(a) (i) any sale, transfer or other Disposition of any property or asset of any Loan Party made in reliance on any of Section 6.07(h); or

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party for which such Loan Party receives insurance proceeds or proceeds of a condemnation award to replace or repair such property or asset.

“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 as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Pro Forma Basis” or “pro forma effect” means, with respect to any determination of the Total Rent Adjusted Net Leverage Ratio, the First Lien Rent Adjusted Net Leverage Ratio, the Fixed Charge Coverage Ratio, Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets (including any component definition thereof), that:

(a) in the case of (i) any Disposition of all or substantially all of the Capital Stock of any Restricted Subsidiary or any division and/or product line of the Borrower and/or any Restricted Subsidiary, (ii) any designation of a Restricted Subsidiary as an Unrestricted Subsidiary (iii) the implementation of any Business Optimization Initiative relating to a cost-savings action and/or (iv) if applicable, any Subject Transaction described in clause (h) or
(j) of the definition thereof, income statement items (whether positive or negative and including any expected cost saving) attributable to
the property or Person subject to such Subject Transaction, shall be excluded as of the first day of the applicable Test Period with respect
to any test or covenant for which the relevant determination is being made;

(b) in the case of (i) any Permitted Acquisition or other Investment, (ii) any designation of any Unrestricted Subsidiary as a
Restricted Subsidiary, and/or (iii) if applicable, any Subject Transaction described in clause (j) of the definition thereof, income
statement items (whether positive or negative) attributable to the property or Person subject to such Subject Transaction shall be included
as of the first day of the applicable Test Period with respect to any test or covenant for which the relevant determination is being made;

(c) any retirement or repayment of Indebtedness by the Borrower or any of its Subsidiaries that constitutes a Subject
Transaction shall be deemed to have occurred as of the first day of the applicable Test Period with respect to any test or covenant for
which the relevant determination is being made;

(d) any Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in connection therewith that constitutes a
Subject Transaction shall be deemed to have occurred as of the first day of the applicable Test Period with respect to any test or covenant
for which the relevant determination is being made; provided that, (i) if such Indebtedness has a floating or formula rate, such
Indebtedness shall have an implied rate of interest for the applicable Test Period for purposes of this definition determined by utilizing
the rate that is or would be in effect with respect to such Indebtedness at the relevant date of determination (taking into account any
interest hedging arrangements applicable to such Indebtedness), (ii) interest on any obligation with respect to any Capital Lease shall be
deemed to accrue at an interest rate reasonably determined by a Responsible Officer of the Borrower in good faith to be the rate of
interest implicit in such obligation in accordance with GAAP and (iii) interest on any Indebtedness that may optionally be determined at
an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate or other rate shall be determined to
have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen by the Borrower;

(e) the acquisition of any asset included in calculating Consolidated Total Assets (other than the amount Cash or Cash
Equivalents, which is addressed in clause (g) below), whether pursuant to any Subject Transaction or any Person becoming a subsidiary
or merging, amalgamating or consolidating with or into the Borrower or any of its subsidiaries, or the Disposition of any asset included
in calculating Consolidated Total Assets described in the definition of “Subject Transaction”, shall be deemed to have occurred as of the
last day of the applicable Test Period with respect to any test or covenant for which such calculation is being made;

(f) subject to Section 1.11, other than, for the avoidance of doubt, for purposes of Section 6.10(a), Section 6.10(b) and Section
6.10(c), the Unrestricted Cash Amount shall be calculated as of the date of the consummation of such Subject Transaction after giving
pro forma effect thereto, including any application of cash proceeds in connection therewith (other than, for the avoidance of doubt, the
cash proceeds of any Indebtedness that is the Subject Transaction for which such a calculation is being made); and

(g) each other Subject Transaction shall be deemed to have occurred as of the first day of the applicable Test Period (or, in the
case of Consolidated Total Assets, as of the last day)
of such Test Period) with respect to any test or covenant for which such calculation is being made.

It is hereby agreed that for purposes of determining pro forma compliance with Section 6.10(a), Section 6.10(b) and/or Section 6.10(c) prior to the last day of the first full Fiscal Quarter after the Closing Date, the applicable level shall be the level cited in Section 6.10(a), Section 6.10(b) or Section 6.10(c), as applicable. Notwithstanding anything to the contrary set forth in the immediately preceding paragraph, for the avoidance of doubt, when calculating the Total Rent Adjusted Net Leverage Ratio for purposes of the definitions of “Applicable Rate”, “Ticking Fee Rate” and “Commitment Fee Rate” and for purposes of Section 6.10(d) (other than for the purpose of determining pro forma compliance with Section 6.10(a), Section 6.10(b) or Section 6.10(c) as a condition to taking any action under this Agreement), the events described in the immediately preceding paragraph that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect.

“Projections” means the financial projections, forecasts, financial estimates and other forward-looking and/or projected information of or relating to the Borrower and its subsidiaries included in the Financial Model (or a supplement thereto).

“Promissory Note” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit L, evidencing the aggregate outstanding principal amount of Loans of the Borrower to such Lender resulting from the Loans made by such Lender.

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

“Public Company Costs” means Charges associated with, or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 (and, in each case, similar Requirements of Law under other jurisdictions) and the rules and regulations promulgated in connection therewith and Charges relating to compliance with the provisions of the Securities Act and the Exchange Act (and, in each case, similar Requirements of Law under other jurisdictions), as applicable to companies with equity or debt securities held by the public, the rules of national securities exchange companies with listed equity or debt securities, directors’, managers’ and/or employees’ compensation, fees and expense reimbursement, Charges relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors’ and officers’ insurance and other executive costs, legal and other professional fees (including auditors’ and accountants’ fees), listing fees, filing fees and other costs and/or expenses associated with being a public company.

“Public Entity” means, following any IPO, the Person the Capital Stock of which is publicly traded as a result of such IPO (which may, for the avoidance of doubt, be any Parent Company or any PCT Listco that Borrower will distribute to any Parent Company in connection with an IPO).

“Public Lender” has the meaning assigned to such term in Section 9.01(d).

“QFC Credit Support” has the meaning assigned to such term in Section 9.26.

“Qualified Capital Stock” of any Person means any Capital Stock of such Person that is not Disqualified Capital Stock.

“Ratio Debt” has the meaning assigned to such term in Section 6.01(s).
“Real Estate Asset” means, at any time of determination, all right, title and interest (fee, leasehold or otherwise) of any Person in and to real property (including, but not limited to, land, improvements and fixtures thereon) or any rents, sale proceeds or other amounts resulting from or in connection with such real property.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two (2) Business Days preceding the date of such setting, (2) if (after the effectiveness of a Benchmark Replacement) the RFR for such Benchmark is Daily Simple SOFR, then four (4) Business Days prior to such setting or (3) if such Benchmark is neither the Term SOFR Rate nor Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

“Refinancing Amendment” means an amendment to this Agreement that is reasonably satisfactory to the Administrative Agent and the Borrower executed by (a) the Borrower, (b) the Administrative Agent and (c) each Lender that agrees to provide all or any portion of the Revolver Replacement Facility, as applicable, being incurred pursuant thereto and in accordance with Section 9.02(c).

“Refinancing Indebtedness” has the meaning assigned to such term in Section 6.01(o).

“Refunding Capital Stock” has the meaning assigned to such term in Section 6.04(a)(vii).

“Register” has the meaning assigned to such term in Section 9.05(b).

“Regulated Bank” means any insured depository institution that is regulated by foreign, federal or state banking regulators, including the United States Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation or the Board.

“Regulation D” means Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation S-X” means Regulation S-X under the Securities Act.

“Regulation U” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Business Assets” means assets (other than cash or Cash Equivalents) used or useful in a Similar Business; provided that any asset received by the Borrower or any Restricted Subsidiary in exchange for any asset transferred by the Borrower or any Restricted Subsidiary shall not be deemed to constitute a Related Business Asset if such asset consists of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary.

“Related Funds” means with respect to any Lender that is an Approved Fund, any other Approved Fund that is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, managers, officers, shareholders, trustees, employees, partners, agents, advisors and other representatives of such Person and such Person’s Affiliates.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into
the Environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“Relevant Governmental Body” means the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB, or, in each case, any successor thereto.

“Replaced Revolving Facility” has the meaning assigned to such term in Section 9.02(c)(ii).

“Replacement Debt” means any Refinancing Indebtedness (whether borrowed in the form of secured or unsecured loans, issued in a public offering, Rule 144A under the Securities Act or other private placement or bridge financing in lieu of the foregoing or otherwise) incurred in respect of Indebtedness permitted under Section 6.01(a) (and any subsequent refinancing of such Replacement Debt).

“Report” means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Borrower’s assets from information furnished by or on behalf of the Borrower, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

“Reportable Event” means, with respect to any Pension Plan, any of the events described in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period is waived under PBGC Reg. Section 4043.

“Representatives” has the meaning assigned to such term in Section 9.13.

“Required Lenders” means, at any time, subject to Section 2.21, Lenders having Loans or Credit Exposure and unused Commitments representing more than 50% of the sum of the Aggregate Credit Exposure and total Loans and such unused Commitments at such time.

“Requirements of Law” means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Rescindable Amount” has the meaning assigned to such term in Section 2.18(d).

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

“Responsible Officer” means, with respect to any Person, the chief executive officer, the president, the chief financial officer, the treasurer, any assistant treasurer of such Person and any other individual or similar official thereof, any executive vice president, any senior vice president, any vice president or the chief operating officer or other officer responsible for the administration of the obligations of such Person in respect of this Agreement, any member of the board of directors (in the case of any Person that is not incorporated in the US), and, as to any document delivered on the Closing
Date, shall include any secretary or assistant secretary or any other individual or similar official thereof with substantially equivalent responsibilities of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer of the applicable Loan Party so designated in writing by the Borrower to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of any Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party, and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Debt” means any Indebtedness described in clause (a) of the definition of “Indebtedness” (other than such Indebtedness among the Borrower or any of its subsidiaries) of any Loan Party that (a)(i) is contractually subordinated in right of payment to the Obligations, (ii) constitutes Junior Lien Debt or (iii) is unsecured and (b) has an individual outstanding principal amount in excess of the Threshold Amount.

“Restricted Debt Payment” has the meaning set forth in Section 6.04(b).

“Restricted Payment” means (a) any dividend or other distribution on account of any shares of any class of the Capital Stock of the Borrower, except a dividend payable solely in shares of Qualified Capital Stock to the holders of such class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of any shares of any class of the Capital Stock of the Borrower and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of the Capital Stock of the Borrower now or hereafter outstanding.

“Restricted Subsidiary” means, as to any Person, any subsidiary of such Person that is not an Unrestricted Subsidiary. Unless otherwise specified, “Restricted Subsidiary” means any Restricted Subsidiary of the Borrower.

“Revolver Replacement Facility” has the meaning assigned to such term in Section 9.02(c)(ii).

“Revolving Credit Commitment” means any Initial Revolving Credit Commitment and any Additional Revolving Credit Commitment.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the aggregate Outstanding Amount at such time of such Lender’s Initial Revolving Credit Exposure and Additional Revolving Credit Exposure.

“Revolving Facility” means the Initial Revolving Facility, any Incremental Revolving Facility, any facility governing Extended Revolving Credit Commitments or Extended Revolving Loans and any Revolver Replacement Facility.

“Revolving Lender” means any Initial Revolving Lender and any Additional Revolving Lender. Unless the context otherwise requires, the term “Revolving Lender” shall include the Swingline Lender.

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

“RFR Borrowing” means, as to any Borrowing, the RFR Loans comprising such Borrowing.

“RFR Loan” means a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.
“Run-Rate Synergies” has the meaning assigned to such term in the definition of “Consolidated Adjusted EBITDA”.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of the S&P Global, Inc.

“Sale and Lease-Back Transaction” means any arrangement providing for the lease by the Borrower and/or any Restricted Subsidiary of any property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary in contemplation of such lease arrangement.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, (c) the European Union, (d) any European Union member state or (e) His Majesty’s Treasury of the United Kingdom.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, the Crimea Region, Zaporizhzhia and Kherson Regions of Ukraine, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means any Person that is the target of Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by (i) OFAC or the U.S. Department of State or (ii) the United Nations Security Council, the European Union, any European Union member state or His Majesty’s Treasury of the United Kingdom; (b) any Person organized or resident in a Sanctioned Country; or (c) the government of a Sanctioned Country.

“Scheduled Payment Date” means the fifteenth (15th) day following the last Business Day of each March, June, September and December (commencing March 31, 2022).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of its functions.

“Secured Hedging Obligations” means all Hedging Obligations (other than any Excluded Swap Obligation) under each Hedge Agreement that is in effect on the Closing Date or entered into at any time on or after the Closing Date between any Loan Party and (a) a counterparty that is (or is an Affiliate of) the Administrative Agent, a Lender or an Arranger as of the Closing Date or at the time such Hedge Agreement is entered into and/or (b) any other Person designated by the Borrower to the Administrative Agent, in each case, for which such Loan Party agrees to provide security and in each case that has been designated to the Administrative Agent in writing by the Borrower as being a Secured Hedging Obligation for purposes of the Loan Documents (provided that the Borrower may designate all Hedge Agreements under a specified ISDA master agreement as being Secured Hedging Obligations without the need for separate notices for each Hedge Agreement), it being understood that each counterparty thereto shall be deemed (A) to appoint the Administrative Agent as its agent under the applicable Loan Documents and (B) to agree to be bound by the provisions of Article VIII, Section 9.03 and Section 9.10 and any applicable Intercreditor Agreement as if it were a Lender.

“Secured Obligations” means all Obligations, together with (a) all Banking Services Obligations and (b) all Secured Hedging Obligations.

“Secured Parties” means (a) the Lenders, the Issuing Banks and the Swingline Lender, (b) the Administrative Agent, (c) each counterparty to a Hedge Agreement with a Loan Party the obligations under which constitute Secured Hedging Obligations, (d) each provider of Banking Services to any Loan
“Securities Act” means the Securities Act of 1933 and the rules and regulations of the SEC promulgated thereunder.

“Security” means a fungible financial instrument that holds some monetary value, such as representing (a) an ownership interest in a publicly-traded company or rights to such ownership, or (b) a creditor relationship with a Governmental Authority or company.

“Security Agreement” means the Pledge and Security Agreement, substantially in the form of Exhibit M, among the Loan Parties, as grantors, and the Administrative Agent for the benefit of the Secured Parties.

“Similar Business” means any Person the majority of the revenues of which are derived from a business that would be permitted by Section 5.18 if the references to “Restricted Subsidiaries” in Section 5.18 were read to refer to such Person.

“SOFR” means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”.

“SPC” has the meaning assigned to such term in Section 9.05(e).

“Specified 5% Adjustment” means the adjustment set forth in clause (c)(xiii) of the definition of “Consolidated Adjusted EBITDA”.

“Specified 15% Adjustments” means the adjustments set forth in clause (c)(xi) (other than Charges of the type described in the clause (c)(xi)(A) and/or any other one-time Disposition or issuance of debt or equity) of the definition of “Consolidated Adjusted EBITDA” and in clauses (c) and (l) of the definition of “Consolidated Net Income”.

“Specified 20% Adjustments” means the adjustments set forth in clauses (c)(x) and (e)(iii) of the definition of “Consolidated Adjusted EBITDA” and in clause (d)(iii) of the definition of “Consolidated Net Income”.

“Specified Adjustments” means the Specified 5% Adjustment, the Specified 15% Adjustments, the Specified 20% Adjustments and all other pro forma adjustments.

“Specified Commitment” has the meaning assigned to such term in Section 1.11(g).
“Specified Commitment Notice” has the meaning assigned to such term in Section 1.11(g).

“Specified Guarantor Release Provision” has the meaning assigned to such term in Section 8.07.

“Stated Amount” means, with respect to any Letter of Credit, at any time, the maximum amount available to be drawn thereunder, in each case determined (a) as if any future automatic increase in the maximum available amount provided for in any such Letter of Credit had in fact occurred at such time and (b) without regard to whether any conditions to drawing could then be met but after giving effect to all previous drawings made thereunder.

“Subject Indebtedness” has the meaning assigned to such term in Section 1.03.

“Subject Person” has the meaning assigned to such term in the definition of “Consolidated Net Income”.

“Subject Transaction” means:

(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 (i) any Restricted Subsidiary the effect of which is to increase the Borrower’s or any Restricted Subsidiary’s respective equity ownership in such Restricted Subsidiary or (ii) any joint venture for the purpose of increasing the Borrower’s or its relevant Restricted Subsidiary’s ownership interest in such joint venture), in each case that is permitted by this Agreement;
(c) any Disposition of (i) all or substantially all of the assets or (ii) the Capital Stock of any subsidiary (or any business unit, line of business or division of the Borrower and/or any Restricted Subsidiary) not prohibited by this Agreement;
(d) the designation of a Restricted Subsidiary as an Unrestricted Subsidiary or an Unrestricted Subsidiary as a Restricted Subsidiary in accordance with Section 5.10;
(e) any incurrence, retirement, redemption, repayment and/or prepayment of Indebtedness (other than any Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes);
(f) any capital contribution in respect of Qualified Capital Stock or any issuance of Qualified Capital Stock (other than any amount constituting a Cure Amount);
(g) the implementation of any Business Optimization Initiative;
(h) at the election of the Borrower, any discontinued operation; and/or
(i) any other event that by the terms of the Loan Documents requires pro forma compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a pro forma basis.

“subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting
power of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of such Person or a combination thereof, in each case to the extent the relevant entity’s financial results are required to be included in such Person’s consolidated financial statements under GAAP; provided that in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interests in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding. Unless otherwise specified, “subsidiary” shall mean any subsidiary of the Borrower.

“Subsidiary Guarantor” means (a) on the Closing Date each subsidiary of the Borrower (other than any such subsidiary that is an Excluded Subsidiary on the Closing Date) and (b) thereafter, each subsidiary of the Borrower that becomes a Guarantor of the Secured Obligations pursuant to the terms of this Agreement (including any such subsidiary designated as a Discretionary Guarantor pursuant to Section 5.12(b)), in each case, until such time as the relevant subsidiary is released from its obligations under the Loan Guaranty in accordance with the terms and provisions hereof.

“Successor Borrower” has the meaning assigned to such term in Section 6.07(a).

“Supported QFC” has the meaning assigned to such term in Section 9.26.

“Swap Obligations” means, with respect to any Loan Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall equal to its Applicable Revolving Credit Percentage of the aggregate Swingline Exposure at such time.

“Swingline Lender” means JPMorgan, in its capacity as lender of Swingline Loans hereunder, or any successor lender of Swingline Loans hereunder.

“Swingline Loan” has the meaning assigned to such term in Section 2.04.

“Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f).

“Taxes” means all present and future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Benchmark” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

“Term Lender” means a Delayed Draw Term Lender or an Incremental Term Lender.

“Term Loan” means a Delayed Draw Term Loan or an Incremental Term Loan.

“Term Loan Commitment” means a Delayed Draw Term Loan Commitment or an Incremental Term Loan Commitment.
“Term SOFR Determination Day” has the meaning assigned to such term in the definition of “Term SOFR Reference Rate”.

“Term SOFR Rate” means, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two (2) U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“Term SOFR Reference Rate” means, for any day and time (such day, the “Term SOFR Determination Day”), and for any tenor comparable to the applicable Interest Period, the rate per annum determined published by the CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.
“Ticking Fee Rate” means, on any date with respect to the Delayed Draw Term Loan Commitments, the applicable rate per annum set forth below based upon the Total Rent Adjusted Net Leverage Ratio; provided that, until the first Adjustment Date following the Amendment No. 2 Effective Date, “Ticking Fee Rate” shall be the applicable rate per annum set forth below in Category 2:

<table>
<thead>
<tr>
<th>Total Rent Adjusted Net Leverage Ratio</th>
<th>Ticking Fee Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>0.35%</td>
</tr>
<tr>
<td>Greater than or equal to 6.00 to 1.00</td>
<td></td>
</tr>
<tr>
<td>Category 2</td>
<td>0.30%</td>
</tr>
<tr>
<td>Greater or equal to than 4.50 to 1.00</td>
<td></td>
</tr>
<tr>
<td>Category 3</td>
<td>0.25%</td>
</tr>
<tr>
<td>Greater than or equal to 3.50 to 1.00</td>
<td></td>
</tr>
<tr>
<td>Category 4</td>
<td>0.20%</td>
</tr>
<tr>
<td>Greater than or equal to 2.50 to 1.00</td>
<td></td>
</tr>
<tr>
<td>Category 5</td>
<td>0.20%</td>
</tr>
<tr>
<td>Less 2.50 to 1.00</td>
<td></td>
</tr>
</tbody>
</table>

The Ticking Fee Rate with respect to the Delayed Draw Term Loan Commitments shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Total Rent Adjusted Net Leverage Ratio in accordance with the table set forth above; provided that if financial statements are not delivered when required pursuant to Section 5.01(a) or (b), as applicable, at the election of a Majority in Interest of the Delayed Draw Term Lenders, the Ticking Fee Rate shall be the rate per annum set forth above in Category 1 until such financial statements are delivered in compliance with Section 5.01(a) or (b), as applicable.

“Transactions” means the execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“Termination Date” has the meaning assigned to such term in the lead-in to Article V.

“Test Period” means, as of any date, the period of four consecutive Fiscal Quarters then most recently ended for which financial statements under Section 5.01(a) or Section 5.01(b), as applicable, have been delivered (or are required to have been delivered); it being understood and agreed that prior to the first delivery (or required delivery) of financial statements under Sections 5.01(a) or (b), “Test Period” means the period of four consecutive Fiscal Quarters most recently ended for which financial statements of the Borrower are available.

“Threshold Amount” means $6,000,000.
“Total Rent Adjusted Net Leverage Ratio” means the ratio, as of any date of determination, of (a)(i) Consolidated Total Debt outstanding as of the last day of the most recently ended Test Period, plus (ii) the product of (A) Consolidated Cash Rental Expense for such Test Prior and (B) eight, to (b) Consolidated Adjusted EBITDAR for such Test Period, in each case, of the Borrower and its Restricted Subsidiaries on a consolidated basis.

“Total Revolving Credit Commitment” means, at any time, the aggregate amount of the Revolving Credit Commitments, as in effect at such time.

“Trademark” means the following: (a) all trademarks (including service marks), common law marks, trade names, trade dress, and logos, slogans and other indicia of origin, and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing, (b) all renewals of the foregoing, (c) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including damages, claims, and payments for past and future infringements thereof, (d) all rights to sue for past, present, and future infringements and other violations of the foregoing, including the right to settle suits involving claims and demands for royalties owing and (e) all rights corresponding to any of the foregoing.

“Transaction Costs” means fees, premiums, expenses and other transaction costs (including original issue discount or upfront fees) payable or otherwise borne by the Borrower, any Parent Company and/or its subsidiaries in connection with the Transactions and the transactions contemplated thereby.

“Transactions” means, collectively, (a) the execution, delivery and performance by the Loan Parties of the Loan Documents to which they are a party and the Borrowing of Loans hereunder on the Closing Date, (b) the Closing Date Refinancing and (c) the payment of the Transaction Costs.

“Treasury Capital Stock” has the meaning assigned to such term in Section 6.04(a)(xii).

“Treasury Regulations” means the US federal income tax regulations promulgated under the Code.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted Term SOFR Rate, the Alternate Base Rate or, following the effectiveness of a Benchmark Replacement, Adjusted Daily Simple SOFR.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the creation or perfection of security interests.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.
“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unit Location” means, collectively, the property comprising the restaurant locations or on which the Borrower or any of its Subsidiaries intends to build out a restaurant.

“Unrestricted Cash Amount” means, as to any Person on any date of determination, the amount of (a) unrestricted Cash and Cash Equivalents of such Person and (b) Cash and Cash Equivalents of such Person that are restricted in favor of the Revolving Facility, the Delayed Draw Term Loan Facility and/or other permitted pari passu or junior secured Indebtedness (which may also include Cash and Cash Equivalents securing other Indebtedness that is secured by a Lien on Collateral along with the Credit Facilities and/or other permitted pari passu or junior secured indebtedness), in each case, (x) whether or not held in a pledged account and (y) calculated in accordance with GAAP.

“Unrestricted Subsidiary” means (a) any subsidiary of the Borrower that is listed on Schedule 5.10 hereto or designated by the Borrower as an Unrestricted Subsidiary after the Closing Date pursuant to Section 5.10 and (b) each subsidiary of any Person described in the preceding clause (a). For the avoidance of doubt, there are no Unrestricted Subsidiaries as of the Closing Date.

“US” means the United States of America.

“U.S. Government Securities Business Day” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“US Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“US Special Resolution Regimes” has the meaning assigned to such term in Section 9.26.

“USA PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“Verona Property” means the Real Estate Asset of CAVA Foods, LLC, a Maryland limited liability company, located north of the corner of Mill Place Pkwy & Lakeview Ct., in Verona, VA 24482.

“Wholly-Owned Subsidiary” of any Person means a subsidiary of such Person, 100% of the Capital Stock of which (other than directors’ qualifying shares or shares required by Requirements of Law to be owned by a resident of the relevant jurisdiction) is owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

“Withdrawal Liability” means any liability to any Multiemployer Plan as the result of a “complete” or “partial” withdrawal by the Borrower or any Restricted Subsidiary or any ERISA Affiliate from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or
change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Term Benchmark Loan”) or by Class and Type (e.g., a “Term Benchmark Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Term Benchmark Borrowing”) or by Class and Type (e.g., a “Term Benchmark Revolving Borrowing”).

Section 1.03 Terms Generally. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.
(b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.
(c) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”
(d) The word “will” shall be construed to have the same meaning and effect as the word “shall.”
(e) The words “herein,” “hereof” and “hereunder,” and words of similar import, when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision hereof.
(f) Any definition of or reference to any agreement, instrument or other document herein or in any Loan Document shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified or extended, replaced or refinanced (subject to any restrictions or qualifications on such amendments, restatements, amendment and restatements, supplements or modifications or extensions, replacements or refinancings set forth herein).
(g) Any reference to any Requirement of Law in any Loan Document shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Requirement of Law.
(h) Any reference herein or in any Loan Document to any Person shall be construed to include such Person’s successors and permitted assigns.
(i) All references herein or in any Loan Document to Articles, Sections, clauses, paragraphs, Exhibits and Schedules shall be construed to refer to Articles, Sections, clauses and paragraphs of, and Exhibits and Schedules to, such Loan Document.
(j) In the computation of periods of time in any Loan Document from a specified date to a later specified date, the word “from” means “from and including”, the words “to” and “until” mean “to but excluding” and the word “through” means “to and including”.

(k) The words “asset” and “property”, when used in any Loan Document, shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including Cash, securities, accounts and contract rights.

(l) For purposes of determining compliance at any time with Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 and 6.09, in the event that any Affiliate transaction, Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Burdensome Agreement, Investment or Disposition, as applicable, meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of such Sections 6.01 (other than Section 6.01(a); provided that it is understood that the provisions of this Section 1.03(l) shall apply to any amount incurred in reliance on the definition of “Incremental Cap”), 6.02 (other than Section 6.02(a)), 6.04, 6.05, 6.06, 6.07 and 6.09, the Borrower, in its sole discretion, may, from time to time, classify or reclassify such transaction or item (or portion thereof) under one or more clauses of each such Section and will only be required to include the amount and type of such transaction (or portion thereof) in any one category; provided that:

(i) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or following the initial incurrence of any portion of any Indebtedness incurred under Section 6.01 (other than Section 6.01(a); provided that it is understood that the provisions of this clause (i) shall apply to any amount incurred in reliance on the definition of “Incremental Cap”) (such portion of such Indebtedness, the “Subject Indebtedness”), if any such Subject Indebtedness could, based on such financial statements, have been incurred in reliance on Section 6.01(s), such Subject Indebtedness shall automatically be reclassified as having been incurred under Section 6.01(s) and any associated Lien will be deemed to have been permitted under Section 6.02 upon any such reclassification;

(ii) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or following the making of any Investment in reliance on Section 6.06 (other than Section 6.06(aa)), if all or any portion of such Investment could, based on such financial statements, have been made in reliance on Section 6.06(aa), such Investment (or the relevant portion thereof) shall automatically be reclassified as having been made in reliance on Section 6.06(aa);

(iii) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or, following the making of any Restricted Payment under Section 6.04(a) (other than Section 6.04(a)(viii)), if all or any portion of such Restricted Payment could, based on such financial statements, have been made in reliance on Section 6.04(a)(x), such Restricted Payment (or the relevant portion thereof) shall automatically be reclassified as having been made in reliance on Section 6.04(a)(x); and

(iv) upon the date on which financial statements of the type described in Section 5.01(a) or (b) are delivered on the date of or, following the making of any Restricted Debt Payment under Section 6.04(b) (other than Section 6.04(b)(vii)), if all or any portion of such Restricted Debt Payment could, based on such financial statements, have been made in reliance on Section 6.04(b)(vii), such Restricted Debt Payment (or the relevant portion thereof) shall automatically be reclassified as having been made in reliance on Section 6.04(b)(vii).
provided, further, that it is understood and agreed that, with respect to the fourth Fiscal Quarter of any Fiscal Year, prior to the date on which financial statements of the type described in Section 5.01(b) for such Fiscal Year are delivered the Borrower may, in its sole discretion, rely on financial statements of the type described in Section 5.01(a) that are internally available to trigger the reclassification of any transaction based on the financial results as of the end of the fourth Fiscal Quarter of such Fiscal Year.

(m) It is understood and agreed that any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Burdensome Agreement, Investment, Disposition and/or Affiliate transaction need not be permitted solely by reference to one category of permitted Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Burdensome Agreement, Investment, Disposition and/or Affiliate transaction under Sections 6.01, 6.02, 6.04, 6.05, 6.06, 6.07 or 6.09, respectively, and may instead be permitted in part under any combination thereof, but the Borrower will only be required to include the amount and type of such transaction (or portion thereof) in one such category (or combination thereof). To the extent the applicability of Sections 6.07 or 6.09 with respect to any transaction is subject to a materiality threshold, such transaction shall only be required to comply with the provisions of such Sections to the extent of the amount of such transaction that is in excess of such materiality threshold.

(n) For purposes of any amount herein expressed as a percentage of Consolidated Adjusted EBITDA, “Consolidated Adjusted EBITDA”, unless the context otherwise requires, shall be deemed to refer to Consolidated Adjusted EBITDA of the Borrower and its Restricted Subsidiaries.

Section 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 First Lien Rent Adjusted Net Leverage Ratio, the Total Rent Adjusted Net Leverage Ratio, Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets shall be construed and interpreted in accordance with GAAP, as in effect from time to time; provided that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date of delivery of the financial statements described in Section 3.04(a) in GAAP or in the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change becomes effective until such notice have been withdrawn or such provision amended in accordance herewith; provided, further, that if the Borrower so requests, the Borrower and the Administrative Agent shall negotiate in good faith to enter into an amendment of the relevant affected provisions (without the payment of any amendment or similar fee to the Lenders) to preserve the original intent thereof in light of such change in GAAP or the application thereof; provided, further, that all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any subsidiary at “fair value,” as defined therein and (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.
(b) Notwithstanding anything to the contrary herein, but subject to Section 1.11, all financial ratios and tests (including the First Lien Rent Adjusted Net Leverage Ratio, the Total Rent Adjusted Net Leverage Ratio and the amount of Consolidated Total Assets, Consolidated Adjusted EBITDAR and Consolidated Adjusted EBITDA) contained in this Agreement that are calculated with respect to any Test Period during which any Subject Transaction occurs shall be calculated with respect to such Test Period and such Subject Transaction on a Pro Forma Basis. Further, if since the beginning of any such Test Period and on or prior to the date of any required calculation of any financial ratio or test (i) any Subject Transaction has occurred or (ii) any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries or any joint venture since the beginning of such Test Period has consummated any Subject Transaction, then, in each case, any applicable financial ratio or test shall be calculated on a Pro Forma Basis for such Test Period as if such Subject Transaction had occurred at the beginning of the applicable Test Period (or, in the case of Consolidated Total Assets (or with respect to any determination pertaining to the balance sheet, including the acquisition of Cash and/or Cash Equivalents), as of the last day of such Test Period) (it being understood, for the avoidance of doubt, that solely for purposes of (A) calculating actual compliance with Section 6.10(a), Section 6.10(b) or Section 6.10(c) and (B) calculating the Total Rent Adjusted Net Leverage Ratio for purposes of the definitions of “Applicable Rate”, “Ticking Fee Rate” and “Commitment Fee Rate”, in each case, the date of the required calculation shall be the last day of the Test Period, and no Subject Transaction occurring thereafter shall be taken into account).

(c) Notwithstanding anything to the contrary contained in paragraph (a) above or in the definition of “Capital Lease,”, only those leases (assuming for purposes hereof that such leases were then in existence) that would constitute Capital Leases in conformity with GAAP as in effect prior to giving effect to the adoption of ASU No. 2016-02 “Leases (Topic 842)” and ASU No. 2018-11 “Leases (Topic 842)” shall be considered Capital Leases hereunder or under any other Loan Document, and all calculations and deliverables under this Agreement or any other Loan Document shall be made, prepared or available, as applicable, in accordance therewith; provided that all financial statements required to be provided hereunder may, at the option of the Borrower, be prepared in accordance with GAAP without giving effect to the foregoing treatment of Capital Leases.

Section 1.05 Effectuation of Transactions. Each of the representations and warranties contained in the Loan Documents (and all corresponding definitions) is made after giving effect to the Transactions, unless the context otherwise requires.

Section 1.06 Timing of Payment or Performance. When payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of “Interest Period”) or performance shall extend to the immediately succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

Section 1.07 Times of Day. Unless otherwise specified herein, all references herein to times of day shall be references to Chicago time (daylight or standard, as applicable).

Section 1.08 Currency Equivalents Generally.

(a) For purposes of any determination under Article I, Article V, Article VI (other than Section 6.10(a), Section 6.10(b) and Section 6.10(c) and the calculation of compliance with any financial ratio for purposes of taking any action hereunder) or Article VII with respect to any Affiliate transaction, the amount of any Indebtedness, Lien, Restricted Payment, Restricted Debt Payment, Investment, Disposition or other transaction, event or circumstance, or any determination under any other provision of this Agreement, (any of the foregoing, a “specified transaction”), in a currency other than Dollars,
(i) the Dollar equivalent amount of a specified transaction in a currency other than Dollars shall be calculated based on the rate of exchange quoted by the Bloomberg Foreign Exchange Rates & World Currencies Page (or any successor page thereto, or in the event such rate does not appear on any Bloomberg Page, by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower) for such foreign currency, as in effect at 11:00 a.m. (London time) on the date of such specified transaction (which, in the case of any Restricted Payment, shall be deemed to be the date of the declaration thereof and, in the case of the incurrence of Indebtedness, shall be deemed to be on the date first committed); provided that, if any Indebtedness is incurred (and, if applicable, associated Lien granted) to refinance or replace other Indebtedness denominated in a currency other than Dollars, and the relevant refinancing or replacement would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing or replacement, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing or replacement Indebtedness (and, if applicable, associated Lien granted) does not exceed an amount sufficient to repay the principal amount of such Indebtedness being refinanced or replaced, except by an amount equal to (x) unpaid accrued interest and premiums (including tender premiums) thereon plus other reasonable and customary fees and expenses (including upfront fees and original issue discount) incurred in connection with such refinancing or replacement, (y) any existing commitment unutilized thereunder and (z) any additional amount permitted to be incurred under Section 6.01 and (ii) for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred solely as a result of a change in the rate of currency exchange occurring after the time of any specified transaction so long as such specified transaction was permitted at the time incurred, made, acquired, committed, entered or declared as set forth in clause (i).

For purposes of Section 6.10(a), Section 6.10(b), Section 6.10(c) and the calculation of compliance with any financial ratio for purposes of taking any action hereunder, on any relevant date of determination, amounts denominated in currencies other than Dollars shall be translated into Dollars at the applicable currency exchange rate used in preparing the financial statements delivered pursuant to Sections 5.01(a) or (b) (or, prior to the first such delivery, the financial statements referred to in Section 3.04), as applicable, for the relevant Test Period and will, with respect to any Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of any Hedge Agreement permitted hereunder in respect of currency exchange risks with respect to the applicable currency in effect on the date of determination for the Dollar equivalent amount of such Indebtedness; provided that the amount of any Indebtedness that is subject to a Debt FX Hedge shall be determined in accordance with the definition of “Consolidated Total Debt”. Notwithstanding the foregoing or anything to the contrary herein, to the extent that the Borrower would not be in compliance with Section 6.10(a), Section 6.10(b) and/or Section 6.10(c) if any Indebtedness denominated in a currency other than Dollars were to be translated into Dollars on the basis of the applicable currency exchange rate used in preparing the financial statements delivered pursuant to Section 5.01(a) or (b), as applicable, for the relevant Test Period, but would be in compliance with Section 6.10(a), Section 6.10(b) or Section 6.10(c), as applicable, if such Indebtedness that is denominated in a currency other than in Dollars were instead translated into Dollars on the basis of the average relevant currency exchange rates over such Test Period (taking into account the currency translation effects, determined in accordance with GAAP, of any Hedge Agreement permitted hereunder in respect of currency exchange risks with respect to the applicable currency in effect on the date of determination for the Dollar equivalent amount of such Indebtedness), then, solely for purposes of compliance with Section 6.10(a), Section 6.10(b) or Section 6.10(c), as applicable, the Total Rent Adjusted Net Leverage Ratio as of the last day of such Test Period shall be calculated on the basis of such average relevant currency exchange rates; provided that the amount of any Indebtedness that is subject to a Debt FX Hedge shall be determined in accordance with the definition of “Consolidated Total Debt”.

(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, renewes or refinances, any of its then-existing Loans with Incremental Loans, Loans in connection with any Revolver Replacement Facility, 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  Interest Rates; Benchmark Notifications. The interest rate on a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.14(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.11  Certain Calculations and Tests.

(a)  Notwithstanding anything to the contrary herein, to the extent that the terms of this Agreement require (i) compliance with any financial ratio or test (including Section 6.10(a), Section 6.10(b), Section 6.10(c), any First Lien Rent Adjusted Net Leverage Ratio test, any Total Rent Adjusted Net Leverage Ratio test and/or any Fixed Charge Coverage Ratio test) and/or any cap expressed as a percentage of Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets, (ii) the absence of a Default or Event of Default (or any type of Default or Event of Default), (iii) the making or accuracy of any representation and/or warranty or (iv) compliance with availability under any basket or cap (including any basket or cap expressed as a percentage of Consolidated Adjusted EBITDA or Consolidated Total Assets), in each case, a condition to (A) the consummation of any transaction in connection with any acquisition or similar Investment (including the assumption or incurrence of Indebtedness), (B) the making of any Restricted Payment and/or (C) the making of any Restricted Debt Payment, the determination of whether the relevant condition is satisfied may be made, at the election of the Borrower, (1) in the case of any acquisition or similar Investment (including with respect to any Indebtedness contemplated, assumed or incurred in connection therewith), at the time of
(or on the basis of the financial statements for the most recently ended Test Period at the time of) either (x) the execution of the definitive agreement with respect to such acquisition or Investment, (y) in connection with an acquisition to which the United Kingdom City Code or Takeover and Mergers (or any comparable Requirement of Law) applies, the date on which a “Rule 2.7 announcement” of a firm intention to make an offer in respect of the target of an acquisition (or equivalent notice under comparable Requirements of Law) or (z) the consummation of such acquisition or Investment, (2) in the case of any Restricted Payment (including with respect to any Indebtedness contemplated or incurred in connection therewith), at the time of

(or on the basis of the financial statements for the most recently ended Test Period at the time of) either (x) the declaration of such Restricted Payment or (y) the making of such Restricted Payment and (3) in the case of any Restricted Debt Payment (including with respect to any Indebtedness contemplated or incurred in connection therewith), at the time of (or on the basis of the financial statements for the most recently ended Test Period at the time of) either (x) delivery of irrevocable (which may be conditional) notice with respect to such Restricted Debt Payment or (y) the making of such Restricted Debt Payment, in each case, after giving effect, on a Pro Forma Basis, to (I) the relevant acquisition, Investment, Restricted Payment, Restricted Debt Payment and/or any related Indebtedness (including the intended use of proceeds thereof) and (II) to the extent definitive documents in respect thereof have been executed, the Restricted Payment has been declared or delivery of notice with respect to a Restricted Debt Payment has been delivered (which definitive documents, declaration or notice has not terminated or expired without the consummation thereof), any other Subject Transaction that the Borrower has elected to treat in accordance with this clause (a).

(b) For purposes of determining the permissibility of any action, change, transaction or event that requires a calculation of any financial ratio or test (including Section 6.10(a), Section 6.10(b), Section 6.10(c), any First Lien Rent Adjusted Net Leverage Ratio test, any Total Rent Adjusted Net Leverage Ratio test and/or any Fixed Charge Coverage Ratio test, and/or the amount of Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets), such financial ratio or test shall be calculated (subject to clause (a) above) at the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such financial ratio or test or amount occurring after such calculation, or after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be.

(c) Notwithstanding anything to the contrary herein, with respect to any amount incurred or transaction entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including any First Lien Rent Adjusted Net Leverage Ratio test, anyFixed Charge Coverage Ratio test and/or any Total Rent Adjusted Net Leverage Ratio test) (any such amount, including any such amount drawn or deemed to have been drawn under any revolving credit facility and, for the avoidance of doubt, any amount that is expressed as a percentage of Consolidated Adjusted EBITDA, Consolidated Adjusted EBITDAR or Consolidated Total Assets, a “Fixed Amount”) substantially concurrently with any amount incurred or transaction entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with a financial ratio or test (including Section 6.10(a), Section 6.10(b), Section 6.10(c), any First Lien Rent Adjusted Net Leverage Ratio test, any Secured Rent Adjusted Net Leverage Ratio test, any Fixed Charge Coverage Ratio test and/or any Total Rent Adjusted Net Leverage Ratio test) (any such amount, an “Incurrence-Based Amount”), it is understood and agreed that (i) any Fixed Amount shall be disregarded in the calculation of the financial ratio or test applicable to the relevant Incurrence-Based Amount and (ii) except as provided in the preceding clause (i), pro forma effect shall be given to the entire transaction. The Borrower may elect that any amount incurred or transaction entered into (or consummated) in reliance on one or more of any Incurrence-Based Amount or any Fixed Amount in its sole discretion; provided that, unless the Borrower elects otherwise, each such amount or transaction

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shall be deemed incurred, entered into or consummated first under any Incurrence-Based Amount to the maximum extent permitted thereunder.

(d) The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

(e) The increase in any amount secured by any Lien by virtue of the accrual of interest, the accretion of accreted value, the payment of interest or a dividend in the form of additional Indebtedness, amortization of original issue discount and/or any increase in the amount of Indebtedness outstanding solely as a result of any fluctuation in the exchange rate of any applicable currency will not be deemed to be the creation, incurrence, assumption, or the permission or sufferance to exist of a Lien for purposes of Section 6.02.

(f) With respect to any pro forma calculation that is required to be made in connection with any acquisition or similar Investment in respect of which financial statements for the applicable target are not available for the same Test Period for which financial statements of the Borrower are available, the Borrower shall make the relevant calculation on the basis of the relevant available financial statements (even if for differing periods) or such other commercially reasonable basis as the Borrower may elect.

(g) In connection with the implementation or assumption of any revolving commitment and/or any delayed draw commitment (in each case, other than any such commitment implemented pursuant to Section 2.22) in reliance on any Incurrence-Based Amount, the Borrower may, in its sole discretion elect to, by written notice to the Administrative Agent (a “Specified Commitment Notice”), either (a) treat all or any portion of such revolving commitment and/or delayed draw commitment as having been fully drawn on the date of implementation or assumption (such commitment (or portion thereof), a “Specified Commitment”), in which case (i) the Borrower shall not be required to comply with any financial ratio or test in connection with any drawing thereunder after the date of incurrence or assumption and (ii) other than for purposes of (A) the Applicable Rate, (B) the Commitment Fee Rate, (C the Ticking Fee Rate and/or (ED) actual compliance with Section 6.10(a), Section 6.10(b), Section 6.10(c), the amount of such Specified Commitment shall be deemed to have been an actual incurrence of Indebtedness thereunder on the date of implementation or assumption for purposes of calculating any Incurrence-Based Amount or (b) test the permissibility of all or any portion of any drawing under such revolving commitment and/or delayed draw commitment on the date of such drawing (if any), in which case, such revolving commitment and/or delayed draw commitment (or portion thereof) shall only be treated as drawn for purposes of any Incurrence-Based Amount to the extent of any actual drawing thereunder that is outstanding at the applicable time of determination. It is understood and agreed that the Borrower may, at any time in its sole discretion, (x) deliver a Specified Commitment Notice with respect to any revolving commitment and/or delayed draw commitment and/or (y) withdraw any Specified Commitment Notice with respect to all or any portion of any revolving commitment and/or delayed draw commitment and instead elect to treat such revolving commitment and/or delayed draw commitment in accordance with clause (a) or (b) of the immediately preceding sentence.

(h) It is understood and agreed that the Borrower and/or any Restricted Subsidiary may incur Indebtedness permitted under any provision of Section 6.01 to refinance Indebtedness originally incurred under the same provision of Section 6.01 while the Indebtedness being refinanced remains outstanding so long as the proceeds of the applicable refinancing Indebtedness are promptly deposited with the trustee or other applicable representative of the holders of the Indebtedness being refinanced, which proceeds will be applied to satisfy and discharge the Indebtedness being refinanced in accordance with the documentation governing such Indebtedness.
Section 1.12 Certain Determinations.

(a) With respect to determination of the permissibility of any transaction by the Borrower and/or any subsidiary under this Agreement, (i) the delivery by the Borrower of a third party valuation report from (A) a nationally recognized accounting, appraisal, investment banking or consulting firm or (B) another firm reasonably acceptable to the Administrative Agent, in each case, shall be conclusive with respect to the value of the assets covered thereby and (ii) any determination of whether an action is taken “in the ordinary course of business” or “in a manner consistent with past practice” (or, in either case, any similar expression) shall be made by the Borrower in good faith.

(b) It is understood and agreed for the avoidance of doubt that the carve-outs from the provisions of Article VI may include items or activities that are not restricted by the relevant provision and the inclusion of such items or activities shall not be construed to expand the scope of Article VI, as applicable.

Section 1.13 Conflicts. In the event of any conflict or inconsistency between any term or provision of this Agreement (excluding the Exhibits hereto) and any term or provision of any Exhibit to this Agreement, the term or provision of this Agreement shall govern, and the Borrower shall be entitled to make such revisions to the relevant term or provision of the applicable Exhibit to ensure that such term or provision is consistent with the corresponding term or provision of this Agreement.

Section 1.14 Confidentiality; Privilege, Etc. Notwithstanding any obligation to provide information under any Loan Document or allow the Administrative Agent, the Lenders or any third party to access or inspect the books and records of the Borrower or its subsidiaries or otherwise as set forth in this Agreement or any other Loan Document, none of the Borrower or any of its subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (a) that constitutes a non-financial trade secret or non-financial proprietary information of any Person, (b) in respect of which disclosure to the Administrative Agent or any Lender (or any of their respective Representatives) is prohibited by applicable Requirements of Law, (c) that is subject to attorney-client or similar privilege or constitutes attorney work product and/or (d) in respect of which the Borrower and/or any of its subsidiaries owes confidentiality obligations to any Person (provided that such confidentiality obligations were not entered into in contemplation of the requirements of the Loan Documents); provided that, in the event that such information has not been provided in reliance on clauses (c) and/or (d) above, notice that information is being withheld on such basis must be provided to the Administrative Agent.

ARTICLE II

THE CREDITS

Section 2.01 Commitments.

(a) Subject to the terms and conditions set forth herein, each Initial Revolving Lender severally, and not jointly, agrees to make revolving loans (the “Initial Revolving Loans”) to the Borrower in Dollars at any time and from time to time on and after the Closing Date, and until the earlier of the Initial Revolving Credit Maturity Date and the termination of the Initial Revolving Credit Commitment of such Initial Revolving Lender in accordance with the terms hereof; provided that, after giving effect to any Borrowing of Initial Revolving Loans, the Outstanding Amount of such Initial Revolving Lender’s Initial Revolving Credit Exposure shall not exceed such Initial Revolving Lender’s Initial Revolving Credit Commitment. Within the foregoing limits and subject to the terms, conditions and limitations set forth herein, Revolving Loans may consist of ABR Loans, Term Benchmark Loans (or, if after the
effectiveness of a Benchmark Replacement, RFR Loans), or a combination thereof, and may be borrowed, paid, repaid and reborrowed.

(b) Subject to the terms and conditions of this Agreement and any applicable Refinancing Amendment, Extension Amendment, or Incremental Facility Amendment, each Lender with an Additional Commitment of a given Class, severally and not jointly, agrees to make Additional Loans of such Class to the Borrower, which Loans shall not exceed for any such Lender at the time of any incurrence thereof the Additional Commitment of such Class of such Lender as set forth in the applicable Refinancing Amendment, Extension Amendment or Incremental Facility Amendment.

(c) Subject to the terms and conditions set forth herein, each Delayed Draw Term Lender severally (and not jointly) agrees to make a Delayed Draw Term Loan in Dollars to the Borrower, in up to five (5) drawings during the Delayed Draw Term Loan Availability Period, in an aggregate principal amount not to exceed such Lender’s unused Delayed Draw Term Loan Commitment at such time. Amounts prepaid or repaid in respect of Delayed Draw Term Loans may not be reborrowed.

Section 2.02 Loans and Borrowings.

(a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the applicable Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender’s failure to make Loans as required. Each Swingline Loan shall be made in accordance with the terms and procedures set forth in Section 2.04. The Delayed Draw Term Loans shall amortize as set forth in Section 2.10.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Term Benchmark Loans (or, if after the effectiveness of a Benchmark Replacement, RFR Loans) as the Borrower may request in accordance herewith; provided that each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Term Benchmark 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 Term Benchmark Loan shall be deemed to have been made and held by such Lender, and the obligation of the Borrower to repay such Term Benchmark Loan shall nevertheless be to such Lender for the account of such domestic or foreign branch or Affiliate of such Lender and (iii) in exercising such option, such Lender shall use reasonable efforts to minimize increased costs to the Borrower resulting therefrom (which obligation of such Lender shall not require it to take, or refrain from taking, actions that it determines would result in increased costs for which it will not be compensated hereunder or that it otherwise determines would be disadvantageous to it and in the event of such request for costs for which compensation is provided under this Agreement, the provisions of Section 2.15 shall apply); provided, further, that no such domestic or foreign branch or Affiliate of such Lender shall be entitled to any greater indemnification under Section 2.17 in respect of any US federal withholding tax with respect to such Term Benchmark 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 Term Benchmark Borrowing, such Term Benchmark Borrowing (or, if after the effectiveness of a Benchmark Replacement, RFR Borrowing) shall comprise an aggregate principal amount that is an integral multiple of $100,000 and not less than $500,000. Each ABR Borrowing when made shall be in a minimum principal amount of
provided that an ABR Revolving Loan Borrowing may be made in a lesser aggregate amount that is (x) equal to the entire aggregate unused Revolving Credit Commitment or (y) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(d). Each Delayed Draw Term Loan shall be in an aggregate amount that is an integral multiple of $1,000,000 and not less than $5,000,000. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of 10 different Interest Periods in effect for Term Benchmark Borrowings at any time outstanding (or such greater number of different Interest Periods as the Administrative Agent may agree from time to time).

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not, nor shall it be entitled to, request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date applicable to the relevant Loans.

Section 2.03 Requests for Borrowings. Each Revolving Loan Borrowing, each conversion of Revolving Loans from one Type to the other, and each continuation of Term Benchmark Loans shall be made upon irrevocable notice by the Borrower to the Administrative Agent, which may be given by a Borrowing Request or an Interest Election Request, as applicable (provided that any notice in respect of any Revolving Loan Borrowing (x) to be made on the Closing Date may be conditioned on the occurrence of the Closing Date, (y) to be made in connection with any acquisition, investment or repayment or redemption of Indebtedness may be conditioned on the closing of such Permitted Acquisition, permitted Investment or permitted repayment or redemption of Indebtedness or (z) for any other purpose to which the Administrative Agent may consent (such consent not to be unreasonably withheld or delayed), may be conditioned on the occurrence of the relevant event). Each such notice must be in the form of a Borrowing Request or an Interest Election Request, as applicable, appropriately completed and signed by a Responsible Officer of the Borrower and must be received by the Administrative Agent (by hand delivery or other electronic transmission (including “.pdf” or “.tif”)) not later than (i) 10:00 a.m. three Business Days prior to the requested day of any Borrowing of, conversion to or continuation of Term Benchmark Loans (or, if after the effectiveness of a Benchmark Replacement, five Business Days prior to the requested day of any Borrowing of, conversion to or continuation of RFR Loans) (or one Business Day in the case of any Borrowing of Term Benchmark Loans to be made on the Closing Date) and (ii) 12:00 p.m. on the requested date of any Borrowing of or conversion to ABR Loans (other than Swingline Loans) (or, in each case, such later time as is reasonably acceptable to the Administrative Agent); provided, however, that if the Borrower wishes to request Term Benchmark Loans having an Interest Period other than one, three or six months in duration or such shorter period as provided in the definition of “Interest Period”, (A) the applicable notice from the Borrower must be received by the Administrative Agent not later than 12:00 p.m. four Business Days prior to the requested date of the relevant Borrowing, conversion or continuation (or such later time as is reasonably acceptable to the Administrative Agent), whereupon the Administrative Agent shall give prompt notice to the appropriate Lenders of such request, (B) the relevant requested Interest Period shall be deemed to be available to each appropriate Lender unless such Lender has delivered written notice to the Administrative Agent indicating that such Interest Period is not available to such Lender within one Business Day following the date on which the notice described in clause (A) above is posted by the Administrative Agent and (C) not later than 10:00 a.m. three Business Days before the requested date of the relevant Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower whether or not the requested Interest Period is available to the appropriate Lenders.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration. The Administrative Agent shall advise each applicable 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 Term Benchmark Borrowing (or, if after the effectiveness of a Benchmark Replacement, RFR Borrowing), no later than one Business Day following receipt of a Borrowing Request in accordance with this Section.

This Section 2.03 shall not apply to Swingline Loans, which shall be requested in accordance with Section 2.04 and may not be continued or converted.

Section 2.04 Swingline Loans.

(a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make swingline loans ("Swingline Loans") to the Borrower from time to time on and after the Closing Date and until the Latest Revolving Credit Maturity Date, in an aggregate principal amount at any time outstanding not to exceed $5,000,000; provided that (i) the Swingline Lender shall not be required to make any Swingline Loan to refinance any outstanding Swingline Loan and (ii) after giving effect to any Swingline Loan, the aggregate Outstanding Amount of all Revolving Loans, Swingline Loans and LC Exposure shall not exceed the Total Revolving Credit Commitment. Each Swingline Loan shall be in a minimum principal amount of not less than $50,000 or such lesser amount as may be agreed by the Swingline Lender; provided that, notwithstanding the foregoing, any Swingline Loan may be in an aggregate amount that is (1) equal to the entire unused balance of the aggregate unused Revolving Credit Commitments or (2) required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(d). Within the foregoing limits and subject to the terms and conditions set forth herein, Swingline Loans may be borrowed, prepaid and reborrowed.

To request a Swingline Loan, the Borrower shall notify the Swingline Lender (with a copy to the Administrative Agent) of such request by delivery of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of the Borrower, not later than 12:00 p.m. on the day of a proposed Swingline Loan. The Swingline Lender shall make each Swingline Loan available to the Borrower on the same Business Day by means of a credit to the account designated in the related Borrowing Request or otherwise in accordance with the instructions of the Borrower (including, in the case of a Swingline Loan made to finance the reimbursement of any LC Disbursement as provided in Section 2.05(e), by remittance to the applicable Issuing Bank).

(b) The Swingline Lender may by written notice given to the Administrative Agent (and in any event, if such notice is received by 11:00 a.m. on a Business Day, no later than 12:00 p.m. on such Business Day and if received after 11:00 a.m. on the immediately succeeding Business Day on any Business Day) on any Business Day require the Revolving Lenders to purchase a participation on the Business Day following receipt of such notice in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which the Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Revolving Lender’s Applicable Revolving Credit Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender’s Applicable Revolving Credit Percentage of such Swingline Loan or Swingline Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or any reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by effecting a wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Revolving Loans made by such Revolving
Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders pursuant to this Section 2.04(b)), and the Administrative Agent shall promptly remit to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower of any participation in any Swingline Loan acquired pursuant to this Section 2.04(b), and thereafter any payment in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower in respect of any Swingline Loan after receipt by the Swingline Lender of the proceeds of any sale of participations therein shall be promptly remitted by the Swingline Lender to the Administrative Agent, and any such amount received by the Swingline Lender shall be promptly remitted by the Administrative Agent to each Revolving Lender that has made its payment pursuant to this Section 2.04(b) and to the Swingline Lender, as their interests may appear; provided that if and to the extent such payment is required to be funded to the Borrower for any reason, such payment shall be repaid to the Swingline Lender or the Administrative Agent, as the case may be, and thereafter to the Borrower. The purchase of participations in a Swingline Loan pursuant to this Section 2.04(b) shall not relieve the Borrower of any default in the payment thereof.

(c) If any Revolving Lender fails to make available to the Administrative Agent (for the account of the Swingline Lender) any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.04 by the time specified in Section 2.04(b), the Swingline Lender shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the greater of the Federal Funds Effective Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the Swingline Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amount owing under this clause (c) shall be conclusive absent manifest error.

Section 2.05 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, (i) each Issuing Bank agrees, in each case in reliance upon the agreements of the other Revolving Lenders set forth in this Section 2.05, (A) from time to time on any Business Day during the period from the Closing Date to the fifth Business Day prior to the Latest Revolving Credit Maturity Date, upon the request of the Borrower, to issue Letters of Credit, issued on sight basis only on behalf of the Borrower and/or any of its subsidiaries (provided that the Borrower will be the applicant) and to amend or renew any Letter of Credit previously issued by it, in accordance with Section 2.05(b), and (B) to honor any draft under any Letter of Credit; provided that no Issuing Bank shall be required to issue any Letter of Credit if (x) the Stated Amount of such Letter of Credit, taken together with the aggregate Stated Amount of all other then-outstanding Letters of Credit then issued by such Issuing Bank would exceed such Issuing Bank’s Letter of Credit Commitment or (y) the issuance of such Letter of Credit would violate any policies or procedures of such Issuing Bank applicable to letters of credit generally and consistently applied by such Issuing Bank to similarly situated borrowers, and (ii) each Revolving Lender severally agrees to participate in each Letter of Credit as provided in Section 2.05(d). It is understood and agreed that no Issuing Bank shall be required (but shall be permitted) to issue any Letter of Credit that (x) is not denominated in Dollars, (y) has a face amount that is less than $50,000 and (z) if (1) any order, judgment or decree of any Governmental Authority with jurisdiction over such Issuing Bank shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or direct that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or (2) the issuance of
such Letter of Credit would violate one or more policies to such Issuing Bank now or hereafter applicable to similarly situated borrowers under comparable credit facilities and letters of credit generally.

(i) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of any Letter of Credit, the Borrower shall deliver to the applicable Issuing Bank and the Administrative Agent, at least three Business Days in advance of the requested date of issuance (or such shorter period as is acceptable to the applicable Issuing Bank), a Letter of Credit Request (it being understood that, to the extent applicable, the issuance of any Letter of Credit expressly for the benefit of any subsidiary that is not a Loan Party shall be contingent upon the Administrative Agent’s receipt of any documentation and other information with respect to such subsidiary that has not been previously provided with respect to any Loan Party, that is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, and reasonably requested by the applicable Issuing Bank at least three Business Days prior to the requested date of issuance). To request an amendment, extension or renewal of an outstanding Letter of Credit, (other than any automatic extension of a Letter of Credit permitted under Section 2.05(c)) the Borrower shall submit a Letter of Credit Request to the applicable Issuing Bank or Issuing Banks selected by the Borrower (with a copy to the Administrative Agent) at least three Business Days in advance of the requested date of amendment, extension or renewal (or such shorter period as is acceptable to the applicable Issuing Bank), identifying the Letter of Credit to be amended, extended or renewed, and specifying the proposed date (which shall be a Business Day) and other details of the amendment, extension or renewal. If requested by the applicable Issuing Bank in connection with any request for any Letter of Credit, the Borrower also shall submit a letter of credit application on such Issuing Bank’s standard form. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. No Letter of Credit, letter of credit application or other document entered into by the Borrower with any Issuing Bank relating to any Letter of Credit shall contain any representation or warranty, covenant or event of default not set forth in this Agreement (and to the extent any representation or warranty, covenant or event of default in any letter of credit application or any such other document is inconsistent herewith, the same shall be rendered null and void (or reformed automatically without further action by any Person to conform to the terms of this Agreement), and all representations and warranties, covenants and events of default set forth therein shall contain standards, qualifications, thresholds and exceptions for materiality or otherwise consistent with those set forth in this Agreement (and, to the extent any representation or warranty, covenant or event of default in any letter of credit application or any such other document is inconsistent herewith, the same shall be deemed to automatically incorporate the applicable standards, qualifications, thresholds and exceptions set forth herein without action by any Person)). No Letter of Credit may be issued, amended, extended or renewed unless (and with respect to clauses (i) and (ii) below, upon the issuance, amendment, extension or renewal of each Letter of Credit, the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, or renewal (i) the LC Exposure does not exceed the Letter of Credit Sublimit, and (ii) (A) the aggregate amount of the Initial Revolving Credit Exposure shall not exceed the aggregate amount of the Initial Revolving Credit Commitments then in effect, (B) the aggregate amount of the Additional Revolving Credit Exposure attributable to any Class of Additional Revolving Credit Commitments does not exceed the aggregate amount of the Additional Revolving Credit Commitments of such Class then in effect and (C) if such Letter of Credit has a term that extends beyond the Maturity Date applicable to the Revolving Credit Commitments of any Class, the aggregate amount of the LC Exposure attributable to Letters of Credit expiring after such
Maturity Date (1) does not exceed the aggregate amount of the Revolving Credit Commitments then in effect that are scheduled to remain in effect after such Maturity Date or (2) is subject to Letter of Credit Support.

(b) **Expiration Date.** No Letter of Credit shall expire later than the earlier of (A) the date that is one year after the date of the issuance of such Letter of Credit (or such later date to which the applicable Issuing Bank may agree) and (B) the date that is five Business Days prior to the Latest Revolving Credit Maturity Date; provided that any Letter of Credit may provide for the automatic extension thereof for any number of additional periods of up to one year in duration (which additional periods shall not extend beyond the date referred to in the preceding clause (B) unless such Letter of Credit is subject to Letter of Credit Support).

(c) **Participations.** By the issuance of any Letter of Credit (or an amendment to any Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, the applicable Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender’s Applicable Revolving Credit Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, such Lender’s Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (d) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(d) **Reimbursement.**

(i) If the applicable Issuing Bank makes any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 11:00 a.m. on (i) the Business Day that the Borrower receives notice of such LC Disbursement under paragraph (f) of this Section, if such notice is received prior to 9:00 a.m. on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is received after 9:00 a.m. on the day of receipt, (provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Revolving Loan Borrowing in an equivalent amount (any such Revolving Loan Borrowing, a “Letter of Credit Reimbursement Loan”), and, to the extent so financed, the obligation of the Borrower to make such payment shall be discharged and replaced by the resulting Borrowing (it being understood and agreed that the Borrower may also request a Swingline Loan to reimburse such LC Disbursement in accordance with Section 2.04, subject, in the case of any such Swingline Loan, to the satisfaction of the applicable conditions set forth in Section 4.02). If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Revolving Lender’s Applicable Revolving Credit Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Revolving Credit Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made
by such Revolving Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Revolving Lenders and such Issuing Bank as their interests may appear.

(ii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the applicable Issuing Bank any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this Section 2.05(d) by the time specified therein, such Issuing Bank shall be entitled to recover from such Revolving Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate per annum equal to the greater of the Federal Funds Effective Rate from time to time in effect and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A certificate of the applicable Issuing Bank submitted to any Revolving Lender (through the Administrative Agent) with respect to any amount owing under this clause (ii) shall be conclusive absent manifest error.

(e) Obligations Absolute. The obligation of the Borrower to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute and unconditional and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the applicable Issuing Bank under any Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the obligations of the Borrower hereunder. Neither the Administrative Agent, the Revolving Lenders nor any Issuing Bank, nor any of their respective Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such Issuing Bank; provided that the foregoing shall not be construed to excuse such Issuing Bank from liability to the Borrower to the extent of any direct damages suffered by the Borrower that are caused by such Issuing Bank’s failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of applicable Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to any document presented which appears on its face to be in substantial compliance with the terms of any Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such document without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such document if such document is not in strict compliance with the terms of such Letter of Credit.
(f) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. After such examination and provided that the documents received are compliant with the terms and conditions of the applicable Letter of Credit, such Issuing Bank shall promptly notify the Administrative Agent and the Borrower by electronic means upon any LC Disbursement thereunder; provided that no failure to give or delay in giving such notice shall relieve the Borrower of its obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(g) Interim Interest. If any Issuing Bank makes any LC Disbursement, then unless the Borrower reimburses such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement (or the date on which such LC Disbursement is reimbursed with the proceeds of Loans, as applicable), at the rate per annum then applicable to Initial Revolving Loans that are ABR Loans; provided that if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (d) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (d) of this Section to reimburse such Issuing Bank shall be for the account of such Revolving Lender to the extent of such payment and shall be payable on the date on which the Borrower is required to reimburse the applicable LC Disbursement in full (and, thereafter, on demand).

(h) Replacement or Resignation of an Issuing Bank; Designation of New Issuing Banks. Any Issuing Bank may be replaced with the consent of the Administrative Agent (not to be unreasonably withheld or delayed) and the Borrower at any time by written agreement among the Borrower, the Administrative Agent and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of an Issuing Bank. At the time any such replacement becomes effective, unless otherwise agreed by the replaced Issuing Bank, the Borrower shall pay all unpaid fees accrued prior to such date for the account of the replaced Issuing Bank pursuant to Section 2.12(b)(ii). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term “Issuing Bank” shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of any Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(i) The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and the relevant Revolving Lender, designate one or more additional Revolving Lenders to act as an issuing bank under the terms of this Agreement. Any Revolving Lender designated as an issuing bank pursuant to this paragraph (i) who agrees in writing to such designation shall be deemed to be an “Issuing Bank” (in addition to being a Revolving Lender) in respect of Letters of Credit issued or to be issued by such Revolving Lender in respect of its Letter of Credit Commitment (the amount of which Letter of Credit Commitment shall be specified in the agreement pursuant to which such Revolving Lender becomes an Issuing Bank), and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Bank and such Revolving Lender; provided that, for the avoidance of doubt, it is understood and agreed that the Letter of Credit Commitments of the other Issuing Banks shall not be reduced or otherwise be affected by the appointment of any additional Revolving Lender as an Issuing Bank pursuant to this
paragraph (i); provided further that notwithstanding anything to the contrary contained herein, this Agreement may be amended to give effect to such appointment with the consent of the Borrower, the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and such Issuing Bank being appointed in accordance with this Section 2.05(h), which amendment may determine the face amount of Letters of Credit required to be issued by such Issuing Bank, and the consent of no other Lender shall be required therefor.

(ii) Notwithstanding anything to the contrary contained herein, each Issuing Bank may, upon 30 days’ prior written notice to the Borrower, each other Issuing Bank and the Lenders, resign as Issuing Bank, which resignation shall be effective as of the date referenced in such notice (but in no event less than 30 days (or such later date as the relevant Issuing Bank may agree) after the delivery of such written notice); provided that the effectiveness of such resignation shall be conditioned on and subject to the appointment of a replacement Issuing Bank reasonably satisfactory to the Borrower who agrees to assume the entire Letter of Credit Commitment of the resigning Issuing Bank, and no such resignation shall become effective unless and until such replacement Issuing Bank has accepted such appointment and agreed to provide such Letter of Credit Commitment on terms acceptable to the Borrower; provided, further, that it is understood and agreed that in the event of any such resignation, any Letter of Credit then outstanding shall remain outstanding (irrespective of whether any amount have been drawn at such time). In the event of any such resignation of any Issuing Bank, the Borrower shall be entitled, but shall not be obligated, to appoint another Revolving Lender that is willing, in its sole discretion to accept such appointment in writing as successor Issuing Bank in respect of such resigning Issuing Bank; it being understood that the resignation of any such Issuing Bank shall not be effective in the event of a failure to appoint any such successor Issuing Bank and/or a failure of any Revolving Lender to accept such appointment as Issuing Bank. Upon the acceptance of any appointment as Issuing Bank hereunder, the successor Issuing Bank shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Issuing Bank, and the retiring Issuing Bank shall be discharged from its duties and obligations in such capacity hereunder.

(i) Cash Collateralization.

(i) If any Event of Default exists and the Loans have been declared due and payable in accordance with Article VII hereof, then on the Business Day following the date on which the Borrower receives notice from the Administrative Agent (at the direction of the Required Majority in Interest of Revolving Lenders) demanding the deposit of Cash collateral pursuant to this paragraph (i), the Borrower shall deposit (or shall cause to be deposited), in an interest-bearing account with the Administrative Agent, for the benefit of the Revolving Lenders (the “LC Collateral Account”), an amount in Cash equal to 102% of the LC Exposure as of such date (minus the amount then on deposit in the LC Collateral Account); provided that the obligation to deposit such Cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 7.01(f) or (g).

(ii) Any such deposit under clause (i) above shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations in accordance with the provisions of this paragraph (i). The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account, and the Borrower hereby grants the Administrative Agent, for the benefit of the Secured Parties, a first priority security interest in the LC Collateral Account. Interest or profits, if any, on such
investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Majority in Interest of Revolving Lenders) be applied to satisfy other Secured Obligations. If the Borrower is required to provide an amount of Cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (together with all interest and other earnings with respect thereto, to the extent not applied as aforesaid) shall be returned to the Borrower promptly (but in no event later than three Business Days) after such Event of Default has been cured or waived.

(j) Reporting. (i) Not later than the third Business Day following the last day of each month and at each issuance of a Letter of Credit (or at such other intervals as the Administrative Agent and the applicable Issuing Bank shall agree), each Issuing Bank shall provide to the Administrative Agent a schedule of the Letters of Credit issued by it, and (ii) at each issuance of a Letter of Credit, the applicable Issuing Bank shall provide to the Administrative Agent a description of such Letter of Credit, in each case, in form and substance reasonably satisfactory to the Administrative Agent, showing the date of issuance of each (or such) Letter of Credit, the account party, the original face amount (if any), the expiration date, and the reference number of any Letter of Credit outstanding at any time during such month (or of such Letter of Credit, as applicable), and showing the aggregate amount (if any) payable by the Borrower to such Issuing Bank during such month (or with respect to such Letter of Credit, as applicable).

Section 2.06 [Reserved].

Section 2.07 Funding of Borrowings.

(a) Each Lender shall make (x) each Loan to be made by it hereunder available to the Administrative Agent not later than 2:00 p.m on the Business Day specified in the applicable Borrowing Request by wire transfer of immediately available funds to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender’s respective Applicable Percentage; provided that Swingline Loans shall be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received on the same Business Day, in like funds, to the account designated in the relevant Borrowing Request or as otherwise directed by the Borrower; provided that ABR Revolving Loans made to finance the reimbursement of any LC Disbursement as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent has received notice from any Lender that such Lender will not make available to the Administrative Agent such Lender’s share of any Borrowing prior to the proposed date of such Borrowing (or, in the case of any Borrowing of ABR Loans, prior to 2:00 p.m on the date of such Borrowing), the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if any Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on
interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to Loans comprising such Borrowing at such time. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender’s Loan included in such Borrowing and the obligation of the Borrower to repay the Administrative Agent such corresponding amount pursuant to this Section 2.07(b) shall cease. If the Borrower pays such amount to the Administrative Agent, the amount so paid shall constitute a repayment of such Borrowing by such amount. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower or any other Loan Party may have against any Lender as a result of any default by such Lender hereunder.

Section 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 Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert any Borrowing denominated in Dollars to a Borrowing of a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders based upon their Applicable Percentages and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Loans, which may not be a Term Benchmark Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall deliver an Interest Election Request, appropriately completed and signed by a Responsible Officer of the Borrower, to the Administrative Agent in accordance with Section 2.03. If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(c) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each applicable Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

(d) If the Borrower fails to deliver (or cause to be delivered) a timely Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, such Borrowing shall be converted at the end of such Interest Period to an ABR Borrowing.

Section 2.09 Termination and Reduction of Commitments.

(a) Unless previously terminated, (i) the Initial Revolving Credit Commitments shall automatically terminate on the Initial Revolving Credit Maturity Date, and (ii) the Delayed Draw Term Loan Commitments shall terminate on a Dollar-for-Dollar basis with and upon any funding of the Delayed Draw Term Loans (immediately after giving effect to any such funding) and, unless previously terminated, all unused Delayed Draw Term Loan Commitments shall terminate at 5:00 p.m. New York City time, on the date on which the Delayed Draw Term Loan Availability Period expires, and (iii) the Additional Revolving Credit Commitments of any Class shall automatically terminate on the Maturity Date specified therefor in the applicable Refinancing Amendment, Extension Amendment or Incremental Facility Amendment, as applicable.

(b) Upon delivery of the notice required by Section 2.09(c), the Borrower may at any time terminate or from time to time reduce the Revolving Credit Commitments of any Class or the Delayed
Draw Term Loan Commitments; provided that (i) each reduction of the Revolving Credit Commitments of any such Class shall be in an amount that is an integral multiple of $100,000 and not less than $500,000 and (ii) the Borrower shall not terminate or reduce the Revolving Credit Commitments of any Class if, after giving effect to any concurrent prepayment of Revolving Loans, Swingline Loans and/or the provision of Letter of Credit Support with respect to any outstanding Letter of Credit, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of such Class would exceed the aggregate amount of the Revolving Credit Commitments of such Class; provided that, after the establishment of any Class of Additional Revolving Credit Commitments, any such termination or reduction of the Revolving Credit Commitments of any Class shall be subject to the provisions set forth in Section 2.22, 2.23 and/or 9.02, as applicable.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce any Revolving Credit Commitment or Delayed Draw Term Loan Commitment under paragraph (b) of this Section in writing at least three Business Days prior to the effective date of such termination or reduction (or such later date to which the Administrative Agent may agree), specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Revolving Lenders of each applicable Class of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that any such notice may state that it is conditioned upon the effectiveness of other transactions or other events, in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of any Revolving Credit Commitment pursuant to this Section 2.09 shall be permanent. Upon any reduction of any Revolving Credit Commitment, the Revolving Credit Commitment of any Class, the Commitment of such Class of each Revolving Lender of the relevant Class shall be reduced by such Revolving Lender’s Applicable Percentage of the amount of such reduction ratably among the Lenders of such Class in accordance with their respective Commitments of the applicable Class.

Section 2.10 Repayment of Loans; Evidence of Debt

(a) (i) The Borrower hereby unconditionally promises to pay in Dollars (A) to the Administrative Agent for the account of each Initial Revolving Lender, the then-unpaid principal amount of the Initial Revolving Loans of such Lender on the Initial Revolving Credit Maturity Date, (B) to the Administrative Agent for the account of each Additional Revolving Lender, the then-unpaid principal amount of each Additional Revolving Loan of such Additional Revolving Lender on the Maturity Date applicable thereto and (C) to the Swingline Lender, the then unpaid principal amount of each Swingline Loan on the Latest Revolving Credit Maturity Date.

(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 any outstanding Letter of Credit, provide Letter of Credit Support with respect thereto), in each case to the extent necessary so that, after giving effect thereto, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of any other Class does not exceed the Revolving Credit Commitments of such other Class then in effect, (B) prepay Swingline Loans to the extent necessary so that, after giving effect thereto, the aggregate amount of the Revolving Credit Exposure attributable to the Revolving Credit Commitments of any other Class shall not exceed the Revolving Credit Commitments of such other Class then in effect and (C) make payment in full of all accrued and unpaid fees and all reimbursable expenses and other Obligations with respect to the Revolving Facility of the applicable Class then due, together with accrued and unpaid interest (if any) thereon.
Commencing on the last day of the first full calendar quarter ending after the termination of all the Delayed Draw Term Loan Commitments, the Borrower hereby unconditionally promises to pay in Dollars to the Administrative Agent, for the account of each Delayed Draw Term Lender, on the last day of each calendar quarter (any such payment, a “DDTL Amortization Payment”) an amount equal to the product of (A) the original aggregate principal amount of all Delayed Draw Term Loans funded hereunder, multiplied by (B) the DDTL Amortization Rate for such DDTL Amortization Payment (as such DDTL Amortization Payment may adjusted from time to time pursuant to Section 2.11(b) or 2.18(b)); provided that, if the date of any DDTL Amortization Payment is not a Business Day, then such DDTL Amortization Payment shall be due and payable on the Business Day immediately preceding such date. To the extent not previously paid, all unpaid Delayed Draw Term Loans shall be paid in full in cash in Dollars by the Borrower to the Administrative Agent, for the account of the Delayed Draw Term Lenders, on the Delayed Draw Term Loan Maturity Date. As used herein, “DDTL Amortization Rate” means, with respect to any DDTL Amortization Payment, the percentage set forth in the table below opposite such DDTL Amortization Payment:

<table>
<thead>
<tr>
<th>DDTL Amortization Payment</th>
<th>DDTL Amortization Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>First eight (8) DDTL Amortization Payments</td>
<td>1.25%</td>
</tr>
<tr>
<td>All subsequent DDTL Amortization Payments occurring prior to the Delayed Draw Term Loan Maturity Date</td>
<td>1.875%</td>
</tr>
</tbody>
</table>

(b) 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.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class, Type and currency thereof and the Interest Period (if any) applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders or the Issuing Banks and each Lender’s or Issuing Bank’s share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any manifest error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement, (ii) in the event of any inconsistency between the accounts maintained by the Administrative Agent pursuant to paragraph (c) of this Section and any Lender’s records, the accounts of the Administrative Agent shall govern and (iii) in the event of any inconsistency between the Register and any other accounts maintained by the Administrative Agent, the Register shall govern absent manifest error.

(e) Any Lender may request that any Loan made by it be evidenced by a Promissory Note. In such event, the Borrower shall prepare, execute and deliver a Promissory Note to such Lender payable to such Lender and its registered permitted assigns; it being understood and agreed that such Lender (and/or its applicable permitted assign) shall be required to return such Promissory Note to the Borrower in accordance with Section 9.05(b)(iii) and upon the occurrence of the Termination Date (or as promptly thereafter as practicable). If any Lender loses the original copy of its Promissory Note, it shall execute an affidavit of loss containing an indemnification provision that is reasonably satisfactory to the
Borrower. The obligation of each Lender to execute and deliver an affidavit of loss containing an indemnification provision that is reasonably satisfactory to the Borrower shall survive the Termination Date.

Section 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 Revolving Loans of any Class and/or any Borrowing of Swingline Loans, in whole or in part without premium or penalty (but subject to Section 2.16); provided that (A) after the establishment of any Class of Additional Revolving Loans, any such prepayment of any Borrowing of Revolving Loans of any Class shall be subject to the provisions set forth in Section 2.22, 2.23 and/or 9.02, as applicable and (B) no Borrowing of Revolving Loans may be prepaid unless all Swingline Loans then outstanding, if any, are prepaid concurrently therewith. Each such prepayment shall be paid to the Revolving Lenders of the applicable Class in accordance with their respective Applicable Percentages of the relevant Class.

(ii) The Borrower shall notify the Administrative Agent (and the Swingline Lender, if applicable) pursuant to delivery to the Administrative Agent (and the Swingline Lender, if applicable) of a Notice of Loan Prepayment in writing of any prepayment under this Section 2.11(a) (i) in the case of any prepayment of a Term Benchmark Borrowing, not later than 10:00 a.m. three Business Days before the date of prepayment (or, if after the effectiveness of a Benchmark Replacement, five Business Days before the date of prepayment of an RFR Borrowing), (ii) in the case of any prepayment of an ABR Borrowing (other than any Swingline Loan), not later than 10:00 a.m., on the date of prepayment or (iii) in the case of any prepayment of any Swingline Loan, not later than 11:00 a.m. on the date of prepayment (or, in each case, such later time as to which the Administrative Agent may reasonably agree). Each such notice shall be irrevocable (except as set forth in the proviso to this sentence) and shall specify the prepayment date and the principal amount of each Borrowing or portion or each relevant Class to be prepaid; provided that any notice of prepayment delivered by the Borrower may be conditioned upon the effectiveness of other transactions or other events, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Promptly following receipt of any such notice relating to any Borrowing, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount at least equal to the amount that would be permitted in the case of a Borrowing of the same Type and Class as provided in Section 2.02(c), or such lesser amount that is then outstanding with respect to such Borrowing being repaid (and in increments of $100,000 in excess thereof or such lesser incremental amount that is then outstanding with respect to such Borrowing being repaid).

(b) Mandatory Prepayments.

(i) (A)(A) In the event that the aggregate Revolving Credit Exposure of any Class exceeds the Total Revolving Credit Commitment of such Class then in effect, the Borrower shall, within five Business Days of receipt of notice from the Administrative Agent, prepay the Revolving Loans or Swingline Loans and/or reduce LC Exposure, in an aggregate amount sufficient to reduce such aggregate Revolving Credit Exposure as of the date of such payment to an amount not to exceed 100% of the Revolving Credit Commitment of such Class then in effect.
by taking any of the following actions as it shall determine at its sole discretion: (I) prepayment of Revolving Loans and/or Swingline Loans in accordance with Section 2.11(a)(i), and/or (II) with respect to any excess LC Exposure, provide Letter of Credit Support with respect thereto.

(B) Each prepayment of any Revolving Loan Borrowing under this Section 2.11(b)(i) shall be paid to the Revolving Lenders in accordance with their respective Applicable Percentages of the applicable Class.

(ii) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party in respect of any Prepayment Event, the Borrower shall prepay on or prior to the date which is five (5) Business Days after the date of the realization or receipt of such Net Proceeds, an aggregate principal amount of Obligations equal to 100% of all Net Proceeds realized or received in respect of such Prepayment Event, which prepayment shall be applied to the Obligations in the manner set forth in Section 2.11(b)(iv) below; provided that, if, at the time that any such prepayment would be required, any Loan Party is required to repay, redeem or repurchase or offer to repay, redeem or repurchase First Lien Debt (other than the Obligations) with the Net Proceeds of such Prepayment Event (such other First Lien Debt required to be repaid, redeemed or repurchased or offered to be so repurchased, “Other Applicable Indebtedness”), then the applicable Loan Party may apply such Net Proceeds on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Obligations and Other Applicable Indebtedness at such time; provided that the portion of such Net Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Net Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms hereof, and the remaining amount, if any, of such Net Proceeds shall be allocated to the Obligations in accordance with the terms hereof) (or less than pro rata basis in the case of such Other Applicable Indebtedness) to the prepayment of the Obligations as provided in Section 2.11(b)(iv) and to the repurchase, redemption or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Obligations that would have otherwise been required pursuant to this Section 2.11(b)(ii) shall be reduced accordingly; provided, further, that to the extent the holders of Other Applicable Indebtedness decline to have such indebtedness repurchased, redeemed or prepaid, the declined amount shall promptly (and in any event within five (5) Business Days after the date of such rejection) be applied to prepay the Obligations in accordance with the terms hereof; provided, further, that no prepayment shall be required pursuant to this Section 2.11(b)(ii) with respect to such portion of such Net Proceeds that the Borrower shall have, on or prior to the applicable date that prepayment of the Obligations would have otherwise been required pursuant to this Section 2.11(b)(ii), given written notice to the Administrative Agent of its intent to reinvest in accordance herewith.

Notwithstanding the foregoing:

(A) the Borrower shall not be obligated to make any such prepayment required by this Section 2.11(b)(ii) during any Fiscal Year of the Borrower unless and until the aggregate amount of Net Proceeds from all Prepayment Events received during such Fiscal Year exceeds $2,000,000 (with respect to any Fiscal Year of the Borrower, the “Prepayment Trigger”), at which time all such Net Proceeds from any Prepayment Event for such Fiscal Year (excluding amounts below the Prepayment Trigger for such Fiscal Year) shall be applied in accordance with Section 2.11(b)(iv); and

(B) with respect to any Net Proceeds realized or received with respect to any Prepayment Event, at the option of the Borrower by written notice to the Administrative Agent, the Borrower may reinvest all or any portion of such Net Proceeds in
assets useful for its or any other Loan Party’s business (x) within twelve (12) months following receipt of such Net Proceeds or (y) if a Loan Party enters into a legally binding commitment to reinvest such Net Proceeds within twelve (12) months following receipt thereof, within one hundred and eighty (180) days after such initial twelve (12) month-period (the foregoing period being referred to as a “Reinvestment Period”); provided, that if any Net Proceeds are no longer intended to be or cannot be so reinvested at any time after delivery of a notice of reinvestment election, an amount equal to any such Net Proceeds shall be applied to the prepayment of the Obligations as set forth in Section 2.11(b)(iv) within five (5) Business Days after the earlier of (I) the end of the applicable Reinvestment Period and (II) such time that the Borrower reasonably determines that such Net Proceeds are no longer intended to be or cannot be so reinvested.

(iii) Prepayments made under this Section 2.11(b) shall be (A) accompanied by accrued interest as required by Section 2.13 (which may, at the election of the Borrower, be netted in the calculation of the applicable prepayment amount (and in the event such election is made, the amount of the applicable prepayment of principal and the amount of such accrued interest shall be determined by the Borrower in good faith with the Administrative Agent)) and (B) subject to Section 2.16.

(iv) All prepayments required to be made pursuant to Section 2.11(b)(ii) shall be applied to prepay Credit Exposure in respect of outstanding Delayed Draw Term Loans (applied, first to accrued interest and fees due on the amount of such prepayment of such Delayed Draw Term Loans and second, to the immediately succeeding six (6) scheduled installments of principal of Delayed Draw Term Loans, with any excess applied pro rata to all remaining scheduled installments of principal of Delayed Draw Term Loans).

(v) Any Delayed Draw Term Lender may elect (in its sole discretion) to decline all (but not less than all) of its Applicable Percentage or other applicable share provided for under this Agreement of the prepayment (such amounts so declined, the “Declined Amounts”) of any mandatory prepayment made pursuant to Section 2.11(b)(ii) by giving notice of such election in writing (each, a “Rejection Notice”) to the Administrative Agent by 12:00 p.m. (New York City time), one (1) Business Day prior to the date on which such payment is due. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above, or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed to constitute an acceptance of such Lender’s Applicable Percentage or other applicable share provided for under this Agreement of the total amount of such mandatory prepayment of Term Loans. Upon receipt by the Administrative Agent, of such Rejection Notice, the Administrative Agent shall immediately notify the Borrower of such election. The aggregate amount of the Declined Amounts shall, subject to the terms of any applicable Intercreditor Agreement, be retained by the Borrower and the other Loan Parties and/or applied by the Borrower or any of the other Loan Parties in any manner not inconsistent with the terms of this Agreement (such Declined Amounts retained and/or applied by the Borrower and the Restricted Subsidiaries, the “Borrower Retained Prepayment Amounts”).

Section 2.12 Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender of any Class (other than any Defaulting Lender) a commitment fee, which shall accrue at a rate equal to the Commitment Fee Rate per annum applicable to the Revolving Credit Commitments of such Class on the actual daily amount of the unused Revolving Credit Commitment of such Class of
such Revolving Lender during the period from and including the Closing Date to the date on which such Lender’s Revolving Credit Commitment of such Class terminates. Accrued Commitment fees shall be payable in arrears on each Scheduled Payment Date for the quarterly period then most recently ended (or, in the case of the first such payment made after the Closing Date, for the period from the Closing Date to such date), and on the date on which the Revolving Credit Commitments of the applicable Class terminate. For purposes of calculating the commitment fee payable pursuant to this Section 2.12(a), the Revolving Credit Commitment of any Class shall be deemed to have been used to the extent of the outstanding principal amount of the Revolving Loans of such Class and the LC Exposure attributable to the Revolving Credit Commitment of such Class, but no portion of the Revolving Credit Commitment of any Class shall be deemed to have been used as a result of any outstanding Swingline Loan.

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender of any Class, a participation fee with respect to its participation in any outstanding Letter of Credit that is not subject to Letter of Credit Support, which shall accrue at the Applicable Rate used to determine the interest rate applicable to Revolving Loans of such Class that are Term Benchmark Loans on the daily portion of such Lender’s LC Exposure that is attributable to its Revolving Credit Commitment of such Class (excluding any portion thereof that is attributable to any unreimbursed LC Disbursement), during the period from and including the Closing Date to the earlier of (A) the later of the date on which such Revolving Lender’s Revolving Credit Commitment of such Class terminates and the date on which such Revolving Lender ceases to have any LC Exposure attributable to its Revolving Credit Commitment of such Class and (B) the Termination Date, and (ii) to each Issuing Bank, for its own account, a fronting fee, in respect of each Letter of Credit that is not subject to Letter of Credit Support issued by such Issuing Bank for the period from the date of issuance of such Letter of Credit to the earliest of (A) the expiration date of such Letter of Credit, (B) the date on which such Letter of Credit terminates, (C) the Termination Date, computed at a rate agreed by such Issuing Bank and the Borrower (but in any event not to exceed 0.125% per annum) of the daily available amount of such Letter of Credit, as well as such Issuing Bank’s standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or the processing of any drawing thereunder. Participation fees and fronting fees shall accrue to but excluding each Scheduled Payment Date and be payable in arrears for the quarterly period then most recently ended (or, in the case of the payment made on the first such date after the Closing Date, for the period from the Closing Date to such date) on each Scheduled Payment Date; provided that all such fees shall be payable on the date on which the Revolving Credit Commitments of the applicable Class terminate, and any such fees accruing after the date on which the Revolving Credit Commitments of the applicable Class terminate and prior to the Termination Date shall be payable on demand. Any other fee payable to any Issuing Bank pursuant to this paragraph shall be payable within 30 days after receipt of a written demand (accompanied by reasonable back-up documentation) therefor.

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, the annual administration fee described in the Fee Letter.

(d) The Borrower agrees to pay to the Administrative Agent for the account of each Delayed Draw Term Lender (other than any Defaulting Lender) a ticking fee, which shall accrue at a rate equal to the Ticking Fee Rate per annum applicable to the Delayed Draw Term Loan Commitments on the actual daily amount of the unused Delayed Draw Term Loan Commitment of such Lender during the period from and including the Amendment No. 2 Effective Date to the date on which the entire amount of such Lender’s Delayed Draw Term Loan Commitment terminates. Accrued ticking fees shall be payable in arrears on each Scheduled Payment Date for the quarterly period then most recently ended (or, in the case of the first such payment made after the Amendment No. 2 Effective Date, for the period from the
Amendment No. 2 Effective Date to such date), and on the date on which all of the Delayed Draw Term Loan Commitments terminate.

(e) All fees payable hereunder shall be paid on the date due, in Dollars and in immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to any Issuing Bank). Fees paid shall not be refundable under any circumstance except as otherwise provided in the Fee Letter. Fees payable hereunder shall accrue through and including the last day of the month immediately preceding the applicable fee payment date.

(f) Unless otherwise indicated herein, all computations of fees shall be made on the basis of a 360-day year and shall be payable for the actual days elapsed (including the first day but excluding the last day). Each determination by the Administrative Agent of the amount of any fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.13 Interest.

(a) The Revolving Loans and the Swing Loans, in each case, comprising each ABR Borrowing (including Swingline Loans) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Revolving Loans comprising each Term Benchmark Borrowing shall bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) If a Benchmark Replacement has occurred, each RFR Loan shall bear interest at a rate per annum equal to the Adjusted Daily Simple SOFR plus the Applicable Rate.

(d) Notwithstanding the foregoing but in all cases subject to Section 9.05(f), if any principal of or interest on any Revolving Loan or Swingline Loan, any LC Disbursement or other amount payable by the Borrower hereunder is not, in each case, paid or reimbursed when due, whether at stated maturity, upon acceleration or otherwise, the relevant overdue amount shall bear interest, to the fullest extent permitted by applicable Requirements of Law, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal or interest of any Revolving Loan, Swingline Loan or unreimbursed LC Disbursement, 2.00% plus the rate otherwise applicable to such Revolving Loan, Swingline Loan or LC Disbursement as provided in the preceding paragraphs of this Section or (ii) in the case of any fee and other amounts, 2.00% plus the rate applicable to Revolving Loans that are ABR Loans as provided in paragraph (a) of this Section 2.13; provided that no amount shall accrue pursuant to this Section 2.13(d) on any overdue amount, reimbursement obligation in respect of any LC Disbursement or other amount that is payable to any Defaulting Lender so long as such Lender is a Defaulting Lender.

(e) Accrued interest on each Revolving Loan and Swingline Loan shall be payable in arrears on each Interest Payment Date for such Revolving Loan or Swingline Loan and (i) on the Maturity Date applicable to such Loan, (ii) in the case of a Revolving Loan of any Class, upon termination of the Revolving Credit Commitments of such Class and (iii) in the case of any Swingline Loan, upon termination of all of the Revolving Credit Commitments, as applicable; provided that (A) interest accrued pursuant to paragraph (d) of this Section 2.13 shall be payable on demand, (B) except as provided in Section 2.11(b)(iii), in the event of any repayment or prepayment of any Revolving Loan (other than an ABR Revolving Loan of any Class prior to the termination of the Revolving Credit Commitments of such Class) or Swingline Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (C) in the event of any conversion of any Term.
Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such 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). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. Any determination of the applicable Alternate Base Rate or Adjusted Term SOFR Rate (and, if after the effectiveness of a Benchmark Replacement, Adjusted Daily Simple SOFR) shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error. Interest shall accrue on each Loan for the day on which the Loan is made and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall bear interest for one day.

Section 2.14 Alternate Rate of Interest; Illegality.

(a) Subject to clauses (b), (c), (d), (e), and (f) of this Section 2.14, if:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) (A) prior to commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate (including, because the Term SOFR Reference Rate is not available or published on a current basis) for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR or Daily Simple SOFR; or

(ii) the Administrative Agent is advised in writing by the Required Lenders that (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or Loan) included in such Borrowing for such Interest Period or (B) at any time, the Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or Loan) included in such Borrowing;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing shall instead be deemed to be an Interest Election Request for an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) be repaid or converted into an ABR Borrowing if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above and (2) any Borrowing Request that requests an RFR Borrowing shall instead be deemed to be a Borrowing Request, as applicable, for an ABR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan (or after the effectiveness of a Benchmark Replacement, any RFR Loan) is outstanding on the date of the Borrower’s receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to such Term Benchmark Loan (or after the effectiveness of
a Benchmark Replacement, any RFR Loan), then until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) an ABR Loan if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above, on such day, and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will have the right (in consultation with the Borrower) to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(d) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (fe) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent (including, if applicable, in consultation with the Borrower) or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.
(e) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(f) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark Loans (or after the effectiveness of a Benchmark Replacement, any RFR Loan) to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted (1) any request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to (A) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an ABR Borrowing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event or (2) any such request for an RFR Borrowing into a request for an ABR Borrowing. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan (or after the effectiveness of a Benchmark Replacement, any RFR Loan) is outstanding on the date of the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect such Term Benchmark Loan (or after the effectiveness of a Benchmark Replacement, any RFR Loan), then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, (x) an RFR Loan so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) an ABR Loan if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan.

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 Term SOFR Rate) or Issuing Bank;

(ii) subjects any Lender or Issuing Bank to any Taxes (other than (A) Indemnified 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, cost or expense (other than Taxes) affecting this Agreement or Term Benchmark 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 Term Benchmark 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 Term Benchmark Loan or Letter of Credit in an amount deemed by such Lender or Issuing Bank to be material, then, within 30 days after the Borrower’s receipt of the certificate contemplated by paragraph (c) of this Section 2.15, the Borrower will pay (or cause to be paid) to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered; provided that the Borrower shall not be liable for such compensation if (x) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto, (y) such Lender invokes Section 2.20 or (z) in the case of requests for reimbursement under clause (iii) above resulting from a market disruption, (A) the relevant circumstances do not generally affect the banking market or (B) the applicable request has not been made by Lenders constituting Required Lenders.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding liquidity or capital requirements has or would have the effect of reducing the rate of return on such Lender’s or Issuing Bank’s capital or on the capital of such Lender’s or Issuing Bank’s holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender’s or such Issuing Bank’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s or Issuing Bank’s policies and the policies of such Lender’s or such Issuing Bank’s holding company with respect to liquidity or capital adequacy), then within 30 days of receipt by the Borrower of the certificate contemplated by paragraph (c) of this Section 2.15 the Borrower will pay (or cause to be paid) to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender’s or such Issuing Bank’s holding company for any such reduction suffered.

(c) Any Lender or Issuing Bank requesting compensation under this Section 2.15 shall be required to deliver a certificate to the Borrower that (i) sets forth the amount or amounts necessary to compensate such Lender or Issuing Bank or the holding company thereof, as applicable, as specified in paragraph (a) or (b) of this Section, (ii) sets forth, in reasonable detail, the manner in which such amount or amounts were determined and (iii) certifies that such Lender or Issuing Bank is generally charging such amounts to similarly situated borrowers, which certificate shall be conclusive absent manifest error.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender’s or Issuing Bank’s right to demand such compensation; provided, however that the Borrower shall not be required to compensate any Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than six months prior to the date that such Lender or Issuing Bank notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender’s or Issuing Bank’s intention to claim compensation therefor; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six month period referred to above shall be extended to include the period of retroactive effect thereof.
Section 2.16  **Break Funding Payments.** (a) Subject to Section 9.05(f), in the event of (a) the conversion or prepayment of any principal of any Term Benchmark 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 Term Benchmark Loan on the date or in the amount specified in any notice delivered pursuant hereto or (c) the assignment of any Term Benchmark Loan of any Lender other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the actual amount of any actual out-of-pocket loss, expense and/or liability (including any actual out-of-pocket loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund or maintain Term Benchmark Loans, but excluding loss of anticipated profit) that such Lender has incurred or sustained as a result of such event. Any Lender requesting compensation under this Section 2.16 shall be required to deliver a certificate to the Borrower that (A) sets forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, the basis therefor and, in reasonable detail, the manner in which such amount or amounts were determined and (B) certifies that such Lender is generally charging the relevant amounts to similarly situated borrowers, which certificate shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11 and is revoked in accordance therewith) or (iii) the assignment of any RFR Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrower pursuant to Section 2.18, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 2.17  **Taxes.**

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of the applicable withholding agent) requires the deduction or withholding of any Tax from any such payment, then (i) if such Tax is an Indemnified Tax, the amount payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions or withholdings applicable to additional sums payable under this Section 2.17) each Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent shall be entitled to make such withholding or deductions and (iii) the applicable withholding agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(b) **Payment of Other Taxes.** In addition, the Loan Parties shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law or at the option of the Administrative Agent timely reimburse it for the payment of Other Taxes.
(c) **Indemnification by the Borrower.** The Borrower shall indemnify the Administrative Agent and each Lender within 10 days after demand therefor, for the full amount of any Indemnified Taxes payable or paid by the Administrative Agent or such Lender, as applicable, or required to be withheld or deducted from a payment to the Administrative Agent or such Lender (including, in each case, Indemnified 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 judgement of a court of competent jurisdiction (or documented in any settlement agreement) to have resulted from the gross negligence, bad faith, or willful misconduct of the Administrative Agent or such Lender, and, in each case, any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted. 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 amount of the relevant payment or liability. Such certificate shall be conclusive absent manifest error. Notwithstanding anything to the contrary contained in this Section 2.17, no Borrower shall be required to indemnify the Administrative Agent or any Lender pursuant to this Section 2.17 for any amount to the extent the Administrative Agent or such Lender fails to notify the Borrower of such possible indemnification claim within six months 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 (the “Notice Date”); provided, however, that if the circumstances giving rise to such indemnification claim have a retroactive effect (e.g., in connection with the audit of a prior tax year), then the Notice Date shall be the date that is six months after the latest of (i) the date of the conclusion of an audit relating to such Tax assessment, (ii) the date that the liability for and amount of such Tax assessment has been agreed to by the Administrative Agent or applicable Lender and the applicable tax authority (e.g., by documentation in a settlement agreement), and (iii) the date that the liability for and amount of such Tax assessment is determined by a final and non-appealable judgement of a court of competent jurisdiction.

(d) **Indemnification by the Lenders.** Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 9.05(c) relating to the maintenance of a Participant Register (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) **Evidence of Payments.** As soon as practicable after any payment of any Taxes pursuant to this Section 2.17 by any Loan Party to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued, if any, by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment that is reasonably satisfactory to the Administrative Agent.

(f) **Status of Lenders.**

   (i) Any Lender that is entitled to an exemption from or reduction of any withholding Tax with respect to any payment made under any Loan Document shall deliver to
the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation as the Borrower or the Administrative Agent may reasonably request to permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Requirements of Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided to the Administrative Agent pursuant to this Section 2.17(f). Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (f)(ii)(A), (ii)(B) and (ii)(D) of this Section 2.17) shall not be required if in the Lender’s reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) each Lender that is a US Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which it becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two executed copies of IRS Form W-9 (or any successor forms) certifying that such Lender is exempt from US federal backup withholding;

(B) each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of any Foreign Lender claiming the benefits of an income tax treaty to which the US is a party, two executed copies of IRS Form W-8BEN or W-8BEN-E, (or any successor forms) as applicable, establishing any available exemption from, or reduction of, US federal withholding Tax;

(2) two executed copies of IRS Form W-8ECI (or any successor forms);

(3) in the case of any Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (x) two executed copies of a certificate substantially in the form of Exhibit O-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10-percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code, and that no payments payable to such Lender are effectively connected with the conduct of a US trade or business (a “Tax Compliance Certificate”) and
(y) two executed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms) as applicable; or

(4) to the extent any Foreign Lender is not the beneficial owner (e.g., where the Foreign Lender is a partnership or participating Lender), two executed copies of IRS Form W-8IMY (or any successor forms), accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or any successor forms), a Tax Compliance Certificate substantially in the form of Exhibit O-2 or Exhibit O-4, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if such Foreign Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a Tax Compliance Certificate substantially in the form of Exhibit O-3 on behalf of each such direct or indirect partner(s);

(C) each Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two executed copies of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in US federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to any Lender under any Loan Document would be subject to US federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by applicable Requirements of Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation as is prescribed by applicable Requirements of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for US federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender’s owner and, as applicable, such Lender.

Each Lender agrees that if any documentation it previously delivered expires or becomes obsolete or inaccurate in any respect (including any specific documentation required above in this Section 2.17(f)), it shall deliver to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so.
(g) **Treatment of Certain Refunds.** If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes (whether received in cash or applied as a credit against any cash Taxes payable) as to which it has been indemnified by the Borrower or with respect to which any Loan Party has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the applicable Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the applicable Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the Administrative Agent or any Lender be required to pay any amount to the 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 and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 2.17 shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the relevant Loan Party or any other Person.

(h) **Survival.** Each party’s obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) **Definition of “Lender”.** For the avoidance of doubt, the term “Lender” shall, for all purposes of this Section 2.17, include any Issuing Bank and the Swingline Lender, and the term “applicable Law” includes FATCA.

(j) **Certain Documentation.** On or before the date JPMorgan becomes a party to this Agreement, it shall deliver to Borrower two executed copies of IRS Form W-9 certifying that it is exempt from U.S. federal backup withholding. At any time thereafter, JPMorgan 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), JPMorgan shall not be required to provide any documentation that JPMorgan 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 2:00 p.m. on the date when due in Dollars.** Each such payment shall be made in immediately available funds (or such other form of consideration as the relevant recipient may agree), without set-off or counterclaim. Any amount received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Each such payment shall be made to the Administrative Agent to the applicable account designated by the
Administrative Agent to the Borrower, except that payments pursuant to Sections 2.12(b)(ii), 2.15, 2.16, 2.17 and/or 9.03 shall be made directly to the Person or Persons entitled thereto. The Administrative Agent shall distribute any such payment received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Except as provided in Sections 2.19(b), 2.21, 2.22, 2.23, 9.02(c) and/or 9.05 and/or any other express provision of this Agreement, each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans of a given Class and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type (and of the same Class) shall be allocated pro rata among the Lenders in accordance with their respective Applicable Percentages of the applicable Class. Each Lender agrees that in computing such Lender’s portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each Lender’s percentage of such Borrowing to the next higher or lower whole Dollar amount. All payments hereunder shall be made in Dollars (or such other form of consideration as the relevant recipient may agree). Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) Subject in all respects to the provisions of any applicable Intercreditor Agreement, all payments and proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as otherwise provided herein) or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (ii) while an Event of Default exists and all or any portion of the Loans have been accelerated hereunder pursuant to Section 7.01, in each case, shall be applied:

(i) first, to the payment of all costs and expenses then due incurred by the Administrative Agent in connection with any collection, sale or realization on Collateral or otherwise in connection with this Agreement, any other Loan Document or any of the Secured Obligations, including all court costs and the fees and expenses of agents and legal counsel, the repayment of all advances made by the Administrative Agent hereunder or under any other Loan Document on behalf of any Loan Party and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document,

(ii) second, on a pro rata basis, to pay any fees, indemnities or expense reimbursements constituting Secured Obligations then due to the Administrative Agent (other than those covered in clause first above) or to the Swingline Lender or any Issuing Bank from the Borrower,

(iii) third, on a pro rata basis, to pay any fees, indemnities or expense reimbursements constituting Secured Obligations then due to the Lenders from the Borrower (other than in connection with Banking Services Obligations or Secured Hedging Obligations),

(iv) fourth, 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 (with amounts allocated to any Class of Term Loans applied to reduce the subsequent scheduled repayments of such Class of Term Loans to be made pursuant to Section 2.10 in the following order: to the immediately succeeding four (4) scheduled installments of principal of Delayed Draw Term Loans, with any excess applied pro rata to all remaining scheduled installments of principal of Delayed Draw Term Loans) (including, with respect to LC Exposure, an amount to be paid to the Administrative Agent equal to 102% of the
LC Exposure (minus the amount then on deposit in the LC Collateral Account) on such date, to be held in the LC Collateral Account as
Cash collateral for such Obligations; provided that if any Letter of Credit expires undrawn, then any Cash collateral held to secure the
related LC Exposure shall be applied in accordance with this Section 2.18(b), beginning with clause first above,

(v) (iv) fourth fifth, as provided in any applicable Intercreditor Agreement, and

(vi) (v) fifth sixth, to, or at the direction of, the Borrower or as a court of competent jurisdiction may otherwise direct.

(c) If any Lender obtains payment (whether voluntary, involuntary, through the exercise of any right of set-off or otherwise) in respect
of any principal of or interest on any Loan of any Class or any participation in LC Disbursements or Swingline Loans and accrued interest thereon than the proportion received by any other Lender with Loans of such Class and participations in
LC Disbursements or Swingline Loans, then the Lender receiving such greater proportion shall purchase (for Cash at face value) participations in
the Loans of such Class and sub-participations in LC Disbursements or Swingline Loans of other Lenders of such Class at such time outstanding
to the extent necessary so that the benefit of all such payments shall be shared by the Lenders of such Class ratably in accordance with the
aggregate amount of principal of and accrued interest on their respective Loans of such Class and participations in LC Disbursements or
Swingline Loans; provided that (i) if any such participation is purchased and all or any portion of the payment giving rise thereto is recovered,
such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of
this paragraph shall not apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement
or (B) any payment obtained by any Lender as consideration for the assignment of or sale of a participation in any Loan to any permitted
assignee or participant, including any payment made or deemed made in connection with Sections 2.22, 2.23, 9.02(c) and/or Section 9.05. The
Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of Law, that any Lender
acquiring a participation pursuant to the foregoing arrangements may exercise rights of set-off and counterclaim against the Borrower with
respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. The
Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased
under this Section 2.18(c) and will, in each case, notify the Lenders following any such purchase or repayment. Each Lender that purchases a
participation pursuant to this Section 2.18(c) shall from and after the date of such purchase have the right to give all notices, requests, demands,
directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though
the purchasing Lender were the original owner of the Obligations purchased.

(d) (i) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due
to the Administrative Agent for the account of the Lenders or any Issuing Bank hereunder that the Borrower will not make such payment, the
Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon
such assumption, distribute to the Lenders or the applicable Issuing Bank, as the case may be, the amount due.

(ii) With respect to any payment that the Administrative Agent makes for the account of the Lenders or any Issuing Bank
hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the
following applies (such payment referred to as the “Rescindable Amount”): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such Issuing Bank, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(iii) A notice from the Administrative Agent to any Lender with respect to any amount owing under this clause (d) shall be conclusive, absent manifest error.

(e) If any Lender fails to make any payment required to be made by it pursuant to Section 2.07(h) or Section 2.18(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amount thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender’s obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 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 Term Benchmark 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 Term Benchmark Loans pursuant to Section 2.20, (ii) any Loan Party is required to pay any additional amount to or indemnify any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, (iii) any Lender is a Defaulting Lender or (iv) in connection with any proposed amendment, waiver or consent requiring the consent of “each Lender”, “each Revolving Lender” or “each Lender directly affected thereby” (or any other Class or group of Lenders other than the Required Lenders) with respect to which Required Lender or Required Revolving Lender consent or consent of a Majority in Interest of Lenders of any Class (or the consent of Lenders holding loans or commitments of such Class or lesser group representing more than 50% of the sum of the total loans and unused commitments of such Class or lesser group at such time) has been obtained, as applicable, any Lender is a non-consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (x) terminate the applicable Commitments of such Lender, and repay all Obligations of the Borrower owing to such Lender relating to the applicable Loans and participations held by such Lender as of such termination date (provided that, if, after giving effect such termination and repayment, the aggregate amount of the Revolving Credit Exposure of any Class exceeds the aggregate amount of the Revolving Credit Commitments of such Class then in effect, then the
Borrower shall, not later than the next Business Day, prepay one or more Revolving Loan Borrowings of the applicable Class and/or Swingline Loans (and, if no Revolving Loan Borrowings of such Class are outstanding, deposit Cash collateral in the LC Collateral Account) in an amount necessary to eliminate such excess or (y) replace such Lender by requiring such Lender to assign and delegate (and such Lender shall be obligated to assign and delegate), without recourse (in accordance with and subject to the restrictions contained in Section 9.05), all of its interests, rights and obligations under this Agreement to an Eligible Assignee that assumes such obligations (which Eligible Assignee may be another Lender, if any Lender accepts such assignment); provided that (A) such Lender has received payment of an amount equal to the outstanding principal amount of its Loans and, if applicable, participations in LC Disbursements or Swingline Loans, in each case of such Class of Loans and/or Commitments, accrued interest thereon, accrued fees and all other amounts payable to it under any Loan Document with respect to such Class of Loans and/or Commitments, (B) in the case of any assignment resulting from a claim for compensation under Section 2.15 or any payment required to be made pursuant to Section 2.17, such assignment would result in a reduction in such compensation or payment and (C) such assignment does not conflict with applicable Requirements of Law. No Lender (other than a Defaulting Lender) shall be required to make any such assignment and delegation, and the Borrower may not repay the Obligations of such Lender or terminate its Commitments, if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each Lender agrees that if it is replaced pursuant to this Section 2.19, it shall execute and deliver to the Administrative Agent an Assignment Agreement to evidence such sale and purchase and shall deliver to the Administrative Agent any Promissory Note (if the assigning Lender’s Loans are evidenced by one or more Promissory Notes) subject to such Assignment Agreement (provided that the failure of any Lender replaced pursuant to this Section 2.19 to execute an Assignment Agreement or deliver any such Promissory Note shall not render such sale and purchase (and the corresponding assignment) invalid), such assignment shall be recorded in the Register and any such Promissory Note shall be deemed cancelled. Each Lender hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Lender’s attorney-in-fact, with full authority in the place and stead of such Lender and in the name of such Lender, from time to time in the Administrative Agent’s discretion, with prior written notice to such Lender, to take any action and to execute any such Assignment Agreement or other instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of this clause (b).

Section 2.20 [Reserved]

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 2.12(d) and, subject to clause (d)(iv) below, on the participation of such Defaulting Lender in Letters of Credit pursuant to Section 2.12(b) and pursuant to any other provision of this Agreement or any other Loan Document.

(b) The Loans, the Commitments and the Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders, each affected Lender, the Required Lenders, the Required Revolving a Majority in Interest of Lenders of any applicable Class or such other number of Lenders as may be required hereby or under any other Loan Document have taken or may take any action hereunder (including any consent to any waiver, amendment or modification pursuant to Section 9.02); provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which (i) increases the Commitment of such Defaulting Lender hereunder, (ii) reduces the principal amount of any amount owing to such Defaulting Lender or (iii) affects such
Defaulting Lender disproportionately and adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(c) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of any Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.11, Section 2.15, Section 2.16, Section 2.17, Section 2.18, Article VII, Section 9.05 or otherwise, and including any amount made available to the Administrative Agent by such Defaulting Lender pursuant to Section 9.09), shall be applied at such time or times as may be determined by the Administrative Agent and, where relevant, the Borrower as follows: first, to the payment of any amount owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amount owing by such Defaulting Lender to any applicable Issuing Bank and/or the Swingline Lender hereunder; third, if so reasonably determined by the Administrative Agent or reasonably requested by the applicable Issuing Bank, to be held as Cash collateral for future funding obligations of such Defaulting Lender in respect of any participation in any Letter of Credit; fourth, so long as no Default or Event of Default exists, as the Borrower may request, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; fifth, as the Administrative Agent or the Borrower may elect, to be held in a Deposit Account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; sixth, to the payment of any amount owing to the non-Defaulting Lenders, Issuing Banks or the Swingline Lender hereunder; seventh, to the payment of any amount owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by any non-Defaulting Lender, any Issuing Bank or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loan or LC Exposure in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loan or LC Exposure was made or created, as applicable, at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Exposure owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loan of, or LC Exposure owed to, such Defaulting Lender. Any payment, prepayment or other amount paid or payable to any Defaulting Lender that are applied (or held) to pay any amount owed by any Defaulting Lender or to post Cash collateral pursuant to this Section 2.21(c) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) If any Swingline Exposure or LC Exposure exists at the time any Lender becomes a Defaulting Lender then:

(i) the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders under the Revolving Facility (the “Non-Defaulting Revolving Lenders”) in accordance with their respective Applicable Revolving Credit Percentages but only to the extent that (A) the sum of the Revolving Credit Exposures of all non-Defaulting Lenders attributable to the Revolving Credit Commitments of any Class does not exceed the total of the Revolving Credit Commitments of all Non-Defaulting Revolving Lenders of such Class and (B) the Revolving Credit Exposure of any non-Defaulting Lender that is attributable to its Revolving Credit Commitment of such Class does not exceed such non-Defaulting Lender’s Revolving Credit Commitment of such Class; it being understood and agreed that, subject to Section 9.23, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against any Defaulting Lender arising from such Lender’s
having become a Defaulting Lender, including any claim of any Non-Defaulting Lender as a result of such Non-Defaulting Lender’s increased exposure following such reallocation;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any other right or remedy available to it hereunder or under applicable Requirements of Law, within two Business Days following notice by the Administrative Agent, Cash collateralize 102% of such Defaulting Lender’s LC Exposure and any obligation of such Defaulting Lender to fund any participation in any Swingline Exposure (after giving effect to any partial reallocation pursuant to clause (i) above and any Cash collateral provided by such Defaulting Lender or pursuant to Section 2.21(c) above) or make other arrangements reasonably satisfactory to the Administrative Agent and to the applicable Issuing Bank and/or the Swingline Lender with respect to such LC Exposure and/or Swingline Exposure and any obligation to fund any participation therein. Cash collateral (or the appropriate portion thereof) provided to reduce LC Exposure or other obligations shall be released promptly following (A) the elimination of the applicable LC Exposure or other obligations giving rise thereto (including by the termination of the Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 2.19)) or (B) the Administrative Agent’s good faith determination that there exists excess Cash collateral (including as a result of any subsequent reallocation of Swingline Exposure and/or LC Exposure among the non-Defaulting Lenders described in clause (i) above);

(iii) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to this Section 2.21(d), then the fees payable to the applicable Lenders pursuant to Sections 2.12(a) and (b), as the case may be, shall be adjusted to give effect to such reallocation; and

(iv) if any Defaulting Lender’s LC Exposure is not Cash collateralized, prepaid or reallocated pursuant to this Section 2.21(d), then, without prejudice to any rights or remedies of the applicable Issuing Bank or any Revolving Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender’s LC Exposure shall be payable to the applicable Issuing Bank until such Defaulting Lender’s LC Exposure is Cash collateralized or reallocated.

(e) So long as any Revolving Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan, and no Issuing Bank shall be required to issue, extend, create, incur, amend or increase any Letter of Credit unless the relevant Issuing Banks, as applicable, are reasonably satisfied that the related exposure will be 102% covered by the Revolving Credit Commitments of the non-Defaulting Revolving Lenders, Cash collateral provided pursuant to Section 2.21(c) and/or Cash collateral provided in accordance with Section 2.21(d), and participating interest in any such newly issued, extended or created Letter of Credit or newly made Swingline Loan shall be allocated among the applicable Class of the other Revolving Lenders in a manner consistent with Section 2.21(d)(i) (it being understood that Defaulting Lenders shall not participate therein).

(f) In the event that the Administrative Agent and the Borrower agree that any Defaulting Lender has adequately remedied all matters that caused such Person to be a Defaulting Lender, then, (i) if such Person is a Revolving Lender, the Applicable Revolving Credit Percentage of such Person’s Revolving Credit Commitment and the Swingline Exposure of the Revolving Lenders shall be readjusted to reflect the inclusion of such Person’s Revolving Credit Commitment, and on such date such Revolving Lender shall purchase at par such of the Revolving Loans of the applicable Class of the other Revolving Lenders (other than any Swingline Loan) or participations in Revolving Loans of the applicable Class as the Administrative Agent determine as necessary in order for such Revolving Lender to hold such Revolving Loans or participations in accordance with its Applicable Percentage of the applicable Class or its Applicable
Revolving Credit Percentage, as applicable and (ii) if such Person is a Delayed Draw Term Lender, on such date such Delayed Draw Term Lender shall purchase at par such of the Delayed Draw Term Loans of the other Delayed Draw Term Lenders or participations in Delayed Draw Term Loans as the Administrative Agent determine as necessary in order for such Delayed Draw Term Lender to hold such Delayed Draw Term Loans or participations in accordance with its Applicable Percentage. Notwithstanding the fact that any Defaulting Lender has adequately remedied all matters that caused such Person to be a Defaulting Lender, (x) no adjustment will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender and (y) except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Delaying Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from such Person’s having been a Defaulting Lender.

Section 2.22  Incremental Credit Extensions.

(a) The Borrower may, at any time, on one or more occasions pursuant to an Incremental Facility Amendment (x) add one or more new Classes of term facilities and/or increase the principal amount of term loans of any existing Class by requesting new commitments to provide such term loans (any such new Class or increase, an “Incremental Term Facility” and any loan made pursuant to an Incremental Term Facility, an “Incremental Term Loan”) and/or (y) increase the aggregate amount of the Revolving Credit Commitments of any existing Class (any such increase, an “Incremental Revolving Facility” and, together with any Incremental Term Facility, “Incremental Facilities”; and the loans thereunder, “Incremental Revolving Loans” and any Incremental Revolving Loans, together with any Incremental Term Loans, the “Incremental Loans”) in an aggregate outstanding principal amount not to exceed the Incremental Cap; provided that:

(i) no Incremental Commitment in respect of any Incremental Term Facility may be in an amount that is less than $5,000,000 (or such lesser amount to which the Administrative Agent may reasonably agree);

(ii) except as the Borrower and any Lender may separately agree, no Lender shall be obligated to provide any Incremental Commitment, and the determination to provide any Incremental Commitment shall be within the sole and absolute discretion of such Lender (it being agreed that the Borrower shall not be obligated to offer the opportunity to any Lender to participate in any Incremental Facility);

(iii) no Incremental Facility or Incremental Loan (nor the creation, provision or implementation thereof) shall require the approval of any existing Lender other than in its capacity, if any, as a lender providing all or part of any Incremental Commitment or Incremental Loan;

(iv) except as otherwise permitted herein (including with respect to currency, pricing (including any “MFN” or other pricing term), interest rate margins, rate floors, fees, premiums (including prepayment premiums), funding discounts, maturity and amortization),

(A) the terms of any Incremental Term Facility, must be reasonably acceptable to the Administrative Agent; it being agreed that any terms applicable to such Incremental Term Facility that (1) are applicable only after the then-existing Latest Maturity Date, (2) are, taken as a whole, in the good faith determination of the Borrower, not more favorable to the lenders or the agent of such Incremental Term Facility than those contained in the Loan Documents, (3) are more favorable to the lenders or the agent of such Incremental Term Facility than those contained in the Loan Documents

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and are then conformed (or added) to the Loan Documents for the benefit of the Lenders or, as applicable, the Administrative Agent (i.e., by conforming or adding a term to the then-outstanding Loans pursuant to the applicable Incremental Facility Amendment) and/or (4) taken as a whole, reflect then current market terms and conditions at the time of the incurrence or issuance of such Incremental Term Facility (as determined by the Borrower in good faith), shall, in each case, be deemed to be satisfactory to the Administrative Agent; provided that, notwithstanding the foregoing, any Incremental Term Facility may be structured as a "delayed draw" facility with such conditions to borrowing thereunder as the Borrower and the relevant Incremental Lenders may agree; and

(B) the terms of any Incremental Revolving Facility (for the avoidance of doubt, other than any arrangement, commitment, structuring, underwriting, ticking and/or amendment fee paid or to be paid in connection with the implementation of such Incremental Revolving Facility) shall be consistent with the terms of a then-existing Revolving Facility (if any);

(v) the currency, pricing (including any “MFN” or other pricing term), interest rate margins, rate floors, fees, premiums (including any prepayment premium), funding discounts and, subject to clauses (vi) and (vii) below, the maturity and amortization schedule applicable to any Incremental Facility shall be determined by the Borrower and the lender or lenders providing such Incremental Facility;

(vi) other than with respect to any Incremental Term Facility consisting of Indebtedness in the form of Customary Bridge Loans, the final maturity date with respect to any Class of Incremental Term Loan shall be no earlier than the then-existing Latest Maturity Date, it being understood and agreed for the avoidance of doubt that any undrawn commitment in respect of any Incremental Term Facility may terminate at such time as the Borrower and the lenders providing the relevant Incremental Term Facility may agree;

(vii) subject to clause (vi) above, any Incremental Term Facility may otherwise have an amortization schedule as determined by the Borrower and the lenders providing such Incremental Term Facility;

(viii) subject to clause (iv) above, to the extent applicable, any fee payable in connection with any Incremental Facility shall be determined by the Borrower and the arrangers and/or lenders providing such Incremental Facility;

(ix) (A) any Incremental Term Facility may rank pari passu with or junior to any then-existing Class of Loans in right of payment and/or security or may be unsecured (and to the extent the relevant Incremental Facility is secured on a junior lien basis or subordinated in right of payment, it shall be subject to an Intercreditor Agreement) and (B) no Incremental Facility may be (x) guaranteed by any subsidiary that is not a Loan Party (it being understood and agreed that the obligations of any subsidiary with respect to any escrow arrangement into which the proceeds of such Incremental Term Facility are deposited shall not constitute a guarantee by any subsidiary that is not a Loan Party) or (y) secured by any asset that does not constitute Collateral; it being understood that any Incremental Facility that is funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements may be secured by the applicable funds and related assets held in Escrow (and the proceeds thereof) until the date on which such funds are released from Escrow;
(x) the effectiveness of any Incremental Facility shall be subject to compliance with Section 6.10(a), Section 6.10(b), Section 6.10(c) on a Pro Forma Basis as of the last day of the most recently ended Test Period prior to the incurrence of such Incremental Facility;

(xi) the proceeds of any Incremental Facility may be used for working capital needs and other general corporate purposes and any other use not prohibited by this Agreement; and

(xii) on the date of the Borrowing of any Incremental Term Loans that will be of the same Class as any then-existing Class of Incremental 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 Incremental Term Loans of such Class on a pro rata basis (based on the relative sizes of such Borrowings), so that each Incremental Term Lender providing such Incremental Term Loans will participate proportionately in each then-outstanding Borrowing of Incremental Term Loans of such Class; it being acknowledged that the application of this clause (a)(xii) may result in new Incremental Term Loans having an Interest Period (the duration of which may be less than one month) that begin during an Interest Period then applicable to outstanding Term Benchmark Loans of the relevant Class and which end on the last day of such Interest Period; and

(xiii) to the extent that of any Incremental Facility does not rank pari passu with any then-existing Class of Loans in right of payment and security or is unsecured, such Incremental Facility will be documented pursuant to separate documentation from this Agreement (it being understood and agreed that any “last out” facility that is pari passu with any then-existing Class of Loans, as applicable, in right of security but which is “last out” with respect to payment priority may be documented hereunder).

(b) Incremental Commitments may be provided by any existing Lender, or by any other Eligible Assignee (any such other lender being called an “Incremental Lender”); provided that the Administrative Agent (and, in the case of any Incremental Revolving Facility, the Swingline Lender and any Issuing Bank) shall have a right to consent (such consent not to be unreasonably withheld, conditioned or delayed) to the relevant Incremental Lender’s provision of Incremental Commitments if such consent would be required under Section 9.05(b) for an assignment of Loans to such Incremental Lender; provided, further, that any Incremental Lender that is an Affiliated Lender shall be subject to the provisions of Section 9.05(g), mutatis mutandis, to the same extent as if the relevant Incremental Commitments and related Obligations had been acquired by such Lender by way of assignment.

(c) Each Lender or Incremental Lender providing a portion of any Incremental Commitment shall execute and deliver to the Administrative Agent and the Borrower all such documentation (including the relevant Incremental Facility Amendment) as may be reasonably required by the Administrative Agent to evidence and effectuate such Incremental Commitment. On the effective date of the relevant Incremental Commitment, each Incremental Lender shall become a Lender for all purposes in connection with this Agreement.

(d) As conditions precedent to the effectiveness of any Incremental Facility or the making of any Incremental Loan:

(i) upon its request, the Administrative Agent shall be entitled to receive customary written opinions of counsel with respect to the Borrower, as well as such reaffirmation agreements, supplements and/or amendments as it may reasonably require;
(ii) the Administrative Agent shall be entitled to receive, from each Incremental Lender, an Administrative Questionnaire and such other documents as it may reasonably require from such Incremental Lender;

(iii) subject to Section 2.22(h), the Administrative Agent shall have received a Borrowing Request as if the relevant Incremental Loans were subject to Section 2.03 or another written request the form of which is reasonably acceptable to the Administrative Agent (it being understood and agreed that the requirement to deliver a Borrowing Request shall not result in the imposition of any condition precedent to the availability of the relevant Incremental Loans (including with respect to the absence of a Default or Event of Default and/or the accuracy of any representation and/or warranty)); and

(iv) the Administrative Agent shall be entitled to receive a certificate of the Borrower signed by a Responsible Officer thereof certifying and attaching a copy of the resolutions adopted by the governing body of the Borrower approving or consenting to such Incremental Facility or Incremental Loans.

(e) Notwithstanding anything to the contrary in this Section 2.22 or in any other provision of any Loan Document, the conditions to the availability or funding of any Incremental Facility shall be determined by the relevant Incremental Lenders providing such Incremental Facility and the Borrower.

(f) Upon the implementation of any Incremental Revolving Facility pursuant to this Section 2.22, (i) each Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each relevant Incremental Revolving Facility Lender, and each relevant Incremental Revolving Facility Lender will automatically and without further act be deemed to have assumed a portion of such Revolving Lender’s participations hereunder in outstanding Letters of Credit and Swingline Loans such that, after giving effect to each deemed assignment and assumption of such participations, all of the Revolving Lenders’ (including each Incremental Revolving Facility Lender) (A) participations hereunder in Letters of Credit and (B) participations hereunder in Swingline Loans shall, in each case of the foregoing clauses (A) and (B), be held on a pro rata basis on the basis of their respective Revolving Credit Commitments (after giving effect to any increase in the Revolving Credit Commitment pursuant to Section 2.22) and (ii) the existing Revolving Lenders of the applicable Class shall assign Revolving Loans to certain other Revolving Lenders of such Class (including the Revolving Lenders providing the relevant Incremental Revolving Facility), and such other Revolving Lenders (including the Revolving Lenders providing the relevant Incremental Revolving Facility) shall purchase such Revolving Loans, in each case to the extent necessary so that all of the Revolving Lenders of such Class participate in each outstanding Borrowing of Revolving Loans pro rata on the basis of their respective Revolving Credit Commitments of such Class (after giving effect to any increase in the Revolving Credit Commitment of such Class pursuant to this Section 2.22); it being understood and agreed that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to this clause (f);

(g) On the date of effectiveness of any Incremental Revolving Facility, the Letter of Credit Sublimit and/or the maximum amount of Swingline Loans, as applicable, permitted hereunder shall increase by an amount, if any, agreed upon by the Borrower, the Administrative Agent and the relevant Issuing Bank and/or the Swingline Lender, as applicable; it being understood and agreed that the Borrower and any Lender providing any Incremental Revolving Facility may agree that such Lender will provide a portion of the Letter of Credit Sublimit in excess of its Applicable Percentage thereof.
(h) The Lenders hereby irrevocably authorize the Administrative Agent to, and the Administrative Agent shall (without the consent of any Lender (other than any Lender providing the applicable Incremental Facility)), enter into any Incremental Facility Amendment and/or any amendment to any other Loan Document as may be necessary, appropriate or advisable in order to establish any Incremental Facility (including any new Class or sub-Class in respect of Loans or commitments pursuant to this Section 2.22) including (i) technical amendments as may be necessary, appropriate or advisable in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Classes or sub-Classes, in each case on terms consistent with this Section 2.22 and/or (ii) any other amendment contemplated by Section 9.02(d)(ii). In addition, the Incremental Facility Amendment with respect to any Incremental Term Facility may, without the consent of any Lender (other than any Lender providing such Incremental Term Loans) or the Administrative Agent, include such amendments to this Agreement as may be necessary, appropriate or advisable as reasonably determined by the Administrative Agent and the Borrower to make the applicable Incremental Term Loans “fungible” with the relevant existing Class of Incremental Term Loans (including by modifying the amortization schedule and/or extending the time period during which any prepayment premium applies).

(i) This Section 2.22 shall supersede any provision in Section 2.18 or 9.02 to the contrary.

Section 2.23 Extensions of Loans and Revolving Credit Commitments

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an “Extension Offer”) made from time to time by the Borrower to all Lenders holding Loans of any Class or Commitments of any Class, in each case on a pro rata basis (based on the aggregate outstanding principal amount of the respective Loans or Commitments of such Class) and on the same terms to each such Lender, the Borrower is hereby permitted to consummate transactions with any individual Lender who accepts the terms contained in the relevant Extension Offer to extend the Maturity Date (or extend the availability period of any Delayed Draw Term Loan Commitment, as applicable) 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 (i) 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 and (ii) any Extended Delayed Draw Term Loan Commitments shall constitute a separate Class of Term Loan Commitments from the Class of Delayed Draw Term Loan Commitments from which they were converted), so long as the following terms are satisfied:

(i) except as to (A) currency, pricing (including any “MFN” or other pricing terms), interest rate margins, rate floors, fees, premiums (including prepayment premiums), funding discounts, maturity and amortization (which shall, subject to the immediately succeeding clause (iii) and to the extent applicable, be determined by the Borrower and any Lender who agrees to an Extension of its Revolving Credit Commitments and set forth in the relevant Extension Offer), (B) terms applicable to such Extended Revolving Credit Commitments or Extended Revolving Loans (each as defined below) that are, taken as a whole, in the good faith determination of the Borrower, more favorable to the lenders or the agent of such Extended Revolving Credit Commitments or Extended Revolving Loans than those contained in the Loan Documents and are then conformed (or added) to the Loan Documents for the benefit of the Revolving Lenders or, as applicable, the Administrative Agent (i.e., by conforming or adding a
term to the then-outstanding Revolving Loans pursuant to the applicable Extension Amendment), (C) terms, taken as a whole, that reflect then current market terms and conditions, taken as a whole, at the time of incurrence or issuance (as determined by the Borrower) and (D) any covenant or other provision applicable only after the Latest Revolving Credit Maturity Date, the Revolving Credit Commitment of any Lender who agrees to an extension with respect to such Commitment (an “Extended Revolving Credit Commitment”, and the Loans thereunder, “Extended Revolving Loans”), and the related outstandings, shall constitute a revolving commitment (or related outstandings, as the case may be) with substantially consistent terms (or terms not less favorable to existing Lenders) as the Class of Revolving Credit Commitments subject to the relevant Extension Offer (and related outstandings) provided hereunder; provided that to the extent more than one Revolving Facility exists after giving effect to any such Extension, (x) the borrowing and repayment of Revolving Loans with respect to any Revolving Facility after the effective date of such Extended Revolving Credit Commitments shall be made on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that any Revolving Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in repayments on a pro rata basis with such Revolving Facilities and that in the event of any Revolving Facility that must participate in borrowings on a less than pro rata basis as compared to other Revolving Facilities, such Revolving Facility shall participate in repayments on a less than pro rata basis as compared to such other Revolving Facilities (in each case, except, in any event, for (1) payments of interest and fees at different rates on the Revolving Facilities (and related outstandings), (2) repayments required on the Maturity Date of any Revolving Facility and (3) repayments made in connection with a permanent repayment and termination of the Revolving Credit Commitments under any Revolving Facility (subject to clause (z) below)), (y) all Swingline Loans and all Letters of Credit shall be participated on a pro rata basis by all Revolving Lenders and (z) any permanent repayment of Revolving Loans with respect to, and reduction or termination of Revolving Credit Commitments under, any Revolving Facility after the effective date of such Extended Revolving Credit Commitments shall be made on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that a Revolving Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in permanent repayments of Revolving Loans with respect to, and reduction and termination of revolving Credit Commitments under, such Revolving Facility on a pro rata basis with such other Revolving Facilities and that in the event of any Revolving Facility that must participate in borrowings on a less than pro rata basis as compared to other Revolving Facilities, such other Revolving Facility shall participate in permanent repayments of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, such Revolving Facility on a less than pro rata basis as compared to such other Revolving Facilities; provided in each case, that notwithstanding the foregoing, to the extent any such Revolving Credit Commitments are terminated in full and refinanced or replaced with a Revolver Replacement Facility or Replacement Debt, such Revolving Credit Commitments may be terminated on a greater than pro rata basis);

(ii)  (A) 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; and (B) no extended Delayed Draw Term Loan Commitments or extended Delayed Draw Term Loans may have a final maturity date earlier than the latest Maturity Date hereunder at such time (or require commitment reductions or terminations prior to the latest availability date for any Delayed Draw Term Loan Commitments at such time);

(iii) 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

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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;

(iv) unless the Administrative Agent otherwise agrees, any Extension must be in a minimum amount of $5,000,000;

(v) any applicable Minimum Extension Condition must be satisfied or waived by the Borrower;

(vi) any documentation in respect of any Extension shall be consistent with the foregoing;

(vii) no Extension of any Revolving Facility shall be effective as to the obligations of the Swingline Lender to make any Swingline Loan or any Issuing Bank with respect to Letters of Credit without the consent of the Swingline Lender or such Issuing Bank (such consents not to be unreasonably withheld or delayed) (and, in the absence of such consent, all references herein to Latest Revolving Credit Maturity Date shall be determined, when used in reference to the Swingline Lender or such Issuing Bank, as applicable, without giving effect to such Extension).

(b) (i) No Extension consummated in reliance on this Section 2.23 shall constitute a voluntary or mandatory prepayment for purposes of Section 2.11, (ii) the scheduled amortization payments (insofar as such schedule affects payments due to Lenders participating in the relevant Class) set forth in Section 2.10 shall be adjusted to give effect to any Extension of any Class of Loans and/or Commitments and (iii) except as set forth in clause (a)(viii) above, no Extension Offer is required to be in any minimum amount or any minimum increment; provided that the Borrower may at its election specify as a condition (a "Minimum Extension Condition") to the consummation of any Extension that a minimum amount (to be specified in the relevant Extension Offer in the Borrower’s sole discretion) of Loans or Commitments (as applicable) of any or all applicable tranches be tendered; it being understood that the Borrower may, in its sole discretion, waive any such Minimum Extension Condition. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.23 (including, for the avoidance of doubt, the payment of any interest, fees or premium in respect of any Extended 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)(vii), 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 Revolving Credit Commitments and all obligations in respect thereof shall constitute Secured Obligations under this Agreement and the other Loan Documents that are secured by the Collateral and guaranteed on a pari passu basis with all other applicable Secured Obligations under this Agreement and the other Loan Documents. The Lenders hereby irrevocably authorize the Administrative Agent to enter into any Extension Amendment and any amendment to any of the other Loan Documents with the Loan Parties as may be necessary in order to establish new Classes or sub-Classes in respect of Loans or Commitments so extended and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in
connection with the establishment of such new Classes or sub-Classes, in each case on terms consistent with this Section 2.23.

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five Business Days’ (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.23.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

On the dates and to the extent required pursuant to Sections 4.01 or 4.02, as applicable, the Borrower hereby represents and warrants to the Lenders, the Issuing Banks and the Administrative Agent that:

Section 3.01 Organization; Powers. The Borrower and each of its Restricted Subsidiaries (a) is (i) duly organized or incorporated (as applicable) and validly existing and (ii) in good standing (to the extent such concept exists in the relevant jurisdiction) under the Requirements of Law of its jurisdiction of organization, (b) has all requisite organizational power and authority to own its assets and to carry on its business as now conducted and (c) is qualified to do business in, and is in good standing (to the extent such concept exists in the relevant jurisdiction) in, every jurisdiction where the ownership, lease or operation of its properties or conduct of its business requires such qualification, except, in each case referred to in this Section 3.01 (other than clause (a)(i) and clause (b), in each case, with respect to the Borrower) where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.02 Authorization; Enforceability. The execution, delivery and performance by each Loan Party of each Loan Document to which such Loan Party is a party (a) are within such Loan Party’s corporate or other organizational power and (b) have been duly authorized by all necessary corporate or other organizational action of such Loan Party. Each Loan Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party and is a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to the Legal Reservations.

Section 3.03 Governmental Approvals; No Conflicts. The execution and delivery of each Loan Document by each Loan Party party thereto and the performance by such Loan Party of its obligations thereunder (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) in connection with the Perfection Requirements and (iii) such consents, approvals, registrations, filings, or other actions the failure to obtain or make which would not be reasonably expected to have a Material Adverse Effect, (b) will not violate any (i) of such Loan Party’s Organizational Documents or (ii) Requirement of Law applicable to such Loan Party which violation, in the case of this clause (b)(ii), would reasonably be expected to have a Material Adverse Effect and (c) will not violate or result in a default under any material Contractual Obligation to which such Loan Party is a party which violation, in the case of this clause (c), would reasonably be expected to result in a Material Adverse Effect.

Section 3.04 Financial Condition; No Material Adverse Effect.

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(a) The financial statements most recently provided pursuant to Section 5.01(a) or (b), as applicable, present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower on a consolidated basis as of such dates and for such periods in accordance with GAAP, (i) except as otherwise expressly noted herein, (ii) subject, in the case of quarterly financial statements, to the absence of footnotes and normal year-end adjustments and (iii) if applicable, except as may be necessary to reflect any differing entities and/or organizational structure prior to giving effect to the Transactions.

(b) Since the Closing Date, there have been no events, developments or circumstances that have had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect that is continuing.

Section 3.05 Properties.

(a) The Borrower and each of its Restricted Subsidiaries have good and valid fee simple title to or rights to purchase, or valid leasehold interests in, or easements or other limited property interests in, all of their respective Real Estate Assets and have good and valid title to their personal property and assets, including the Collateral, in each case, except (i) for defects in title that do not materially interfere with their ability to conduct their business as currently conducted or to utilize such properties and assets for their intended purposes, (ii) for any Permitted Lien, or (iii) where the failure to have such title would not reasonably be expected to have a Material Adverse Effect.

(b) The Borrower and its Restricted Subsidiaries own or otherwise have a license or right to use all rights in Patents, Trademarks, Copyrights and other rights in works of authorship (including all Copyrights embodied in software) and all other intellectual property rights (collectively, “IP Rights”) that are used in the conduct their respective businesses as presently conducted without any infringement, violation 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, violation 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 or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any of its Restricted Subsidiaries which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) Except for any matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, (i) neither the Borrower nor any of its Restricted Subsidiaries is subject to, or has received notice of, any Environmental Claim or Environmental Liability or knows of any basis for any Environmental Liability or Environmental Claim of the Borrower or any of its Restricted Subsidiaries and (ii) neither the Borrower nor any of its Restricted Subsidiaries has failed to comply with any Environmental Law or to obtain, maintain or comply with any Governmental Authorization, permit, license or other approval required under any Environmental Law.

(c) Neither the Borrower nor any of its Restricted Subsidiaries has treated, stored, transported or Released any Hazardous Materials on, at, under or from any currently or formerly owned, leased or operated real estate or facility in a manner that would reasonably be expected to have a Material Adverse Effect.
Section 3.07 **Compliance with Laws.** Each of the Borrower and each of its Restricted Subsidiaries is in compliance with all Requirements of Law applicable to it or its property, except, in each case where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; it being understood and agreed that this Section 3.07 shall not apply to the Requirements of Law covered by Section 3.17.

Section 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 the Borrower and each of its Restricted Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed by or with respect to it and has paid or caused to be paid all Taxes required to have been paid by it that are due and payable (including in its capacity as a withholding agent), except (a) Taxes (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 Restricted Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (c) to the extent that the failure to do so, individually or in the aggregate, could 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 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 Borrower and its subsidiaries, to the knowledge of the Borrower, all written information (other than the Projections, forecasts, financial estimates, other forward-looking information and/or projected information, information of a general economic or industry-specific nature and/or any third party report and/or memorandum (but not the written information (other than Projections, forecasts, financial estimates, other forward looking information and/or projected information and/or general economic or industry-specific information) on which such third party report and/or memorandum was based, if such written information was provided to any Initial Lender, any Arranger or the Administrative Agent)) concerning the Borrower and its subsidiaries that was prepared by or on behalf of the Borrower or its subsidiaries or their respective representatives and made available to any Initial Lender, any Arranger or the Administrative Agent in connection with the Transactions on or before the Closing Date (collectively, the “Information”), when taken as a whole, did not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements were made (after giving effect to all supplements and updates thereto from time to time).

(b) As of the Closing Date, the Projections have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time furnished (it being recognized that such Projections are not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond the Borrower’s control, that no assurance can be given that any
particular financial projections will be realized, that actual results may differ from projected results and that such differences may be material).

Section 3.12 Solvency. As of the Closing Date, after giving effect to the Transactions and the incurrence of the Indebtedness and obligations being incurred in connection with this Agreement on the Closing Date, (i) the sum of the debt (including contingent liabilities) of the Borrower and its Restricted Subsidiaries, taken as a whole, does not exceed the fair value of the assets of the Borrower and its Restricted Subsidiaries, taken as a whole, (ii) the capital of the Borrower and its Restricted Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, contemplated as of the Closing Date; and (iii) the Borrower and its Restricted Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debts as they mature in accordance with their terms. For purposes of this Section 3.12, (A) it is assumed that the Indebtedness and other obligations under the Revolving Facility will come due at their respective maturities and (B) the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Section 3.13 Subsidiaries. Schedule 3.13 sets forth, in each case as of the Closing Date, (a) a correct and complete list of the name of the Borrower, each subsidiary of the Borrower and the ownership interest therein held by the Borrower or its applicable subsidiary, and (b) the type of entity of the Borrower and each of its subsidiaries.

Section 3.14 Security Interest in Collateral. Subject to the terms of the final paragraph of Section 4.01, the Legal Reservations, the Perfection Requirements and the provisions, limitations and/or exceptions set forth in this Agreement and/or any other Loan Document, the Collateral Documents create legal, valid and enforceable Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of it and the other Secured Parties, and upon the satisfaction of the applicable Perfection Requirements and/or any other perfection action required under the terms of any Loan Document, such Liens constitute perfected Liens (with the priority that such Liens are expressed to have under the relevant Collateral Documents, unless otherwise permitted hereunder or under any Collateral Document) on the Collateral (to the extent such Liens are then required to be perfected under the terms of the Loan Documents) securing the Secured Obligations, in each case as and to the extent set forth therein.

For the avoidance of doubt, notwithstanding anything herein or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to (A) the effect of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in the Capital Stock held by any Loan Party in any Person organized under the laws of any jurisdiction other than the jurisdiction in which such Loan Party is organized, or as to the rights and remedies of the Administrative Agent or any Lender with respect thereto, under the Requirements of Law of any jurisdiction other than the jurisdiction in which such Loan Party is organized, or as to the rights and remedies of the Administrative Agent or any Lender with respect thereto, under the Requirements of Law of any jurisdiction other than the jurisdiction in which such Loan Party is organized, or as to the rights and remedies of the Administrative Agent or any Lender with respect thereto, under the Requirements of Law of any jurisdiction other than the jurisdiction in which such Loan Party is organized, (B) the enforcement of any security interest, or right or remedy with respect to any Collateral that may be limited or restricted by, or require any consent, authorization approval or license under, any Requirement of Law or (C) on the Closing Date and until required pursuant to Section 5.12, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent the same is not required on the Closing Date.

Section 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 or slowdowns against the Borrower or any of its Restricted Subsidiaries pending or, to the knowledge of the Borrower or any of its Restricted Subsidiaries, threatened and (b) the hours worked by and payments made to employees of the
Borrower and its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters.

Section 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 or incidentally or ultimately, for any purpose that results in a violation of the provisions of Regulation U.

Section 3.17 Sanctions; PATRIOT ACT and FCPA.

(a) (i) None of the Borrower, nor any of its Restricted Subsidiaries nor any officer or director of any of the foregoing nor, to the knowledge of the Borrower, employee or agent of any of the foregoing is a Sanctioned Person; and (ii) the Borrower will not directly or, to its knowledge, indirectly, use the proceeds of the Loans or Letters of Credit or otherwise make available such proceeds to any Person for (x) the purpose of funding, financing or facilitating the activities of any Person that is the subject or target of any applicable Sanctions, except to the extent licensed or otherwise approved by OFAC or in compliance with applicable exemption, licenses or other approvals; (y) the purpose of funding, financing or facilitating activities in a Sanctioned Country; or (z) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(b) To the extent applicable, each Loan Party, their respective officers and directors, and to the knowledge of each Loan Party their employees and agents, are in compliance, in all material respects, with Anti-Corruption Laws, Sanctions and the USA PATRIOT Act.

(c) (i) Neither the Borrower nor any of its Restricted Subsidiaries nor, to the knowledge of the Borrower, any director, officer, or employee of the Borrower or any Restricted Subsidiary, nor, to the knowledge of the Borrower, any agent (solely to the extent acting in its capacity as an agent for the Borrower or any of its subsidiaries), has taken any action, directly or, to its knowledge, indirectly, that would result in a material violation by any such Person of Anti-Corruption Laws, including making any offer, payment, promise to pay or authorization or approval of the payment of any money, or other property, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in each case in contravention of Anti-Corruption Laws; 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 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 Anti-Corruption Laws.

The representations and warranties set forth in Section 3.17 above made by or on behalf of any Foreign Subsidiary are subject to and limited by any Requirement of Law applicable to such Foreign Subsidiary; it being understood and agreed that to the extent that any Foreign Subsidiary is unable to make any such representation or warranty set forth in Section 3.17 as a result of the application of this sentence, such Foreign Subsidiary shall be deemed to have represented and warranted that it is in compliance, in all material respects, with any equivalent Requirement of Law relating to sanctions, anti-terrorism, anti-corruption or anti-money laundering that is applicable to such Foreign Subsidiary in its relevant local jurisdiction of organization.
ARTICLE IV

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, in each case, on the Closing Date, shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received from the Borrower and each Loan Party, to the extent party thereto, (i) a counterpart signed by the Borrower or such Loan Party (or written evidence reasonably satisfactory to the Administrative Agent (which may include a copy transmitted by facsimile or other electronic method) that such party has signed a counterpart) of (A) this Agreement and (B) each Promissory Note requested by a Lender at least three Business Days prior to the Closing Date and (ii) a Borrowing Request as required by Section 2.03.

(b) Legal Opinions. The Administrative Agent (or its counsel) shall have received, on behalf of itself, the Lenders and each Issuing Bank on the Closing Date, customary written opinions of (i) Weil, Gotshal & Manges LLP, in its capacity as special counsel for the Borrower and the Loan Parties, (ii) McDees Wallace & Nurick LLC, in its capacity as Maryland counsel for certain of the Loan Parties and (iii) Huie Fernambucq & Stewart, LLP, in its capacity as Alabama counsel for certain of the Loan Parties, in each case, dated the Closing Date and addressed to the Administrative Agent, the Lenders and each Issuing Bank.

(c) Financial Statements and Compliance Certificate. The Administrative Agent shall have received:

(i) the audited consolidated balance sheet of the Borrower for the Fiscal Year ended on December 27, 2020 and the audited consolidated statements of income and cash flows of the Borrower for the Fiscal Year then ended; and

(ii) the unaudited consolidated balance sheet and the unaudited consolidated statements of income and cash flows of the Borrower for the Fiscal Quarters ended on April 18, 2021, July 11, 2021 and October 3, 2021.

(d) Secretary’s Certificate and Good Standing Certificates of Loan Parties. The Administrative Agent (or its counsel) shall have received:

(i) a certificate of each Loan Party on the Closing Date, dated the Closing Date and executed by a Responsible Officer, which shall:

(A) certify that attached thereto is a true and complete copy of the resolutions, written consents or extracts of minutes of a meeting, as applicable, of its board of directors, board of managers, supervisory board, shareholders, members or other governing body (as the case may be and in each case, to the extent required) authorizing the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions or written consents have not been modified, rescinded or amended and are in full force and effect,
identify by name and title and bear the signatures of the Responsible Officer or authorized signatory of such Loan Party on the Closing Date that is authorized to sign the Loan Documents to which it is a party on the Closing Date, as applicable, and

(C) certify (I) that attached thereto is a true and complete copy of the certificate or articles of incorporation or organization (or memorandum of association, articles of association or other equivalent thereof) of each Loan Party on the Closing Date (certified by the relevant authority of the jurisdiction of organization of such Loan Party) and a true and correct copy of its by-laws or operating, management, partnership or similar agreement (to the extent applicable) and (II) that such documents or agreements have not been amended (except as otherwise attached to such certificate and certified therein as being the only amendments thereto as of such date), and

(ii) a good standing certificate (or equivalent), dated as of a recent date for each such Loan Party from the relevant office of its jurisdiction of organization (to the extent available in the jurisdiction of organization of such Loan Party).

(e) Representations and Warranties. The representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date; provided that (i) to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or for such period and (ii) to the extent that any representation and warranty is qualified by or subject to a “material adverse effect”, “material adverse change” or similar term or qualification, the same shall be true and correct in all respects.

(f) Fees. 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) Closing Date Refinancing. The Closing Date Refinancing shall be consummated and the Administrative Agent shall have received a customary payoff letter providing for the release of liens securing the obligations under the Existing Credit Agreement (to the extent required by the definition of “Closing Date Refinancing”) upon the consummation of the Closing Date Refinancing.

(h) No Default or Event of Default. At the time of and immediately after giving effect to the making of the Loans to be made on the Closing Date, no Default or Event of Default has occurred and is continuing.

(i) Solvency. The Administrative Agent (or its counsel) shall have received a certificate in substantially the form of Exhibit P from a Responsible Officer of the Borrower dated as of the Closing Date and certifying as to the matters set forth therein.

(j) Perfection Certificate. The Administrative Agent (or its counsel) shall have received a completed Perfection Certificate dated the Closing Date and signed by a Responsible Officer of the Borrower, together with all attachments contemplated thereby.
(k) **Filings Registrations and Recordings.** Subject to the final paragraph of this **Section 4.01** and except as may otherwise be agreed by the Administrative Agent, the requirements set forth in clause (a) of the definition of “Collateral and Guarantee Requirement” shall be satisfied.

(l) **Material Adverse Effect.** Since December 27, 2020, there shall not have occurred a Material Adverse Effect.

(m) **USA PATRIOT Act.** No later than three Business Days in advance of the Closing Date, the Administrative Agent shall have received all documentation and other information reasonably requested with respect to any Loan Party in writing by any Initial Lender at least 10 Business Days in advance of the Closing Date, which documentation or other information is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(n) **Beneficial Ownership Certification.** To the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, no later than three Business Days in advance of the Closing Date, the Administrative Agent shall have received a Beneficial Ownership Certification in relation to the Borrower to the extent reasonably requested by it at least 10 Business Days in advance of the Closing Date.

(o) **Officer’s Certificate.** The Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower certifying the satisfaction of the conditions precedent set forth in Sections 4.01(e), (h) and (l).

For purposes of determining whether the conditions specified in this **Section 4.01** have been satisfied on the Closing Date, by funding the Loans hereunder or issuing a Letter of Credit on the Closing Date, the Administrative Agent, each Lender and each Issuing Bank, as applicable, shall be deemed to have consented to, approved or accepted, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Administrative Agent, such Lender or such Issuing Bank, as the case may be.

Notwithstanding the foregoing, to the extent that the Lien on any Collateral is not or cannot be created or perfected on the Closing Date (other than, to the extent required herein or in the other Loan Documents, the creation and perfection of a Lien on Collateral that is of the type that may be perfected by the filing of a Form UCC-1 financing statement under the UCC), then the creation and/or perfection of such Lien shall not constitute a condition precedent to the availability of the Revolving Facility on the Closing Date, but may instead be delivered or perfected within the time period set forth in **Section 5.15** (or such later date as the Administrative Agent may reasonably agree).

**Section 4.02 Each Credit Extension.** After the Closing Date, the obligation of each **Revolving** Lender and each Issuing Bank to make any Credit Extension is subject to the satisfaction of the following conditions:

(a) (i) In the case of any Borrowing, the Administrative Agent shall have received a Borrowing Request as required by **Section 2.03**. (ii) in the case of the issuance of any Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a Letter of Credit Request or (iii) in the case of any Borrowing of Swingline Loans, the Swingline Lender and the Administrative Agent shall have received Borrowing Request as required by **Section 2.04(a)**.

(b) The representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of any
such Credit Extension with the same effect as though such representations and warranties had been made on and as of the date of such Credit Extension; provided that, to the extent that any representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or for such period; provided, further, that, any representation and warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates or for such periods.

(c) At the time of and immediately after giving effect to the applicable Credit Extension, no Default or Event of Default has occurred and is continuing.

(d) In the case of any drawing of a Delayed Draw Term Loan, at the time of funding any such Loan and immediately after giving effect (including giving effect on a Pro Forma Basis) thereto and the application of proceeds therefrom and any other transactions consummated in connection therewith, the Borrower is in compliance with the financial covenant set forth in Section 6.10(a).

Each Credit Extension after the Closing Date shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (b) and (c) of this Section; provided, however, that, for the avoidance of doubt, the conditions set forth in this Section 4.02 shall not apply to (A) any Incremental Loan and/or (B) any Credit Extension under any Refinancing Amendment and/or Extension Amendment, unless, in each case, the lenders in respect thereof have required satisfaction of the same in the applicable Incremental Facility Amendment, Refinancing Amendment or Extension Amendment, as applicable.

ARTICLE V

AFFIRMATIVE COVENANTS

From the Closing Date until the date on which all Revolving Credit Commitments have expired or terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document (other than (i) contingent indemnification obligations for which no claim or demand has been made and (ii) for the avoidance of doubt, obligations and liabilities under Banking Services Obligations and Secured Hedging Obligations) have been paid in full in the manner prescribed by Section 2.18 and all Letters of Credit have expired or have been terminated (or have been made subject to Letter of Credit Support) and all LC Disbursements have been reimbursed (such date, the “Termination Date”), and the Borrower hereby covenant and agree with the Lenders, the Issuing Banks and the Administrative Agent 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. Within 45 days (or, with respect to the fiscal quarters ending April 17, 2022, July 10, 2022 and October 2, 2022, 60 days) after the end of each of the first three Fiscal Quarters of each Fiscal Year, the consolidated balance sheet of the Borrower as at the end of such Fiscal Quarter and the related consolidated statements of income or operations and cash flows of the Borrower for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, and setting forth, in reasonable detail, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail; provided that any comparison against the corresponding figures from the corresponding period in any prior Fiscal Year may reflect the financial results of any applicable predecessor entity;
(b) **Annual Financial Statements.** Within 120 days after the end of each Fiscal Year (or, with respect to the Fiscal Year ended December 26, 2021, by May 25, 2022), (i) the consolidated balance sheet of the Borrower as at the end of such Fiscal Year and the related consolidated statements of income or operations and cash flows of the Borrower for such Fiscal Year and setting forth, in reasonable detail, in comparative form the corresponding figures for the previous Fiscal Year (it being understood and agreed that no such comparison shall be required if (A) the relevant independent certified public accountant is not willing to provide the same or (B) the corresponding figures from the previous Fiscal Year are not available) and (ii) with respect to such consolidated financial statements, a report thereon of Deloitte & Touche, LLP or other independent certified public accountant of recognized national standing (which report shall not be subject to (A) a “going concern” qualification (but not a “going concern” explanatory paragraph or like statement) (except as resulting from, in the good faith determination of the Borrower, (1) the impending maturity of any Indebtedness, (2) the breach or anticipated breach of any financial covenant and/or (3) the activities, operations, financial results, assets or liabilities of any Unrestricted Subsidiary) or (B) a qualification as to the scope of the relevant audit), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower as at the dates indicated and its results of operations and cash flows for the periods indicated in conformity with GAAP;

(c) **Compliance Certificate.** Together with each delivery of financial statements pursuant to Sections 5.01(a) and (b), (i) a duly executed and completed Compliance Certificate and (ii)(A) a summary of the pro forma adjustments (if any) necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such financial statements and (B) a list identifying each Unrestricted Subsidiary as of the last day of the Fiscal Quarter covered by such Compliance Certificate or confirmation that there is no change in such information since the later of the Closing Date and the date of the last such list delivered pursuant to this clause (ii)(B);

(d) **Notice of Default; Notice of Material Adverse Effect.** Promptly upon any Responsible Officer of the Borrower obtaining knowledge of (i) any Default or Event of Default or (ii) the occurrence of any event or change that has caused or evidences or would reasonably be expected to cause or evidence, either individually or in the aggregate, a Material Adverse Effect, a reasonably-detailed written notice specifying the nature and period of existence of such condition, event or change and what action the Borrower has taken, is taking and proposes to take with respect thereto;

(e) **Notice of Litigation.** Promptly upon any Responsible Officer of the Borrower obtaining knowledge of (i) the institution of, or threat of, any Adverse Proceeding not previously disclosed in writing by the Borrower to the Administrative Agent, or (ii) any material development in any Adverse Proceeding that, in the case of either of clauses (i) or (ii), would reasonably be expected to have a Material Adverse Effect, written notice thereof from the Borrower together with such other non-privileged information as may be reasonably available to the Loan Parties to enable the Lenders to evaluate such matters;

(f) **ERISA.** Promptly upon any Responsible Officer of the Borrower becoming aware of the occurrence of any ERISA Event that would reasonably be expected to have a Material Adverse Effect, a written notice from the Borrower specifying the nature thereof, what action the Borrower, any Restricted Subsidiary or any ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the U.S. Department of Labor or the PBGC with respect thereto;
(g) **Financial Plan.** Within 90 days after the beginning of any Fiscal Year (commencing with the Fiscal Year ending December 31, 2023), an annual consolidated financial budget for such Fiscal Year prepared by management of the Borrower;

(h) **Information Regarding Collateral.** Prompt (an, in any event, within 60 days of the relevant change (or such later date to which the Administrative Agent may agree in its reasonable discretion), written notice (i) with respect to the Borrower or any other Loan Party that is a Domestic Subsidiary, of any change in (A) such Loan Party’s legal name, (B) such Loan Party’s type of organization, (C) such Loan Party’s jurisdiction of organization or (D) such Loan Party’s organizational identification number, in each case, to the extent such information is necessary to enable the Administrative Agent to perfect or maintain the perfection and priority of its security interest in the Collateral of the relevant Loan Party, together with a certified copy of the applicable Organizational Document reflecting the relevant change, and (ii) with respect to any Loan Party that is a Discretionary Guarantor, such types of changes affecting the perfection or priority of the Administrative Agent’s security interest in the applicable Collateral of such Discretionary Guarantor as the Borrower and the Administrative Agent have agreed in connection with such Loan Party becoming a Discretionary Guarantor; and

(i) **Certain Reports.** Promptly upon their becoming available and without duplication of any obligation with respect to any such information that is otherwise required to be delivered under the provisions of any Loan Document, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by the Borrower or its applicable Parent Company to all of its security holders acting in such capacity and (ii) all regular and periodic reports and all registration statements (other than on Form S-8 or a similar form) and prospectuses, if any, publicly filed by the Borrower or its applicable Parent Company with any securities exchange or with the SEC or any analogous Governmental Authority or private regulatory authority with jurisdiction over matters relating to securities, in each case other than any prospectus relating to any equity plan; and

(j) **Other Information.** Such customary additional information (financial or otherwise) that is readily available to the Borrower as the Administrative Agent may reasonably request from time to time regarding the financial condition or business of the Borrower and its Restricted Subsidiaries.

Documents required to be delivered pursuant to this **Section 5.01** may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earliest to occur of the date (i) on which the Borrower (or a representative thereof) (A) posts such documents or (B) provides a link thereto, in each case, at the website address listed on **Schedule 5.01** (which **Schedule 5.01** may be updated from time to time), (ii) (A) on which such documents are delivered by the Borrower to the Administrative Agent for posting on behalf of the Borrower on IntraLinks/SyndTrak or another relevant website (the “**Platform**”), if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent) or (B) on which the relevant documents are electronically mailed or otherwise transmitted to the Administrative Agent in a manner to which the Administrative Agent have access and (iii) in respect of the items required to be delivered pursuant to **Section 5.01(a), (b) and/or (i)**, on which such items have been made available on the SEC website or the website of the relevant analogous governmental or private regulatory authority or securities exchange (including, for the avoidance of doubt, by way of “EDGAR”).

Notwithstanding the foregoing, the obligations in **Section 5.01(a) and (b)** may instead be satisfied with respect to any relevant information of the Borrower by furnishing (i) the applicable financial statements or other information required by such clauses of the Borrower (or any Parent Company) or (ii) in the case of **Sections 5.01(a) and (b)**, the Borrower’s (or any Parent Company thereof), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC or any securities exchange, in each
case, within the time periods specified in such paragraphs and without any requirement to provide notice of such filing to the Administrative Agent or any Lender; provided that, with respect to each of clauses (i) and (ii), (A) to the extent (x) such financial statements relate to any Parent Company and (y) either (1) such Parent Company (or any other Parent Company that is a subsidiary of such Parent Company) has any material third party Indebtedness and/or material operations (as determined by the Borrower in good faith and other than any operations that are attributable solely to such Parent Company’s ownership of the Borrower and its subsidiaries) or (2) there are material differences (in the good faith determination of the Borrower) between the financial statements of such Parent Company and its consolidated subsidiaries, on the one hand, and the Borrower and its consolidated subsidiaries, on the other hand, such financial statements or Form 10-K or Form 10-Q, as applicable, shall be accompanied by unaudited consolidating information that summarizes in reasonable detail the differences between the information relating to such Parent Company and its consolidated subsidiaries, on the one hand, and the information relating to the Borrower and its consolidated subsidiaries on a consolidated stand-alone basis, on the other hand (other than any such difference relating to shareholders’ equity), and (B) to the extent such financial statements are in lieu of statements required to be provided under Section 5.01(b), such statements shall be accompanied by a report and opinion with respect to the financial statements of the applicable Parent Company of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall satisfy the applicable requirements set forth in Section 5.01(b).

No financial statement required to be delivered pursuant to Section 5.01(a) or (b) shall be required to include any acquisition accounting adjustment relating to the Transactions or any Permitted Acquisition or other Investment to the extent it is not practicable to include any such adjustment in such financial statement.

Section 5.02 Existence. Except as otherwise permitted under Section 6.07 or Section 6.09, the Borrower will, and the Borrower will cause each of its Restricted Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights, franchises, licenses and permits reasonably necessary to the normal conduct of 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 the Borrower nor any of the Borrower’s Restricted Subsidiaries shall be required to preserve any such existence (other than with respect to the preservation of existence of 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. The Borrower will, and the Borrower will cause each of its Restricted Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income or businesses or franchises before any penalty or fine accrues thereon; provided that no such Tax need be paid if (i) it is being contested in good faith by appropriate proceedings, so long as adequate reserves or other appropriate provisions, as are required in conformity with GAAP, have been made therefor or (ii) 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 Restricted Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and casualty and condemnation excepted, all property reasonably necessary to the normal conduct of business of the Borrower and its Restricted Subsidiaries and from time to time will make or cause to be made all needed and appropriate repairs, renewals and replacements.
thereof, in each case except as expressly permitted by this Agreement or where the failure to maintain such properties or make such repairs, renewals or replacements could not reasonably be expected to have a Material Adverse Effect.

Section 5.05 Insurance. (a) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, the Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, such insurance coverage with respect to liability, loss or damage in respect of the assets, properties and businesses of the Borrower and its Restricted Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Each such policy of insurance shall, subject to Section 5.15, (i) name the Administrative Agent on behalf of the Secured Parties as an additional insured thereunder as its interests may appear and (ii) to the extent available from the relevant insurance carrier, in the case of each casualty insurance policy (excluding any business interruption insurance policy) (A) contain a lender loss payable clause or endorsement that names the Administrative Agent, on behalf of the Secured Parties as the lender loss payee thereunder and (B) provide for at least 30 days’ prior written notice to the Administrative Agent of any modification or cancellation of such policy (or 10 days’ prior written notice in the case of the failure to pay any premium thereunder); provided that, unless an Event of Default exists, (A) the Administrative Agent agrees that the Borrower and/or its applicable Restricted Subsidiary shall have the sole right to adjust or settle any claims under such insurance and (B) all proceeds from a casualty event shall be paid to the Borrower.

(b) In the event any Collateral (including, without limitation, the Verona Property) is located in any area that has been designated by the Federal Emergency Management Agency as a “Special Flood Hazard Area”, the Loan Parties shall purchase and maintain, with financially sound and reputable insurance companies, flood insurance on such Collateral (including any personal property which is located on any Real Property Asset leased by such Loan Party within a “Special Flood Hazard Area”). The amount of flood insurance required by this Section 5.05(a) shall be in an amount equal to the lesser of (i) the total Commitments and (ii) the total replacement cost value of the improvements for the applicable location; provided that in no event shall such amount be less than the amount required under applicable Flood Insurance Laws.

Section 5.06 Inspections. The Borrower will, and the Borrower will cause each of its Restricted Subsidiaries to, permit any authorized representative designated by the Administrative Agent to visit and inspect any of the properties of the Borrower and any of its Restricted Subsidiaries at which the principal financial records and executive officers of the applicable Person are located, to inspect, copy and take extracts from its and their respective financial and accounting records, and to discuss its and their respective affairs, finances and accounts with its and their Responsible Officers and independent public accountants (provided that the Borrower (or any of its subsidiaries) may, if it so chooses, be present at or participate in any such discussion), all upon reasonable notice and at reasonable times during normal business hours; provided that (a) only the Administrative Agent on behalf of the Lenders may exercise the rights of the Administrative Agent and the Lenders under this Section 5.06, (b) except as expressly set forth in clause (c) below during the continuance of an Event of Default under Section 7.01(a), (f) or (g), the Administrative Agent shall not exercise such rights more often than one time during any calendar year and (c) when an Event of Default under Section 7.01(a), (f) or (g) exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice.
Section 5.07 Maintenance of Books and Records. The Borrower will, and will cause its Restricted Subsidiaries to, maintain proper books of record and account containing entries of all material financial transactions and matters involving the assets and business of the Borrower and its Restricted Subsidiaries that are full, true and correct in all material respects and permit the preparation of consolidated financial statements in accordance with GAAP.

Section 5.08 Compliance with Laws. The Borrower will comply, and the Borrower will cause each of its Restricted Subsidiaries to comply, with all applicable Requirements of Law (including applicable ERISA, the Code and all Environmental Laws and the USA PATRIOT Act), except to the extent the failure of the Borrower or the relevant Restricted Subsidiary to comply could not reasonably be expected to have a Material Adverse Effect. The Borrower will comply, and the Borrower will cause each of its Restricted Subsidiaries to comply in all material respects with all applicable Anti-Corruption Laws and Sanctions; provided that the requirements set forth in this Section 5.08, as they pertain to compliance by any Foreign Subsidiary with any Sanctions, the USA PATRIOT ACT and Anti-Corruption Laws, are subject to and limited by any Requirement of Law applicable to such Foreign Subsidiary in its relevant local jurisdiction and shall not apply to such Foreign Subsidiary to the extent the same conflict with relevant local Requirements of Law applicable to such Foreign Subsidiary. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

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 Restricted Subsidiaries, a copy of any and all written communications with respect to (A) any Environmental Claim that, individually or in the aggregate, would reasonably be expected to give rise to a Material Adverse Effect, (B) any Release required to be reported by the Borrower or any of its Restricted Subsidiaries to any federal, state or local governmental or regulatory agency or other Governmental Authority that would reasonably be expected to have a Material Adverse Effect, (C) any request made to the Borrower or any of its Restricted Subsidiaries for information from any governmental agency that suggests such agency is investigating whether the Borrower or any of its Restricted Subsidiaries may be potentially responsible for any Hazardous Materials Activity which would reasonably be expected to have a Material Adverse Effect and (D) such other documents and information as from time to time may be reasonably requested by the Administrative Agent in relation to any matters disclosed pursuant to this Section 5.09(a);

(b) Hazardous Materials Activities, Etc. The Borrower shall promptly take, and shall cause each of its Restricted Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by the Borrower or its Restricted Subsidiaries, and address with appropriate corrective or remedial action any Release or threatened Release of Hazardous Materials at or from any Facility, in each case, that would reasonably be expected to have a Material Adverse Effect and (ii) make an appropriate response to any Environmental Claim against the Borrower or any of its Restricted Subsidiaries and discharge any obligations it may have to any Person thereunder, in each case, where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.10 Designation of Subsidiaries. The Borrower may at any time after the Closing Date designate (or re-designate) any subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (a) immediately after giving effect to such designation (or re-designation), no Event of Default exists (including after giving effect to the reclassification of any Investment in, Indebtedness of and/or Lien on the assets of, the applicable
Restricted Subsidiary or Unrestricted Subsidiary), (b) immediately after giving effect to such designation (or re-designation), the Borrower is in compliance with Section 6.10(a), Section 6.10(b) and Section 6.10(c) on a Pro Forma Basis as of the last day of the most recently ended Test Period, (c) no Restricted Subsidiary may be designated (or re-designated) as an Unrestricted Subsidiary if, as of the date of the designation, thereof such Restricted Subsidiary owns or is the exclusive licensee of or, immediately after giving effect to such designation (or re-designation), will own or be the exclusive licensee of, any Material Intellectual Property and (d) as of the date of the designation thereof, no Unrestricted Subsidiary shall own any Capital Stock in any Restricted Subsidiary of the Borrower (unless such Restricted Subsidiary is also designated as an Unrestricted Subsidiary). The designation of any subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower (or its applicable Restricted Subsidiary) therein at the date of designation in an amount equal to the portion of the fair market value of the net assets of such subsidiary attributable to the Borrower’s (or its applicable Restricted Subsidiary’s) equity interest therein as estimated by the Borrower in good faith (and such designation shall only be permitted to the extent such Investment is permitted under Section 6.06). The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the making, incurrence or granting, as applicable, at the time of designation of any then-existing Investment, Indebtedness or Lien of such subsidiary, as applicable; provided that, upon any re-designation of any Unrestricted Subsidiary as a Restricted Subsidiary, the Borrower (or its applicable Restricted Subsidiary) shall be deemed to continue to have an Investment in the resulting Restricted Subsidiary in an amount (if positive) equal to (a) the Borrower’s (or its applicable Restricted Subsidiary’s) “Investment” in such Restricted Subsidiary at the time of such re-designation, less (b) the portion of the fair market value of the net assets of such Restricted Subsidiary attributable to the Borrower’s (or its applicable Restricted Subsidiary’s) equity therein at the time of such re-designation as estimated by the Borrower in good faith.

Section 5.11 Use of Proceeds.

(a) The Borrower shall use the proceeds of the Revolving Loans (i) on the Closing Date, (A) to finance (or to replenish balance sheet cash used to finance) all or a portion of the Transactions (including the payment of Transaction Costs and other costs and expenses), (B) to finance other general corporate purposes, (C) to finance working capital needs and (D) to cash collateralize letters of credit issued on behalf of the Borrower and its subsidiaries under the Existing Credit Agreement, and (ii) after the Closing Date, to finance working capital needs and other general corporate purposes of the Borrower and its subsidiaries and any other purpose not prohibited by the terms of the Loan Documents.

(b) The Borrower shall use the proceeds of the Swingline Loans made after the Closing Date to finance the working capital needs and other general corporate purposes of the Borrower and its subsidiaries and for any other purpose not prohibited by the terms of the Loan Documents.

(c) Letters of Credit may be issued (i) on the Closing Date in the ordinary course of business and to replace or provide credit support for any letter of credit, bank guarantee and/or surety, customs, performance or similar bond of the Borrower and its subsidiaries or any of their Affiliates and/or to replace cash collateral posted by any of the foregoing Persons and (ii) after the Closing Date, for general corporate purposes of the Borrower and its subsidiaries and any other purpose not prohibited by the terms of the Loan Documents.

(d) The proceeds of the Delayed Draw Term Loans will be used solely to finance construction and Capital Expenditures in respect of the Verona Property and any fees, costs and expenses incurred in connection therewith.

Section 5.12 Covenant to Guarantee Obligations and Provide Security.
(a) Upon (i) the formation or acquisition after the Closing Date of any Restricted Subsidiary, (ii) the designation of any Unrestricted Subsidiary as a Restricted Subsidiary or (iii) any Restricted Subsidiary that was an Excluded Subsidiary ceasing to be an Excluded Subsidiary, on or before the date on which a Compliance Certificate is required to be delivered pursuant to Section 5.01(c), for the Fiscal Quarter in which the relevant formation, acquisition, designation or cessation occurred (or such longer period as the Administrative Agent may reasonably agree), the Borrower shall (A) cause such Restricted Subsidiary (other than any Excluded Subsidiary) to comply with the requirements set forth in clause (b) of the definition of “Collateral and Guarantee Requirement” and (B) upon the reasonable request of the Administrative Agent, which request may not be made unless the Consolidated Total Assets of the relevant Restricted Subsidiary constitutes more than 10% of the Consolidated Total Assets of the Borrower and its Restricted Subsidiaries, taken as a whole, cause the relevant Restricted Subsidiary (other than any Excluded Subsidiary) to deliver to the Administrative Agent a signed copy of a customary opinion of counsel for such Restricted Subsidiary, addressed to the Administrative Agent, the Issuing Banks and the Lenders.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, the Borrower may, in its sole discretion, elect to cause any Restricted Subsidiary and/or Parent Company (any such Person, a “Discretionary Guarantor”) that is not otherwise required to be a Subsidiary Guarantor to provide a Loan Guaranty by causing such Person to execute a Joinder Agreement, and any such Person shall constitute a Loan Party and a Guarantor for all purposes hereunder; it being understood and agreed that such Person shall grant a security interest in such categories of assets pursuant to such documentation as the Borrower and the Administrative Agent may reasonably agree; provided that (i) in the case of any Discretionary Guarantor that is a Foreign Subsidiary, the jurisdiction of such person is reasonably satisfactory to the Administrative Agent and (ii) the Administrative Agent shall have received at least two Business Days prior to such person becoming a Guarantor, all documentation and other information in respect of such person required under applicable “know your customer” and anti-money laundering rules and regulations (including the USA Patriot Act).

(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 may apply retroactively) for the creation and perfection of security interests in, or obtaining of legal opinions or other deliverables with respect to, particular assets or the provision of any Loan Guaranty by any Restricted Subsidiary, and each Lender hereby consents to any such extension of time;

(ii) any Lien required to be granted from time to time pursuant to the definition of “Collateral and Guarantee Requirement” and/or any action requested in connection therewith shall be subject to the exceptions and limitations set forth in this Agreement and the Collateral Documents;

(iii) perfection by control shall not be required with respect to assets requiring perfection through control agreements or other control arrangements, including Deposit Accounts, securities accounts and commodities accounts (other than control of (A) pledged Capital Stock of the Borrower or any material first tier Restricted Subsidiary of a Loan Party and/or (B) any Material Debt Instrument owing from any Person that is not a Loan Party, in each case, to the extent the same otherwise constitute Collateral);
(iv) no Loan Party shall be required to seek any landlord lien waiver, bailee letter, estoppel, warehouseman waiver or other collateral access or similar letter or agreement;

(v) no Loan Party (other than any Discretionary Guarantor that is organized under the laws of a jurisdiction outside of the US) will be required to (A) take any action to grant or perfect a security interest in any asset located outside of the US or (B) execute any security agreement, pledge agreement, mortgage, deed, charge or other collateral document governed by the laws of any jurisdiction other than the US, any state thereof or the District of Columbia; it being understood and agreed that no Loan Party (including any Discretionary Guarantor) will be required to take any action to perfect a security interest in the Collateral in any jurisdiction other than the jurisdiction in which such Loan Party is organized (other than with respect to (x) the required pledge of the Capital Stock of any Discretionary Guarantor that is not organized under the laws of the United States or any state thereof, the jurisdiction of organization of such Discretionary Guarantor and (y) the Mortgage and Mortgage Instruments in respect of the Verona Property);

(vi) in no event will (A) the Collateral include any Excluded Asset or (B) any Excluded Subsidiary be required to become a Subsidiary Guarantor;

(vii) without limiting clause (xiii) below, no action shall be required to perfect any Lien with respect to (A) any vehicle or other asset subject to a certificate of title, (B) any Letter-of-Credit Right, (C) the Capital Stock of any Immaterial Subsidiary (other than any Immaterial Subsidiary that is a Loan Party), (D) the Capital Stock of any Person that is not a subsidiary, which Person, if a subsidiary, would constitute an Immaterial Subsidiary and/or (E) any aircraft, in each case, except to the extent that a security interest therein can be perfected by filing a Form UCC-1 (or similar) financing statement under the UCC (without the requirement to list a “VIN” or similar number);

(viii) no action shall be required to perfect a Lien in any asset in respect of which the perfection of a security interest therein would (A) be prohibited by enforceable anti-assignment provisions set forth in any contract that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than in the case of Capital Leases, purchase money and similar financings), (B) violate the terms of any contract relating to such asset that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than in the case of Capital Leases, purchase money and similar financings), in each case, after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Requirement of Law or (C) trigger termination of any contract relating to such asset that is permitted or otherwise not prohibited by the terms of this Agreement and is binding on such asset at the time of its acquisition and not incurred in contemplation thereof (other than in the case of Capital Leases, purchase money and similar financings) pursuant to any “change of control” or similar provision; it being understood that the Collateral shall include any proceeds and/or receivables arising out of any contract described in this clause to the extent the assignment of such proceeds or receivables is expressly deemed effective under the UCC or other applicable Requirement of Law notwithstanding the relevant prohibition, violation or termination right;

(ix) (A) no Loan Party shall be required to perfect a Lien in any asset to the extent the perfection of a security interest in such asset would be prohibited under any applicable Requirement of Law and (B) it is understood and agreed, for the avoidance of doubt, that no
Loan Party shall be required to comply with the Federal Assignment of Claims Act or any similar statute;

(x) any Joinder Agreement, any Collateral Document and/or any other Loan Document executed by any Restricted Subsidiary that is required to become (or otherwise becomes) a Loan Party pursuant to Section 5.12(a) above (including any Joinder Agreement) may, with the consent of the Administrative Agent (not to be unreasonably withheld or delayed), include such schedules (or updates to schedules) as may be necessary to qualify any representation or warranty set forth in any Loan Document to the extent necessary to ensure that such representation or warranty is true and correct to the extent required thereby or by the terms of any other Loan Document;

(xi) the Lenders and the Administrative Agent acknowledge and agree that the Collateral that may be provided by any Loan Party may be limited to minimize stamp duty, notarization, registration or other applicable fees, taxes and duties where the benefit to the Secured Parties of increasing the secured amount is disproportionate to the cost of such fees, taxes and duties;

(xii) the Administrative Agent shall not require the taking of a Lien on, or require the perfection of any Lien granted in, any asset as to which the cost of obtaining or perfecting such Lien (including any mortgage, stamp, intangibles or other tax or expenses relating to such Lien) is excessive in relation to the benefit to the Lenders of the security afforded thereby as reasonably determined in writing by the Borrower and the Administrative Agent;

(xiii) except with respect to any Discretionary Guarantor that is organized under the laws of a jurisdiction outside the US, no Loan Party shall be required, and the Administrative Agent shall not be authorized, to perfect any security interest by means other than (A) filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of any Loan Party’s jurisdiction of organization, (B) filings with the US federal government offices with respect to IP Rights as expressly required by the Security Agreement (to the extent a security interest can be perfected by such filings), or (C) delivery to the Administrative Agent, for its possession (subject to the terms of any applicable Intercreditor Agreement), of any Collateral consisting of pledged Capital Stock held by any Loan Party in the Borrower or any Restricted Subsidiary that is a Wholly-Owned Subsidiary and/or any Material Debt Instrument issued to the Borrower or another Loan Party, in each case, to the extent required by the Security Agreement, provided that, notwithstanding the foregoing, the Loan Parties shall be required to enter into and deliver the Mortgage and Mortgage Instruments described in Section 5.12(e) below, and

(xiv) (A) no Collateral Document executed and delivered after the Closing Date will impose any commercial obligation on any Loan Party or contain any representation, warranty or undertaking that is not required for the creation and/or perfection of a security interest in the relevant asset and (B) to the extent the subject matter of any representation, warranty or undertaking in any Collateral Document executed and delivered after the Closing Date is the same as any representation, warranty or covenant in the Credit Agreement, such representation, warranty or covenant shall be no more burdensome to the applicable Loan Party than the corresponding provision of this Agreement unless the relevant additional requirement is necessary for the creation and/or perfection of a security interest in the relevant asset.

(d) It is understood and agreed for the avoidance of doubt that the Borrower may elect to join any Domestic Subsidiary that is not required to be or become a Subsidiary Guarantor solely because
such Restricted Subsidiary is an Immaterial Subsidiary without (i) the consent of the Administrative Agent or (ii) delivery of an opinion of counsel.

(e) Not later than the date that is ninety (90) days following the Amendment No. 2 Effective Date (or such later date as agreed by the Administrative Agent), the Loan Parties shall deliver to the Administrative Agent each of the following with respect to the Verona Property, all in form and substance reasonably satisfactory to the Administrative Agent:

(i) Mortgage on the Verona Property;

(ii) evidence that a counterpart of the Mortgage has been delivered in form suitable for filing or recording in each place the Administrative Agent may deem reasonably necessary to create a valid and enforceable first priority Lien in favor of the Administrative Agent for the benefit of itself and the Secured Parties;

(iii) if any such parcel of real property is determined by the Administrative Agent to be in a “Special Flood Hazard Area” as designated on maps prepared by the Federal Emergency Management Agency, a flood notification form signed by the Borrower and evidence that flood insurance is in place for the building and contents, all in form, substance and amount satisfactory to the Administrative Agent;

(iv) ALTA or other mortgagee’s title policy;

(v) a customary legal opinion of counsel in the state in which the Verona Property is located; and

(vi) such other information, documentation, and certifications as may be reasonably required by 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) the Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements, instruments, notices and acknowledgments and take all such further actions (including the filing and recordation of financing statements and/or amendments thereto and other documents), that may be required under any applicable Requirement of Law and which the Administrative Agent may reasonably request to ensure the creation, perfection and priority of the Liens created or intended to be created under the Collateral Documents, all at the expense of the relevant Loan Parties; and

(b) the Borrower will, and will cause each other applicable Loan Party to, (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts (including notices to third parties), deeds, assurances and other instruments as the Administrative Agent may reasonably request from time to time in order to ensure the creation, perfection and priority of the Liens created or intended to be created under the Collateral Documents.
Section 5.15  **Post-Closing Covenant.** Take the actions required by Schedule 5.15 in each case within the time periods specified therein (or, in each case, such longer period to which the Administrative Agent may reasonably agree).

Section 5.16  **Depository Banks.** The Borrower and each of its Subsidiaries will maintain the Administrative Agent as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business. Additionally, the Administrative Agent shall be the principal provider of other bank products to the Borrower and its Subsidiaries.

Section 5.17  **Fiscal Year.** In the event that the Borrower elects to change the end date of its Fiscal Year to a date other than as described in the definition of “Fiscal Year”, the Borrower shall notify the Administrative Agent in writing, in which case the Borrower and the Administrative Agent will, and are hereby authorized to, make any adjustment to this Agreement that is necessary to reflect such change in Fiscal Year.

Section 5.18  **Nature of Business.** From and after the Closing Date, the Borrower shall, and shall cause its Restricted Subsidiaries to, ensure that any material line of business in which it engages is either (a) a business engaged in by the Borrower and/or any Restricted Subsidiary on the Closing Date or a similar, incidental, complementary, ancillary or related business or (b) another line of business to which, in the case of this clause (b), the Administrative Agent provides its consent.

Section 5.19  **Amendments or Waivers of Organizational Documents.** The Borrower shall, and shall cause each Subsidiary Guarantor to, ensure that it does not, without the consent of the Administrative Agent, amend or modify its respective Organizational Documents in a manner that is, in the good faith determination of the Borrower, materially adverse to the Lenders (in their capacity as such), taken as a whole; provided that, for the avoidance of doubt, it is understood and agreed that the Borrower and/or any Subsidiary Guarantor may make any change to its organizational form and/or consummate any other transaction that is permitted under Section 6.07.

**ARTICLE VI**

**NEGATIVE COVENANTS**

From the Closing Date until the Termination Date, the Borrower covenants and agrees with the Lenders, the Issuing Banks and the Administrative Agent that:

Section 6.01  **Indebtedness.** The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to create, incur, assume or otherwise become or remain liable with respect to any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness of (i) the Borrower to any Restricted Subsidiary and/or (ii) any Restricted Subsidiary to the Borrower and/or any other Restricted Subsidiary; provided that (A) in the case of any Indebtedness of any Restricted Subsidiary that is not a Loan Party owing to the Borrower or any Restricted Subsidiary that is a Loan Party, the related Investment is permitted under Section 6.06, and (B) any Indebtedness of any Loan Party owing to any Restricted Subsidiary that is not a Loan Party incurred in reliance on this clause (b) must be unsecured and expressly subordinated to the Obligations of such Loan Party on terms that are reasonably acceptable to the Administrative Agent (it being understood that the subordination terms set forth in the Intercompany Note are acceptable to the Administrative Agent);
(c) (i) Indebtedness arising from any agreement providing for indemnification, adjustment of purchase price or similar obligations (including contingent earn-out obligations) incurred in connection with the Transactions, any Disposition permitted hereunder, any acquisition or other Investment permitted hereunder or consummated prior to the Closing Date or any other purchase of assets or Capital Stock or any other Investment, and (ii) Indebtedness arising from guaranties, letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments securing the performance of the Borrower or any such Restricted Subsidiary pursuant to any such agreement;

(d) Indebtedness of the Borrower and/or any Restricted Subsidiary (i) as a result of or pursuant to tenders, statutory obligations, bids, leases, governmental contracts, trade contracts, surety, stay, customs, appeal, performance and/or return of money bonds or other similar obligations incurred in the ordinary course of business or pursuant to self-insurance obligations and not in connection with debt for borrowed money and (ii) in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments to support any of the foregoing items;

(e) Indebtedness of the Borrower and/or any Restricted Subsidiary in respect of Banking Services and/or otherwise in connection with Cash management and Deposit Accounts;

(f) (i) guaranties by the Borrower and/or any Restricted Subsidiary of the obligations of suppliers, customers, franchisees and licensees in the ordinary course of business in an aggregate outstanding principal amount not to exceed the greater of $1,500,000 and 5% of Consolidated Adjusted EBITDA, (ii) Indebtedness incurred in the ordinary course of business in respect of obligations of the Borrower and/or any Restricted Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services and (iii) Indebtedness in respect of letters of credit, bankers’ acceptances, bank guaranties or similar instruments supporting trade payables, warehouse receipts or similar facilities entered into in the ordinary course of business;

(g) Guarantees by the Borrower and/or any Restricted Subsidiary of Indebtedness or other obligations of the Borrower, any Restricted Subsidiary and/or any joint venture with respect to Indebtedness otherwise permitted to be incurred pursuant to this Section 6.01 or other obligations not prohibited by this Agreement; provided that in the case of any Guarantee by any Loan Party of the obligations of any non-Loan Party, the related Investment is permitted under Section 6.06;

(h) Indebtedness of the Borrower and/or any Restricted Subsidiary existing, or pursuant to commitments existing, on the Closing Date; provided that any such Indebtedness or commitment having an outstanding principal amount in excess of $1,000,000 shall be described on Schedule 6.01;

(i) Indebtedness of Restricted Subsidiaries that are not Loan Parties; provided that the aggregate outstanding principal amount of such Indebtedness shall not exceed (x) prior to the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $9,600,000 and 40% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(j) Indebtedness of the Borrower and/or any Restricted Subsidiary consisting of obligations owing under incentive, supply, license or similar agreements entered into in the ordinary course of business;

(k) Indebtedness of the Borrower and/or any Restricted Subsidiary consisting of (i) the financing of insurance premiums, (ii) take-or-pay obligations contained in supply arrangements, in each...
case, in the ordinary course of business and/or (iii) obligations to reacquire assets or inventory in connection with customer financing arrangements in the ordinary course of business;

(l) Indebtedness of the Borrower and/or any Restricted Subsidiary with respect to Capital Leases and purchase money Indebtedness in an aggregate outstanding principal amount not to exceed (x) prior to the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $12,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(m) Indebtedness of any Person that becomes a Restricted Subsidiary and/or Indebtedness assumed in connection with any acquisition or similar Investment; provided that:

(i) such Indebtedness (A) existed at the time such Person became a Restricted Subsidiary or the assets subject to such Indebtedness were acquired and (B) was not created or incurred in contemplation of the applicable acquisition or similar Investment, and

(ii) after giving effect to such Indebtedness on a Pro Forma Basis, the Borrower is in compliance with Section 6.10(a);

(n) Indebtedness issued by the Borrower or any Restricted Subsidiary to any stockholder of the Borrower (or 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 the Borrower (or any Parent Company) permitted by Section 6.04(a);

(o) Indebtedness refinancing, refunding or replacing any Indebtedness permitted under clauses (a), (h), (i), (l), (m), (t), (s) and/or (u) and/or (cc) of this Section 6.01 (in any case, including any refinancing Indebtedness incurred in respect thereof, “Refinancing Indebtedness”) and any subsequent Refinancing Indebtedness in respect thereof; provided that:

(i) the principal amount of such Indebtedness does not exceed the principal amount of, and commitments in respect of, the Indebtedness being refinanced, refunded or replaced, except by (A) an amount equal to unpaid accrued interest, penalties and premiums (including tender premiums) thereon plus underwriting discounts, other reasonable and customary fees, commissions and expenses (including upfront fees, original issue discount or initial yield payments) incurred in connection with the relevant refinancing, refunding or replacement and the related refinancing transaction, (B) an amount equal to any existing commitments unutilized thereunder and (C) additional amounts permitted to be incurred pursuant to this Section 6.01 (provided that (1) any additional Indebtedness referenced in this clause (C) satisfies the other applicable requirements of this definition (with additional amounts incurred in reliance on this clause (C) constituting a utilization of the relevant basket or exception pursuant to which such additional amount is permitted) and (2) if such additional Indebtedness is secured, the Lien securing such Indebtedness satisfies the applicable requirements of Section 6.02);

(ii) in the case of Refinancing Indebtedness with respect to clauses (a), (w) and/or (z) (other than Customary Bridge Loans), such Indebtedness (other than revolving indebtedness) has a final maturity equal to or later than (and, in the case of revolving Indebtedness, does not require mandatory commitment reductions, if any, prior to) (x) the final maturity of the Indebtedness refinanced, refunded or replaced and (y) the Latest Maturity Date;
(iii) the terms of any Replacement Debt with an original principal amount in excess of the Threshold Amount (excluding, to the extent applicable, pricing (including any “MFN” provision), fees, premiums, rate floors, optional prepayment, funding discounts, maturity, amortization schedule, redemption terms or subordination terms and security), are not, taken as a whole (as determined by the Borrower in good faith), more favorable to the lenders providing such Indebtedness than those applicable to the Indebtedness being refinanced, refunded or replaced (other than (A) any covenant or any other provision applicable only to periods after the applicable maturity date of the debt then being refinanced as of such date, (B) any covenant or provision which constitutes a then-current market term for the applicable type of Indebtedness (as determined by the Borrower in good faith), or (C) any covenant or other provision which is confirmed (or added) to the Loan Documents for the benefit of the Lenders or, as applicable, the Administrative Agent, pursuant to an amendment to this Agreement effectuated in reliance on Section 9.02(d)(ii), it being understood and agreed that if any Refinancing Indebtedness that constitutes a revolving facility includes a financial covenant, the requirement set forth in this clause (iii) shall be satisfied if such financial covenant is added to this Agreement for the benefit of the then-existing Revolving Facility);

(iv) in the case of Refinancing Indebtedness with respect to Indebtedness permitted under clauses (i), (l), (m)(ii)(C), (r), (t), (u) and/or (ee) of this Section 6.01, the incurrence thereof shall be without duplication of any amount outstanding in reliance on the relevant clause such that the amount available under the relevant clause shall be reduced by the amount of the applicable Refinancing Indebtedness;

(v) except in the case of Refinancing Indebtedness constituting Replacement Debt, (A)(1) such Indebtedness, if secured, is secured only by Permitted Liens at the time of such refinancing, refunding or replacement (it being understood that secured Indebtedness may be refinanced with unsecured Indebtedness), and (2) either (x) if the Liens securing such Indebtedness were originally contractually subordinated to the Liens on the Collateral securing the Initial Revolving Facility, the Liens securing such Indebtedness are subordinated to the Liens on the Collateral securing the Initial Revolving Facility on terms not materially less favorable (as determined by the Borrower in good faith), taken as a whole, to the Lenders than those (I) applicable to the Liens securing the Indebtedness being refinanced, refunded or replaced, taken as a whole, or (II) set forth in any relevant Intercreditor Agreement or (y) the purchase, defeasance, redemption, repurchase, repayment, refinancing or other acquisition or retirement of such Indebtedness is permitted under Section 6.04(b) (other than Section 6.04(b)(i)); it being understood that the proceeds of any such Refinancing Indebtedness may be funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements, (B) such Indebtedness is incurred by the obligor or obligors in respect of the Indebtedness being refinanced, refunded or replaced, except to the extent otherwise permitted pursuant to Section 6.01 (it being understood that (1) any entity that was a guarantor in respect of the relevant refinanced Indebtedness may be the primary obligor in respect of the refinancing Indebtedness, and any entity that was the primary obligor in respect of the relevant refinanced Indebtedness may be a guarantor in respect of the refinancing Indebtedness and (2) the obligation of any Person with respect to any Escrow arrangement into which the proceeds of such Refinancing Indebtedness are deposited shall not constitute a Guarantee) and (C) if the Indebtedness being refinanced, refunded or replaced was expressly contractually subordinated to the Obligations in right of payment, (x) such Indebtedness is contractually subordinated to the Obligations in right of payment, or (y) if not contractually subordinated to the Obligations in right of payment, the purchase, defeasance, redemption, repurchase, repayment, refinancing or
other acquisition or retirement of such Indebtedness is permitted under Section 6.04(b) (other than Section 6.04(b)(i)); and

(vi) in the case of Refinancing Indebtedness constituting Replacement Debt, (A) such Indebtedness is pari passu or junior in right of payment and secured by the Collateral on a pari passu or junior basis with respect to the remaining Obligations hereunder, or is unsecured; provided that any such Refinancing Indebtedness that is pari passu or junior with respect to the Collateral shall be subject to an Intercreditor Agreement, (B) if the Indebtedness being refinanced, refunded or replaced is secured, it is not secured by any asset that does not constitute Collateral; it being understood that the proceeds of any such Refinancing Indebtedness may be funded into Escrow pursuant to customary (in the good faith determination of the Borrower) escrow arrangements, (C) if the Indebtedness being refinanced, refunded or replaced is Guaranteed, it shall not be Guaranteed by any Restricted Subsidiary of the Borrower other than one or more Loan Parties (it being understood that the obligation of any Person with respect to any Escrow arrangement into which the proceeds of such Refinancing Indebtedness are deposited shall not constitute a Guarantee) and (D) such Refinancing Indebtedness is incurred under (and pursuant to) documentation other than this Agreement;

(p) Indebtedness of the Borrower and/or any Restricted Subsidiary under any Derivative Transaction not entered into for speculative purposes;

(q) Indebtedness of the Borrower and/or any Restricted Subsidiary representing (i) deferred compensation to current or former directors, officers, employees, members of management, managers, and consultants of any Parent Company, the Borrower and/or any Restricted Subsidiary in the ordinary course of business and (ii) deferred compensation or other similar arrangements in connection with the Transactions, any Permitted Acquisition or any other Investment permitted hereby;

(r) Indebtedness of the Borrower and/or any Restricted Subsidiary in an aggregate outstanding principal amount not to exceed (x) prior to the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $12,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(s) Unsecured Indebtedness of the Borrower and/or any Restricted Subsidiary (any Indebtedness incurred pursuant to this Section 6.01(s), “Ratio Debt”) so long as:

(i) after giving effect thereto, including the application of the proceeds thereof (in each case, without “netting” the cash proceeds of the applicable Indebtedness being incurred), the outstanding principal thereof does not exceed an unlimited amount, so long as, in the case of this clause (w), on a Pro Forma Basis, the Total Rent Adjusted Net Leverage Ratio does not exceed (i) prior to the consummation of an IPO, 5.25:1.00 as of the last day of the most recently ended Test Period and (ii) following the consummation of any IPO, 5.75:1.00 as of the last day of the most recently ended Test Period;

(ii) the aggregate outstanding principal amount of Ratio Debt incurred in reliance on this Section 6.01(s) by Restricted Subsidiaries that are not Loan Parties shall not, at any time, exceed an amount equal to (x) prior to the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $9,600,000 and 40% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; and
(iii) if such Ratio Debt is issued or incurred by any Loan Party and consists of third party Indebtedness for borrowed money (other than Indebtedness among the Borrower and its Restricted Subsidiaries):

(A) the final maturity date of such Indebtedness (other than revolving loans) is no earlier than the Latest Maturity Date on the date of the issuance or incurrence thereof;

(B) [reserved], and

(C) if such Indebtedness constitutes revolving loans, such Indebtedness will not mature or have any mandatory commitment reductions prior to the Initial Revolving Credit Maturity Date;

(t) Indebtedness of the Borrower and/or any Restricted Subsidiary incurred in connection with any Sale and Lease-Back Transaction permitted pursuant to Section 6.07;

(u) any Incremental Equivalent Debt;

(v) Indebtedness (including obligations in respect of letters of credit, bank guarantees, bankers’ acceptances, surety bonds, performance bonds or similar instruments with respect to such Indebtedness) incurred by the Borrower and/or any Restricted Subsidiary in respect of workers compensation claims, unemployment, property, casualty or liability insurance (including premiums related thereto) or self-insurance, other reimbursement-type obligations regarding workers’ compensation claims, other types of social security, pension obligations, vacation pay or health, disability or other employee benefits;

(w) Indebtedness representing (i) deferred compensation to current or former directors, officers, employees, members of management, managers and consultants of any Parent Company, the Borrower or any Subsidiary in the ordinary course of business and (ii) deferred compensation or other similar arrangements in connection with the Transactions, any acquisition or any other Investment permitted hereby;

(x) Indebtedness of the Borrower and/or any Restricted Subsidiary in respect of any letter of credit or bank guarantee issued in favor of any Issuing Bank or the Swingline Lender to support any Defaulting Lender’s participation in Letters of Credit issued, or Swingline Loans made, hereunder;

(y) Indebtedness of the Borrower or any Restricted Subsidiary supported by any Letter of Credit or any other letter of credit, bank guarantee or similar instrument permitted by this Section 6.01;

(z) unfunded pension fund and other employee benefit plan obligations and liabilities incurred by the Borrower and/or any Restricted Subsidiary in the ordinary course of business to the extent that the unfunded amounts would not otherwise cause an Event of Default under Section 7.01(i);

(aa) 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;

(bb) without duplication of any other Indebtedness, all premiums (if any), interest (including post-petition interest and payment in kind interest), accretion or amortization of original issue discount, fees, expenses and charges with respect to Indebtedness of the Borrower and/or any Restricted Subsidiary hereunder;
Indebtedness owed on a short-term basis to banks and other financial institutions in the ordinary course of business to manage cash balances;

Indebtedness in respect of earn-outs, seller notes or similar deferred purchase price obligations incurred in connection with any acquisition or other Investment permitted hereby; and

real estate-related Indebtedness incurred in the ordinary course of business (i) secured by a deed of trust, mortgage or other lien on the applicable Real Estate Asset (other than the Verona Property) of the Borrower or its Restricted Subsidiaries or (ii) constituting other nonrecourse Indebtedness that is customarily incurred or issued in connection with Real Estate Assets; provided that the aggregate principal amount of such Indebtedness under this clause (ee) at any time outstanding shall not exceed the difference of (A) $30,000,000, minus (B) the sum of (x) the aggregate outstanding principal amount of all Delayed Draw Term Loans at such time and (y) the aggregate principal amount of unused Delayed Draw Term Loan Commitments at such time.

Section 6.02 Liens. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, create, incur, assume or permit or suffer to exist any Lien on or with respect to any property of any kind owned by it, whether now owned or hereafter acquired, or any income or profits therefrom, except:

(a) Liens securing the Secured Obligations;

(b) Liens for Taxes which (i) are not then due or (ii) are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(c) statutory Liens (and rights of set-off) of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by applicable Requirements of Law, in each case incurred in the ordinary course of business (i) for amounts not yet overdue by more than 60 days, (ii) for amounts that are overdue by more than 60 days and that are being contested in good faith by appropriate proceedings, so long as any reserves or other appropriate provisions required by GAAP have been made for any such contested amounts or (iii) for amounts with respect to which the failure to make payment would not reasonably be expected to have a Material Adverse Effect;

(d) Liens granted or arising (i) in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security laws and regulations, (ii) in the ordinary course of business to secure the performance of tenders, statutory obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money), (iii) pursuant to pledges and deposits of Cash or Cash Equivalents in the ordinary course of business securing (A) any liability for reimbursement or indemnification obligations of insurance carriers providing property, casualty, liability or other insurance to the Borrower and its subsidiaries or (B) leases or licenses of property (excluding IP Rights) otherwise permitted by this Agreement and (iv) to secure obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments posted with respect to the items described in clauses (i) through (iii) above;

(e) Liens consisting of survey exceptions, easements, rights-of-way, restrictions, encroachments, servitudes for railways, sewers, drains, gas and oil and other pipelines, gas and water mains, electric light and power and telecommunication, telephone or telegraph or cable television conduits, poles, wires and cables, covenants, conditions, declarations, encroachments, zoning restrictions

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and other defects or irregularities in title or environmental deed restrictions, in each case, which do not, in the aggregate, materially interfere with the ordinary conduct of the business of the Borrower and/or its Restricted Subsidiaries, taken as a whole;

(f) Liens consisting of any (i) interest or title of a lessor or sub-lessee 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-lessee may be subject or (iv) subordination of the interest of the lessee or sub-lessee under such lease to any restriction or encumbrance referred to in the preceding clause (iii);

(g) Liens (i) solely on any Cash earnest money deposits and/or arising in connection with any escrow arrangement made by the Borrower and/or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement with respect to any Investment permitted hereunder and (ii) consisting of (A) an agreement to Dispose of any property in a Disposition permitted under Section 6.07 and/or (B) the pledge of Cash as part of an escrow arrangement required in any Disposition permitted under Section 6.07;

(h) (i) purported Liens evidenced by the filing of UCC financing statements or similar financing statements under applicable Requirements of Law relating solely to operating leases or consignment or bailee arrangements entered into in the ordinary course of business, (ii) Liens arising from precautionary UCC financing statements or similar filings and (iii) any Lien relating to the sale of accounts receivable for which a UCC financing statement or similar financing statement is required;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) Liens in connection with any zoning, building, environmental or similar Requirements of Law or right reserved to or vested in any Governmental Authority to control or regulate the use or dimensions of any real property or the structures thereon, including Liens in connection with any condemnation or eminent domain proceeding or compulsory purchase order;

(k) Liens securing Indebtedness permitted pursuant to Section 6.01(o) (solely with respect to the permitted refinancing of (1) secured Indebtedness permitted pursuant to Sections 6.01(a), (h), (i), (l), (m), (r), (t), (u) and/or (bb) and (2) Indebtedness that is secured in reliance on Section 6.02(t) (provided that the granting of the relevant Lien shall be without duplication of any Lien outstanding under Section 6.02(t) such that the amount available under Section 6.02(t) shall be reduced by the amount secured by the applicable Lien granted in reliance on this clause (2))); provided that (i) no such Lien extends to any asset not covered by the Lien securing (or permitted to secure) the Indebtedness that is being refinanced (it being understood that individual financings of the type permitted under Section 6.01(l) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates), (ii) if the Lien securing the Indebtedness being refinanced was subject to intercreditor arrangements, then (A) the Lien securing any refinancing Indebtedness in respect thereof shall be subject to intercreditor arrangements that are not materially less favorable to the Secured Parties, taken as a whole, than the intercreditor arrangements governing the Lien securing the Indebtedness that is refinanced or (B) the intercreditor arrangements governing the Lien securing the relevant refinancing Indebtedness shall be set forth in an Intercreditor Agreement, (iii) except as permitted by another provision of this Section 6.02, no such Lien shall be senior in priority as compared to the Lien securing the Indebtedness being refinanced and (iv) subject to clauses (i) through (iii) above, any such Lien may be subject to an Intercreditor Agreement to the extent the Lien securing the Indebtedness being refinanced was permitted to be subject to an Intercreditor Agreement;
(i) Liens in existence on the Closing Date and any modification, replacement, refinancing, renewal or extension thereof; provided that any such Lien securing Indebtedness having an aggregate principal amount outstanding on the Closing Date in excess of $1,000,000 shall be described on Schedule 6.02; provided further that (i) no such Lien extends to any additional property other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 6.01 and (B) proceeds and products thereof, replacements thereof, accesses or additions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(l) provided by any lender may be cross-collateralized to other financings of such type provided by such lender or its affiliates) and (ii) any such modification, replacement, refinancing, renewal or extension of the obligations secured or benefited by such Liens, if constituting Indebtedness, is permitted by Section 6.01;

(m) Liens arising out of Sale and Lease-Back Transactions permitted under Section 6.07;

(n) Liens securing Indebtedness permitted pursuant to Section 6.01(l); provided that any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness and proceeds and products thereof, replacements, accesses or additions thereto and improvements thereon (it being understood that individual financings of the type permitted under Section 6.01(l) 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(m) on the relevant acquired assets or on the Capital Stock and assets of the relevant newly acquired Restricted Subsidiary and/or any future subsidiary of such Restricted Subsidiary (including, for the avoidance of doubt, any after-acquired property of any such newly acquired subsidiary and/or any such subsidiary of such subsidiary); provided that no such Lien (i) extends to or covers any other assets (other than the proceeds or products thereof, replacements thereof, accesses or additions thereto and improvements thereon) (it being understood that (A) individual financings of the type permitted under Section 6.01(l) provided by any lender may be cross collateralized to other financings of such type provided by such lender or its affiliates and (B) any such Lien may extend to after-acquired property of any such Person) or (ii) was created in contemplation of the applicable acquisition of assets or Capital Stock;

(p) (i) Liens that are contractual rights of setoff or netting relating to (A) the establishment of depositary relations with banks not granted in connection with the issuance of Indebtedness, (B) pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary, (C) purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business and (D) commodity trading or other brokerage accounts incurred in the ordinary course of business, (ii) Liens encumbering reasonable customary initial deposits and margin deposits, (iii) bankers Liens and rights and remedies as to Deposit Accounts, (iv) Liens of a collection bank arising under Section 4-208 of the UCC on items in the ordinary course of business, (v) Liens in favor of banking or other financial institutions arising as a matter of Law or under customary general terms and conditions encumbering deposits or other funds maintained with a financial institution and that are within the general parameters customary in the banking industry or arising pursuant to such banking institution’s general terms and conditions, (vi) Liens on the proceeds of any Indebtedness incurred in connection with any transaction permitted hereunder, which proceeds have been deposited into an escrow account on customary terms to secure such Indebtedness pending the application of such proceeds to finance such transaction and (vii) any general banking Lien over any bank account arising in the ordinary course of business;
(q) Liens on assets owned by, and/or Capital Stock of, Restricted Subsidiaries that are not Loan Parties (including Capital Stock owned by such Persons) securing Indebtedness of Restricted Subsidiaries that are not Loan Parties permitted pursuant to Section 6.01;

(r) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of the Borrower and/or its Restricted Subsidiaries;

(s) Liens securing Indebtedness incurred in reliance on, and subject to the provisions set forth in, Section 6.01(u); provided that any Lien that is granted on the Collateral in reliance on this clause (s) shall be subject to an Intercreditor Agreement;

(t) Liens on assets securing Indebtedness or other obligations in an aggregate principal amount at any time outstanding not to exceed (x) prior to the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $12,000,000 and 50% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, in each case, subject, in the case of any Lien on the Collateral, at the request of the relevant lender, to an Intercreditor Agreement;

(u) (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;

(v) (i) leases, subleases licenses or sublicenses (other than with respect to IP Rights) in the ordinary course of business which do not secure any Indebtedness and (ii) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its subsidiaries are located;

(w) Liens on Securities that are the subject of repurchase agreements constituting Investments permitted under Section 6.06 arising out of such repurchase transaction;

(x) Liens securing obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments permitted under Sections 6.01(c), (d), (f), (v) and (z);

(y) 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);

(z) Liens (i) in favor of any Loan Party and/or (ii) granted by any non-Loan Party in favor of any Restricted Subsidiary that is not a Loan Party, in the case of clauses (i) and (ii), securing intercompany Indebtedness permitted (or not restricted) under Sections 6.01 or 6.09;

(aa) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(bb) (i) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof and (ii) Liens on specific items of inventory or other goods and the proceeds thereof securing the relevant Person’s obligations in respect of documentary letters of credit or banker’s acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;
(cc) Liens securing (i) obligations of the type described in Section 6.01(e) and/or (ii) obligations of the type described in Section 6.01(p);

(dd) (i) Liens on Capital Stock of (A) joint ventures securing capital contributions to, or obligations of, such Persons and/or (B) Unrestricted Subsidiaries and (ii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements and agreements with respect to non-Wholly Owned Subsidiaries;

(ee) Liens on cash or Cash Equivalents arising in connection with the defeasance, discharge or redemption of Indebtedness;

(ff) Liens consisting of the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(gg) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(hh) Liens consisting of (i) any reservation, limitation, proviso and/or condition, if any, expressed in any original grant from the Crown of any real property or any interest therein and/or (ii) any right of expropriation, access, or user or any other right conferred or vested by statutes of Canada or any applicable province;

(ii) Liens that do not secure Indebtedness for borrowed money and are customary in the operation of the business of the Borrower and its Restricted Subsidiaries;

(jj) 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;

(kk) Liens arising in connection with escrow arrangements established in connection with the Transactions; and

(ll) Liens on Real Estate Assets (other than the Verona Property) of the Borrower or its Restricted Subsidiaries securing Indebtedness permitted under Section 6.01(ee).

Notwithstanding anything to the contrary in this Section 6.02, if the proceeds of any Indebtedness the Liens securing which are required or permitted to be subject to an Intercreditor Agreement are funded into Escrow, at the election of the Borrower, either (x) the relevant Intercreditor Agreement shall not be required to be entered into or become effective until the release and/or termination of the relevant Escrow arrangement, so long as, prior to such release and/or termination, the relevant Indebtedness is secured only by a Lien on such proceeds so funded into Escrow or (y) the property subject to the applicable Escrow arrangement is not required to be subject to the relevant Intercreditor Agreement. Furthermore, notwithstanding anything to the contrary in this Section 6.02, no Liens (other than Liens permitted pursuant to Section 6.02(a) or (ll)) on Real Estate Assets shall be permitted to secure any Indebtedness.

Section 6.03  [Reserved].

Section 6.04  Restricted Payments; Restricted Debt Payments.
(a) The Borrower shall not pay or make any Restricted Payment, except that:

(i) the Borrower may make, directly or indirectly, Restricted Payments to the extent necessary to permit any Parent Company:

   (A) to pay general administrative and operating costs and expenses (including corporate overhead, legal or similar expenses and customary salary, bonus and other benefits payable to any director, officer, employee, member of management, manager and/or consultant of any Parent Company) and franchise Taxes, and similar fees and expenses required to maintain the organizational existence or qualification to do business of such Parent Company, in each case, which are reasonable and customary and incurred in the ordinary course of business, plus the amount of any reasonable and customary indemnification claim made by any director, officer, member of management, manager, employee and/or consultant of any Parent Company, in each case, to the extent attributable to the ownership or operations of any Parent Company and/or its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such amount, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries);

   (B) any distribution to any Parent Company to pay the aggregate amount of consolidated, combined, unitary or similar group tax liabilities attributable to the income of the Borrower and its subsidiaries; provided that the amount of such payments does not exceed the amounts that the Borrower, and its subsidiaries would have been required to pay had the Borrower, and its subsidiaries been a stand-alone group for applicable tax purposes; provided that any amounts distributed in respect of any taxes attributable to the income of Unrestricted Subsidiaries may be made only to the extent that (x) such subsidiaries have made cash payments to any Loan Party or Restricted Subsidiary in at least the amount of such taxes or (y) the Borrower and its Restricted Subsidiaries with respect to making such a distribution are treated as deemed to have made an Investment in the amount of such taxes in the relevant Unrestricted Subsidiary and such Investment complies with the requirements of Section 6.06;

   (C) to pay audit and other accounting and reporting expenses of any Parent Company to the extent such expenses are attributable to such Parent Company, the Borrower and its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such expenses, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries);

   (D) for the payment of any insurance premium that is payable by or attributable to any Parent Company, the Borrower and/or its subsidiaries (but excluding, for the avoidance of doubt, the portion of any such premium, if any, that is attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries);

   (E) to pay (1) any fee and/or expense related to any debt and/or equity offering, investment or acquisition (whether or not consummated) and/or any expense of, or indemnification obligation in favor of, any trustee, agent, arranger, underwriter or similar role, and (2) Public Company Costs;

   (F) to finance any Investment permitted under Section 6.06 (other than Section 6.06(t)) (provided that (x) any Restricted Payment under this clause (a)(i)(F)
shall be made substantially concurrently with the closing of such Investment (except with respect to any deferred purchase price or other contingent consideration, the Restricted Payments in respect of which may be made after the closing of such Investment) and (y) the relevant Parent Company shall, promptly following the closing thereof, cause (I) all property acquired to be contributed to the Borrower or one or more of its Restricted Subsidiaries, or (II) the merger, consolidation or amalgamation of the Person formed or acquired into the Borrower or one or more of its Restricted Subsidiaries, in order to consummate such Investment in compliance with the applicable requirements of Section 6.06 as if the relevant Investment was undertaken as a direct Investment by the Borrower or the relevant Restricted Subsidiary); and

(G) to pay customary salary, bonus, severance and other benefits payable to current or former directors, officers, members of management, managers, employees or consultants of any Parent Company (or any Immediate Family Member of any of the foregoing) to the extent such salary, bonuses, severance and other benefits are attributable and reasonably allocated to the operations of the Borrower and/or its subsidiaries,

in each case, so long as such Parent Company applies the amount of any such Restricted Payment for such purpose;

(ii) the Borrower may pay (or make Restricted Payments to allow any Parent Company) to repurchase, redeem, retire or otherwise acquire or retire for value the Capital Stock of the Borrower (or any Parent Company) or any subsidiary held by any future, present or former employee, director, member of management, officer, manager or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company, the Borrower or any subsidiary:

(A) with Cash and Cash Equivalents (and including, to the extent constituting a Restricted Payment, amounts paid in respect of promissory notes issued to evidence any obligation to repurchase, redeem, retire or otherwise acquire or retire for value the Capital Stock of any Parent Company, the Borrower or any subsidiary held by any future, present or former employee, director, member of management, officer, manager or consultant (or any Affiliate or Immediate Family Member thereof) of any Parent Company, the Borrower or any subsidiary) in an amount not to exceed, in any Fiscal Year, (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, in each case, which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year);

(B) with the proceeds of any sale or issuance of, or any capital contribution in respect of, the Capital Stock of the Borrower or any Parent Company that are Not Otherwise Applied (to the extent such proceeds are contributed in respect of Qualified Capital Stock to the Borrower or any Restricted Subsidiary); and/or

(C) with the net proceeds of any key-man life insurance policy;
so long as no Event of Default exists, the Borrower may make Restricted Payments in an amount not to exceed (A) the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (iii)(A) and/or (B) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrower elects to apply to this clause (iii)(B);

(iv) the Borrower may make Restricted Payments:

(A) to make Cash payments (or to any Parent Company to enable such Parent Company to make Cash payments) in lieu of the issuance of fractional shares in connection with any dividend, split or combination thereof in connection with any Investment permitted hereunder or the exercise or vesting of warrants, options, restricted stock units or similar incentive interests or other securities convertible into or exchangeable for Capital Stock of the Borrower (or such Parent Company) or otherwise to honor a conversion requested by a holder thereof or

(B) consisting of (1) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former officers, directors, employees, members of management, managers or consultants of the Borrower, any subsidiary of the Borrower or Parent Company or any of their respective Immediate Family Members, (2) payments or other adjustments to outstanding Capital Stock in accordance with any management equity plan, stock option plan or any other similar employee benefit or incentive plan, agreement or arrangement in connection with any Restricted Payment and/or (3) repurchases of Capital Stock in consideration of the payments described in clauses (1) and/or (2) above, including demand repurchases, in connection with the exercise or vesting of stock options, restricted stock units or similar incentive interests;

(v) the Borrower may repurchase (or make Restricted Payments to any Parent Company to enable it to repurchase) Capital Stock upon the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock if such Capital Stock represents all or a portion of the exercise price of, or tax withholdings with respect to, such warrants, options or other securities convertible into or exchangeable for Capital Stock;

(vi) the Borrower may make Restricted Payments, the proceeds of which are applied (A) to effect the consummation of the Transactions and (B) to pay Transaction Costs;

(vii) the Borrower may make Restricted Payments to (i) redeem, repurchase, retire or otherwise acquire any (A) Capital Stock (“Treasury Capital Stock”) of the Borrower and/or any Restricted Subsidiary or (B) Capital Stock of any Parent Company, in the case of each of subclauses (A) and (B), in exchange for, or out of the proceeds of the substantially concurrent sale (other than to the Borrower and/or any Restricted Subsidiary) of, Qualified Capital Stock of the Borrower or any Parent Company to the extent any such proceeds are contributed to the capital of the Borrower and/or any Restricted Subsidiary in respect of Qualified Capital Stock (“Refunding Capital Stock”) to the extent such proceeds are Not Otherwise Applied and (ii) declare and pay dividends on any Treasury Capital Stock out of the proceeds of the substantially concurrent sale (other than to the Borrower or a Restricted Subsidiary) of any Refunding Capital Stock;
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/or Section 6.09 (other than Sections 6.09(d) and (i));

so long as no Event of Default exists, the Borrower may make Restricted Payments in an aggregate amount not to exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

so long as no Event of Default exists, the Borrower may make Restricted Payments so long as the Total Rent Adjusted Net Leverage Ratio, calculated on a Pro Forma Basis, would not exceed (i) prior to the consummation of an IPO, 3.50:1.00 as of the last day of the most recently ended Test Period and (ii) following the consummation of any IPO, 4.00:1.00 as of the last day of the most recently ended Test Period;

the Borrower may declare and make dividend payments or other Restricted Payments payable solely in the Capital Stock of the Borrower or of any Parent Company;

the Borrower may make Restricted Payments (other than in the form of Cash and Cash Equivalents) in connection with and/or relating to any internal reorganization or restructuring activities (including related to tax planning); provided that such activities do not result in any Capital Stock of the Borrower becoming an Excluded Asset;

the Borrower may make payments or distributions to satisfy dissenters’ or appraisal rights, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of assets that complies with Section 6.07;

Restricted Payments constituting any part of any PCT Reorganization Transaction shall be permitted;

following the consummation of the first IPO, the Borrower may (or may make Restricted Payments to any Parent Company to enable it to) make Restricted Payments with respect to any equity interests in an annual amount not to exceed an amount equal to 7.00% of the Net Proceeds received by or contributed to the Borrower from any IPO; and

so long as no Event of Default exists, the Borrower may make Restricted Payments in an aggregate amount not to exceed $1,000,000 in any Fiscal Year to pay management fees and other fees and expenses to be paid to the Permitted Holders.

It is understood and agreed that, for purposes of this Section 6.04(a), any determination of the value of any asset other than Cash shall be made by the Borrower in good faith.

(b) The Borrower shall not, nor shall it permit any Restricted Subsidiary to make any voluntary prepayment in respect of principal outstanding of Restricted Debt, including any sinking fund or similar deposit, on account of the voluntary prepayment, repurchase, purchase, redemption, retirement, acquisition, cancellation or termination of any Restricted Debt, in each case, more than one year prior to the scheduled maturity date thereof (collectively, “Restricted Debt Payments”), except:
with respect to any purchase, defeasance, redemption, refinancing repurchase, repayment or other acquisition or retirement thereof made by exchange for, or out of the proceeds of, Indebtedness permitted by Section 6.01 that constitutes Restricted Debt;

(ii) as part of an applicable high yield discount obligation catch-up payment;

(iii) payments of regularly scheduled principal or regularly scheduled interest (including any penalty interest, if applicable) and payments of fees, expenses and indemnification obligations as and when due (other than payments that are prohibited by the subordination provisions thereof);

(iv) so long as no Event of Default exists, Restricted Debt Payments in an aggregate amount not to exceed (A) (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, plus (B) at the election of the Borrower, the amount of Restricted Payments then permitted to be made by the Borrower in reliance on Section 6.04(a)(ix) (it being understood that any amount utilized under this clause (B) to make a Restricted Debt Payment shall result in a reduction in the amount available under Section 6.04(a)(ix));

(v) (A) Restricted Debt Payments in exchange for, or with proceeds of any issuance of, Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower and/or any capital contribution in respect of Qualified Capital Stock of the Borrower in each case, that are Not Otherwise Applied, (B) Restricted Debt Payments as a result of the conversion of all or any portion of any Restricted Debt into Qualified Capital Stock of the Borrower or the Capital Stock of any Parent Company and (C) to the extent constituting a Restricted Debt Payment, payment-in-kind interest with respect to any Restricted Debt that is permitted under Section 6.01;

(vi) so long as no Event of Default exists, Restricted Debt Payments in an aggregate amount not to exceed (A) the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (vi)(A) and/or (B) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrower elects to apply to this clause (vi)(B); and

(vii) so long as no Event of Default exists, Restricted Debt Payments in an unlimited amount; provided that after giving effect thereto the Total Rent Adjusted Net Leverage Ratio, calculated on a Pro Forma Basis, would not exceed (i) prior to the consummation of an IPO, 3.75:1.00 as of the last day of the most recently ended Test Period and (ii) following the consummation of any IPO, 4.25:1.00 as of the last day of the most recently ended Test Period.

Section 6.05 Burdensome Agreements. Except as provided herein or in any other Loan Document, any document with respect to any Incremental Equivalent Debt and/or in any agreement with respect to any refinancing, renewal or replacement of any such Indebtedness that is permitted by Section 6.01, the Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, enter into or cause to exist any agreement (any such agreement, a “Burdensome Agreement”) restricting the ability of any Loan Party to create, permit or grant a Lien on any of its properties or assets to secure the Secured Obligations (after giving effect to the applicable anti-assignment provisions of the UCC and/or any other applicable Requirement of Law), except restrictions:
(a) set forth in any agreement governing (i) Indebtedness of a Restricted Subsidiary that is not a Loan Party permitted by Section 6.01, (ii) Indebtedness permitted by Section 6.01 that is secured by a Permitted Lien if the relevant restriction applies only to the Person obligated under such Indebtedness and its Restricted Subsidiaries or the assets intended to secure such Indebtedness and (iii) Indebtedness permitted pursuant to clauses (j), (m), (p) (as it relates to Indebtedness in respect of clauses (a), (l), (r), (s), (u) and/or (cc) of Section 6.01), (r), (s), (t), (u) and/or (cc) of Section 6.01;

(b) arising under customary provisions restricting assignments, subletting or other transfers (including the granting of any Lien) contained in leases, subleases, licenses, sublicenses, joint venture agreements and other agreements entered into in the ordinary course of business;

c) that are or were created by virtue of any Lien granted upon, transfer of, agreement to transfer or grant of, any option or right with respect to any assets or Capital Stock not otherwise prohibited under this Agreement;

d) that are assumed in connection with any acquisition of property or the Capital Stock of any Person, so long as the relevant encumbrance or restriction relates solely to the Person and its subsidiaries (including the Capital Stock of the relevant Person or Persons) and/or property so acquired and was not created in connection with or in anticipation of such acquisition;

(e) set forth in any agreement for any Disposition of any Restricted Subsidiary (or all or substantially all of the assets thereof) that restricts the payment of dividends or other distributions or the making of cash loans or advances by such Restricted Subsidiary pending such Disposition;

(f) set forth in provisions in agreements or instruments which prohibit the payment of dividends or the making of other distributions with respect to any class of Capital Stock of a Person other than on a pro rata basis;

(g) imposed by customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements and other similar agreements;

(h) on Cash, other deposits or net worth or similar restrictions imposed by any Person under any contract entered into in the ordinary course of business or for whose benefit such Cash, other deposits or net worth or similar restrictions exist;

(i) set forth in documents which exist on the Closing Date;

(j) arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be incurred after the Closing Date if the relevant restrictions, taken as a whole, are not materially less favorable to the Lenders than the restrictions contained in this Agreement, taken as a whole (as determined in good faith by the Borrower);

(k) arising under or as a result of applicable Requirements of Law or the terms of any license, authorization, concession or permit;

(l) arising in any Hedge Agreement and/or any agreement or arrangement relating to any Banking Services and/or any other obligation of the type permitted under Section 6.01(e);

(m) relating to any asset (or all of the assets) of and/or the Capital Stock of the Borrower and/or any Restricted Subsidiary which is imposed pursuant to an agreement entered into in connection with any Disposition of such asset (or assets) and/or all or a portion of the Capital Stock of the relevant
Person that is permitted or not restricted by this Agreement or that would result in the occurrence of the Termination Date;

(n) set forth in any agreement relating to any Permitted Lien that limits the right of the Borrower and/or any Restricted Subsidiary to Dispose of or encumber the assets subject thereto;

(o) customary subordination and/or subrogation provisions set forth in guaranty or similar documentation (not relating to Indebtedness for borrowed money) that is entered into in the ordinary course of business;

(p) any restriction created in connection with any factoring program implemented in the ordinary course of business, so long as in the case of any prohibition on Liens, the relevant restriction relates solely to assets subject to such factoring program and the Capital Stock of any Person participating in such factoring program; and/or

(q) imposed by any amendment, modification, restatement, renewal, increase, supplement, refinancing or refinancing of any contract, instrument or obligation referred to in clauses (a) through (p) above; provided that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith judgment of the Borrower, more restrictive with respect to such restrictions, taken as a whole, than those in existence prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 6.06 Investments. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, make or own any Investment in any other Person except:

(a) Cash or Investments that were Cash Equivalents at the time made;

(b) (i) Investments existing on the Closing Date in the Borrower or in any subsidiary; (ii) Investments made after the Closing Date among the Borrower and/or one or more Restricted Subsidiaries; provided that the aggregate outstanding amount of Investments by any Loan Party in any Restricted Subsidiary that is not a Loan Party in reliance on this Section 6.06(b)(ii) shall not exceed (x) prior to the consummation of an IPO, the greater of $2,500,000 and 10% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $6,000,000 and 25% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, (iii) any Investment made after the Closing Date among the Borrower and/or one or more Restricted Subsidiaries in connection with cash management and (iv) Investments in any Restricted Subsidiary in the form of any contribution or Disposition of the Capital Stock of any Person that is not a Loan Party; provided that, in the case of this clause (iv), (x) there is a bona fide business purpose for such contribution or Disposition or (y) such contribution or Disposition is not consummated solely for the purpose of obtaining a release of the Collateral in respect of the Capital Stock in such Person, in the case of the foregoing clauses (x) and (y), as determined in good faith by the Borrower;

(c) Investments (i) constituting deposits, prepayments, trade credits and/or credits to suppliers, (ii) made in connection with obtaining, maintaining or renewing client and customer contracts or (iii) made in distributors, suppliers, licensors and licensees, in each case, in the ordinary course of business or, in the case of clause (iii), to the extent necessary to maintain the ordinary course of supplies to the Borrower or any Restricted Subsidiary;

(d) (i) Investments in joint ventures in an aggregate outstanding amount not to exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of
the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; provided that the Capital Stock of such joint venture shall be Collateral, and (ii) so long as no Event of Default under Section 7.01(a), (f) or (g) exists, Investments in Unrestricted Subsidiaries in an aggregate outstanding amount not to exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(e) (i) Permitted Acquisitions and (ii) any Investment in any Restricted Subsidiary that is not a Loan Party in an amount required to permit such Restricted Subsidiary to directly, or indirectly through one or more other Restricted Subsidiaries, consummate a Permitted Acquisition, which amount is applied, by such Restricted Subsidiary, directly or indirectly, through one or more other Restricted Subsidiaries to consummate such Permitted Acquisition;

(f) (i) Investments existing on, or contractually committed to or contemplated as of, the Closing Date; provided that, to the extent the outstanding amount (or contractually committed or contemplated amount) of any such Investment on the Closing Date exceeds $1,000,000 such Investment is described on Schedule 6.06 and (ii) any modification, replacement, renewal or extension of any Investment described in clause (i) above so long as no such modification, renewal or extension increases the amount of such Investment except by the terms thereof or as otherwise permitted by this Section 6.06;

(g) Investments received in lieu of Cash in connection with any Disposition permitted by Section 6.07 or any other disposition of assets not constituting a Disposition;

(h) loans or advances to present or former employees, directors, members of management, officers, managers or consultants or independent contractors (or their respective Immediate Family Members) of any Parent Company, the Borrower, its subsidiaries and/or any joint venture to the extent permitted by Requirements of Law, in connection with such Person’s purchase of Capital Stock of any Parent Company or the Borrower, either (i) in an aggregate principal amount not to exceed $2,000,000 at any one time outstanding or (ii) so long as the proceeds of such loan or advance are substantially contemporaneously contributed (or deemed to have been contributed) to the Borrower for the purchase of such Capital Stock;

(i) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business;

(j) Investments consisting of (or resulting from) Indebtedness permitted under Section 6.01 (other than Indebtedness permitted under Sections 6.01(b) and (g)), Permitted Liens, Restricted Payments permitted under Section 6.04 (other than Section 6.04(a)(viii)), Restricted Debt Payments permitted by Section 6.04 and mergers, consolidations, amalgamations, liquidations, windings up, dissolutions or Dispositions permitted by Section 6.07 (other than Section 6.07(a) (if made in reliance on subclause (ii)(B) of the proviso thereto), Section 6.07(c)(ii) (if made in reliance on clause (B) therein) and Section 6.07(g));

(k) Investments (i) in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers and/or (ii) in the ordinary course of business and/or consistent with industry practice consisting of loans or advances made to distributors;

(l) Investments (including debt obligations and Capital Stock) received (i) in connection with the bankruptcy or reorganization of any Person, (ii) in settlement of delinquent obligations of, or
other disputes with, customers, suppliers and other account debtors arising in the ordinary course of business, (iii) upon foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment and/or (iv) as a result of the settlement, compromise, resolution of litigation, arbitration or other disputes;

(m) loans and advances of payroll payments or other compensation (including deferred compensation) to present or former employees, directors, members of management, officers, managers or consultants of the Borrower or any Parent Company (to the extent such payments or other compensation relate to services provided to such Parent Company (but excluding, for the avoidance of doubt, the portion of any such amount, if any, attributable to the ownership or operations of any subsidiary of any Parent Company other than the Borrower and/or its subsidiaries)), the Borrower and/or any subsidiary in the ordinary course of business;

(n) Investments to the extent that payment therefor is made with Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower or any Restricted Subsidiary that are Not Otherwise Applied, in each case, to the extent not resulting in a Change of Control; provided that in connection with any such Investment, any payment (or portion thereof) not made with Capital Stock of any Parent Company or Qualified Capital Stock of the Borrower or any Restricted Subsidiary must otherwise be permitted under this Section 6.06;

(o) (i) Investments of any Restricted Subsidiary acquired after the Closing Date, or of any Person acquired by, or merged into or consolidated or amalgamated with, the Borrower or any Restricted Subsidiary after the Closing Date, in each case as part of an Investment otherwise permitted by this Section 6.06 to the extent that such acquired Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of the relevant acquisition, merger, amalgamation or consolidation and (ii) any modification, replacement, renewal or extension of any Investment permitted under clause (i) of this Section 6.06(o) so long as no such modification, replacement, renewal or extension thereof increases the original amount of such Investment, except as otherwise permitted by this Section 6.06;

(p) Investments made in connection with the Transactions;

(q) Investments made after the Closing Date by the Borrower and/or any of its Restricted Subsidiaries in an aggregate amount at any time outstanding not to exceed:

(i) so long as no Event of Default under Section 7.01(a), (f) or (g) exists, (A) (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, plus (B) at the election of the Borrower, the amount of Restricted Payments then permitted to be made by the Borrower in reliance on Section 6.04(a)(ix) (it being understood that any amount utilized under this clause (B) to make an Investment shall result in a reduction in the amount available under Section 6.04(a)(ix)), plus (C) at the election of the Borrower, the amount of Restricted Debt Payments then permitted to be made by the Borrower or any Restricted Subsidiary in reliance on Section 6.04(b)(iv)(A) (it being understood that any amount utilized under this clause (C) to make an Investment shall result in a reduction in the amount available under Section 6.04(b)(iv)(A)), plus

(ii) in the event that (A) the Borrower or any of its Restricted Subsidiaries makes any Investment after the Closing Date in any Person that is not a Restricted Subsidiary and (B) such Person subsequently becomes a Restricted Subsidiary, an amount equal to 100% of the
fair market value of such Investment as of the date on which such Person becomes a Restricted Subsidiary;

(r) so long as no Event of Default Exists, Investments made after the Closing Date by the Borrower and/or any of its Restricted Subsidiaries in an aggregate outstanding amount not to exceed (i) the portion, if any, of the Available Amount on such date that the Borrower elects to apply to this clause (r)(i) and/or (ii) the portion, if any, of the Available Excluded Contribution Amount on such date that the Borrower elects to apply to this clause (r)(ii);

(s) (i) Guarantees of leases (other than Capital Leases) or of other obligations of the Borrower and/or any Restricted Subsidiary not constituting Indebtedness and (ii) Guarantees of the lease obligations of suppliers, customers, franchisees and licensees of the Borrower and/or its Restricted Subsidiaries, in each case, in the ordinary course of business in an aggregate outstanding principal amount not to exceed the greater of $1,500,000 and 5% of Consolidated Adjusted EBITDA;

(t) Investments in any Parent Company in amounts and for purposes for which Restricted Payments to such Parent Company are permitted under Section 6.04(a) (other than Section 6.04(a)(i)(F)); provided that any Investment made as provided above in lieu of any such Restricted Payment shall reduce availability under the applicable Restricted Payment basket under Section 6.04(a);

(u) Investments in Similar Businesses in an aggregate outstanding amount not to exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period;

(v) Investments in the Borrower and/or any Restricted Subsidiary in connection with internal reorganizations and/or restructurings and/or activities related to tax planning; provided that, after giving effect to any such reorganization, restructuring or activity, in the good faith determination of the Borrower, neither the Loan Guaranty, taken as a whole, nor the security interest of the Administrative Agent in the Collateral, taken as a whole, is materially impaired;

(w) Investments under Derivative Transactions of the type permitted under Section 6.01(p);

(x) 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;

(y) 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;

(z) Investments in the Borrower, any Restricted Subsidiary and/or joint venture in connection with intercompany cash management arrangements and related activities in the ordinary course of business;

(aa) so long as no Event of Default under Section 7.01(a), (f) or (g) exists, any Investment so long as, after giving effect thereto on a Pro Forma Basis, the Total Rent Adjusted Net Leverage Ratio does not exceed (i) prior to the consummation of an IPO, 4.00:1.00 as of the last day of the most recently
ended Test Period and (ii) following the consummation of any IPO, 4.50:1.00 as of the last day of the most recently ended Test Period;

(bb) any Investment made or committed to be made by any Unrestricted Subsidiary prior to the date on which such Unrestricted Subsidiary is designated as a Restricted Subsidiary so long as the relevant Investment was not made or committed to be made in contemplation of the designation of such Unrestricted Subsidiary as a Restricted Subsidiary;

(cc) Investments consisting of the licensing, sublicensing or contribution of IP Rights, including pursuant to joint marketing, collaboration or joint development arrangements with other Persons in the ordinary course of business;

(dd) any loan and/or advance to any Parent Company not in excess of the amount (after giving effect to any other loan, advance or Restricted Payment in respect thereof) of Restricted Payments that are permitted to be made to such Parent Company in accordance with Section 6.04(a)(i), such Investment being treated for purposes of the applicable provision of Section 6.04(a), including any limitation, as a Restricted Payment made pursuant to such clause;

(ee) Investments in the ordinary course of business to secure performance of operating leases and other contractual obligations that do not constitute Indebtedness;

(ff) Investments consisting of prepaid expenses, negotiable instruments held for collection and lease, utility and workers’ compensation, performance and other similar deposits;

(gg) Investments in receivables owing to the Borrower and/or any Restricted Subsidiary in the ordinary course of business on customary trade terms, including such concessionary trade terms as the Borrower or the relevant Restricted Subsidiary may deem reasonable under the applicable circumstances;

(hh) any contribution to a “rabbi” trust for the benefit of any employee, director, consultant, independent contractor or other service provider or any other grantor trust;

(ii) Investments in franchisees in an aggregate outstanding amount not to exceed the greater of $2,500,000 and 10% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, in which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year); and/or

(jj) Investments made in connection with any PCT Reorganization Transaction.

Notwithstanding the foregoing, it is understood and agreed that this Section 6.06 shall not permit (x) an IP Separation Transaction or (y) an Investment by the Borrower or any Restricted Subsidiary in the form of a contribution of any Material Intellectual Property to any Unrestricted Subsidiary.

Section 6.07 Fundamental Changes; Disposition of Assets. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, merge, consolidate, amalgamate, or liquidate, wind up or dissolve themselves (or suffer any liquidation or dissolution), or make any voluntary Disposition of assets outside the ordinary course of business having a fair market value in excess of $2,000,000 in any single transaction or series of related transactions (including, in each case, pursuant to a Delaware LLC Division), except:
(a) the Borrower or any Subsidiary Guarantor may be merged, consolidated or amalgamated with another Person or, if applicable, effect a Delaware LLC Division, or any Restricted Subsidiary may be merged, consolidated or amalgamated with or into the Borrower or any Restricted Subsidiary or, if applicable, effect a Delaware LLC Division; provided that:

(i) in the case of any such merger, consolidation or amalgamation with or into the Borrower or any Delaware LLC Division relating to the Borrower, (A) the Borrower shall be the continuing or surviving Person or (B) if the Person formed by or surviving any such merger, consolidation, amalgamation or Delaware LLC Division is not the Borrower (any such Person, the “Successor Borrower”), (1) the Successor Borrower shall be an entity organized or existing under the law of the US, any state thereof or the District of Columbia, (2) the Successor Borrower shall expressly assume the Obligations of the Borrower in a manner reasonably satisfactory to the Administrative Agent and (3) except as the Administrative Agent may otherwise agree, each Guarantor, unless it is the other party to such merger, consolidation or amalgamation, shall have executed and delivered a reaffirmation agreement with respect to its obligations under the Loan Guaranty and the other Loan Documents; it being understood and agreed that if the foregoing conditions under clauses (1) through (3) are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents, and

(ii) in the case of any such merger, consolidation or amalgamation with or into any Subsidiary Guarantor or any Delaware LLC Division relating to any Subsidiary Guarantor, either (A) the Borrower or a Subsidiary Guarantor shall be the continuing or surviving Person or the continuing or surviving Person (or, in the case of an amalgamation, the Person formed as a result thereof) shall expressly assume the obligations of such Subsidiary Guarantor in a manner reasonably satisfactory to the Administrative Agent or (B) the relevant transaction shall be treated as an Investment and shall comply with Section 6.06;

(b) Dispositions (including of Capital Stock) among the Borrower and/or any Restricted Subsidiary (upon voluntary liquidation or otherwise); provided that if the relevant Disposition is to a Restricted Subsidiary that is not a Loan Party, the relevant transaction shall be treated as an Investment and shall comply with Section 6.06;

(c) (i) the liquidation, dissolution or Delaware LLC Division of any Restricted Subsidiary if the Borrower determines in good faith that (A) such liquidation, dissolution or Delaware LLC Division is in the best interests of the Borrower and (B) is not materially disadvantageous to the Lenders (taken as a whole) and (ii) the Borrower or any Restricted Subsidiary receives the assets (if any) of the relevant liquidated, dissolved or divided Restricted Subsidiary; provided that in the case of any liquidation, dissolution or Delaware LLC Division of any Loan Party that results in a distribution of assets to any Restricted Subsidiary that is not a Loan Party, such distribution shall be treated as an Investment and shall comply with Section 6.06 (other than in reliance on clause (j) thereof); (ii) any merger, amalgamation, dissolution, liquidation, consolidation or Delaware LLC Division, the purpose of which is to effect (A) any Disposition otherwise permitted under this Section 6.07 (other than clause (a), clause (b) or this clause (c)) or (B) any Investment permitted under Section 6.06 (other than Section 6.06(j)); and (iii) the conversion of the Borrower or any Restricted Subsidiary into another form of entity, so long as such conversion does not, in the good faith determination of the Borrower, adversely affect the value of the Loan Guaranty or Collateral, if any;
(d) (i) Dispositions of inventory or equipment or immaterial assets in the ordinary course of business (including on an intercompany basis) and (ii) the leasing or subleasing of real property in the ordinary course of business;

(e) Dispositions of surplus, obsolete, used or worn out property or other property that, in the good faith judgment of the Borrower, is (i) no longer useful in its business (or in the business of any Restricted Subsidiary of the Borrower) or (ii) otherwise economically impracticable to maintain, including any property abandoned in connection with the termination of any lease;

(f) Dispositions of Cash and/or Cash Equivalents and/or other assets that were Cash Equivalents when the relevant original Investment was made;

(g) Dispositions, mergers, amalgamations, consolidations or conveyances that constitute (or would result in) (i) Investments permitted pursuant to Section 6.06 (other than Section 6.06(j)), (ii) Permitted Liens and (iii) Restricted Payments permitted by Section 6.04(a) (other than Section 6.04(a)(viii));

(h) Dispositions for fair market value; provided that:

(i) with respect to any such Disposition (other than any Permitted Asset Swap) with a purchase price in excess of (x) prior to the consummation of an IPO, the greater of $1,250,000 and 5% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $2,500,000 and 10% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, at least 75% of the consideration for such Disposition (other than the portion of any such Disposition consisting of a Permitted Asset Swap) shall consist of Cash or Cash Equivalents;

(ii) for purposes of the 75% Cash consideration requirement described immediately above:

   (A) the amount of any Indebtedness or other liabilities (other than Indebtedness or other liabilities that are subordinated to the Obligations or that are owed to the Borrower or any Restricted Subsidiary) of the Borrower or any Restricted Subsidiary (as shown on such Person’s most recent balance sheet or statement of financial position (or in the notes thereto)) that are assumed by the transferee of any such assets (or that are otherwise terminated or cancelled in connection with the transaction with such transferee) and for which the Borrower and/or its applicable Restricted Subsidiary have been validly released by all relevant creditors in writing,

   (B) the amount of any trade-in value applied to the purchase price of any replacement assets acquired in connection with such Disposition,

   (C) any Security received by the Borrower or any Restricted Subsidiary from such transferee that will be converted by such Person into Cash or Cash Equivalents (to the extent of the Cash or Cash Equivalents received) within 180 days following the closing of the applicable Disposition, and

   (D) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (D) that is at that time outstanding, not in excess of (x) prior to the consummation of an IPO, the greater of
$2,500,000 and 10% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period,

in each case, shall be deemed to be Cash; and

(iii) the amount of Dispositions made pursuant to this clause (h), together with the amount of Dispositions made pursuant to Section 6.07(z) below, does not exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period in any Fiscal Year, which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year);

(i) Dispositions to the extent that (i) the relevant property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of the relevant Disposition are promptly applied to the purchase price of such replacement property;

(j) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to, buy/sell arrangements between joint venture or similar parties set forth in the relevant joint venture arrangements and/or similar binding arrangements;

(k) Dispositions, discounting or forgiveness of notes receivable or accounts receivable in the ordinary course of business (including to insurers which have provided insurance as to the collection thereof) or in connection with the collection or compromise thereof (including sales to factors);

(l) Dispositions and/or terminations of leases, subleases, licenses or sublicenses, (i) the Disposition or termination of which will not materially interfere with the business of the Borrower and its Restricted Subsidiaries (taken as a whole) or (ii) which relate to closed facilities or the discontinuation of any product line;

(m) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business;

(n) Dispositions of property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding);

(o) Dispositions or consignments of equipment, inventory or other assets (including leasehold interests in real property) with respect to facilities that are temporarily not in use, held for sale or closed;

(p) Dispositions of non-core (as determined by the Borrower in good faith) assets acquired in connection with any acquisition or other Investment permitted hereunder and sales of Real Estate Assets acquired in any acquisition or other Investment permitted hereunder; provided that no Event of
Default under **Section 7.01(a), (f), or (g)** exists on the date on which the definitive agreement governing the relevant Disposition is executed;

(q) exchanges or swaps, including transactions covered by Section 1031 of the Code (or any comparable provision of any foreign jurisdiction), of assets so long as any such exchange or swap is made for fair value (as determined by the Borrower in good faith) for like assets (including Related Business Assets);

(r) Dispositions of assets that do not constitute Collateral for fair market value;

(s) (i) any Disposition or non-exclusive licensing, sublicensing and/or cross-licensing arrangement involving any IP Right of the Borrower or any Restricted Subsidiary in the ordinary course of business, and (ii) any Disposition, abandonment, cancellation or lapse of any IP Right, or any issuance or registration, or application for issuance or registration, of any IP Right, which, in the good faith determination of the Borrower is not material to the conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, or is no longer economical to maintain in light of its use;

(t) any termination or unwind of Derivative Transactions or Banking Services Obligations;

(u) Dispositions of Capital Stock of, or sales of Indebtedness or other Securities of, Unrestricted Subsidiaries;

(v) Dispositions of Real Estate Assets (other than the Verona Property) and related assets in the ordinary course of business in connection with relocation activities for directors, officers, employees, members of management, managers or consultants of any Parent Company, the Borrower and/or any Restricted Subsidiary;

(w) Dispositions made to comply with any order of any Governmental Authority or any applicable Requirement of Law (including as a condition to, or in connection with, the consummation of the Transactions);

(x) any merger, consolidation, Disposition or conveyance the purpose of which is to reincorporate or reorganize (i) any Restricted Subsidiary in another jurisdiction in the US and/or (ii) any Foreign Subsidiary in the US or any other jurisdiction;

(y) any sale of motor vehicles and information technology equipment purchased at the end of an operating lease and resold thereafter;

(z) Dispositions involving assets having a fair market value in the aggregate, together with the amount of Dispositions made pursuant to clause (h) above, of not more than (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period in any Fiscal Year, which, if not used in such Fiscal Year, shall be carried forward to the next Fiscal Year (but not to any succeeding Fiscal Years to the extent not fully utilized in the immediately succeeding Fiscal Year; it being understood and agreed that such carried forward amounts shall be deemed utilized first in any Fiscal Year prior to utilization of the indicative amount for such Fiscal Year);

(aa) Dispositions in connection with reorganizations and/or restructurings and/or activities related to tax planning; provided that, after giving effect to any such reorganization, restructuring or activity, in the good faith determination of the Borrower, neither the Loan Guaranty, taken as a whole,
nor the security interest of the Administrative Agent in the Collateral, taken as a whole, is materially impaired;

(bb) Dispositions of assets in connection with the closing or sale of an office in the ordinary course of business of the Borrower and the Restricted Subsidiaries, which consist of leasehold interests in the premises of such office, the equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such office; provided that any such sale shall be at a commercially reasonable price and on commercially reasonable terms in a bona fide arm’s-length transaction;

(cc) Sale and Lease-Back Transactions; provided that (i) the fair market value of all property so Disposed of after the Closing Date shall not exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period and (ii) the Borrower shall be in compliance with Section 6.10(a), Section 6.10(b) and Section 6.10(c) on a Pro Forma Basis;

(dd) so long as no Event of Default exists, Dispositions of any asset acquired with the proceeds of an Available Excluded Contribution Amount;

(ee) the granting of franchises with respect to restaurants (and Dispositions of property in connection therewith) made to franchisees meeting the Borrower’s reasonable qualifications; provided that (A) such Dispositions are made for fair market value, (B) any such granting of a franchise with respect to a restaurant then owned by any Loan Party shall be subject to the absence of any Event of Default on the date on which such Disposition is consummated, (C) the Borrower is in compliance with Section 6.10(a), Section 6.10(b) and Section 6.10(c) on a Pro Forma Basis, at the Borrower’s election, either (1) at the time of the execution of the definitive agreement governing such Disposition or (2) on the date on which such Disposition is consummated and (D) the aggregate amount of Dispositions made pursuant to this clause (kk) does not exceed (x) prior to the consummation of an IPO, the greater of $5,000,000 and 20% of Consolidated EBITDA as of the last day of the most recently ended Test Period, and (y) following the consummation of an IPO, the greater of $8,500,000 and 35% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period; and

(ff) any transaction in connection with any PCT Reorganization Transaction.

It is understood and agreed that (a) to the extent that any Collateral is Disposed of as permitted by this Section 6.07, such Collateral shall be Disposed of free and clear of the Liens created by the Loan Documents, which Liens shall be automatically released upon the consummation of such Disposition, and the Administrative Agent shall be authorized to take, and shall take, any action reasonably requested by the Borrower in order to effect the foregoing; provided that in the case of a Disposition made to any Loan Party, the relevant transferred assets shall become part of the Collateral of the transferee Loan Party (except to the extent such assets constitute Excluded Assets), (b) any determination of the fair market value of any asset other than Cash for purposes of this Section 6.07 shall be made by the Borrower in good faith at its election either (1) at the time of the execution of the definitive agreement governing such Disposition or (2) the date on which such Disposition is consummated and (c) notwithstanding the foregoing provisions of this Section 6.07, this Section 6.07 shall not permit (i) an IP Separation Transaction or (ii) a Disposition by the Borrower or any Restricted Subsidiary of any Material Intellectual Property to any Unrestricted Subsidiary.
Section 6.08  Amendments of or Waivers with Respect to Restricted Debt. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, amend or otherwise modify the subordination terms set forth in the documentation governing any Restricted Debt if the effect of such amendment or modification, together with all other amendments or modifications made, is, in the good faith determination of the Borrower, materially adverse to the interests of the Lenders (in their capacities as such); provided that, for purposes of clarity, it is understood and agreed that the foregoing limitation shall not otherwise prohibit any Refinancing Indebtedness or any other replacement, refinancing, amendment, supplement, modification, extension, renewal, restatement or refunding of any Restricted Debt, in each case, that is otherwise permitted to be incurred under this Agreement in respect thereof.

Section 6.09  Transactions with Affiliates. The Borrower shall not, nor shall it permit any of its Restricted Subsidiaries to, consummate any transaction with any Affiliate thereof that involves payment in excess of $4,800,000 and 20% of Consolidated Adjusted EBITDA as of the last day of the most recently ended Test Period, on terms that are not at least as favorable (as determined by the Borrower in good faith at the time of the execution of the definitive agreement relating thereto) to the Borrower or such Restricted Subsidiary, as the case may be, as those that might be obtained at the time in a comparable arm’s-length transaction from a Person who is not an Affiliate (or, if in the good faith judgment of Borrower, there is no comparable transaction on the basis of which to make the comparison described above, such transaction is fair to the Borrower or its applicable Restricted Subsidiary from a financial point of view); provided that the foregoing requirement shall not apply to:

(a) any transaction between or among the Borrower and/or one or more Restricted Subsidiaries (or any entity that becomes a Restricted Subsidiary as a result of such transaction) to the extent permitted or not restricted by this Agreement (it being understood this clause (a) shall not permit any Restricted Subsidiary that is not a Wholly-Owned Subsidiary to make a distribution to, or repurchase of its Capital Stock from, any Affiliate (other than the Borrower and/or one or more Restricted Subsidiaries) to the extent the share of the foregoing made or paid to the Borrower or any of the Restricted Subsidiaries is not at least pro rata to the percentage of such class of Capital Stock in such Restricted Subsidiary that is not a Wholly-Owned Subsidiary owned by the Borrower and its other Restricted Subsidiaries);

(b) any issuance, sale or grant of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of employment arrangements, stock options and stock ownership plans approved by the board of directors (or equivalent governing body) of any Parent Company or of the Borrower or any Restricted Subsidiary;

(c) (i) any collective bargaining, employment or severance agreement or compensatory (including profit sharing) arrangement (including salary or guaranteed payment and bonuses) entered into by the Borrower or any of its Restricted Subsidiaries with their respective current or former officers, directors, members of management, managers, employees, consultants or independent contractors or those of any Parent Company, (ii) any subscription agreement or similar agreement pertaining to the repurchase of Capital Stock pursuant to put/call rights or similar rights with current or former officers, directors, members of management, managers, employees, consultants or independent contractors and (iii) any transaction pursuant to any employee compensation, benefit plan, stock option plan or arrangement, any health, disability or similar insurance plan which covers current or former officers, directors, members of management, managers, employees, consultants or independent contractors or any employment contract or arrangement;
(d) (i) transactions permitted by Sections 6.04 and 6.06 and (ii) issuances of Capital Stock, equity contributions and issuances and incurrences of Indebtedness not otherwise restricted by this Agreement;

(e) transactions in existence on the Closing Date and any amendment, modification or extension thereof to the extent such amendment, modification or extension, taken as a whole, is not (i) materially adverse to the Lenders or (ii) more disadvantageous in any material respect to the Lenders than the relevant transaction in existence on the Closing Date;

(f) the Transactions and the payment of Transaction Costs;

(g) customary compensation to, and reimbursement of expenses of, Affiliates in connection with financial advisory, financing, underwriting or placement services or in respect of other investment banking activities and other transaction fees, which payments are approved by the majority of the members of the board of directors (or similar governing body) or a majority of the disinterested members of the board of directors (or similar governing body) of the Borrower in good faith;

(h) Guarantees permitted by Section 6.01 or Section 6.06;

(i) transactions that are otherwise permitted (or not restricted) under Article VI;

(j) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, members of the board of directors (or similar governing body), officers, employees, members of management, managers, consultants and independent contractors of the Borrower and/or any of its Restricted Subsidiaries in the ordinary course of business and, in the case of payments to such Person in such capacity on behalf of any Parent Company, to the extent attributable to the operations of the Borrower or its subsidiaries;

(k) transactions with customers, clients, suppliers, joint ventures, purchasers or sellers of goods or services or providers of employees or other labor entered into in the ordinary course of business, which are (i) fair to the Borrower and/or its applicable Restricted Subsidiary in the good faith determination of the Borrower (or its board of directors (or similar governing body) or senior management) or (ii) on terms at least as favorable as might reasonably be obtained from a Person other than an Affiliate;

(l) the payment of reasonable out-of-pocket costs and expenses related to registration rights and customary indemnities provided to shareholders under any shareholder agreement;

(m) any intercompany loan made by the Borrower to any Restricted Subsidiary;

(n) any transaction (or series of related transactions) in respect of which the Borrower delivers to the Administrative Agent a letter addressed to the board of directors (or equivalent governing body) of the Borrower from an accounting, appraisal or investment banking firm of nationally recognized standing stating that such transaction or transactions, as applicable, is or are on terms that either (i) are no less favorable to the Borrower or the applicable Restricted Subsidiary than might be obtained at the time in a comparable arm’s length transaction from a Person who is not an Affiliate or (ii) fair to the Borrower or the relevant Restricted Subsidiary from a financial point of view;

(o) any issuance, sale or grant of securities or other payments, awards or grants in Cash, securities or otherwise pursuant to, or the funding of employment arrangements, stock options and stock ownership or incentive plans approved by a majority of the members of the board of directors (or similar
governing body) or a majority of the disinterested members of the board of directors (or similar governing body) of the Borrower in good faith;

(p) any payment pursuant to any tax sharing agreement or arrangement (whether written or as a matter of practice), that would otherwise be permitted as a distribution pursuant to Section 6.04(a);

(q) the licensing of any IP Rights in the ordinary course of business to permit the commercial use of IP Rights between or among the Borrower and/or any subsidiary and/or Affiliate thereof (other than an Unrestricted Subsidiary);

(r) any transaction (or series of related transactions) approved by a majority of the disinterested directors (or members of any similar governing body) of the Borrower or an applicable Parent Company;

(s) any investment by any Permitted Holder or Parent Company in securities or Indebtedness of the Borrower and/or any Guarantor;

(t) transactions not otherwise prohibited by this Agreement for the purpose of (i) forming a holding company and/or (ii) reincorporating the Borrower in a new jurisdiction;

(u) any payment to or from, and/or any transaction with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activity related thereto);

(v) (i) the existence and performance of any agreement and/or transaction with any Unrestricted Subsidiary that was entered into or consummated prior to the designation of such subsidiary as an Unrestricted Subsidiary to the extent that such agreement or transaction was permitted at the time that it was entered into with such Restricted Subsidiary and/or (ii) any transaction entered into by any Unrestricted Subsidiary with any Affiliate prior to the re-designation of such Unrestricted Subsidiary as a Restricted Subsidiary; provided that such transaction was not entered into in contemplation of such designation or re-designation, as applicable;

(w) any capital contribution (whether or not in exchange for the issuance of additional Capital Stock) or loan to any Unrestricted Subsidiary that is not otherwise prohibited by this Agreement;

(x) transactions permitted pursuant to Section 9.05(g); and/or

(y) (i) any investment by any Affiliate in the Loans, loans, securities or other Indebtedness of the Borrower and/or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower or such Restricted Subsidiary generally to other investors on the same or more favorable terms and (ii) payments and/or distributions to Affiliates in respect of the Loans, loans, securities or Indebtedness of the Borrower or any Restricted Subsidiary in connection with the securities and other Indebtedness contemplated in the foregoing subclause (h) or that were acquired from Persons other than the Borrower and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities or Indebtedness.

Section 6.10 Financial Covenants.

(a) Total Rent Adjusted Net Leverage Ratio. On the last day of any Test Period (commencing with the Test Period ending December 26, 2021), the Borrower shall not permit the Total Rent Adjusted Net Leverage Ratio to be greater than (A) from the Test Period ending on December 26,
2021 to and including the Test Period ending on December 25, 2022, 6.50:1.00, (B) from the Test Period ending on April 16, 2023 to and including the Test Period ending on December 31, 2023, 5.75:1.00, and (C) from the Test Period ending on April 21, 2024 and each Test Period ending thereafter, 5.00:1.00.

(b) **Fixed Charge Coverage Ratio.** On the last day of any Test Period (commencing with the Test Period ending December 26, 2021), the Borrower shall not permit the Fixed Charge Coverage Ratio to be less than (A) from the Test Period ending on December 26, 2021 to and including the Test Period ending on December 25, 2022, 1.15:1.00 and (B) from the Test Period ending on April 16, 2023 and each Test Period ending thereafter, 1.20:1.00.

(c) **Liquidity.** On the last day of any Test Period (commencing with the Test Period ending December 26, 2021), the Borrower shall not permit Liquidity to be less than $15,000,000.

(d) **Notwithstanding anything to the contrary in this Agreement** (including Article VII), upon any failure by the Borrower to comply with Section 6.10(a), Section 6.10(b) and/or Section 6.10(c) above for the Test Period ending on the last day of any Fiscal Quarter, the Borrower shall have the right (the “Cure Right”) at any time during such Fiscal Quarter or thereafter until the date that is 15 Business Days after the date on which financial statements for such Fiscal Quarter are required to be delivered pursuant to Section 5.01(a) or (b), as applicable, to issue Qualified Capital Stock or other equity (such other equity to be on terms reasonably acceptable to the Administrative Agent) for Cash or otherwise receive Cash contributions in respect of its Qualified Capital Stock or other equity (such other equity to be on terms reasonably acceptable to the Administrative Agent) (the “Cure Amount”), and thereupon the Borrower’s compliance with Section 6.10(a), Section 6.10(b) and/or Section 6.10(c) shall be recalculated giving effect to (x) a pro forma increase in the amount of Consolidated Adjusted EBITDA in an amount equal to the Cure Amount (notwithstanding the absence of a related addback in the definition of “Consolidated Adjusted EBITDA”) solely for the purpose of determining compliance with Section 6.10(a) and/or Section 6.10(b) and (y) to increase Liquidity on a dollar-for-dollar basis solely for the purposes of determining compliance with Section 6.10(c), as applicable, of the end of such Fiscal Quarter and for applicable subsequent periods that include such Fiscal Quarter. If, after giving effect to the foregoing recalculation (but not, for the avoidance of doubt, taking into account any immediate repayment of Indebtedness in connection therewith), the requirements of Section 6.10(a), Section 6.10(b) and/or Section 6.10(c), as applicable, would be satisfied, then the requirements of Section 6.10(a), Section 6.10(b) and/or Section 6.10(c), as applicable, shall be deemed to have been satisfied as of the end of the relevant Fiscal Quarter (and Test Period) with the same effect as though there had been no failure to comply therewith at such date. Notwithstanding anything herein to the contrary:

(i) in each four consecutive Fiscal Quarter period there shall be at least two Fiscal Quarters in which the Cure Right is not exercised (it being understood that, subject to clause (ii), the Cure Right may be exercised in consecutive Fiscal Quarters),

(ii) during the term of this Agreement, the Cure Right shall not be exercised more than five times (it being understood and agreed that the exercise of a Cure Right in any Fiscal Quarter with respect to any failure to comply with Section 6.10(a), Section 6.10(b) and Section 6.10(c) shall constitute a single exercise of the Cure Right),

(iii) the Cure Amount shall be no greater than the amount required for the purpose of complying with Section 6.10(a), Section 6.10(b) and/or Section 6.10(c), as applicable,

(iv) there shall be no pro forma or other reduction of the amount of Indebtedness by the amount of any Cure Amount for purposes of determining compliance with Section 6.10(a), Section 6.10(b) or Section 6.10(c) for the Fiscal Quarter in respect of which the Cure Right was
exercised (other than, with respect to any future period, to the extent of any portion of such Cure Amount that is actually applied to prepay Indebtedness (including by way of buyback or repurchase)),

(v) any pro forma adjustment to Consolidated Adjusted EBITDA resulting from any Cure Amount shall be disregarded for purposes of determining (A) whether any financial ratio-based condition to the availability of any carve-out set forth in Article VI of this Agreement has been satisfied or (B) the Applicable Rate, the Ticking Fee Rate or the Commitment Fee Rate, in each case during each Fiscal Quarter in which the pro forma adjustment applies, and

(vi) no Revolving Lender, Delayed Draw Term Lender or Issuing Bank shall be required to make any Revolving Loan, Delayed Draw Term Loan or issue, amend or increase the face amount of any Letter of Credit, as applicable, from and after the date on which a Compliance Certificate demonstrating a failure to comply with Section 6.10(a), Section 6.10(b) or Section 6.10(c) for the Test Period ending on the last day of any Fiscal Quarter is (or would be required to be) delivered pursuant to Section 5.01(c) until the date on which the Borrower receives the relevant Cure Amount.

ARTICLE VII
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 Restricted Subsidiary to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness for borrowed money of the Borrower or such Restricted Subsidiary (other than (x) Indebtedness referred to in clause (a) above and (y) intercompany Indebtedness) with an individual outstanding principal amount exceeding the Threshold Amount, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by the Borrower or any Restricted Subsidiary with respect to any other term of (A) one or more items of third-party Indebtedness for borrowed money of the Borrower or such Restricted Subsidiary (other than (x) Indebtedness referred to in clause (a) above and (y) intercompany Indebtedness) with an individual outstanding principal amount exceeding the Threshold Amount or (B) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness (other than, for the avoidance of doubt, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of the relevant Hedge Agreement which are not the result of any default hereunder by the Borrower or any Restricted Subsidiary), in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (with the giving of notice, if required) such Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; provided that (I) clause (ii) of this paragraph (b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property securing such Indebtedness if such sale or transfer is permitted hereunder, (II) any failure described under clauses (i) or (ii) above is unremedied and is not waived by the holders of such
Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to this Article VII and (III) it is understood and agreed that the occurrence of any event described in this clause (b) that would, prior to the expiration of any applicable grace period, permit the holder or holders of the relevant Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (with the giving of notice, if required) such Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be, will not result in a Default or Event of Default under this Agreement prior to the expiration of such grace period; or

(c) Breach of Certain Covenants. Failure of any Loan Party, as required by the relevant provision, to perform or comply with Section 5.01(d)(i), Section 5.02 (as it applies to the preservation of the existence of the Borrower), Section 5.12(e) or Article VI: provided that,

(i) any breach of Section 6.10(a), Section 6.10(b) or Section 6.10(c) is subject to cure as provided in Section 6.10(d); and

(ii) no Default or Event of Default may arise under Section 6.10(a), Section 6.10(b) or Section 6.10(c) until the 15th Business Day after the date on which financial statements are required to be delivered for the relevant Fiscal Quarter under Sections 5.01(a) or (b), as applicable (unless the Cure Right has previously been exercised in excess of the aggregate cap on Cure Rights contemplated by Section 6.10(d) over the life of this Agreement and/or the Cure Right has previously been exercised twice in the applicable four consecutive Fiscal Quarter period), and then only to the extent the Cure Amount has not been received on or prior to such date; or

(d) Breach of Representations, Etc. Any representation, warranty or certification made or deemed made by any Loan Party in any Loan Document or in any certificate required to be delivered in connection herewith or therewith (including, for the avoidance of doubt, any Perfection Certificate) being untrue in any material respect as of the date made or deemed made; it being understood and agreed that (i) any breach of any representation, warranty or certification resulting from the failure of the Administrative Agent to file any Uniform Commercial Code financing statement, amendment and/or continuation statement or the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it shall not result in an Event of Default under Sections 7.01(d) or any other provision of any Loan Document and (ii) if the relevant representation and warranty is capable of being cured (including by the delivery of a restated certification or calculation or restated financial statements), no Default or Event of Default may arise under this Section 7.01(d) with respect to such representation and warranty unless such representation and warranty remains incorrect in any material respect for a period of 30 days following the delivery of a written notice by the Administrative Agent of the relevant inaccuracy to the Borrower; or

(e) Other Defaults Under Loan Documents. Default by any Loan Party in the performance of or compliance with any term contained herein or any of the other Loan Documents, other than any such term referred to in any other Section of this Article VII, which default has not been remedied or waived within 30 days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) The entry by a court of competent jurisdiction of a decree or order for relief in respect of the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) in an involuntary case under any Debtor Relief Law now or hereafter in effect, which decree or order is not stayed; or any other similar relief in respect of the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) shall be granted under any
applicable Requirements of Law, which relief is not stayed; or (ii) the commencement of an involuntary case against the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) under any Debtor Relief Law; the entry by a court having jurisdiction in the premises of a decree or order for the appointment of a receiver, receiver and manager, (preliminary) insolvency receiver, liquidator, sequestrator, trustee, administrator, custodian or other officer having similar powers over the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary), or over all or a material part of its property; or the involuntary appointment of an interim receiver, trustee or other custodian of the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) for all or a material part of its property, which remains, in any case under this Section 7.01(f), undismsissed, unvacated, unbounded or unstayed pending appeal for 60 consecutive days; provided that it is understood and agreed that the occurrence of any event described in this clause (f) will not result in a Default or Event of Default under this Agreement prior to the expiration of such 60 consecutive day period; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) The entry against the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of an order for relief in, or the commencement by the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of a voluntary case under any Debtor Relief Law, or the consent by the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case, under any Debtor Relief Law, or the consent by the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) to the appointment of or taking possession by a receiver, receiver and manager, insolvency receiver, liquidator, sequestrator, trustee, administrator, custodian or other like official for or in respect of itself or for all or a material part of the property of the Borrower and any Restricted Subsidiary (other than any Immaterial Subsidiary), taken as a whole or (ii) the making by the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of a general assignment for the benefit of creditors; or

(h) Judgments and Attachments. The entry or filing of one or more final money judgments, writs or warrants of attachment or similar process against the Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) individually or any of its assets involving in the aggregate at any time an amount in excess of the Threshold Amount (in either case, to the extent not adequately covered by indemnity from a third party (including any escrow arrangement), by self-insurance (if applicable) or by insurance as to which, in the case of any such third party insurance, the relevant third party insurance company has been notified and not denied coverage), which judgment, writ, warrant or similar process remains unpaid, undischarged, unvacated, unbonded or unstayed pending appeal for a period of 60 consecutive days; provided that it is understood and agreed that the occurrence of any event described in this clause (h) will not result in a Default or Event of Default under this Agreement prior to the expiration of such 60 consecutive day period; or

(i) Employee Benefit Plans. The occurrence of one or more ERISA Events with respect to the Borrower or any Restricted Subsidiary, which individually or in the aggregate result in liability of any Loan Party in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(j) Change of Control. The occurrence of a Change of Control; or

(k) Guaranties, Collateral Documents and Other Loan Documents. At any time after the execution and delivery thereof, (i) any material Loan Guaranty for any reason, other than the occurrence of the Termination Date, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared, by a court of competent jurisdiction, to be null and void or any Loan Guarantor shall repudiate in writing its obligations thereunder (in each case, other than as a result of the discharge of such Loan Guarantor in accordance with the terms thereof and other than as a result of any
act or omission by the Administrative Agent or any Lender), (ii) this Agreement or any material Collateral Document ceases to be in full force and effect or shall be declared, by a court of competent jurisdiction, to be null and void or any Lien on a material portion of the Collateral created under any Collateral Document ceases to be perfected with respect to a material portion of the Collateral (other than solely by reason of (1) such perfection not being required pursuant to the Collateral and Guarantee Requirement, the Collateral Documents, this Agreement or otherwise, (2) the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it or the failure of the Administrative Agent to file Uniform Commercial Code financing statements, amendments or continuation statements, (3) a release of Collateral in accordance with the terms hereof or thereof or (4) the occurrence of the Termination Date or any other termination of such Collateral Document in accordance with the terms thereof) or (iii) other than in any bona fide, good faith dispute as to the scope of Collateral or whether any Lien has been, or is required to be released, any Loan Party shall contest in writing, the validity or enforceability of any material provision of any Loan Document (or any Lien purported to be created by the Collateral Documents on any material portion of the Collateral or any Loan Guaranty) or deny in writing that it has any further liability (other than by reason of the occurrence of the Termination Date or any other termination of any other Loan Document in accordance with the terms thereof), including with respect to future advances by the Lenders, under any Loan Document to which it is a party; it being understood and agreed that the failure of the Administrative Agent to file any Uniform Commercial Code financing statement, amendment or continuation statement and/or maintain possession of any physical Collateral shall not result in an Event of Default under this Section 7.01(k) or any other provision of any Loan Document;

(l) Subordination. The Obligations ceasing or the assertion in writing by any Loan Party that the Obligations cease to constitute senior indebtedness under the subordination provisions of any document or instrument evidencing any Restricted Debt that is required to be subordinated pursuant to the terms of this Agreement or any such subordination provision being invalidated by a court of competent jurisdiction in a final non-appealable order, or otherwise ceasing, for any reason, to be valid, binding and enforceable obligations of the parties thereto; then, and in every such event (other than an event described in Section 7.01(f) or Section 7.01(g)) at any time thereafter during the continuance of such event, the Administrative Agent may and at the request of the Required Lenders, shall by notice to the Borrower, take any of the following actions, at the same or different times: (i) terminate the Revolving Credit Commitments, and thereupon such Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, but ratably as among Classes of the Loans and the Loans of each Class at the time outstanding, 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 102% of the relevant face amount) of the then outstanding LC Exposure (minus the amount then on deposit in the LC Collateral Account); provided that upon the occurrence of an event described in Section 7.01(f) or Section 7.01(g), any such Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and the obligation of the Borrower to Cash collateralize the outstanding Letters of Credit as aforesaid shall automatically become effective, in each case, without further action of the Administrative Agent or any Lender. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders, shall exercise any rights and remedies provided
to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE VIII
THE ADMINISTRATIVE AGENT

Section 8.01 Authorization and Action.

(a) Each Lender, on behalf of itself and any of its Affiliates that are Secured Parties and each Issuing Bank hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the United States, each Lender and each Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender’s or such Issuing Bank’s behalf. Without limiting the foregoing, each Lender and each Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents.

(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Bank; provided, however, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and an Issuing Banks with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. 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, any other Loan Party, any subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.
In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, any Issuing Bank, any other Secured Party or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term “agent” (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby; and

(ii) nothing in this Agreement or any Loan Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account;

(d) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article VIII 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 pursuant to this Agreement. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(e) The Arranger shall not have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Loan Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) 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, LC Disbursements 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 under Sections 2.12, 2.13, 2.15, 2.17 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 in accordance with the Loan Documents;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender, each Issuing Bank and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, the any Issuing Banks or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 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.

(g) The provisions of this Article VIII are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and, except solely to the extent of the Borrower’s rights to consent pursuant to and subject to the conditions set forth in this Article VIII, none of the Borrower or any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations provided under the Loan Documents, to have agreed to the provisions of this Article VIII.

Section 8.02 Administrative Agent’s Reliance, Limitation of Liability, Etc.

(a) Neither the Administrative Agent nor any of its Related Parties shall be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (including, for the avoidance of doubt, in connection with the Administrative Agent’s reliance on any Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(b) The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 5.01 unless and until written notice thereof stating that it is a “notice under Section 5.01” in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a “notice of
Default” or a “notice of an Event of Default”) is given to the Administrative Agent by the Borrower, a Lender or an Issuing Bank. Further, 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 thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (vi) the creation, perfection or priority of Liens on the Collateral or (vii) compliance by Affiliated Lenders with the terms hereof relating to Affiliated Lenders.

(c) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.05, (ii) may rely on the Register to the extent set forth in Section 9.05(b), (iii) may consult with legal counsel (including counsel to the Borrower), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or any Issuing Bank and shall not be responsible to any Lender or any Issuing Bank for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) 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 an Issuing Bank, may presume that such condition is satisfactory to such Lender or any Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or any Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or any Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or any Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Section 8.03 Posting of Communications.

(a) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Banks by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic system chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”).

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Closing Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, each of the Issuing Banks and the Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved
Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, each of the Issuing Banks and the Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, THE ARRANGER OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, “APPLICABLE PARTIES”) HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, 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 OR THE APPROVED ELECTRONIC PLATFORM.

“Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(d) Each Lender and each Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and each Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender’s or each Issuing Bank’s (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, each of the Issuing Banks and the Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent’s generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or any Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 8.04 The Administrative Agent Individually. With respect to its Commitment, Loans (including Swingline Loans) and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and
liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms “Issuing Banks”, “Lenders”, “Required Lenders” and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, an Issuing Bank or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with, any Loan Party, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Banks.

Section 8.05 Successor Administrative Agent.

(a) The Administrative Agent may resign at any time by giving 30 days’ prior written notice thereof to the Lenders, the Issuing Banks and the Borrower, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within thirty (30) days after the retiring Administrative Agent’s giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, such appointment shall be subject to the prior written approval of the Borrower (which approval may not be unreasonably withheld and shall not be required while an Event of Default under Section 7.01(a), (f) or (g) has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent’s resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Banks and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties, and continue to be entitled to the rights set forth in such Collateral Document and Loan Document, and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Security Collateral Document, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person.
and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall directly be given or made to each Lender and each Issuing Bank. Following the effectiveness of the Administrative Agent’s resignation from its capacity as such, the provisions of this Article VIII, Section 2.17(c) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

Section 8.06 Acknowledgements of Lenders and Issuing Banks.

(a) Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any Arranger or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Closing Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Closing Date or the effective date of any such Assignment and Assumption or any other Loan Document pursuant to which it shall have become a Lender hereunder.

(c) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a “Payment”) were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a
rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.06(c) shall be conclusive, absent manifest error.

(ii) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “Payment Notice”) or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(iii) The Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party.

(iv) Each party’s obligations under this Section 8.06(c) shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

(d) Each Lender hereby agrees that (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties’ books and records, as well as on representations of the Loan Parties’ personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to the Borrower, or the
indemnifying Lender’s participation in, or the indemnifying Lender’s purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys’ fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 8.07 Collateral Matters.

(a) Except with respect to the exercise of setoff rights in accordance with Section 9.09 or with respect to a Secured Party’s right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In its capacity, the Administrative Agent is a “representative” of the Secured Parties within the meaning of the term “secured party” as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(b) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services the obligations under which constitute Secured Obligations and no Hedge Agreement the obligations under which constitute Secured Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Banking Services or Hedge Agreement, as applicable, shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

(c) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(b). The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent’s Lien thereon or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

Each Lender and each other Secured Party irrevocably authorizes and instructs the Administrative Agent to, and the Administrative Agent shall, subject to Section 9.22, release (or evidence the release of) any Subsidiary Guarantor from its obligations under the Loan Guaranty (i) if such Person ceases to be a Restricted Subsidiary (or is or becomes an Excluded Subsidiary as a result of a single transaction or series of related transactions not prohibited hereunder), (ii) on the Termination Date and/or (iii) in the case of any Discretionary Guarantor, at the election of the Borrower, upon notice from the Borrower to the Administrative Agent at any time; provided that if any Subsidiary Guarantor ceases to constitute a Wholly-Owned Subsidiary, such Subsidiary Guarantor shall not be released from its Loan Guaranty unless (A) such Subsidiary Guarantor is no longer a direct or indirect subsidiary of the Borrower, (B)
after giving pro forma effect to such release and the consummation of the relevant transaction, the Borrower is deemed to have made a new Investment in such Person (as if such Person was then newly acquired) and such Investment is permitted by the Loan Documents or (C) such Dispositions of Capital Stock is a good faith Disposition to a bona fide unaffiliated third party (as determined by the Borrower in good faith) for fair market value and for a bona fide business purpose (as determined by the Borrower in good faith); it being understood that this proviso shall not limit the release of any Subsidiary Guarantor that otherwise constitutes an Excluded Subsidiary for any reason other than not constituting a Wholly-Owned Subsidiary of the Borrower (this proviso, the “Specified Guarantor Release Provision”).

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 VIII. In each case as specified in this Article VIII, the Administrative Agent will (and each Lender, and each Issuing Bank hereby authorizes the Administrative Agent to), without recourse or warranty (other than as to the Administrative Agent’s authority to execute and deliver the same) and at the Borrower’s expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents, to subordinate its interest therein, or to release such Loan Party from its obligations under the Loan Guaranty, in each case in accordance with the terms of the Loan Documents and this Article VIII; provided that, upon the request of the Administrative Agent, the Borrower shall deliver a certificate of a Responsible Officer certifying that the relevant transaction has been consummated in compliance with the terms of this Agreement.

Notwithstanding anything to the contrary in this Section 8.07 or in any other provision of any Loan Document, each Lender and each other Secured Party hereby authorizes the Administrative Agent to, and the Administrative Agent shall, execute and deliver any instruments, documents, consents, acknowledgments, and agreements necessary or desirable to evidence, effectuate or confirm the release of any Subsidiary Guarantor or Collateral or the subordination of any Lien pursuant to the provisions of this Section 8.07.

Section 8.08 Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles (ii) each of the Secured Parties’ ratable interests in the Obligations which were credit bid shall be deemed without any further action under this
Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 9.02 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership interests, limited partnership interests or membership interests, in such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

Section 8.09 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,
(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or any Arranger or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker’s acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

Section 8.10 Intercreditor Agreements. The Administrative Agent is authorized by the Lenders and each other Secured Party to, and shall, enter into any Intercreditor Agreement and any other intercreditor, subordination, collateral trust or similar agreement contemplated hereby with respect to any (a) Indebtedness (i) that is (A) required or permitted hereunder to be subordinated in right of payment or with respect to security and/or (B) secured by any Lien and (ii) which contemplates an intercreditor, subordination, collateral trust or similar agreement and/or (b) Secured Hedging Obligations and/or Banking Services Obligations, whether or not constituting Indebtedness (any such other intercreditor, subordination, collateral trust and/or similar agreement an “Additional Agreement”), and the Secured Parties party hereto acknowledge that any Intercreditor Agreement and any other Additional Agreement is binding upon them. Each Lender and each other
Secured Party hereto hereby (a) agrees that it will be bound by, and will not take any action contrary to, the provisions of any Intercreditor Agreement or any other Additional Agreement and (b) authorizes and instructs the Administrative Agent to enter into any Intercreditor Agreement and/or any other Additional Agreement and to subject the Liens on the Collateral securing the Secured Obligations to the provisions thereof. The foregoing provisions are intended as an inducement to the Lenders and the other Secured Parties to extend credit to the Borrower, and the Lenders and the other Secured Parties are intended third-party beneficiaries of such provisions and the provisions of any Intercreditor Agreement and/or any other Additional Agreement.

Section 8.11 Flood Laws. JPMorgan has adopted internal policies and procedures that address requirements placed on federally regulated lenders under applicable Flood Laws. JPMorgan, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, JPMorgan reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE IX
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 email, as follows:

(i) if to any Loan Party, to such Loan Party in the care of the Borrower at:

Cava Group, Inc.
702 H Street NW, Second Floor
Washington, DC 20001
Attention: [●]
Email: on file with the Administrative Agent

with copies to (which shall not constitute notice to any Loan Party):

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: [***]
Email: [***]

(ii) if to the Administrative Agent or the Swingline Lender, at:

JPMorgan Chase Bank, N.A.
+131 S–Dearborn St., Floor 04
(iii) if to any Issuing Bank, at:

if to any other Issuing Bank that is an Issuing Bank on the Closing Date, the relevant address specified in Schedule 9.01;
or

if to any other Issuing Bank, such address as may be specified in the documentation pursuant to which such Issuing Bank is appointed in its capacity as such; and

(iv) if to any Lender, to it at its physical address or email address set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof or three Business Days after dispatch if sent by certified or registered mail, in each case, delivered, sent or mailed (properly addressed) to the relevant party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01 or (B) sent by facsimile shall be deemed to have been given when sent and when receipt has been confirmed by telephone; provided that notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, such notices or other communications shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below shall be effective as provided in such clause (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or intranet websites) pursuant to procedures set forth herein or otherwise approved by the Administrative Agent. The Administrative Agent or the Borrower (on behalf of any Loan Party) may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures set forth herein or otherwise approved by it; provided that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (i) sent to an e-mail
address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement); provided that any such notice or communication not given during the normal business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day for the recipient or (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Any party hereto may change its address or facsimile number or other notice information hereunder by notice to the other parties hereto; it being understood and agreed that the Borrower may provide any such notice to the Administrative Agent as recipient on behalf of itself, the Swingline Lender, each Issuing Bank and each Lender.

(d) The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders and the Issuing Banks materials and/or information provided by, or on behalf of, the Borrower hereunder (collectively, the “Borrower Materials”) by posting the Borrower Materials on the Platform and (b) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material nonpublic information within the meaning of the US federal securities laws with respect to the Borrower or their respective securities) (each, a “Public Lender”). At the reasonable request of the Administrative Agent, the Borrower hereby agrees that (i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC”, (ii) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as information of a type that (A) is publicly available or (B) would not be material with respect to the Borrower, their respective subsidiaries, any of their respective securities or the Transactions, as determined in good faith by the Borrower, for purposes of the US federal securities laws and (iii) the Administrative Agent shall be required to treat Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not marked as “Public Investor.” Notwithstanding the foregoing, (i) the Loan Documents shall be deemed to be marked “PUBLIC,” unless the Borrower notifies the Administrative Agent promptly that any such document contains material nonpublic information (it being understood that the Borrower shall have a reasonable opportunity to review the same prior to distribution and comply with SEC or other applicable disclosure obligations) and (ii) in no event shall any financial budget delivered pursuant to Section 5.01(g) be made available to Public Lenders.

Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable law, including US federal and state securities laws, to make reference to communications that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of US federal or state securities laws.

THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS RELATED PARTIES WARRANTS THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS ON, OR THE ADEQUACY OF, THE PLATFORM, AND EACH EXPRESSLY DISCLAIMS LIABILITY FOR ERRORS OR OMISSIONS IN ANY SUCH COMMUNICATION. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS IS MADE BY THE ADMINISTRATIVE
AGENT OR ANY OF ITS RELATED PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT
SHALL ANY PARTY HERETO OR ANY OF ITS RELATED PARTIES HAVE ANY LIABILITY TO ANY OTHER PARTY HERETO OR
ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING
DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT,
CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF
COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY SUCH PERSON IS FOUND IN
A FINAL RULING BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH PERSON’S GROSS
NEGLECTION 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 hereunder and under
any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any
provision of any Loan Document or consent to any departure by any party hereto therefrom shall in any event be effective unless the same is
permitted by this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is
given. Without limiting the generality of the foregoing, to the extent permitted by applicable Requirements of Law, neither the making of any
Loan nor the issuance of any Letter of Credit shall be construed as a waiver of any Default or Event of Default, regardless of whether the
Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default or Event of Default at the time.

(b) Except as expressly provided in this Section 9.02 (or otherwise in this Agreement or the applicable Loan Document), neither this
Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified, except (i) in the case of this
Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders (or the Administrative
Agent with the consent of the Required Lenders) or (ii) in the case of any other Loan Document (other than any waiver, amendment or
modification to effectuate any modification thereto expressly contemplated by the terms of such other Loan Document), pursuant to an
agreement or agreements in writing entered into by the Administrative Agent and each Loan Party that is party thereto, with the consent of the
Required Lenders; provided that, notwithstanding the foregoing:

(A) the consent of each Lender directly and adversely affected thereby (but not the consent of the Required Lenders)
shall be required for any waiver, amendment or modification that:

(1) increases the Commitment of such Lender (other than with respect to any Incremental Facility pursuant to
Section 2.22 in respect of which such Lender has agreed to be an Incremental Lender); it being understood that no
amendment, modification or waiver of, or consent to departure from, any condition precedent, representation, warranty,
covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall
constitute an increase of any Commitment of such Lender;
(2) (x) extends the scheduled final maturity of any Loan or (y) postpones any Interest Payment Date or scheduled amortization payment with respect to any Loan held by such Lender or the date of any scheduled payment of any principal, fee or premium payable to such Lender hereunder (in each case, other than (i) any extension for administrative reasons agreed by the Administrative Agent and (ii) any prepayment required to be made pursuant to Section 2.11(b)(ii));

(3) reduces the rate of interest (other than to waive any Default or Event of Default or any obligation of the Borrower to pay interest to such Lender at the default rate of interest under Section 2.13(d), which shall only require the consent of the Required Lenders) or the amount of any fee or premium owed to such Lender; it being understood that no change in the definition of “Total Rent Adjusted Net Leverage Ratio” or any other ratio used in the calculation of the Applicable Rate, the Ticking Fee Rate or the Commitment Fee Rate, or in the calculation of any other interest, fee or premium due hereunder (including any component definition thereof) shall constitute a reduction in any rate of interest or fee hereunder;

(4) 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

(5) waives, amends or modifies the provisions of Sections 2.18(b) or (c) of this Agreement in a manner that would by its terms alter the order or pro rata sharing of payments required thereby (except in connection with any transaction permitted under Sections 2.22, 2.23, 9.02(c) and/or 9.05(g) or as otherwise provided in this Section 9.02 or otherwise in this Agreement);

(B) no such agreement shall:

(1) change any of the provisions of Section 9.02(a) or (b) or the definition of “Required Lenders” or “Majority in Interest”, 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;

(2) (A) release all or substantially all of the Collateral from the Lien granted pursuant to the Collateral Documents (except as otherwise permitted herein or in the other Loan Documents, including pursuant to Article VIII or Section 9.22), without the prior written consent of each Lender or (B) subordinate the Lien on a material portion of the Collateral, taken as a whole (as determined by the Borrower in good faith), securing the Secured Obligations or subordinate the Obligations in right of payment, in either case, to any other Indebtedness for borrowed money (in each case, other than in connection with (1) any Acceptable Debtor-In-Possession Financing, (2) the implementation of an “asset-based” revolving credit facility, any permitted securitization, receivables facility, factoring facility, receivables financing or any similar
financing and/or (3) any other financing with respect to which each relevant Lender has been offered the opportunity to provide such financing), in each case, without the prior written consent of each Lender;

(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 VIII or Section 9.22), without the prior written consent of each Lender; or

(4) amend or waive any of the conditions set forth in Section 4.02 and applicable to any drawing of Delayed Draw Term Loans without the prior written consent of a Majority in Interest of Lenders holding Delayed Draw Term Loan Commitments;

(C) solely with the consent of the relevant Issuing Bank, any such agreement may (x) increase or decrease the Letter of Credit Sublimit, (y) waive, amend or modify any condition precedent set forth in Section 4.02 as it pertains to the issuance of any Letter of Credit or (z) amend or modify the provisions of Section 2.05 or any letter of credit application and any bilateral agreement between the Borrower and any Issuing Bank regarding such Issuing Bank’s LC Exposure or the respective rights and obligations between the Borrower and such Issuing Bank in connection with the issuance of Letters of Credit; and

(D) solely with the consent of the Swingline Lender, any such agreement may increase or decrease the amount of Swingline Loans available under Section 2.04; and

(E) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, any Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, such Issuing Bank or the Swingline Lender, as the case may be.

c) Notwithstanding the foregoing, this Agreement may be amended:

with the written consent of the Borrower and the Lenders providing the relevant Revolver Replacement Facility to permit the refinancing or replacement of all or any portion of any Revolving Credit Commitment of any Class (any such Revolving Credit Commitment being refinanced or replaced, a “Replaced Revolving Facility”) with a replacement revolving facility and/or replacement term loans hereunder (a “Revolver Replacement Facility”) pursuant to a Refinancing Amendment; provided that:

(i) the aggregate maximum amount of any Revolver Replacement Facility shall not exceed the aggregate maximum amount of the commitments in respect of the relevant Replaced Revolving Facility plus (x) any additional amount permitted to be incurred under Section 6.01 and, to the extent any such additional amount is secured, the related Lien is permitted under Section 6.02, plus (y) the amount of accrued interest, penalties and premium thereon, any committed but undrawn amounts and underwriting discounts, fees (including upfront fees, original issue discount or initial yield payments, commissions and expenses associated therewith and/or any underwriting discount, fees and/or initial yield payment associated with the applicable Revolver Replacement Facility);
(ii) no Revolver Replacement Facility may have a final maturity date (or require commitment reductions) prior to the final maturity date of the relevant Replaced Revolving Facility at the time of such refinancing;

(iii) any Revolver Replacement Facility may be pari passu with or junior to any then-existing Revolving Credit Commitment in right of payment and pari passu with or junior to any then-existing Revolving Credit Commitment with respect to the Collateral or may be unsecured; provided that any Revolver Replacement Facility that is junior to the then-existing Revolving Credit Commitments in right of payment or security shall be subject to an Intercreditor Agreement; provided, further, that if any Revolver Replacement Facility is not in the form of a loan constituting First Lien Debt, such Revolver Replacement Facility will be documented pursuant to separate documentation from the Loan Documents;

(iv) any Revolver Replacement Facility that is secured may not be secured by any asset other than Collateral;

(v) any Revolver Replacement Facility that is guaranteed may not be guaranteed by any subsidiary of the Borrower other than one or more Loan Parties;

(vi) (1) if the relevant Revolver Replacement Facility is a revolving facility, such Revolver Replacement Facility may provide for the borrowing and repayment of Revolving Loans with respect to any Revolving Facility after the effective date of such Revolver Replacement Facility on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that any Revolver Replacement Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in repayments on a pro rata basis with such Revolving Facilities and that in the event of any Revolver Replacement Facility that must participate in borrowings on a less than pro rata basis as compared to other Revolving Facilities, such Revolver Replacement Facility shall participate in repayments on a less than pro rata basis as compared to such other Revolving Facilities (in each case, except, in any case, for (x) payments of interest and fees at different rates on the Revolving Facilities (and related outstandings), (y) repayments required on the Maturity Date of any Revolving Facility and (z) repayments made in connection with a permanent repayment and termination of the Revolving Credit Commitments under any Revolving Facility (subject to clause (3) below)), (2) if the relevant Revolver Replacement Facility is a revolving facility, all Letters of Credit and Swingline Loans shall be participated on a pro rata basis by all Revolving Lenders and (3) if the relevant Revolver Replacement Facility is a revolving facility, any permanent repayment of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, any Revolver Replacement Facility after the effective date of such Revolver Replacement Facility shall be made on a pro rata basis or a non-pro rata basis with all other Revolving Facilities (it being understood that a Revolver Replacement Facility that participates in borrowings on a pro rata basis with other Revolving Facilities shall participate in permanent repayments of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, such Revolving Facility on a pro rata basis with such other Revolving Facilities and that in the event of any Revolver Replacement Facility that must participate in borrowings on a less than pro rata basis with other Revolving Facilities, such Revolver Replacement Facility shall participate in permanent repayments of Revolving Loans with respect to, and reduction and termination of Revolving Credit Commitments under, such other Revolving Facility on a less than pro rata basis as compared to such other Revolving Facilities; provided that, in each case, notwithstanding the foregoing, to the extent any such Revolving Credit Commitments are terminated in full and refinanced or replaced with another
Revolver Replacement Facility or Replacement Debt, such Revolving Credit Commitments may be terminated on a greater than pro rata basis;

(vii) any Revolver Replacement Facility may have pricing (including “MFN” or other pricing terms), interest, fees, rate margins, rate floors, premiums (including prepayment premiums), funding discounts, and, subject to the preceding clause (F), optional prepayment and redemption terms as the Borrower and the lenders providing such Revolver Replacement Facility may agree;

(viii) the other terms of any Revolver Replacement Facility (excluding as set forth above) shall be substantially consistent with the Replaced Revolving Facility (or any other then-existing Revolving Facility) or be reasonably satisfactory to the Administrative Agent; provided that such terms and conditions shall be deemed to be satisfactory to the Administrative Agent so long as any such terms and conditions (i) are not substantially consistent with those applicable to the relevant Replaced Revolving Facility are applicable only to periods after the latest Maturity Date of such Replaced Revolving Facility (in each case, as of the date of implementation of such Revolver Replacement Facility), (2) are substantially identical to, or (taken as a whole) no more favorable (as determined by the Borrower in good faith) to the lenders providing such Revolver Replacement Facility than those applicable to the relevant Replaced Revolving Facility (other than such terms to which clause (1) is applicable), (3) reflect then-current market terms and conditions (as determined by the Borrower in good faith) for the applicable type of Indebtedness or are reasonably acceptable to the Administrative Agent or (4) are more favorable to the lenders or the agent of such Revolver Replacement Facility than those contained in the Loan Documents and are then conformed (or added) to the Loan Documents pursuant to the applicable Refinancing Amendment or (ii) in the case of a Revolver Replacement Facility that consists of replacement term loans, consistent with the provisions of Section 9.02(c)(i)(H);

(ix) the commitments in respect of the relevant Replaced Revolving Facility (or the relevant portion thereof) shall be terminated, and all loans outstanding in respect of such Replaced Revolving Facility and all accrued but unpaid interest and fees then due and payable in connection therewith shall be paid in full, in each case on the date any Revolver Replacement Facility is implemented; and

(x) any Revolver Replacement Facility may be provided by any existing Lender and/or any other Eligible Assignee; provided that the Administrative Agent (and, in the case of any Revolver Replacement Facility that constitutes a revolving facility, any Issuing Bank) shall have a right to consent (such consent not to be unreasonably withheld, conditioned or delayed) to the relevant Person’s provision of a Revolver Replacement Facility if such consent would be required under Section 9.05(b) for an assignment of Loans to the relevant Person;

provided, further, that, in respect of each of subclauses (i) and (ii) of this clause (c), any Affiliated Lender shall (x) be permitted without the consent of the Administrative Agent to provide any Revolver Replacement Facility in the form of a term loan, it being understood that in connection therewith, the Affiliated Lender shall be subject to the restrictions applicable to such Person under Section 9.05 and (y) no Affiliated Lender may provide any Revolver Replacement Facility in the form of revolving facility.

Each party hereto hereby agrees that this Agreement may be amended by the Borrower, the Administrative Agent and the lenders providing the relevant Revolver Replacement Facility, as applicable, to the extent (but only to the extent) necessary to reflect the existence and terms of such Revolver Replacement Facility, incurred or implemented pursuant thereto (including any amendment.
necessary to treat the loans and commitments subject thereto as a separate “tranche” and “Class” of Loans and/or commitments hereunder). It is understood that any Lender approached to provide all or a portion of any Revolver Replacement Facility, may elect or decline, in its sole discretion, to provide such Revolver Replacement Facility.

(d) Notwithstanding anything to the contrary contained in this Section 9.02 or any other provision of this Agreement or any provision of any other Loan Document:

(i) the Borrower and the Administrative Agent may, without the input or consent of any Lender, amend, supplement and/or waive this Agreement and/or any guaranty, collateral security agreement, pledge agreement and/or related document (if any) executed in connection with this Agreement to (A) comply with any Requirement of Law or the advice of counsel or (B) cause any such guaranty, collateral security agreement, pledge agreement or other document to be consistent with this Agreement and/or the relevant other Loan Documents,

(ii) the Borrower and the Administrative Agent may, without the input or consent of any other Lender (other than the relevant Lenders providing Loans under such Sections), effect amendments to this Agreement and the other Loan Documents as may be necessary or advisable in the reasonable opinion of the Borrower and the Administrative Agent to (A) effect the provisions of Sections 2.22, 2.23, 5.12, 5.17, 5.18 and/or 9.02(c), or any other provision of this Agreement or any other Loan Document specifying that any waiver, amendment or modification may be made with the consent or approval of the Administrative Agent and/or (B) add terms (including representations and warranties, conditions, prepayments, covenants or events of default) that are favorable to the then-existing Lenders, as reasonably determined by the Administrative Agent (it being understood that, where applicable, any such amendment may be effectuated as part of an Incremental Facility Amendment, an Extension Amendment and/or a Refinancing Amendment),

(iii) if the Administrative Agent and the Borrower have jointly identified any ambiguity, mistake, defect, inconsistency, obvious error or any error or omission of a technical nature or any necessary or desirable technical change, in each case, in any provision of any Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend such provision solely to address such matter as reasonably determined by them,

(iv) the Administrative Agent and the Borrower may amend, restate, amend and restate or otherwise modify any Intercreditor Agreement and/or any other Additional Agreement as provided therein,

(v) the Administrative Agent may amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.05, Commitment reductions or terminations pursuant to Section 2.09, implementations of Additional Commitments or incurrences of Additional Loans pursuant to Sections 2.22, 2.23 or 9.02(c) and reductions or terminations of any such Additional Commitments or Additional Loans,

(vi) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except as permitted pursuant to Section 2.21(b),

(vii) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit any extension of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share
in the relevant benefits of this Agreement and the other Loan Documents and/or (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion,

(viii) any amendment, waiver or modification of any term or provision that solely affects Lenders under one or more Classes and does not directly and adversely affect Lenders under one or more other Classes (including any waiver or modification of any condition to any extension of credit under any Class of Commitments, pricing or other modification) may be effected with the consent of Lenders owning more than 50% of the aggregate commitments or Loans of such directly affected Class in lieu of the consent of the Required Lenders, so long as such amendment, waiver or modification is not of the type that would require the consent each Lender directly and adversely affected thereby or each Lender,

(ix) this Agreement may be amended in the manner prescribed in Sections 2.14(c) and/or 2.05(h),

(x) this Agreement may be amended in the manner prescribed in Sections 2.22(i) and 2.23(c); it being understood and agreed that any such amendment may provide that with respect to any Class of Loans and/or Commitments that is structured as a “delayed draw” or similar facility, (i) any condition precedent to the funding of any Loan thereunder and/or (ii) any Event of Default arising as a result of any inaccuracy of any representation and/or warranty (including any certification) made in connection with the satisfaction of any such condition precedent, in each case, may be waived, amended or modified solely with the consent of a majority of the holders of such Loans and/or Commitments (or such other percentage of such holders as may be required in the amendment implementing such Class of Loans and/or Commitments (and without the consent of the Required Lenders or any other Lenders),

(xi) for the avoidance of doubt, any “MFN” provision may be amended solely with the consent of the Borrower and the Required Lenders, and

(xii) the Required Lenders, without the consent of any other Lender, may (A) rescind any acceleration of the Loans and/or any other Obligation pursuant to Article VII hereof and/or (B) agree that the Administrative Agent and the Lenders will forbear from exercising any remedy provided under any Loan Document with respect to any Event of Default.

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 material jurisdiction to all such Persons, taken as a whole) in connection with the syndication and distribution (including via the Internet or through a service such as Intralinks) of the Revolving Facility, the Delayed Draw Term Loan Facility, the preparation, execution, delivery and administration of the Loan Documents and any related documentation, including in connection with any amendment, modification or waiver of any provision of any Loan Document (whether or not the transactions contemplated thereby are consummated, but only to the extent the preparation of any such amendment, modification or waiver was requested by the Borrower and except as otherwise provided in a separate writing between the Borrower, the relevant Arranger and/or the Administrative Agent) and (ii) without duplication of the obligation set forth in Section 9.03(b), all reasonable and documented out-of-pocket expenses incurred by the Administrative
Agent, the Arrangers, the Issuing Banks or the Lenders or any of their respective Affiliates (but limited (x) in the case of legal fees and expenses, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one firm of outside counsel to all such Persons taken as a whole and, if necessary, of one local counsel in any relevant material jurisdiction to all such Persons, taken as a whole and solely in the case of a conflict of interest, (A) one additional counsel to all affected Persons, taken as a whole, and (B) one additional local counsel in any such jurisdiction to all affected Persons, taken as a whole), and (y) in the case of other third party advisors, to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of only third party advisors the engagement of whom has been approved by the Borrower (such approval not to be unreasonably withheld, delayed or conditioned in writing) in connection with the enforcement, collection or protection of their respective rights in connection with the Loan Documents, including their respective rights under this Section, or in connection with the Loans made and/or Letters of Credit issued hereunder. Except to the extent required to be paid on the Closing Date, all amounts due under this paragraph (a) shall be payable by the Borrower upon receipt by the Borrower of an invoice setting forth such expenses in reasonable detail, together with backup documentation supporting the relevant reimbursement request.

(b) The Borrower shall indemnify each Arranger, the Administrative Agent, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages and liabilities (but limited, in the case of any such loss, claim, damage and/or liability constituting legal fees and expenses to the actual reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and solely in the case of a conflict of interest, (A) one additional counsel to all affected Indemnitees, taken as a whole, and (B) one additional local counsel to all affected Indemnitees, taken as a whole), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby and/or the enforcement of the Loan Documents, (ii) the use of the proceeds of the Loans or any Letter of Credit, (iii) any actual or alleged Release or presence of Hazardous Materials on, at, under or from any property currently or formerly owned, leased or operated by the Borrower, any of its Restricted Subsidiaries or any other Loan Party or any Environmental Liability related to the Borrower, any of its Restricted Subsidiaries or any other Loan Party and/or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto (and regardless of whether such matter is initiated by or against a third party or by or against the Borrower, any other Loan Party or any of their respective Affiliates); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that any such loss, claim, damage, or liability (i) is determined by a final and non-appealable judgment of a court of competent jurisdiction (or documented in any settlement agreement referred to below) to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or, to the extent such judgment finds (or any such settlement agreement acknowledges) that any such loss, claim, damage, or liability has resulted from such Person’s (or such Person’s Related Party’s) material breach of the Loan Documents (other than, with the written consent of the Borrower in its sole discretion, the Administrative Agent, in its capacity as such, in respect of obligations not owed to the Loan Parties) or (ii) arises out of any claim, litigation, investigation or proceeding brought by such Indemnitee against another Indemnitee (other than any claim, litigation, investigation or proceeding that is brought by or against the Administrative Agent, any Issuing Bank or any Arranger, acting in its capacity as the Administrative Agent, as an Issuing Bank or as an Arranger) that does not involve any act or omission of the Borrower or any of its subsidiaries. Each Indemnitee shall be obligated to refund or return any and all amounts paid by the Borrower pursuant to this Section 9.03(b) to such Indemnitee for any fees, expenses, or damages to the extent such
Indemnitee is not entitled to payment thereof in accordance with the terms hereof. Any amount due under this Section 9.03(b) shall be payable by the Borrower (x) within 30 days 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, upon receipt by the Borrower of an invoice setting forth such costs and expenses in reasonable detail, together with reasonable backup documentation supporting the relevant reimbursement request. This Section 9.03(b) shall not apply to Taxes other than any Taxes that represent losses, claims, damages or liabilities in respect of a non-Tax claim.

(c) The Borrower shall not be liable for any settlement of any proceeding effected without its written consent (which consent shall not be unreasonably withheld, delayed or conditioned) or any other losses, claims, damages, liabilities and/or expenses incurred in connection therewith, but if any proceeding is settled with the written consent of the Borrower, or if there is a final judgment against any Indemnitee in any such proceeding, the Borrower agrees to indemnify and hold harmless each Indemnitee to the extent and in the manner set forth above. The Borrower shall not, without the prior written consent of the affected Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened proceeding in respect of which indemnity could have been sought hereunder by such Indemnitee unless (i) such settlement includes an unconditional release of such Indemnitee from all liability or claims that are the subject matter of such proceeding and (ii) such settlement does not include any statement as to any admission of fault or culpability.

Section 9.04 Waiver of Claim. To the extent permitted by applicable Requirements of Law, no party to this Agreement nor any Secured Party shall assert, and each hereby waives on behalf of itself and its Related Parties, any claim against any other party hereto, any Loan Party and/or any Related Party of any thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or any Letter of Credit or the use of the proceeds thereof, except, in the case of any claim by any Indemnitee against the Borrower, to the extent such damages would otherwise be subject to indemnification pursuant to, and in accordance with, the terms of Section 9.03.

Section 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 permitted under Section 6.07, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with the terms of this Section (any attempted assignment or transfer not complying with the terms of this Section shall be null and void (other than an assignment or transfer to a Disqualified Institution, which shall be subject to Section 9.05(f)). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and permitted assigns, to the extent provided in Section 9.05(c)), Participants and, to the extent expressly contemplated hereby, the Related Parties of each of the Arrangers, the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) 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, Commitment or Additional Commitment added pursuant to Sections 2.22, 2.23 or 9.02(c) at the time owing to it) with the prior written consent of:
(A) the Borrower (such consent not to be unreasonably withheld, conditioned or delayed); provided that the consent of the Borrower shall not be required for any assignment (1) at any time when an Event of Default under Section 7.01(a) or Section 7.01(f) or (g) exists, or (2) of Revolving Loans or Revolving Credit Commitments to any other Revolving Lender or (3) of Term Loans or Term Loan Commitments to any other Term Lender; it being understood and agreed that the Borrower may withhold its consent (in its sole discretion) to any assignment to any Person that is known by it to be an Affiliate of a Disqualified Institution and/or an Affiliate of a Competitor (other than a Competitor Debt Fund Affiliate, unless the Borrower has other reasonable grounds on which to withhold its consent);

(B) the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed); provided that no consent of the Administrative Agent shall be required for any assignment to another Lender, any Affiliate of a Lender or any Approved Fund; and

(C) in the case of any Revolving Facility, each Issuing Bank and the Swingline Lender (such consent not to be unreasonably withheld, conditioned or delayed); provided that no consent of any Issuing Bank or the Swingline Lender shall be required for any assignment to a Revolving Lender or an Affiliate of a Revolving Lender.

(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 $5,000,000 (in the case of a Revolving Credit Commitment or Revolving Loans) or $1,000,000 (in the case of a Term Loan Commitment or Term Loans) 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; provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender’s rights and obligations in respect of one Class of Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment Agreement via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent); and

(D) the relevant Eligible Assignee, if it is not a Lender, shall deliver on or prior to the effective date of such assignment, to the Administrative Agent (1) an Administrative Questionnaire and (2) any IRS form required under Section 2.17.
(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 a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the US a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders and their respective successors and assigns, and the commitment Commitments 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, if applicable, 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 Restricted Subsidiary or the performance or observance by the Borrower or any Restricted Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (C) the assignee represents and warrants that it is (1) an Eligible Assignee and (2) not a Disqualified Institution or an Affiliate of any Disqualified Institution, legally authorized to enter into such Assignment Agreement; (D) the assignee confirms that it has received a copy of this Agreement and each applicable Intercreditor Agreement, together with copies of the financial statements referred to in Section 4.01(c) or the most recent financial statements delivered pursuant to Section 5.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment Agreement; (E) the assignee will independently and without reliance upon the Administrative Agent, the assigning Lender or any other Lender and based on such documents and information as it deems appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (F) the assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent, by the terms hereof, together with such powers as are reasonably incidental thereto; and (G) the assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent, any Issuing Bank or any other Lender, sell participations to any bank or other entity (other than to any Disqualified Institution, any natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons) or the Borrower or any of its Affiliates) (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its commitments and the Loans owing to it); provided, that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the relevant Participant, agree to any amendment, modification or waiver described in (x) clause (A) of the first proviso to Section 9.02(b) that directly and adversely affects the Loans or commitments in which such Participant has an interest and (y) clauses (B)(1), (2) or (3) of the first proviso to Section 9.02(b); it being understood and agreed that no Lender may enter into any agreement or other arrangement with any Participant that provides such Participant with the right to agree to or approve (or direct such Lender to agree, approve, consent or not to agree, approve or consent) any other amendment, modification or waiver in respect of any Loan Document, and any such agreement or arrangement shall be deemed to be null and void and of no force or effect. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the limitations and requirements of such Sections and Section 2.19) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section and it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender, and if additional amounts are required to be paid pursuant to Section 2.17(a) or Section 2.17(c), to the Borrower and the Administrative Agent). To the extent permitted by applicable Requirements of Law, each
Participant also shall be entitled to the benefits of Section 9.09 as though it were a Lender; provided that such Participant shall be subject to Section 2.18(c) as though it were a Lender.

(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 participation is made with the prior written consent of the Borrower (in its sole discretion), expressly acknowledging that such Participant’s entitlement to benefits under Sections 2.15, 2.16 and 2.17 is not limited to what the participating Lender would have been entitled to receive absent the grant to such Participant.

Each Lender that sells a participation or makes a grant to an SPC (as defined in Section 9.05(e)) shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and each SPC and their respective successors and registered assigns, and the principal of and interest amounts on each Participant’s and each SPC’s interest in the Loans or other obligations under the Loan Documents (a “Participant/SPC Register”); provided that no Lender shall have any obligation to disclose all or any portion of any Participant/SPC Register (including the identity of any Participant or SPC or any information relating to any Participant’s or SPC’s interest in any Commitment, Loan, Letter of Credit or any other obligation under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) of the Treasury Regulations (or any amended or successor version). The entries in the Participant/SPC Register shall be conclusive absent manifest error, and each Lender shall treat each Person whose name is recorded in the Participant/SPC Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant/SPC Register.

(d) (i) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (other than to any Disqualified Institution or any natural person (or any holding company, investment vehicle or trust for, or owned and operated by, or for the primary benefit of, one or more natural persons)) to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to any Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section 9.05 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release any Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(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 (any such swap or other derivative instrument, an “Obligations Derivative Instrument”) with any counterparty that is a Disqualified Institution.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a “Granting Lender”) may grant to a special purpose funding vehicle (an “SPC”), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of any Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such
Grantee Lender. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase
the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under
Section 2.15, 2.16 or 2.17) and no SPC shall be entitled to any greater amount under Section 2.15, 2.16 or 2.17 or any other provision of this
Agreement or any other Loan Document that the Granting Lender would have been entitled to receive, unless the grant to such SPC is made with
the prior written consent of the Borrower (in its sole discretion), expressly acknowledging that such SPC’s entitlement to benefits under
Sections 2.15, 2.16 and 2.17 is not limited to what the Granting Lender would have been entitled to receive absent the grant to the SPC, (ii) no
SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting
Lender) and (iii) the Granting Lender shall for all purposes including approval of any amendment, waiver or other modification of any provision
of the Loan Documents, remain the Lender of record hereunder. In furtherance of the foregoing, each party hereto hereby agrees (which
agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all
outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against,
such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the Requirements of Law of the US or any
State thereof; provided (i) such SPC’s Granting Lender is in compliance in all material respects with its obligations to the Borrower
hereunder and (ii) each Lender designating any SPC hereby agrees to indemnify, save and hold harmless each other party hereto for any loss,
cost, damage or expense arising out of its inability to institute such a proceeding against such SPC during such period of forbearance. In
addition, notwithstanding anything to the contrary contained in this Section 9.05, any SPC may (i) with notice to, but without the prior written
consent of, the Borrower or the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in
any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency,
commercial paper dealer or provider of any surety, guaranty or credit or liquidity enhancement to such SPC.

(f) (i) Any assignment, participation, entry into an Obligations Derivative Instrument or pledge by a Lender (A) to or with any
Disqualified Institution or (B) in the case of any assignment and/or participation, without the Borrower’s consent to the extent the Borrower’s
consent is required under this Section 9.05 (and, if applicable, not deemed to have been given pursuant to Section 9.05(b)(i)(A)), in each case, to
any Person shall be null and void unless, solely in the case of any assignment, solely to the extent that there has been any subsequent assignment
by a Disqualified Institution or any such other Person to an Eligible Assignee that complies with the requirements of Section 9.05(b), in which
case such subsequent assignment will be deemed to be a valid and enforceable assignment for the purposes hereof, and the Borrower shall each
be entitled to seek specific performance to unwind any such assignment, participation, Obligations Derivative Instrument or pledge and/or
specifically enforce this Section 9.05(f) in addition to injunctive relief (without posting a bond or presenting evidence of irreparable harm) or any
other remedy available to the Borrower at law or in equity; it being understood and agreed that the Borrower and its subsidiaries will suffer
irreparable harm if any Lender breaches any obligation under this Section 9.05 as it relates to any assignment or participation to a Disqualified
Person, any entry into any Obligations Derivative Instrument with any Disqualified Person, the pledge or assignment of any security interest in
any Loan or Commitment to a Disqualified Person and/or any assignment or participation of, or pledge or assignment of a security interest in,
any Loan or Commitment to any Person to whom the Borrower’s consent is required but not obtained. Nothing in this Section 9.05(f) shall be
deemed to prejudice any right or remedy that the Borrower may otherwise have at law or equity. The Administrative Agent may make the list of
Disqualified Institutions available on a confidential basis in accordance with Section 9.13 to any Lender who specifically requests a copy
thereof, and such Lender may provide such list of Disqualified Institutions to any potential assignee or participant or counterparty to any
Obligations Derivative Instrument who agrees to keep such list

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confidential in accordance with Section 9.13 solely for the purpose of permitting such Person to verify whether such Person (or any Affiliate thereof) constitutes a Disqualified Institution.

(ii) If any assignment or participation under this Section 9.05 is made to any Disqualified Institution and/or any Affiliate of any Disqualified Institution (other than any Competitor Debt Fund Affiliate) and/or any other Person to whom the Borrower’s consent is required but not obtained, in each case, without the Borrower’s prior written consent (any such person, a “Disqualified Person”), then the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Person and the Administrative Agent, (A) terminate any Commitment of such Disqualified Person and repay all obligations of the Borrower owing to such Disqualified Person and/or (B) require such Disqualified Person to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 9.05), all of its interests, rights and obligations under this Agreement to one or more Eligible Assignees; provided that (I) in the case of clause (B), the applicable Disqualified Person has received payment of an amount equal to the lesser of (1) par and (2) the amount that such Disqualified Person paid for the applicable Loans and participations in Letters of Credit and Swingline Loans, plus accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the Borrower, (II) in the case of clauses (A) and (B), the Borrower shall not be liable to the relevant Disqualified Person under Section 2.16 if any Term Benchmark 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 no registration and processing fee required under this Section 9.05 shall be required with any assignment pursuant to this paragraph) and (IV) in no event shall such Disqualified Person be entitled to receive amounts to which it would otherwise be entitled under Section 2.13(d). Further, whether or not the Borrower has taken any action described in the preceding sentence, (A) no Disqualified Person identified by the Borrower to the Administrative Agent shall otherwise comply with this Section 9.05 (except that no registration and processing fee required under this Section 9.05 shall be required with any assignment pursuant to this paragraph) and (IV) in no event shall such Disqualified Person be entitled to receive amounts to which it would otherwise be entitled under Section 2.13(d). Further, whether or not the Borrower has taken any action described in the preceding sentence, (A) no Disqualified Person identified by the Borrower to the Administrative Agent shall otherwise comply with this Section 9.05 (except that no registration and processing fee required under this Section 9.05 shall be required with any assignment pursuant to this paragraph) and (IV) in no event shall such Disqualified Person be entitled to receive amounts to which it would otherwise be entitled under Section 2.13(d).

(iii) Notwithstanding anything to the contrary herein, the Borrower and each Lender acknowledges and agrees that the Administrative Agent shall not (x) have any liability for any assignment or participation made to any Disqualified Institution or Affiliated Lender (regardless of whether the consent of the Administrative Agent is required thereto) or (y) be obligated to
ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Lender, and none of the Borrower, any Lender or any of their respective Affiliates will bring any claim to that effect.

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 VIII 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 Commitments, 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 Intercreditor Agreement and the Fee Letter constitute the entire agreement among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it has been executed by the Borrower and the Administrative Agent and when the Administrative Agent has received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by email as a “.pdf” or “.tif” attachment shall be effective as delivery of a manually executed counterpart of this Agreement. It is understood and agreed that, subject to any Requirement of Law, the words “execution”, “signed”, “signature”, “delivery” and words of like import in or relating to any Loan Document shall be deemed to include any Electronic Signature, delivery or the keeping of any record in electronic form, each of which shall have the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system to the extent and as provided for in any applicable Requirement of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state laws based on the Uniform Electronic Transactions Act.

Section 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, the Administrative Agent and, upon the written consent of the Administrative Agent, each Issuing Bank and each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations (in any currency) at any time owing by the
Administrative Agent, such Issuing Bank or such Lender, respectively, to or for the credit or the account of any Loan Party against any of and all
the Secured Obligations held by the Administrative Agent, such Issuing Bank or such Lender, irrespective of whether or not the Administrative
Agent, such Issuing Bank or such Lender shall have made any demand under the Loan Documents and although such obligations may be
contingent or unmatured or are owed to a branch or office of such Lender or Issuing Bank different than the branch or office holding such
deposit or obligation on such Indebtedness. The Administrative Agent shall promptly notify the Borrower and any applicable Lender or Issuing
Bank shall promptly notify the Borrower and the Administrative Agent of such set-off or application, as applicable; provided that any failure to
give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each
Lender, each Issuing Bank and the Administrative Agent under this Section are in addition to other rights and remedies (including other rights of
setoff) which such Lender, such Issuing Bank or the Administrative Agent may have. For the avoidance of doubt, the term “Lender” shall, for all
purposes of this paragraph, include the Swingline Lender.

Section 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), WHETHER IN TORT, CONTRACT (AT LAW OR IN EQUITY) OR OTHERWISE, SHALL BE GOVERNED BY, AND
CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b)  EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS
PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY US FEDERAL OR NEW YORK STATE COURT SITTING IN THE
BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK (OR ANY APPELLATE COURT THEREFROM) OVER ANY SUIT,
ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT AND AGREES THAT ALL CLAIMS IN
RESPECT OF ANY SUCH ACTION OR PROCEEDING SHALL (EXCEPT AS PERMITTED BELOW) BE HEARD AND DETERMINED IN
SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, FEDERAL COURT.
EACH PARTY HERETO AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY REGISTERED MAIL
ADDRESSED TO SUCH PERSON SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PERSON FOR ANY SUIT, ACTION
OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH PARTY HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH
ACTION OR PROCEEDING MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER
MANNER PROVIDED BY APPLICABLE REQUIREMENTS OF LAW. EACH PARTY HERETO AGREES THAT THE ADMINISTRATIVE
AGENT RETAINS THE RIGHT TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER
JURISDICTION SOLELY IN CONNECTION WITH THE EXERCISE OF ITS RIGHTS UNDER ANY COLLATERAL DOCUMENT.

(c)  EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT
MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF
VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN
DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH PARTY HERETO HEREBY IRREVOCABLY
WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY CLAIM OR DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION, SUIT OR PROCEEDING IN ANY SUCH COURT.

(d) TO THE EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 9.01. EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY LOAN DOCUMENT THAT SERVICE OF PROCESS WAS INVALID AND INEFFECTIVE. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE REQUIREMENTS OF LAW.

Section 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 and its Affiliates’ members, partners, directors (or equivalent managers), officers, managers, employees, agents, independent auditors, or other experts and advisors, including accountants, legal counsel and other advisors (collectively, the “Representatives”) on a “need to know” basis solely in connection with the transactions contemplated hereby and who are informed of the confidential nature of the Confidential Information and are or have been advised of their obligation to keep the Confidential Information of this type confidential; provided that such Person shall be responsible for its Affiliates’ and their Representatives’ compliance with this paragraph; provided, further, that unless the Borrower otherwise consents, no such disclosure shall be made by the Administrative Agent, any Issuing Bank, any Arranger, any Lender or any Affiliate or Representative thereof to any Affiliate or Representative of the Administrative Agent, any Issuing Bank, any Arranger, or any Lender that is a Disqualified Institution,
(b) to the extent compelled by legal process in, or reasonably necessary to, the defense of such legal, judicial or administrative proceeding, in any legal, judicial or administrative proceeding or otherwise as required by applicable Requirements of Law (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any governmental, regulatory or self-regulatory authority exercising examination or regulatory authority, (i) to the extent practicable and permitted by applicable Requirements of Law, inform the Borrower promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any such information so disclosed is accorded confidential treatment),

(c) upon the demand or request of any Governmental Authority (including any self-regulatory body) purporting to have jurisdiction over such Person or its Affiliates (in which case such Person shall, except with respect to any audit or examination conducted by bank accountants or any Governmental Authority or regulatory or self-regulatory authority exercising examination or regulatory authority, to the extent permitted by applicable Requirements of Law, (i) to the extent practicable and permitted by applicable Requirements of Law, inform the Borrower promptly in advance thereof and (ii) use commercially reasonable efforts to ensure that any information so disclosed is accorded confidential treatment),

(d) to the extent provided by or on behalf of the Borrower to the Administrative Agent for distribution to the Issuing Banks and/or Lenders, by the Administrative Agent to any Lender or Issuing Bank party to this Agreement, as applicable,

(e) subject to an acknowledgment and agreement by the relevant recipient that the Confidential Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as otherwise reasonably acceptable to the Borrower and the Administrative Agent) in accordance with the standard syndication process of the Arrangers or market standards for dissemination of the relevant type of information, which shall in any event require “click through” or other affirmative action on the part of the recipient to access the Confidential Information and acknowledge its confidentiality obligations in respect thereof, to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or prospective Participant in, any of its rights or obligations under this Agreement, including any SPC (in each case other than a Disqualified Institution and/or any Person to whom the Borrower has, at the time of disclosure, affirmatively declined to consent to any assignment or participation), (ii) any pledgee referred to in Section 9.05 and/or (iii) any actual or prospective, direct or indirect contractual counterparty (or its advisors) to any Derivative Transaction (including any credit default swap) or similar derivative product to which any Loan Party is a party,

(f) subject to the Borrower’s prior approval of the information to be disclosed, to the CUSIP Service Bureau or any similar agency on a confidential basis in connection with the issuance and monitoring of CUSIP numbers with respect to the facilities or

(g) (i) the existence of this Agreement (but not the terms hereof) and the existence of the Revolving Facility and the Delayed Draw Term Loan Facility (but not the terms thereof) and (ii) certain other limited generic information regarding the Revolving Facility and the Delayed Draw Term Loan Facility (but not any other Confidential Information), may be disclosed to market data collectors and other similar service providers to the lending industry and, in the case of the Administrative Agent, to service providers to the Administrative Agent in connection with the administration of the Revolving Facility and the Delayed Draw Term Loan Facility,

(h) to the extent the Confidential Information becomes publicly available other than as a result of a breach of this Section by such Person, its Affiliates or their respective Representatives, and
For purposes of this Section, “Confidential Information” means all information relating to 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 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 the Borrower or any of its subsidiaries and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. For the avoidance of doubt, in no event shall any disclosure of any Confidential Information be made to any Person that is a Disqualified Institution at the time of disclosure.

Section 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 “Credit Parties”), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their respective affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Credit Party, on the one hand, and such Loan Party, its respective stockholders or its respective affiliates, on the other. Each Loan Party acknowledges and agrees that: (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Credit Parties, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Credit Party, in its capacity as such, has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its respective stockholders or its respective affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Credit Party has advised, is currently advising or will advise any Loan Party, its respective stockholders or its respective Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (y) each Credit Party, in its capacity as such, is acting solely as principal and not as the agent or fiduciary of such Loan Party, its respective management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that such Loan Party has consulted its own legal, tax and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto.

Section 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 and the requirements of the Beneficial Ownership Regulation hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act and the Borrower in accordance with the Beneficial Ownership Regulation.
Section 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 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 Intercreditor Agreements. REFERENCE IS MADE TO EACH INTERCREDITOR AGREEMENT. EACH SECURED PARTY HEREUNDER AGREES THAT IT WILL BE BOUND BY AND WILL TAKE NO ACTION CONTRARY TO THE PROVISIONS OF EACH INTERCREDITOR AGREEMENT AND AUTHORIZES AND INSTRUCTS THE ADMINISTRATIVE AGENT TO ENTER INTO EACH APPLICABLE INTERCREDITOR AGREEMENT AS “FIRST LIEN AGENT” (OR EQUIVALENT) AND ON BEHALF OF SUCH SECURED PARTY. THE PROVISIONS OF THIS SECTION 9.20 ARE NOT INTENDED TO SUMMARIZE ALL RELEVANT PROVISIONS OF ANY INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO EACH INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH SECURED PARTY IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF EACH INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NEITHER THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES MAKES ANY REPRESENTATION TO ANY SECURED PARTY AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN ANY INTERCREDITOR AGREEMENT. THE FOREGOING PROVISIONS ARE INTENDED AS AN INDUCEMENT TO THE LENDERS OR HOLDERS OF ANY OTHER INDEBTEDNESS SUBJECT TO ANY APPLICABLE INTERCREDITOR AGREEMENT TO EXTEND CREDIT THEREUNDER AND SUCH LENDERS AND/OR HOLDERS ARE INTENDED THIRD PARTY BENEFICIARIES OF SUCH PROVISIONS AND THE PROVISIONS OF EACH APPLICABLE INTERCREDITOR AGREEMENT.
Section 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; provided
that, in the case of any conflict or inconsistency between any Intercreditor Agreement and any Loan Document, the terms of such Intercreditor
Agreement shall govern and control.

Section 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 and any Lien granted by such Subsidiary Guarantor pursuant to
any Collateral Document shall be automatically released) (i) upon the consummation of any transaction or series of related transactions not
prohibited hereunder if as a result thereof such Subsidiary Guarantor ceases to be a Restricted Subsidiary (or is or becomes an Excluded
Subsidiary as a result of a single transaction or series of related transactions not prohibited hereunder), subject, if applicable, to the Specified
Guarantor Release Provision, (ii) upon the occurrence of the Termination Date and/or (iii) in the case of any Discretionary Guarantor, at the
election of the Borrower, upon notice from the Borrower to the Administrative Agent at any time and (b) any Subsidiary Guarantor that meets the
definition of an “Excluded Subsidiary” shall be released by the Administrative Agent promptly following the request therefor by the Borrower,
subject, if applicable, to the Specified Guarantor Release Provision. In connection with any such release, the Administrative Agent shall
promptly execute and deliver to the relevant Loan Party, at such Loan Party’s expense, all documents that such Loan Party shall reasonably
request to evidence termination or release; provided that, upon the request of the Administrative Agent, the Borrower shall deliver a certificate of
a Responsible Officer certifying that the relevant transaction has been consummated in compliance with the terms of this Agreement. Any
execution and delivery of any document pursuant to the preceding sentence of this Section 9.22 shall be without recourse to or warranty by the
Administrative Agent (other than as to the Administrative Agent’s authority to execute and deliver such documents).

Section 9.23 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in
any Loan Document or in any other agreement, arrangement or understanding of the parties hereto, each such party acknowledges that any
liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the
Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be
bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising
hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial
Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other
instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other
Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of
the applicable Resolution Authority.
Section 9.24 [Reserved]

Section 9.25 Judgment Currency. If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or the Lenders hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or the Person to whom such obligation was owing against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent in such currency, the Administrative Agent agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable Requirements of Law).

Section 9.26 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Derivative Transactions or any other agreement or instrument that is a QFC (such support, “QFC Credit Support” and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “US Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the US or any other state of the US):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a US Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the US Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the US or a state of the US. In the event a Covered Party or a BHC ACT Affiliate of a Covered Party becomes subject to a proceeding under a US Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the US Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the US or a state of the US. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 9.26, the following terms have the following meanings:
“BHC ACT Affiliate” means an “affiliate” (as defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)).

“Covered Entity” means any of the following:

(i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
(ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
(iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

Section 9.27 Marketing Consent. The Borrowers hereby authorize JPMorgan and its affiliates (collectively, the “JPM Parties”), at their respective sole expense, and without any prior approval by the Borrower, to include the Borrower’s name and logo in advertising, marketing, tombstones, case studies and training materials, and to give such other publicity to this Agreement as JPM Parties may from time to time determine in their sole discretion. The JPM Parties agree to consult with the Borrower prior to the publication of any such advertising, marketing or tombstones. The foregoing authorization shall remain in effect unless the Borrower notifies JPM in writing that such authorization is revoked.

[Remainder of Page Intentionally Left Blank]
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:

CAVA GROUP, INC.,
as the Borrower

By:
   Name:
   Title:

Signature Page to Credit Agreement
JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, an Issuing Bank, an Initial
Revolving Lender and the Swingline Lender

By:

Name:
Title:

Signature Page to Credit Agreement
[ ], as an Initial Revolving Lender and as an Issuing Bank

By:  
    Name:  
    Title:  

Signature Page to Credit Agreement
Amended Exhibits

[Attached]
Ladies and Gentlemen:

Reference is hereby made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

The undersigned hereby gives you notice pursuant to Section [2.03][2.04] of the Credit Agreement that it requests a Borrowing and in that connection sets forth below the terms on which the Borrowings are requested to be made:

1. Date of Borrowing (which shall be a Business Day) [__________] [__, 20__]

2. Aggregate Amount of Borrowing $[__________] 3

[Include bracketed language for Borrowing of Swingline Loans.

2 The Administrative Agent must be notified in writing by hand delivery, fax or other electronic transmission (including “.pdf” or “.tif”) not later than (i) 10:00 a.m. three Business Days prior to the requested day of any Borrowing of Term Benchmark Loans (or, if after the effectiveness of a Benchmark Replacement, five Business Days prior to the requested day of any Borrowing of RFR Loans) (or one Business Day in the case of any Borrowing of Term Benchmark Loans to be made on the Closing Date) and (ii) 12:00 p.m. on the requested date of any Borrowing of or conversion to ABR Loans (other than Swingline Loans) (or, in each case, such later time as is reasonably acceptable to the Administrative Agent); provided, however, that if the Borrower wishes to request Term Benchmark Loans having an Interest Period other than one, three or six months in duration or such shorter period as provided in the definition of “Interest Period”, (A) the applicable notice from the Borrower must be received by the Administrative Agent not later than 12:00 p.m. four Business Days prior to the requested date of the relevant Borrowing (or such later time as is reasonably acceptable to the Administrative Agent), whereupon the Administrative Agent shall give prompt notice to the appropriate Lenders of such request, (B) the relevant requested Interest Period shall be deemed to be available to each appropriate Lender unless such Lender has delivered written notice to the Administrative Agent indicating that such Interest Period is not available to such Lender within one Business Day following the date on which the notice described in clause (A) is posted by the Administrative Agent and (C) not later than 10:00 a.m. three Business Days before the requested date of the relevant Borrowing, the Administrative Agent shall notify the Borrower whether or not the requested Interest Period is available to the appropriate Lenders. With respect to Swingline Loans, the Administrative Agent must be notified in writing by hand delivery, fax or other electronic transmission (including “.pdf” or “.tif”) not later than 12:00 p.m. on the day of the proposed Swingline Loan.

3 Subject to Sections 2.02(c) and 2.04(a) of the Credit Agreement.

B-1
3. Type of Borrowing [_________] 4  
4. Class of Borrowing [_________]  
5. Interest Period (in the case of Term Benchmark Borrowing) [_________] 5  
6. Amount, Account Number and Location

<table>
<thead>
<tr>
<th>Wire Transfer Instructions:</th>
<th></th>
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<tbody>
<tr>
<td>Amount</td>
<td>$[_________]</td>
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<tr>
<td>Bank:</td>
<td>[_________]</td>
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<tr>
<td>ABA No.:</td>
<td>[_________]</td>
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<tr>
<td>Account No.:</td>
<td>[_________]</td>
</tr>
<tr>
<td>Account Name:</td>
<td>[_________]</td>
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</tbody>
</table>

The undersigned hereby certifies, as a Responsible Officer of the Borrower, in such capacity and not in an individual capacity, that the following statements will be true on the date of the Borrowing:

(a) [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 date of the Borrowing with the same effect as though such representations and warranties had been made on and as of the date of such Borrowing; provided that, to the extent that any representation and warranty specifically refers to an earlier date or a given period, it is true and correct in all material respects as of such earlier date or for such period; provided, further, that, any representation and warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates or for such periods.]⁴

(b) [At the time of and immediately after giving effect to the Borrowing, no Default or Event of Default has occurred and is continuing.]⁵

(c) [At the time of and immediately after giving effect to the Borrowing (including giving effect on a Pro Forma Basis) and the application of proceeds therefrom and any other transactions consummated in connection therewith, the Borrower is in compliance with the financial covenant set forth in Section 6.10(a) of the Credit Agreement.]⁶

[Signature Page Follows]

⁴ State whether a Term Benchmark Borrowing or ABR Borrowing. If no Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. A Borrowing consisting of Swingline Loans shall be an ABR Borrowing.  
⁵ Must be a period contemplated by the definition of “Interest Period”. If no Interest Period is specified, then the Interest Period shall be of one-month’s duration.  
⁶ Include bracketed language only for Borrowings after Closing Date (subject to applicable provisions of the Credit Agreement).  
⁷ Include bracketed language only for Borrowings after Closing Date (subject to applicable provisions of the Credit Agreement).  
⁸ [Include bracketed language only for Borrowings of Delayed Draw Term Loans.]
INTEREST ELECTION REQUEST

JPMorgan Chase Bank, N.A.,
as Administrative Agent for the Lenders referred to below
131 S Dearborn St, Floor 04
Chicago, IL, 60603-5506
Attention: Loan and Agency Servicing
Email: [***]

[__________] [__, 20__]

Ladies and Gentlemen:

Reference is hereby made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assignees, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

The undersigned hereby gives you notice pursuant to Section 2.08 of the Credit Agreement of an interest rate election, and in that connection sets forth below the terms thereof:

1. On [__________] [__, 20__] (which is a Business Day), the undersigned will convert $[__________]10 of the aggregate outstanding principal amount of the [Revolving Loans][Delayed Draw Term Loans], bearing interest at the [ABR][Term Benchmark], into a [Term Benchmark][ABR] Loan [and, in the case of a Term Benchmark Loan, having an Interest Period of [__] month(s)]11; and]

2. On [__________] [__, 20__] (which is a Business Day), the undersigned will continue $[__________] of the aggregate outstanding principal amount of the [Revolving Loans][Delayed Draw

9 The Administrative Agent must be notified in writing, which must be received by the Administrative Agent (by hand delivery, fax or other electronic transmission (including “.pdf” or “.tif”) not later than (i) 10:00 a.m. three Business Days prior to the requested day of any conversion to or continuation of Term Benchmark Loans (or, if after the effectiveness of a Benchmark Replacement, five Business Days prior to the requested day of any Borrowing of, conversion to or continuation of RFR Loans) and (ii) 12:00 p.m. on the requested date of any conversion to ABR Loans (other than Swingline Loans) (or, in each case, such later time as is reasonably acceptable to the Administrative Agent); provided, however, that if the Borrower wishes to request Term Benchmark Loans having an Interest Period other than one, three or six months in duration or such shorter period as provided in the definition of “Interest Period”, (A) the applicable notice from the Borrower must be received by the Administrative Agent not later than 12:00 p.m. four Business Days prior to the requested date of the relevant conversion or continuation (or such later time as is reasonably acceptable to the Administrative Agent), whereupon the Administrative Agent shall give prompt notice to the appropriate Lenders of such request, (B) the relevant requested Interest Period shall be deemed to be available to each appropriate Lender unless such Lender has delivered written notice to the Administrative Agent indicating that such Interest Period is not available to such Lender within one Business Day following the date on which the notice described in clause (A) above is posted by the Administrative Agent and (C) not later than 10:00 a.m. three Business Days before the requested date of the relevant conversion or continuation, the Administrative Agent shall notify the Borrower whether or not the requested Interest Period is available to the appropriate Lenders.

10 Subject to Section 2.02(c) of the Credit Agreement.

11 Must be a period contemplated by the definition of “Interest Period”.

H-1
Term Loans] bearing interest at the Term Benchmark, as Term Benchmark Loans having an Interest Period of [___]month(s)\(^{12}\).
CAVA GROUP, INC.

By: 

Name: 
Title: 

H-3
[FORM OF]
PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned Cava Group, Inc., a Delaware corporation (the “Borrower”), hereby promises to pay on demand to [______] (the “Lender”) or its registered permitted assign, at the office of JPMorgan Chase Bank, N.A. at [______], New York, New York [______] [_____. 20[_____] in the principal amount of $[______] or such lesser amount as is outstanding from time to time, on the dates and in the amounts set forth in that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. The Borrower also promises to pay interest from the date of such [Delayed Draw Term Loans][Revolving Loans] on the principal amount thereof from time to time outstanding, in like Dollars, at such office, in each case, in the manner and at the rate or rates per annum and payable on the dates provided in the Credit Agreement. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

The Borrower promises to pay interest on any overdue principal and, to the extent permitted by applicable Requirements of Law, overdue interest from the relevant due dates, in each case, in the manner, at the rate or rates and under the circumstances provided in the Credit Agreement.

The Borrower hereby waives diligence, presentment, demand, protest and notice of any kind to the extent possible under any applicable Requirements of Law. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All Borrowings evidenced by this promissory note and all payments and prepayments of the principal hereof and interest hereon and the respective dates thereof shall be endorsed by the holder hereof on the schedules attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in its internal records; provided, however, that the failure of the holder hereof to make such a notation or any error in such notation shall not affect the obligations of the Borrower under this promissory note.

This promissory note is one of the promissory notes referred to in the Credit Agreement that, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional and mandatory prepayment of the principal hereof prior to the maturity hereof and for the amendment or waiver of certain provisions of the Credit Agreement, all upon the terms and conditions therein specified. This promissory note is entitled to the benefit of the Credit Agreement, and the obligations hereunder are guaranteed and secured as provided therein and in the other Loan Documents referred to in the Credit Agreement.

If any assignment by the Lender holding this promissory note occurs after the date of the issuance hereof, the Lender agrees that it shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender this promissory note to the Administrative Agent for cancellation.

L-1
THE ASSIGNMENT OF THIS PROMISSORY NOTE AND ANY RIGHTS WITH RESPECT THERETO ARE SUBJECT TO THE PROVISIONS OF THE CREDIT AGREEMENT, INCLUDING THE PROVISIONS GOVERNING THE REGISTER AND THE PARTICIPANT REGISTER.

THIS PROMISSORY NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

[Remainder of Page Intentionally Left Blank]
## Schedule A:

### Loans, Conversions and Repayments of ABR Loans

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount of ABR Loans</th>
<th>Amount Converted to ABR Loans</th>
<th>Amount of Principal of ABR Loans Repaid</th>
<th>Amount of ABR Loans Converted to Term Benchmark Loans</th>
<th>Unpaid Principal Balance of ABR Loans</th>
<th>Notation Made By</th>
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Schedule A to Exhibit L-1
## LOANS, CONTINUATIONS, CONVERSIONS AND REPAYMENTS OF TERM BENCHMARK LOANS

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount of Term Benchmark Loans</th>
<th>Amount Converted to Term Benchmark Loans</th>
<th>Interest Period and Term Benchmark with Respect Thereto</th>
<th>Amount of Principal of Term Benchmark Loans Repaid</th>
<th>Amount of Term Benchmark Loans Converted to ABR Loans</th>
<th>Unpaid Principal Balance of Term Benchmark Loans</th>
<th>Notation Made By</th>
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Schedule A to Exhibit L-2
NOTICE OF LOAN PREPAYMENT

JPMorgan Chase Bank, N.A.,
as Administrative Agent for the Lenders referred to below
131 S Dearborn St, Floor 04
Chicago, IL, 60603-5506
Attention: Loan and Agency Servicing
Email: [***]

Ladies and Gentlemen:

Reference is hereby made to that certain Credit Agreement, dated as of March 11, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified and in effect on the date hereof, the “Credit Agreement”), by and among Cava Group, Inc., a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, the Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., in its capacities as administrative agent for the Lenders and collateral agent for the Secured Parties (in such capacities and together with its permitted successors and assigns, the “Administrative Agent”) and as an Issuing Bank and the Swingline Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

The Borrower hereby notifies the Administrative Agent that on the date(s) referenced below, pursuant to the terms of Section 2.11 of the Credit Agreement, the Borrower intends to voluntarily [prepay][repay] the following Loans on [__________] [__], 20[__]13 (the “Prepayment Date”) as more specifically set forth below:

Revolving Loans:

<table>
<thead>
<tr>
<th>Amount to be Repaid</th>
<th>Term Benchmark Borrowing or ABR Borrowing</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
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</table>

13 All prepayments submitted under a single Notice of Loan Prepayment must be effective on the same date. If multiple effective dates are needed, multiple Notice of Loan Prepayment will need to be prepared and signed.

14 The Administrative Agent must be notified in writing, which must be received by the Administrative Agent (by hand delivery, fax or other electronic transmission (including “.pdf” or “.tif”) not later than (i) 10:00 a.m. three Business Days prior to the Prepayment Date in the case of any prepayment of a Term Benchmark Borrowing (or, if after the effectiveness of a Benchmark Replacement, five Business Days before the date of prepayment of an RFR Borrowing), (ii) 10:00 a.m. on the Prepayment Date in the case of any prepayment of an ABR Borrowing and (iii) 11:00 a.m. on the Prepayment Date in the case of any prepayment of any Swingline Loans (or, in each case, such later time as to which the Administrative Agent may reasonably agree).

15 Complete a new row for each Borrowing being prepaid.
Delayed Draw Term Loans:

<table>
<thead>
<tr>
<th>Amount to be Repaid</th>
<th>Term Benchmark Borrowing or ABR Borrowing</th>
</tr>
</thead>
<tbody>
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</table>

Swingline Loans:

<table>
<thead>
<tr>
<th>Amount to be Repaid</th>
</tr>
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</table>

[Signature Page Follows]
CAVA GROUP, INC.

By: ________________________________

Name: ________________________________
Title: ________________________________

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CAVA GROUP, INC.

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Schedule 1 – Schedule of Investors
CAVA GROUP, INC.

FIFTH AMENDED AND RESTATED INVESTORS’ RIGHTS AGREEMENT

This Fifth Amended and Restated Investors’ Rights Agreement (this “Agreement”), is made as of March 26, 2021, by and among Cava Group, Inc., a Delaware corporation (the “Company”), and the holders of the Company’s Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock listed on Schedule 1 hereto (the “Investors”).

RECITALS

WHEREAS, certain of the Investors (the “Existing Investors”) hold shares of the Company’s Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and/or Series E Preferred Stock and possess information rights, rights of first offer and other rights pursuant to that certain Fourth Amended and Restated Investors’ Rights Agreement, dated as of August 16, 2018 by and among the Company and such Existing Investors (the “Prior Agreement”);

WHEREAS, the Company and the Existing Investors desire to amend and restate the Prior Agreement and to accept the rights created pursuant hereto in lieu of the rights granted to them under the Prior Agreement; and

WHEREAS, certain Investors are parties to that certain Series F Preferred Stock Purchase Agreement, dated as of the date hereof, by and among the Company and certain of the Investors (the “Purchase Agreement”), under which the obligations of the Company and such Investors party to the Purchase Agreement are conditioned upon the execution and delivery of this Agreement.

WHEREAS, except as set forth in Section 6.1, this Agreement shall only become effective upon the Initial Closing (as defined in the Purchase Agreement, and for purposes of this Agreement, the “Initial Closing”) and until such time the Prior Agreement shall remain in full force and effect.

AGREEMENT

NOW, THEREFORE, the Company and the Existing Investors hereby agree that, effective upon the Initial Closing, the Prior Agreement shall be amended and restated in its entirety as follows, and the parties to this Agreement further agree as follows:

1. Definitions. For purposes of this Agreement:

   1.1 “Affiliate” means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including without limitation any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person; provided that with respect to Act III Holdings LLC, “Affiliate” at all times shall include any custodian or trustee of any trust partnership or limited liability company exclusively for the benefit of, or the ownership interests of
which are owned wholly by, Ronald M. Shaich, any of his spouse, children or other direct lineal descendants, or any one or more trusts exclusively for the benefit of any of them.

1.2 “Common Stock” means shares of the Company’s common stock, par value $0.0001 per share.

1.3 “Competitor” means a Person engaged, directly or indirectly (including through any partnership, limited liability company, corporation, joint venture or similar arrangement (whether now existing or formed hereafter)), in the Company’s business, but shall not include any financial investment firm or collective investment vehicle solely by virtue of its ownership (and/or its Affiliates’ ownership) of an equity interest in any Competitor solely for investment purposes. For the sake of clarity, an Investor that is a venture capital fund shall not be deemed to be a competitor of the Company merely because it has a portfolio company that is a competitor to the Company.

1.4 “Damages” means any loss, damage, claim or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, claim or liability (or any action in respect thereof) arises out of or is based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.

1.5 “Derivative Securities” means any securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly), Common Stock, including options and warrants.


1.7 “Excluded Registration” means (i) a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or (iv) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

1.8 “Form S-1” means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.9 “Form S-3” means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.
1.10 “GAAP” means generally accepted accounting principles in the United States.

1.11 “Holder” means any holder of Registrable Securities who is a party to this Agreement.

1.12 “Immediate Family Member” means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including, adoptive relationships, of a natural person referred to herein.

1.13 “Initiating Holders” means, collectively, Holders who properly initiate a registration request under this Agreement.

1.14 “IPO” means the Company’s first underwritten public offering of its Common Stock under the Securities Act.

1.15 “Major Investor” means any of TF Group Holdings LLC, Artal International S.C.A. and any Investor that, individually or together with such Investor’s Affiliates, holds at least 200,000 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof).

1.16 “New Securities” means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

1.17 “Person” means any individual, corporation, partnership, trust, limited liability company, association or other entity.


1.19 “Registrable Securities” means (i) the Common Stock issuable or issued upon conversion of the Preferred Stock; and (ii) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clause (i) above; excluding in all cases, however, any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Section 6.2, and excluding for purposes of Section 2 any shares for which registration rights have terminated pursuant to Section 2.12 of this Agreement.

1.20 “Registrable Securities then outstanding” means the number of shares determined by adding the number of shares of outstanding Common Stock that are Registrable Securities and the number of shares of Common Stock issuable (directly or indirectly) pursuant to then exercisable and/or convertible securities that are Registrable Securities.
1.21 “Restated Certificate” means the Company’s Sixth Amended and Restated Certificate of Incorporation, as amended from time to time.

1.22 “Restricted Securities” means the securities of the Company required to be notated with the legend set forth in Section 2.12(b) hereof.

1.23 “SEC” means the Securities and Exchange Commission.

1.24 “SEC Rule 144” means Rule 144 promulgated by the SEC under the Securities Act.

1.25 “SEC Rule 145” means Rule 145 promulgated by the SEC under the Securities Act.

1.26 “Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

1.27 “Selling Expenses” means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Section 2.6.

1.28 “Series A Preferred Stock” means shares of the Company’s Series A Preferred Stock, par value $0.0001 per share.

1.29 “Series B Preferred Stock” means shares of the Company’s Series B Preferred Stock, par value $0.0001 per share.

1.30 “Series C Preferred Stock” means shares of the Company’s Series C Preferred Stock, par value $0.0001 per share.

1.31 “Series D Preferred Stock” means shares of the Company’s Series D Preferred Stock, par value $0.0001 per share.

1.32 “Series E Preferred Stock” means shares of the Company’s Series E Preferred Stock, par value $0.0001 per share.

1.33 “Series F Preferred Stock” means shares of the Company’s Series F Preferred Stock, par value $0.0001 per share.

1.34 “Subsidiary” means any direct or indirect subsidiary of the Company now existing or formed hereafter (if any).
2. **Registration Rights.** The Company covenants and agrees as follows:

2.1 **Form S-3 Demand.**

(a) If at any time when it is eligible to use a Form S-3 registration statement, the Company receives a request from Holders of at least twenty percent (20%) of the Registrable Securities then outstanding (inclusive of any Registrable Securities issuable upon conversion of any Preferred Stock then outstanding) that the Company file a Form S-3 registration statement with respect to outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least $25 million, then the Company shall (i) within ten (10) days after the date such request is given, give a Demand Notice to all Holders other than the Initiating Holders; and (ii) as soon as practicable, and in any event within forty-five (45) days after the date such request is given by the Initiating Holders, file a Form S-3 registration statement under the Securities Act covering all Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of [Sections 2.1(b) and 2.3.](

(b) Notwithstanding the foregoing obligations, if the Company furnishes to Holders requesting a registration pursuant to this Section 2.1, a certificate signed by the Company’s chief executive officer stating that in the good faith judgment of the Company’s board of directors (the “Board of Directors”) it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly, for a period of not more than ninety (90) days after the request of the Initiating Holders is given; provided, however, that the Company may not invoke this right more than once in any twelve (12) month period; and provided further that the Company shall not register any securities for its own account or that of any other stockholder during such ninety (90) day period other than pursuant to a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, or similar plan; a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

(c) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Section 2.1(a) (i) during the period that is thirty (30) days before the Company’s good faith estimate of the date of filing of, and ending on a date that is ninety (90) days after the effective date of, a Company-initiated registration, provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; or (ii) if the Company has effected two registrations pursuant to Section 2.1(a) within the twelve (12) month period immediately preceding the date of such request. A registration shall not be counted as
“effected” for purposes of this Section 2.1(c) until such time as the applicable registration statement has been declared effective by the SEC, unless the Initiating Holders withdraw their request for such registration, elect not to pay the registration expenses therefor, and forfeit their right to one demand registration statement pursuant to Section 2.6, in which case such withdrawn registration statement shall be counted as “effected” for purposes of this Section 2.1(c).

2.2 Company Registration. If the Company proposes to register (including, for this purpose, a registration effected by the Company for stockholders other than the Holders) any of its Common Stock under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder notice of such registration. Upon the request of each Holder given within twenty (20) days after such notice is given by the Company, the Company shall, subject to the provisions of Section 2.3, cause to be registered all of the Registrable Securities that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.2 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Section 2.6.

2.3 Underwriting Requirements.

(a) If, pursuant to Section 2.1, the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 2.1, and the Company shall include such information in the Demand Notice. The underwriter(s) will be selected by the Company and shall be reasonably acceptable to a majority in interest of the Initiating Holders. In such event, the right of any Holder to include such Holder’s Registrable Securities in such registration shall be conditioned upon such Holder’s participation in such underwriting and the inclusion of such Holder’s Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 2.4(e)) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting. Notwithstanding any other provision of this Section 2.3, if the underwriters advise the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities owned by each Holder or in such other proportion as shall mutually be agreed to by all such selling Holders; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

(b) In connection with any offering involving an underwriting of shares of the Company’s capital stock pursuant to Section 2.2, the Company shall not be required to include any of
the Holders’ Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable) to the number of Registrable Securities owned by each selling Holder or in such other proportions as shall mutually be agreed to by all such selling Holders. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest one hundred (100) shares. Notwithstanding the foregoing, in no event shall the number of Registrable Securities included in the offering be reduced unless all other securities (other than securities to be sold by the Company) are first entirely excluded from the offering, unless such offering is the IPO, in which case the selling Holders may be excluded further if the underwriters make the determination described above and no other stockholder’s securities are included in such offering. For purposes of the provision in this Section 2.3(a) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single “selling Holder,” and any pro rata reduction with respect to such “selling Holder” shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such “selling Holder,” as defined in this sentence.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Stock (or other securities) of the Company, from selling any securities included in such registration, and (ii) in the case of any registration of Registrable Securities on Form S-3 that are intended to be offered on a continuous or delayed basis, subject to compliance with applicable SEC rules, such one hundred twenty (120) day period shall be extended for up to one year, if necessary, to keep the registration statement effective until all such Registrable Securities are sold;
(b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act in order to enable the disposition of all securities covered by such registration statement;

(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

(d) use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(f) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on a national securities exchange or trading system and each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(g) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) promptly make available for inspection by the selling Holders, any underwriter(s) participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company’s officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(i) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed; and

(j) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.
In addition, the Company shall ensure that, at all times after any registration statement covering a public offering of securities of the Company under the Securities Act shall have become effective, its insider trading policy shall provide that the Company’s directors may implement a trading program under Rule 10b5-1 of the Exchange Act.

2.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder’s Registrable Securities.

2.6 Expenses of Registration. All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2, including all registration, filing, and qualification fees; printers’ and accounting fees; fees and disbursements of counsel for the Company; and the reasonable fees and disbursements, not to exceed $20,000, of one counsel for the selling Holders (“Selling Holder Counsel”), shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 2.1 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one registration pursuant to Section 2.1; provided further that if, at the time of such withdrawal, the Holders shall have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such information then the Holders shall not be required to pay any of such expenses and shall not forfeit their right to one registration pursuant to Section 2.1. All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. If any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, and stockholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 2.8(a) shall not apply to amounts paid in settlement of
any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 2.8(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by any Holder by way of indemnity or contribution under Sections 2.8(b) and 2.8(d) exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.8, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action. The failure to give notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.8, to the extent that such failure materially prejudices the indemnifying party’s ability to defend such action. The failure to give notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.8.
(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either: (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Section 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Section 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Section 2.8, then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties’ relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case (x) no Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by such Holder pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; provided further that in no event shall a Holder’s liability pursuant to this Section 2.8(d), when combined with the amounts paid or payable by such Holder pursuant to Section 2.8(b), exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Section 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Company for the IPO;
(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company has become subject to such reporting requirements); and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the registration statement filed by the Company for the IPO), the Securities Act, and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); and (ii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of a majority of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that (i) would provide to such holder the right to include securities in any registration on other than either a pro rata basis with respect to the Registrable Securities or on a subordinate basis after all Holders have had the opportunity to include in the registration and offering all shares of Registrable Securities that they wish to so include; or (ii) allow such holder or prospective holder to initiate a demand for registration of any securities held by such holder or prospective holder; provided that this limitation shall not apply to any additional Investor who becomes a party to this Agreement in accordance with Section 6.10.

2.11 “Market Stand-off” Agreement. Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the registration by the Company of shares of its Common Stock or any other equity securities under the Securities Act on a registration statement on Form S-1 or Form S-3, and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days in the case of the IPO, or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (1) the publication or other distribution of research reports, and (2) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2241, or any successor provisions or amendments thereto), (i) lend; offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; grant any option, right, or warrant to purchase; or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock (whether such shares or any such securities are then owned by the Holder or are thereafter acquired) or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash, or otherwise. The foregoing provisions of this Section 2.11 shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, or the transfer of any shares to any trust for the direct or indirect benefit of the Holder or the immediate family of the Holder, provided that the trustee of the trust agrees to be bound in
writing by the restrictions set forth herein, and provided further that any such transfer shall not involve a disposition for value, and shall be applicable to the Holders only if all officers, directors and all stockholders individually owning more than one percent (1%) of the Company’s outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock) are bound by and have entered into similar agreements. The underwriters in connection with such registration are intended third-party beneficiaries of this Section 2.11 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Section 2.11 or that are necessary to give further effect thereto.

2.12 Restrictions on Transfer.

(a) The Preferred Stock and the Registrable Securities shall not be sold, pledged, or otherwise transferred, and the Company shall not recognize and shall issue stop-transfer instructions to its transfer agent with respect to any such sale, pledge, or transfer, except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of the Securities Act. A transferring Holder will cause any proposed purchaser, pledgee, or transferee of the Preferred Stock and the Registrable Securities held by such Holder to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement.

(b) Each certificate, instrument, or book entry representing (i) the Preferred Stock, (ii) the Registrable Securities, and (iii) any other securities issued in respect of the securities referenced in clauses (i) and (ii), upon any stock split, stock dividend, recapitalization, merger, consolidation, or similar event, shall (unless otherwise permitted by the provisions of Section 2.12(c)) be notated with a legend substantially in the following form:

THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

THE SECURITIES REPRESENTED HEREBY MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

The Holders consent to the Company making a notation in its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer set forth in this Section 2.12.
(c) The holder of such Restricted Securities, by acceptance of ownership thereof, agrees to comply in all respects with the provisions of this Section 2. Before any proposed sale, pledge, or transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed transaction, the Holder thereof shall give notice to the Company of such Holder’s intention to effect such sale, pledge, or transfer. Each such notice shall describe the manner and circumstances of the proposed sale, pledge, or transfer in sufficient detail and, if reasonably requested by the Company, shall be accompanied at such Holder’s expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act; (ii) a “no action” letter from the SEC to the effect that the proposed sale, pledge, or transfer of such Restricted Securities without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed sale, pledge, or transfer of the Restricted Securities may be effected without registration under the Securities Act, whereupon the Holder of such Restricted Securities shall be entitled to sell, pledge, or transfer such Restricted Securities in accordance with the terms of the notice given by the Holder to the Company. The Company will not require such a legal opinion or “no action” letter (x) in any transaction in compliance with SEC Rule 144; or (y) in any transaction in which such Holder distributes Restricted Securities to an Affiliate of such Holder for no consideration; provided that each transferee agrees in writing to be subject to the terms of this Section 2.12. Each certificate, instrument, or book entry representing the Restricted Securities transferred as above provided shall be notated with, except if such transfer is made pursuant to SEC Rule 144, the appropriate restrictive legend set forth in Section 2.12(b), except that such certificate instrument, or book entry shall not be notated with such restrictive legend if, in the opinion of counsel for such Holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act.

2.13 Termination of Registration Rights. The right of any Holder to request inclusion of Registrable Securities in any registration pursuant to Sections 2.1 or 2.2 shall terminate upon the earliest to occur of:

(a) the closing of a Deemed Liquidation Event, as such term is defined in the Restated Certificate;

(b) such time as Rule 144 or another similar exemption under the Securities Act is available for the sale of all of such Holder’s shares without limitation during a three-month period without registration; and

(c) the fifth anniversary of the IPO.
3. Information and Observer Rights.

3.1 Delivery of Financial Statements. The Company shall deliver to each Major Investor, provided that the Board of Directors has not reasonably determined that such Major Investor is a Competitor of the Company:

(a) as soon as practicable, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Company (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year, and (iii) a statement of stockholders’ equity as of the end of such year, all such financial statements audited and certified by independent public accountants of nationally or regionally recognized standing selected by the Company;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of the Company, unaudited statement of income for such fiscal quarter, and an unaudited balance sheet as of the end of such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments; and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(c) as soon as practicable, but in any event within thirty (30) days of the end of each month, (i) an unaudited statement of income for such month, and (ii) an unaudited balance sheet as of the end of such month, all prepared in accordance with GAAP (except that such financial statements may (A) be subject to normal year-end audit adjustments and (B) not contain all notes thereto that may be required in accordance with GAAP); and

(d) as soon as practicable, but in any event thirty (30) days before the end of each fiscal year, an annual operating budget and business plan for the next fiscal year (collectively, the “Budget”), prepared on a monthly basis, including balance sheets, income statements, and statements of cash flow for such months and, promptly after prepared, any other budgets or revised budgets prepared by the Company.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Notwithstanding anything else in this Section 3.1 to the contrary, the Company may cease providing the information set forth in this Section 3.1 during the period starting with the date sixty (60) days before the Company’s good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering; provided that the Company’s covenants under this Section 3.1 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

3.2 Inspection. The Company shall permit each Major Investor (provided that the Board of Directors has not reasonably determined that such Major Investor is a Competitor of the Company), at such Major Investor’s expense, to visit and inspect the properties of the Company and the
Subsidiaries; examine their books of account and records; and discuss their affairs, finances, and accounts with their officers, during normal business hours of the Company as may be reasonably requested by the Major Investor, provided, however, that the Company and the Subsidiaries shall not be obligated pursuant to this Section 3.2 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, in form acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel.

3.3 Observer Rights

(a) During any period of time in which (i) there is not a designee of Cava Grill Investors LLC (“CGI”) on the Company’s Board of Directors and (ii) CGI has rights under Section 1.2(d) and (e) of the Fifth Amended and Restated Voting Agreement related to appointing a designee to the Board of Directors, the Company shall invite a representative of CGI to attend all meetings of its Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest, or if CGI or its representative is or becomes a Competitor of the Company.

(b) During any period of time in which (i) Lambros Grigoropoulos is not on the Company’s Board of Directors and (ii) Lambros Grigoropoulos has rights under Section 1.2(f) of the Fifth Amended and Restated Voting Agreement related to appointing a designee to the Board of Directors, the Company shall invite Lambros Grigoropoulos to attend all meetings of its Board of Directors in a nonvoting observer capacity and, in this respect, shall give Lambros Grigoropoulos copies of all notices, minutes, consents, and other materials that it provides to its directors; provided, however, that Lambros Grigoropoulos shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further that the Company reserves the right to withhold any information and to exclude Lambros Grigoropoulos from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest, or if Lambros Grigoropoulos is or becomes a Competitor of the Company.

3.4 Termination of Information and Observer Rights

The covenants set forth in Sections 3.1, 3.2, and 3.3 shall terminate and be of no further force or effect (i) immediately before the consummation of a Qualified IPO (as that term is defined in the Restated Certificate), or (ii) upon a Deemed Liquidation Event (as that term is defined in the Restated Certificate), whichever event occurs first.

3.5 Confidentiality. Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company’s intention to file a registration statement), unless such
confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 3.5 by such Investor), (b) is or has been independently developed or conceived by the Investor without use of the Company’s confidential information, or (c) is or has been made known or disclosed to the Investor by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser agrees to be bound by the provisions of this Section 3.5; (iii) to any Affiliate, partner, member, stockholder, or wholly owned subsidiary of such Investor in the ordinary course of business, provided that such Investor informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law, provided that the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure.

4. Rights to Future Stock Issuances.

4.1 Right of First Offer. Subject to the terms and conditions of this Section 4.1 and applicable securities laws, if the Company proposes to offer or sell any New Securities, the Company shall first offer such New Securities to each Major Investor. A Major Investor shall be entitled to apportion the right of first offer hereby granted to it in such proportions as it deems appropriate, among (i) itself, (ii) its Affiliates, and (iii) its beneficial interest holders, such as limited partners, members or any other Person having “beneficial ownership,” as such term is defined in Rule 13d-3 promulgated under the Exchange Act, of such Major Investor (“Investor Beneficial Owners”); provided that each such Affiliate or Investor Beneficial Owner (x) is not a Competitor, unless such party’s purchase of New Securities is otherwise consented to by the Board of Directors, (y) agrees to enter into this Agreement and each of the Fifth Amended and Restated Voting Agreement and the Fifth Amended and Restated Right of First Refusal and Co-Sale Agreement of even date herewith by and among the Company, the Investors and the other parties named therein, as an “Investor” under each such agreement (provided that any Competitor shall not be entitled to any rights as a Major Investor under Sections 3.1, 3.2 and 4.1 hereof), and (z) agrees to purchase at least such number of New Securities as are allocable hereunder to the Major Investor holding the fewest number of shares of Preferred Stock and any other Derivative Securities.

(a) The Company shall give notice (the “Offer Notice”) to each Major Investor, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Company within twenty (20) days after the Offer Notice is given, each Major Investor may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the proportion that the Common Stock then held by such Major Investor (including all shares of Common Stock then issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then held by such Major Investor) bears to the total Common Stock of the Company then outstanding (assuming full conversion and/or exercise, as
applicable, of all Preferred Stock and other Derivative Securities). At the expiration of such twenty (20) day period, the Company shall promptly notify each Major Investor that elects to purchase or acquire all the shares available to it (each, a “Fully Exercising Investor”) of any other Major Investor’s failure to do likewise. During the ten (10) day period commencing after the Company has given such notice, each Fully Exercising Investor may, by giving notice to the Company, elect to purchase or acquire, in addition to the number of shares specified above, up to that portion of the New Securities for which Major Investors were entitled to subscribe but that were not subscribed for by the Major Investors which is equal to the proportion that the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of Preferred Stock and any other Derivative Securities then held, by such Fully Exercising Investor bears to the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then held, by all Fully Exercising Investors who wish to purchase such unsubscribed shares. The closing of any sale pursuant to this Section 4.1(b) shall occur within the later of ninety (90) days of the date that the Offer Notice is given and the date of initial sale of New Securities pursuant to Section 4.1(c).

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Section 4.1(b), the Company may, during the ninety (90) day period following the expiration of the periods provided in Section 4.1(b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Major Investors in accordance with this Section 4.1.

(d) The right of first offer in this Section 4.1 shall not be applicable to (i) Exempted Securities (as defined in the Restated Certificate); (ii) shares of Common Stock issued in the IPO; and (iii) the issuance of shares of Series F Preferred Stock to Purchasers under the Purchase Agreement.

4.2 Termination. The covenants set forth in Section 4.1 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, or (ii) upon a Deemed Liquidation Event, as such term is defined in the Restated Certificate, whichever event occurs first.

5. Additional Covenants.

5.1 Insurance. The Company shall use its commercially reasonable efforts to obtain, within thirty (30) days of the date hereof, from financially sound and reputable insurers, Directors and Officers liability insurance in an amount of no less than $10,000,000 or such other amount as may be approved by the Board of Directors and on terms and conditions satisfactory to the Board of Directors, and will use commercially reasonable efforts to cause such insurance policy to be maintained until such time as the Board of Directors determines that such insurance should be discontinued.

5.2 Matters Requiring the Approval of a Majority of the Directors. The Company hereby covenants and agrees with each of the Investors that it shall not, and shall not permit any
Subsidiary to, without approval of the Board of Directors, which approval must include the affirmative vote of a majority of the directors of the Board of Directors then in office:

(a) approve the Budget;
(b) make, or allow any subsidiary to make, any individual capital expenditure in excess of $250,000 that is not already included in the Budget approved by the Board of Directors;
(c) authorize or issue equity securities of the Company, or any Subsidiary, for purposes of raising capital to fund operations or growth;
(d) incur or guarantee any aggregate indebtedness that is not already included in the Budget approved by the Board of Directors, other than trade credit incurred in the ordinary course of business;
(e) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Company other than (i) redemptions of or dividends or distributions on the Preferred Stock only as expressly authorized in the Restated Certificate, (ii) dividends or other distributions payable on the Common Stock only as expressly authorized in the Restated Certificate, or (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Company or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof;
(f) consummate an IPO, liquidate, dissolve or wind-up the business and affairs of the Company, effect any merger or consolidation, or any other Deemed Liquidation Event (as that term is defined in the Restated Certificate), or consent to any of the foregoing;
(g) increase the number of shares of Common Stock authorized or reserved for issuance under any equity incentive plan or establish or adopt any new employee stock option plan, employee stock purchase plan, employee restricted stock plan or other similar equity incentive plan;
(h) acquire a material amount of assets through a merger or purchase of all or substantially all of the assets or capital stock of another entity; or
(i) hire, terminate, or change the compensation of any executive officer, including approving any option grants or stock awards to any executive officer.

5.3 Board Matters. The Company shall reimburse the directors for all reasonable out-of-pocket travel expenses incurred (consistent with the Company’s travel policy) in connection with attending meetings of the Board of Directors or any committees thereof and in connection with attending any other events (e.g. meetings and trade shows) required by or at the request of the Company.

5.4 Employee Stock. Unless otherwise approved by the Board of Directors, all future employees and consultants of the Company who purchase, receive options to purchase, or receive awards of shares of the Company’s capital stock after the date hereof shall be required to execute restricted stock or option agreements, as applicable, providing for (i) vesting of shares over a four (4)
year period, with the first twenty-five percent (25%) of such shares vesting following twelve (12) months of continued employment or service, and the remaining shares vesting in equal monthly installments over the following thirty-six (36) months, and (ii) a market stand-off provision substantially similar to that in Section 2.11. In addition, unless otherwise approved by the Board of Directors, the Company shall retain a “right of first refusal” on employee transfers until the Company’s IPO and shall have the right to repurchase unvested shares at cost upon termination of employment of a holder of restricted stock.

5.5 Successor Indemnification. If the Company or any of its successors or assignees consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately before such transaction, whether such obligations are contained in the Company’s Bylaws, its Restated Certificate, or elsewhere, as the case may be.

5.6 Subsidiary Board Approval – General. No Subsidiary shall take any action without the approval of the Board of Directors of the Company to the extent approval of the Board of Directors of the Company would be required in the event such action was to be taken by the Company itself.

5.7 Termination of Covenants. The covenants set forth in this Section 5, except for Section 5.5, shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO or (ii) upon a Deemed Liquidation Event, as such term is defined in the Restated Certificate, whichever event occurs first.

6. Miscellaneous.

6.1 Effectiveness. Except for this Section 6.1 and Section 6.16, which shall be effective as of the date hereof, the effectiveness of this Agreement shall be conditioned upon the consummation of the Initial Closing, at which time the Prior Agreement shall be amended and restated in its entirety as set forth in this Agreement without any further action of any Person. Unless and until the Initial Closing occurs, the parties to the Prior Agreement will continue to be bound by the terms of the Prior Agreement and entitled and subject to the rights and obligations set forth therein.

6.2 Successors and Assigns. The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to a transferee of Registrable Securities that (i) is an Affiliate of a Holder; (ii) is a Holder’s Immediate Family Member or trust for the benefit of an individual Holder or one or more of such Holder’s Immediate Family Members; or (iii) after such transfer, holds at least 200,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations, and other recapitalizations); provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement, including the provisions of Section 2.11. For the purposes of determining the number of shares of Registrable Securities held by a transferee, the
holdings of a transferee (1) that is an Affiliate or stockholder of a Holder; (2) who is a Holder’s Immediate Family Member; or
(3) that is a trust for the benefit of an individual Holder or such Holder’s Immediate Family Member shall be aggregated together
and with those of the transferring Holder; provided further that all transferees who would not qualify individually for assignment of
rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices, or taking any action under this
Agreement. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and
permitted assignees of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than
the parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason
of this Agreement, except as expressly provided herein.

6.3 **Governing Law.** This Agreement shall be governed by the internal law of the State of Delaware.

6.4 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed
an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile,
electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g.,
www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly
delivered and be valid and effective for all purposes.

6.5 **Titles and Subtitles.** The titles and subtitles used in this Agreement are for convenience only and are not to be
considered in construing or interpreting this Agreement.

6.6 **Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and
shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the party to be notified, (b) when sent,
if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours,
then on the recipient’s next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt
requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid,
specifying next business day delivery, with written verification of receipt. All communications to the Investors shall be sent to the
respective parties at their address as set forth on the signature page or Schedule 1, or to such e-mail address, facsimile number or
address as subsequently modified by written notice given in accordance with this Section 6.6. If notice is given to the Company, it
shall be sent to the principal office of the Company at 702 H St NW, 2nd Floor Washington, DC 20001, Attn: Chief Executive
Officer, or to such email address, facsimile number, or address as subsequently modified by written notice in accordance with this
Section 6.6. If notice is given to (i) the Company, a copy shall also be sent to Jeremy London, Kenneth Wolff and Ryan Dzierniejko,
Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Ave NW, Washington, DC 20005, [***], and (ii) the Investors, a copy
shall be sent to The Invus Group LLC, attn.: Benjamin Felt, 750 Lexington Avenue, 30th Floor, New York, NY 10022; Simpson
Thacher & Bartlett LLP, 600 Travis Street, Suite 5400, Houston, TX 77002, attn.: Christopher May; Simpson Thacher & Bartlett
LLP, 425 Lexington Avenue, New York, NY 10017, attn.: Anthony Vernace, and to Act III Holdings LLC, 23 Prescott Street,
Brookline, Massachusetts 02446; Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004, attn.: Francis Aquila and
Audra Cohen.
6.7 Amendments and Waivers. This Agreement amends and restates in its entirety the Prior Agreement. Notwithstanding the fact that the signature pages hereto may name one or more parties who have not executed this Agreement, this Agreement will be a valid and effective amendment to the Prior Agreement pursuant to its terms. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and the holders of at least a majority of the Registrable Securities then outstanding (inclusive of any Registrable Securities issuable upon conversion of any Preferred Stock then outstanding); provided that any waiver of the rights pursuant to Section 4 of this Agreement shall require the written consent of at least a majority of the Registrable Securities then outstanding held by the Major Investors; provided that the Company may in its sole discretion waive compliance with Section 2.12(c) (and the Company’s failure to object promptly in writing after notification of a proposed assignment allegedly in violation of Section 2.12(c) shall be deemed to be a waiver); provided further, that any provision hereof may be waived by any waiving party on such party’s own behalf, without the consent of any other party. Notwithstanding the foregoing, this Agreement may not be amended or terminated and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment, termination, or waiver applies to all Investors in the same fashion (it being agreed that a waiver of the provisions of Section 4 with respect to a particular transaction shall be deemed to apply to all Investors in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Investors may nonetheless, by agreement with the Company, purchase securities in such transaction); provided, however, that in the event of such a purchase, the Company shall provide each non-waiving Major Investor notice and the opportunity to participate on a pro rata basis (based on the level of participation of the other non-waiving Major Investor purchasing the largest portion of such Major Investor’s pro rata share) on the same terms and conditions as the purchasing Major Investor(s) and in accordance with the notice and election periods set forth in Section 4. The Company shall give prompt notice of any amendment or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, termination, or waiver. Any amendment, termination, or waiver effected in accordance with this Section 6.7 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

6.8 Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

6.9 Aggregation of Stock. All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

6.10 Additional Investors. Notwithstanding anything to the contrary contained herein, any holder of Preferred Stock who was not listed on Schedule 1 hereto as of the date of this Agreement may become a party to this Agreement by executing and delivering an additional counterpart signature
page to this Agreement, and thereafter shall be deemed an “Investor” for all purposes hereunder. No action or consent by the Investors shall be required for such joinder to this Agreement by such additional Investor, so long as such additional Investor has agreed in writing to be bound by all of the obligations as an “Investor” hereunder.

6.11 **Entire Agreement.** This Agreement (including any Schedules and Exhibits hereto), the Restated Certificate and the other Transaction Agreements (as defined in the Purchase Agreement) constitute the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled. Upon the Initial Closing, the Prior Agreement shall be deemed superseded and replaced in its entirety by this Agreement, and shall be of no further force or effect.

6.12 **Dispute Resolution.** The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the Delaware Court of Chancery for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the Delaware Court of Chancery, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION AGREEMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.13 **Attorneys’ Fees.** Each party will bear its own costs in respect of any disputes arising under this Agreement.

6.14 **Delays or Omissions.** No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or nondefaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be
deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

6.15 **Specific Performance.** In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, each Investor shall be entitled to specific performance of the agreements and obligations of the Company hereunder and to such other injunction as may be granted by a court of competent jurisdiction.

6.16 **Termination.** Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall automatically terminate and cease to be of any further force and effect upon any termination of the Purchase Agreement in accordance with its terms prior to the consummation of the Initial Closing.

6.17 **Waiver.** Notwithstanding anything to the contrary contained in this Agreement, the provisions of Section 4 shall not apply in respect of any offer or sale of New Securities in connection with the Tender Offer (as defined in the Purchase Agreement).

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties have executed this Fifth Amended and Restated Investors’ Rights Agreement as of the date first written above.

COMPANY:

CAVA GROUP, INC.

By: /s/ Brett M. Schulman
    Brett M. Schulman, President and CEO

SIGNATURE PAGE TO FIFTH AMENDED AND RESTATED INVESTORS’ RIGHTS AGREEMENT
CAVA GROUP, INC.
IN WITNESS WHEREOF, the parties have executed this Fifth Amended and Restated Investors’ Rights Agreement as of the date first written above.

ARTAL INTERNATIONAL S.C.A.

By: Artal International Management S.A.,
as Managing Partner

By: /s/ Anne Goffard
Ann Goffard, Managing Director

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REVOLUTION GROWTH III, LP

By: Revolution Growth GP III, LP
Its General Partner

By: Revolution Growth UGP III, LLC
Its: General Partner

By: /s/ Steven J. Murray

Name: Steven J. Murray
Its: Operating Manager

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SHEA VENTURES LLC

By: /s/ John Morrissey

Name: John Morrissey

Title: Managing Director

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TOYOPA PARTNERS LP

By:  /s/ John Morrissey
Name: John Morrissey
Title: General Partner

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SWaN HOSPITALITY 4, LLC

By: /s/ Fredrick Schaufeld

Fredrick Schaufeld, Managing Director

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**SWaN & LEGEND FUND 3, LP**

By: SWaN & Legend Fund 3 GP, LLC, its General Partner

By: /s/ David Strasser  
David Strasser, Managing Director

**SWaN & LEGEND FUND 4, LP**

By: SWaN & Legend Fund 4 GP, LLC, its General Partner

By: /s/ David Strasser  
David Strasser, Managing Director

**SWaN HOSPITALITY, LLC**

By: /s/ Frederick Schaufeld  
Frederick Schaufeld, Managing Director

**SWaN HOSPITALITY 2, LLC**

By: /s/ Frederick Schaufeld  
Frederick Schaufeld, Managing Director

**SWaN HOSPITALITY 3, LLC**

By: /s/ Frederick Schaufeld  
Frederick Schaufeld, Managing Director

SIGNATURE PAGE TO FIFTH AMENDED AND RESTATED INVESTORS’ RIGHTS AGREEMENT  
CAVA GROUP, INC.
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date first written above.

**SMALLCAP WORLD FUND, INC.**

By Capital Research and Management Company, for
and on behalf of SMALLCAP World Fund, Inc.

By: /s/ Walter R. Burkley

Name: Walter R. Burkley
Title: Authorized Signatory

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CAVA GROUP, INC.
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Declaration Capital PE SPV XXX LLC

By: /s/ Rob Jackowitz
Name: Rob Jackowitz
Title: Authorized Person

SIGNATURE PAGE TO FIFTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT
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Equilibra PE Partners LLC

By: /s/ Stacy Dick
Name: Stacy Dick
Title: President & CFO

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CAVA GROUP, INC.
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MOUSSERNA L.P.

By Serena Limited, its General Partner

By: /s/ Charles Heilbronn

Name: Charles Heilbronn
Title: President

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LIGHTHOUSE

Map 248 Segregated Portfolio

By: /s/ Robert P. Swan
    Name: Robert P. Swan
    Title: Director

By: /s/ Aaron Nieman
    Aaron Nieman

By: /s/ Blaine Marder
    Blaine Marder

By: /s/ Daniel Marcus
    Daniel Marcus

By: /s/ Ara Terpanjian
    Ara Terpanjian

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CAVA ACT III, LLC

By:  /s/ Ronald M. Shaich  
Ronald M. Shaich, Chief Executive Officer

CAVA ACT III TRUST, LLC

By:  /s/ Ronald M. Shaich  
Ronald M. Shaich, Chief Executive Officer

SIGNATURE PAGE TO FIFTH AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT  
CAVA GROUP, INC.
IN WITNESS WHEREOF, the parties have executed this Fifth Amended and Restated Investors’ Rights Agreement as of the date first written above.

INVESTOR:

T. ROWE PRICE SMALL-CAP STOCK FUND, INC.
T. ROWE PRICE INSTITUTIONAL SMALL-CAP STOCK FUND
T. ROWE PRICE SPECTRUM CONSERVATIVE ALLOCATION FUND
T. ROWE PRICE SPECTRUM MODERATE ALLOCATION FUND
T. ROWE PRICE SPECTRUM MODERATE GROWTH ALLOCATION FUND
T. ROWE PRICE MODERATE ALLOCATION PORTFOLIO
U.S. SMALL-CAP STOCK TRUST
TD MUTUAL FUNDS - TD U.S. SMALL-CAP EQUITY FUND
T. ROWE PRICE U.S. SMALL-CAP CORE EQUITY TRUST
MINNESOTA LIFE INSURANCE COMPANY
COSTCO 401(K) RETIREMENT PLAN
MASSMUTUAL SELECT FUNDS – MASSMUTUAL SELECT T. ROWE PRICE SMALL AND MID CAP BLEND FUND

Each account, severally and not jointly

By:  T. Rowe Price Associates, Inc., Investment Adviser or Subadviser, as applicable

By:  /s/ Andrew Baek
Name:  Andrew Baek

Address:
T. Rowe Price Associates, Inc.
100 East Pratt Street
Baltimore, MD 21202
Attn.: Andrew Baek, Vice President
Phone: [***]
E-mail: [***]
IN WITNESS WHEREOF, the parties have executed this Fifth Amended and Restated Investors’ Rights Agreement as of the date first written above.

INVESTOR:

T. ROWE PRICE SMALL-CAP VALUE FUND, INC.
T. ROWE PRICE U.S. SMALL-CAP VALUE EQUITY TRUST
T. ROWE PRICE U.S. EQUITIES TRUST
MASSMUTUAL SELECT FUNDS - MASSMUTUAL
SELECT T. ROWE PRICE SMALL AND MID CAP BLEND FUND

Each account, severally and not jointly

By: T. Rowe Price Associates, Inc., Investment Adviser or Subadviser, as applicable

By: /s/ Andrew Baek
Name: Andrew Baek

Address:
T. Rowe Price Associates, Inc.
100 East Pratt Street
Baltimore, MD 21202
Attn.: Andrew Baek, Vice President
Phone: [***]
E-mail: [***]
IN WITNESS WHEREOF, the parties have executed this Fifth Amended and Restated Investors’ Rights Agreement as of the date first written above.

INVESTOR:

T. ROWE PRICE NEW HORIZONS FUND, INC.
T. ROWE PRICE NEW HORIZONS TRUST
T. ROWE PRICE U.S. EQUITIES TRUST
MASSMUTUAL SELECT FUNDS - MASSMUTUAL SELECT T.
ROWE PRICE SMALL AND MID CAP BLEND FUND

Each account, severally and not jointly

By:  T. Rowe Price Associates, Inc., Investment Adviser or Subadviser, as applicable

By:  /s/ Andrew Baek
Name: Andrew Baek

Address:
T. Rowe Price Associates, Inc.
100 East Pratt Street
Baltimore, MD 21202
Attn.: Andrew Baek, Vice President
Phone: [***]
E-mail: [***]
IN WITNESS WHEREOF, the parties have executed this Fifth Amended and Restated Investors’ Rights Agreement as of the
date first written above.

INVESTOR:

T. ROWE PRICE GLOBAL CONSUMER FUND

Each account, severally and not jointly

By: T. Rowe Price Associates, Inc., Investment
    Adviser or Subadviser, as applicable

By: /s/ Andrew Baek
Name: Andrew Baek
Title: Vice President

Address:
T. Rowe Price Associates, Inc.
100 East Pratt Street
Baltimore, MD 21202
Attn.: Andrew Baek, Vice President
Phone: [***]
E-mail: [***]
CAVA GROUP, INC.

2015 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: March 24, 2021
APPROVED BY THE STOCKHOLDERS: March 25, 2021
TERMINATION DATE: MARCH 24, 2031

1. GENERAL.

(a) Eligible Stock Award Recipients. The persons eligible to receive Stock Awards are Employees, Directors and Consultants.

(b) Available Stock Awards. The Plan provides for the grant of the following Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights, (iv) Restricted Stock Awards, and (v) Restricted Stock Unit Awards.

(c) Purpose. The Company, by means of the Plan, seeks to secure and retain the services of the group of persons eligible to receive Stock Awards as set forth in Section 1(a), to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate, and to provide a means by which such eligible recipients may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Stock Awards.

2. ADMINISTRATION.

(a) Administration by Board. The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in Section 2(c).

(b) Powers of Board. The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time (A) which of the persons eligible under the Plan shall be granted Stock Awards; (B) when and how each Stock Award shall be granted; (C) what type or combination of types of Stock Award shall be granted; (D) the provisions of each Stock Award granted (which need not be identical), including the time or times when a person shall be permitted to receive cash or Common Stock pursuant to a Stock Award; (E) the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan or Stock Award fully effective.

(iii) To settle all controversies regarding the Plan and Stock Awards granted under it.
(iv) To accelerate the time at which a Stock Award may first be exercised or the time during which a Stock Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Stock Award stating the time at which it may first be exercised or the time during which it will vest.

(v) To suspend or terminate the Plan at any time. Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to bring the Plan or Stock Awards granted under the Plan into compliance therewith, subject to the limitations, if any, of applicable law. However, except as provided in Section 9(a) relating to Capitalization Adjustments, to the extent required by applicable law, stockholder approval shall be required for any amendment of the Plan that either (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Stock Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan or materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (D) materially extends the term of the Plan, or (E) expands the types of Stock Awards available for issuance under the Plan. Except as provided above, rights under any Stock Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (1) the Company requests the consent of the affected Participant, and (2) such Participant consents in writing. Notwithstanding the foregoing, subject to the limitations of applicable law, if any, and without the affected Participant’s consent, the Board may amend the terms of any one or more Stock Awards if necessary to maintain the qualified status of the Stock Award as an Incentive Stock Option or to bring the Stock Award into compliance with Section 409A of the Code.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 422 of the Code regarding Incentive Stock Options.

(viii) To approve forms of Stock Award Agreements for use under the Plan and to amend the terms of any one or more Stock Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Stock Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; provided however, that, the rights under any Stock Award shall not be impaired by any such amendment unless (i) the Company requests the consent of the affected Participant, and (ii) such Participant consents in writing. Notwithstanding the foregoing, subject to the limitations of applicable law, if any, and without the affected Participant’s consent, the Board may amend the terms of any one or more Stock Awards if necessary to maintain the qualified status of the Stock Award as an Incentive Stock Option or to bring the Stock Award into compliance with Section 409A of the Code.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Stock Awards.
(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States.

(xi) To effect, at any time and from time to time, with the consent of any adversely affected Participant, (A) the reduction of the exercise price (or strike price) of any outstanding Option or SAR under the Plan, (B) the cancellation of any outstanding Option or SAR under the Plan and the grant in substitution therefore of (1) a new Option or SAR under the Plan or another equity plan of the Company covering the same or a different number of shares of Common Stock, (2) a Restricted Stock Award, (3) a Restricted Stock Unit Award, (4) cash and/or (5) other valuable consideration (as determined by the Board, in its sole discretion), or (C) any other action that is treated as a repricing under generally accepted accounting principles; provided, however, that no such reduction or cancellation may be effected if it is determined, in the Company’s sole discretion, that such reduction or cancellation would result in any such outstanding Option becoming subject to the requirements of Section 409A of the Code.

(c) Delegation to Committee. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(d) Delegation to an Officer. The Board may delegate to one or more Officers of the Company the authority to do one or both of the following: (i) designate Officers and Employees of the Company or any of its Subsidiaries to be recipients of Options and Stock Appreciation Rights (and, to the extent permitted by applicable law, other Stock Awards) and the terms thereof, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Officers and Employees; provided, however, that the Board resolutions regarding such delegation shall specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Notwithstanding the foregoing, the Board may not delegate authority to an Officer to determine the Fair Market Value pursuant to Section 13(t) below.

(e) Effect of Board’s Decision. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

3. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards beginning on the Effective Date shall not exceed two million seven hundred
thousand six hundred and sixty-three (2,702,663) shares (the “Share Reserve”). Furthermore, if a Stock Award (i) expires or otherwise terminates without having been exercised in full or (ii) is settled in cash (i.e., the holder of the Stock Award receives cash rather than stock), such expiration, termination or settlement shall not reduce (or otherwise offset) the number of shares of Common Stock that may be issued pursuant to the Plan. For clarity, the limitation in this Section 3(a) is a limitation in the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 3(a) does not limit the granting of Stock Awards except as provided in Section 7(a).

(b) Reversion of Shares to the Share Reserve. If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares which are forfeited shall revert to and again become available for issuance under the Plan. Also, any shares reacquired by the Company pursuant to Section 8(g) or as consideration for the exercise of an Option shall again become available for issuance under the Plan. Notwithstanding the provisions of this Section 3(b), any such shares shall not be subsequently issued pursuant to the exercise of Incentive Stock Options.

(c) Incentive Stock Option Limit. Notwithstanding anything to the contrary in this Section 3(c), subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options shall be two million seven hundred thousand six hundred and sixty-three (2,702,663) shares of Common Stock.

(d) Source of Shares. The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

4. Eligibility.

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to employees of the Company or a “parent corporation” or “subsidiary corporation” thereof (as such terms are defined in Sections 424(e) and (f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; provided, however, Nonstatutory Stock Options and SARs may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any “parent” of the Company, as such term is defined in Rule 405, unless the stock underlying such Stock Awards is treated as “service recipient stock” under Section 409A of the Code because the Stock Awards are granted pursuant to a corporate transaction (such as a spin off transaction) or unless such Stock Awards comply with the distribution requirements of Section 409A of the Code.

(b) Ten Percent Stockholders. A Ten Percent Stockholder shall not be granted an Incentive Stock Option unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

(c) Consultants. A Consultant shall not be eligible for the grant of a Stock Award if, at the time of grant, either the offer or the sale of the Company’s securities to such Consultant is not exempt under Rule 701 because of the nature of the services that the Consultant is providing.
to the Company, because the Consultant is not a natural person, or because of any other provision of Rule 701, unless the Company determines that such grant need not comply with the requirements of Rule 701 and will satisfy another exemption under the Securities Act as well as comply with the securities laws of all other relevant jurisdictions.

5. PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option or SAR shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, then the Option shall be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; provided, however, that each Option Agreement or Stock Appreciation Right Agreement shall conform to (through incorporation of provisions hereof by reference in the applicable Stock Award Agreement or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Stock Award Agreement.

(b) Exercise Price. Subject to the provisions of Section 4(b) regarding Incentive Stock Options granted to Ten Percent Stockholders, the exercise price (or strike price) of each Option or SAR shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Option or SAR is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise price (or strike price) lower than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option or SAR if such Option or SAR is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Sections 409A and 424(a) of the Code (whether or not such Stock Awards are Incentive Stock Options). Each SAR will be denominated in shares of Common Stock equivalents.

(c) Consideration for Options. The purchase price of Common Stock acquired pursuant to the exercise of an Option shall be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board shall have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in
either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) if the Option is a Nonstatutory Stock Option, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company shall accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; provided, further, that shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are reduced to pay the exercise price pursuant to the “net exercise,” (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations;

(v) according to a deferred payment or similar arrangement with the Optionholder; provided, however, that interest shall compound at least annually and shall be charged at the minimum rate of interest necessary to avoid (A) the imputation of interest income to the Company and compensation income to the Optionholder under any applicable provisions of the Code, and (B) the classification of the Option as a liability for financial accounting purposes; or

(vi) in any other form of legal consideration that may be acceptable to the Board.

(d) Exercise and Payment of a SAR. To exercise any outstanding Stock Appreciation Right, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right. The appreciation distribution payable on the exercise of a Stock Appreciation Right will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the Stock Appreciation Right) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such Stock Appreciation Right, and with respect to which the Participant is exercising the Stock Appreciation Right on such date, over (B) the strike price that will be determined by the Board at the time of grant of the Stock Appreciation Right. The appreciation distribution in respect to a Stock Appreciation Right may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

(e) Transferability of Options and SARs. The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board shall determine.
In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs shall apply:

(i) **Restrictions on Transfer.** An Option or SAR shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant; provided, however, that the Board may, in its sole discretion, permit transfer of the Option or SAR to such extent as permitted by Rule 701 and in a manner consistent with applicable tax and securities laws upon the Participant’s request.

(ii) **Domestic Relations Orders.** Notwithstanding the foregoing, an Option or SAR may be transferred pursuant to a domestic relations order; provided, however, that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) **Beneficiary Designation.** Notwithstanding the foregoing, the Participant may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company and any broker designated by the Company to effect Option exercises, designate a third party who, in the event of the death of the Participant, shall thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, the executor or administrator of the Participant’s estate shall be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise.

(f) **Vesting Generally.** The total number of shares of Common Stock subject to an Option or SAR may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of performance goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

(g) **Termination of Continuous Service.** Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, in the event that a Participant’s Continuous Service terminates (other than for Cause or upon the Participant’s death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Stock Award as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Participant’s Continuous Service (or such longer or shorter period specified in the Stock Award Agreement, which period shall not be less than thirty (30) days if necessary to comply with applicable state laws) or (ii) the expiration of the term of the Option or SAR as set forth in the Stock Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the time specified herein or in the Stock Award Agreement (as applicable), the Option or SAR shall terminate.
(h) **Extension of Termination Date.** Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, if the exercise of an Option or SAR following the termination of the Participant’s Continuous Service (other than for Cause or upon the Participant’s death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR shall terminate on the earlier of (i) the expiration of a period of three (3) months after the termination of the Participant’s Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, or (ii) the expiration of the term of the Option or SAR as set forth in the Stock Award Agreement. In addition, unless otherwise provided in a Participant’s Award Agreement, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of the Participant’s Continuous Service (other than for Cause) would violate the Company’s insider trading policy, then the Option or SAR shall terminate on the earlier of (i) the expiration of a period equal to the applicable post-termination exercise period after the termination of the Participant’s Continuous Service during which the exercise of the Option or SAR would not be in violation of the Company’s insider trading policy, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Stock Award Agreement.

(i) **Disability of Participant.** Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, in the event that a Participant’s Continuous Service terminates as a result of the Participant’s Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination of Continuous Service (or such longer or shorter period specified in the Stock Award Agreement, which period shall not be less than six (6) months if necessary to comply with applicable state laws), or (ii) the expiration of the term of the Option or SAR as set forth in the Stock Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the time specified herein or in the Stock Award Agreement (as applicable), the Option or SAR shall terminate.

(j) **Death of Participant.** Except as otherwise provided in the applicable Stock Award Agreement or other agreement between the Participant and the Company, in the event that (i) a Participant’s Continuous Service terminates as a result of the Participant’s death, or (ii) the Participant dies within the period (if any) specified in the Stock Award Agreement after the termination of the Participant’s Continuous Service for a reason other than death, then the Option or SAR may be exercised (to the extent the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant’s estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant’s death, but only within the period ending on the earlier of (i) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Stock Award Agreement, which period shall not be less than six (6) months if necessary to comply with applicable state laws), or (ii) the expiration of the term of such Option or SAR as set forth in the Stock Award Agreement. If, after the Participant’s death, the Option or
SAR is not exercised within the time specified herein or in the Stock Award Agreement (as applicable), the Option or SAR shall terminate.

(k) **Termination for Cause.** Except as explicitly provided otherwise in a Participant’s Stock Award Agreement, if a Participant’s Continuous Service is terminated for Cause, the Option or SAR shall terminate upon the termination date of such Participant’s Continuous Service, and the Participant shall be prohibited from exercising his or her Option or SAR from and after the time of such termination of Continuous Service.

(l) **Non-Exempt Employees.** No Option or SAR granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option or SAR. Notwithstanding the foregoing, consistent with the provisions of the Worker Economic Opportunity Act, in the event of the Participant’s death or Disability, upon a Corporate Transaction or a Change in Control in which the vesting of such Options or SARs accelerates, or upon the Participant’s retirement (as such term may be defined in the Participant’s Stock Award Agreement or in another applicable agreement or in accordance with the Company’s then current employment policies and guidelines) any such vested Options and SARs may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay.

(m) **Early Exercise of Options.** An Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder’s Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. Subject to the “Repurchase Limitation” in Section 8(l), any unvested shares of Common Stock so purchased may be subject to a repurchase right in favor of the Company or to any other restriction the Board determines to be appropriate. Provided that the “Repurchase Limitation” in Section 8(l) is not violated, the Company shall not be required to exercise its repurchase right until at least six (6) months (or such longer or shorter period of time required to avoid classification of the Option as a liability for financial accounting purposes) have elapsed following exercise of the Option unless the Board otherwise specifically provides in the Option Agreement.

(n) **Right of Repurchase.** Subject to the “Repurchase Limitation” in Section 8(l), the Option or SAR may include a provision whereby the Company may elect to repurchase all or any part of the vested shares of Common Stock acquired by the Participant pursuant to the exercise of the Option or SAR.

(o) **Right of First Refusal.** The Option or SAR may include a provision whereby the Company may elect to exercise a right of first refusal following receipt of notice from the Participant of the intent to transfer all or any part of the shares of Common Stock received upon the exercise of the Option or SAR. Such right of first refusal shall be subject to the “Repurchase Limitation” in Section 8(l). Except as expressly provided in this Section 5(o) or in the Stock Award Agreement, such right of first refusal shall otherwise comply with any applicable provisions of the Bylaws of the Company.
6. **Provisions of Restricted Stock Awards and Restricted Stock Units.**

(a) **Restricted Stock Awards.** Each Restricted Stock Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. To the extent consistent with the Company’s Bylaws, at the Board’s election, shares of Common Stock may be (x) held in book entry form subject to the Company’s instructions until any restrictions relating to the Restricted Stock Award lapse; or (y) evidenced by a certificate, which certificate shall be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical; provided, however, that each Restricted Stock Award Agreement shall conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) **Consideration.** A Restricted Stock Award may be awarded in consideration for (A) cash or cash equivalents, (B) past or future services actually or to be rendered to the Company or an Affiliate, or (C) any other form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

(ii) **Vesting.** Subject to the “Repurchase Limitation” in Section 8(l), shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

(iii) **Termination of Participant’s Continuous Service.** If a Participant’s Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right, any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

(iv) **Transferability.** Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board shall determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

(v) **Dividends.** A Restricted Stock Award Agreement may provide that any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

(b) **Restricted Stock Unit Awards.** Each Restricted Stock Unit Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical, provided, however, that each Restricted Stock Unit Award
Agreement shall conform to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) **Consideration.** At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

(ii) **Vesting.** At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) **Payment.** A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

(iv) **Additional Restrictions.** At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) **Dividend Equivalents.** Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all the terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

(vi) **Termination of Participant’s Continuous Service.** Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant’s termination of Continuous Service.

(vii) **Compliance with Section 409A of the Code.** Notwithstanding anything to the contrary set forth herein, any Restricted Stock Unit Award granted under the Plan that is not exempt from the requirements of Section 409A of the Code shall contain such provisions so that such Restricted Stock Unit Award will comply with the requirements of Section 409A of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Restricted Stock Unit Award Agreement evidencing such Restricted Stock Unit Award. For example, such restrictions may include, without limitation, a requirement that any Common Stock that is to be issued in a year following the year in which the Restricted Stock Unit Award vests must be issued in accordance with a fixed pre-determined schedule.
7. **Covenants of the Company.**

(a) **Availability of Shares.** During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock reasonably required to satisfy such Stock Awards.

(b) **Securities Law Compliance.** The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained. A Participant shall not be eligible for the grant of a Stock Award or the subsequent issuance of Common Stock pursuant to the Stock Award if such grant or issuance would be in violation of any applicable securities law.

(c) **No Obligation to Notify.** The Company shall have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company shall have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.

8. **Miscellaneous.**

(a) **Use of Proceeds from Sales of Common Stock.** Proceeds from the sale of shares of Common Stock pursuant to Stock Awards shall constitute general funds of the Company.

(b) **Corporate Action Constituting Grant of Stock Awards.** Corporate action constituting a grant by the Company of a Stock Award to any Participant shall be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Stock Award is communicated to, or actually received or accepted by, the Participant.

(c) **Stockholder Rights.** No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Stock Award unless and until (i) such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms, if applicable, and (ii) the issuance of the Common Stock subject to such Stock Award has been entered into the books and records of the Company.

(d) **No Employment or Other Service Rights.** Nothing in the Plan, any Stock Award Agreement or any other instrument executed thereunder or in connection with any Stock Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or
shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant’s agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) **Incentive Stock Option $100,000 Limitation.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds one hundred thousand dollars ($100,000), the Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(f) **Investment Assurances.** The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant’s knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant’s own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (x) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (y) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(g) **Withholding Obligations.** Unless prohibited by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to a Stock Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Stock Award; provided, however, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding payment from any amounts otherwise payable to the Participant; (iv) withholding cash from a Stock Award settled in cash; or (v) by such other method as may be set forth in the Stock Award Agreement.
(h) **Electronic Delivery.** Any reference herein to a “written” agreement or document shall include any agreement or document delivered electronically or posted on the Company’s intranet.

(i) **Deferrals.** To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Stock Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Stock Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant’s termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(j) **Compliance with Section 409A.** To the extent that the Board determines that any Stock Award granted hereunder is subject to Section 409A of the Code, the Stock Award Agreement evidencing such Stock Award shall incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Stock Award Agreements shall be interpreted in accordance with Section 409A of the Code.

(k) **Compliance with Exemption Provided by Rule 12h-1(f).** If: (i) the aggregate of the number of Optionholders and the number of holders of all other outstanding compensatory employee stock options to purchase shares of Common Stock equals or exceeds five hundred (500), and (ii) the assets of the Company at the end of the Company’s most recently completed fiscal year exceed $10 million, then the following restrictions shall apply during any period during which the Company does not have a class of its securities registered under Section 12 of the Exchange Act and is not required to file reports under Section 15(d) of the Exchange Act: (A) the Options and, prior to exercise, the shares of Common Stock acquired upon exercise of the Options may not be transferred until the Company is no longer relying on the exemption provided by Rule 12h-1(f) promulgated under the Exchange Act (“Rule 12h-1(f)”), except: (1) as permitted by Rule 701(c) promulgated under the Securities Act, (2) to a guardian upon the disability of the Optionholder, or (3) to an executor upon the death of the Optionholder (collectively, the “Permitted Transferees”); provided, however, the following transfers are permitted: (i) transfers by the Optionholder to the Company, and (ii) transfers in connection with a change of control or other acquisition involving the Company, if following such transaction, the Options no longer remain outstanding and the Company is no longer relying on the exemption provided by Rule 12h-1(f); provided further, that any Permitted Transferees may not further transfer the Options; (B) except as otherwise provided in (A) above, the Options and shares of Common Stock acquired upon exercise of the Options are restricted as to any pledge, hypothecation, or other transfer, including any short position, any “put equivalent position” as defined by Rule 16a-1(h) promulgated under the Exchange Act, or any “call equivalent position” as defined by Rule 16a-1(b) promulgated under the Exchange Act by the Optionholder prior to exercise of an Option until the Company is no longer relying on the exemption provided by Rule

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12h-1(f); and (C) at any time that the Company is relying on the exemption provided by Rule 12h-1(f), the Company shall deliver to Optionholders (whether by physical or electronic delivery or written notice of the availability of the information on an internet site) the information required by Rule 701(e)(3), (4), and (5) promulgated under the Securities Act every six (6) months, including financial statements that are not more than one hundred eighty (180) days old; provided, however, that the Company may condition the delivery of such information upon the Optionholder’s agreement to maintain its confidentiality.

(I) Repurchase Limitation. The terms of any repurchase right shall be specified in the Stock Award Agreement. The repurchase price for vested shares of Common Stock shall be the Fair Market Value of the shares of Common Stock on the date of repurchase. The repurchase price for unvested shares of Common Stock shall be the lower of (i) the Fair Market Value of the shares of Common Stock on the date of repurchase or (ii) their original purchase price. However, the Company shall not exercise its repurchase right until at least six (6) months (or such longer or shorter period of time necessary to avoid classification of the Stock Award as a liability for financial accounting purposes) have elapsed following delivery of shares of Common Stock subject to the Stock Award, unless otherwise specifically provided by the Board.

9. Adjustments upon Changes in Common Stock; Other Corporate Events.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c), and (iii) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive.

(b) Dissolution or Liquidation. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company’s right of repurchase) shall terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company’s repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service, provided, however, that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions shall apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the holder of the Stock Award or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. Except as otherwise stated in the Stock Award Agreement, in the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board
shall take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation’s parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation’s parent company);

(iii) accelerate the vesting, in whole or in part, of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction;

(iv) arrange for the lapse of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

(v) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for such cash consideration, if any, as the Board, in its sole discretion, may consider appropriate; and

(vi) make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the holder of the Stock Award would have received upon the exercise of the Stock Award, over (B) any exercise price payable by such holder in connection with such exercise. The Board need not take the same action with respect to all Stock Awards or with respect to all Participants.

(d) Change in Control. A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration shall occur.

10. Termination or Suspension of the Plan.

(a) Plan Term. The Board may suspend or terminate the Plan at any time. Unless sooner terminated by the Board pursuant to Section 2, the Plan shall automatically terminate on the day before the tenth (10th) anniversary of the earlier of (i) the date the Plan is adopted by the Board, or (ii) the date the Plan is approved by the stockholders of the Company. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.
(b) **No Impairment of Rights.** Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

11. **Effective Date of Plan.**

This Plan shall become effective on the Effective Date.

12. **Choice of Law.**

The law of the State of Delaware shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state’s conflict of laws rules.

13. **Definitions.** As used in the Plan, the following definitions shall apply to the capitalized terms indicated below:

   (a) “**Affiliate**” means, at the time of determination, any “parent” or “majority-owned subsidiary” of the Company, as such terms are defined in Rule 405 of the Securities Act. The Board shall have the authority to determine the time or times at which “parent” or “majority-owned subsidiary” status is determined within the foregoing definition.

   (b) “**Board**” means the Board of Directors of the Company.

   (c) “**Capitalization Adjustment**” means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure, or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards No. 123 (revised). Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a Capitalization Adjustment.

   (d) “**Cause**” shall have the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term means with respect to a Participant, the occurrence of any of the following events: (i) such Participant’s commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) such Participant’s attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (ii) such Participant’s intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant’s unauthorized use or disclosure of the Company’s confidential information or trade secrets; or (v) such Participant’s gross misconduct. The determination that a termination of the Participant’s Continuous Service is either for Cause or without Cause shall be made by the Company in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Stock Awards held by such Participant shall have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.
(e) “Change in Control” means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company’s then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company’s securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (C) solely because the level of Ownership held by any Exchange Act Person (the “Subject Person”) exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction; or

(iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition.

Notwithstanding the foregoing definition or any other provision of this Plan, (A) the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with
respect to Stock Awards subject to such agreement; provided, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

(f) “Code” means the Internal Revenue Code of 1986, as amended, as well as any applicable regulations and guidance thereunder.

(g) “Committee” means a committee of one (1) or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(h) “Common Stock” means the common stock of the Company.

(i) “Company” means Cava Group, Inc., a Delaware corporation.

(j) “Consultant” means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, shall not cause a Director to be considered a “Consultant” for purposes of the Plan.

(k) “Continuous Service” means that the Participant’s service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director, or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant’s service with the Company or an Affiliate, shall not terminate a Participant’s Continuous Service; provided, however, if the Entity for which a Participant is rendering service ceases to qualify as an Affiliate, as determined by the Board in its sole discretion, such Participant’s Continuous Service shall be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an employee of the Company to a consultant of an Affiliate or to a Director shall not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party’s sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company’s leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

(l) “Corporate Transaction” means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) the consummation of a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;
(ii) the consummation of a sale or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;

(iii) the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(m) “Director” means a member of the Board.

(n) “Disability” means the inability of a Participant to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code and shall be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(o) “Effective Date” means the effective date of this Plan, which is the earlier of (i) the date that this Plan is first approved by the Company’s stockholders, or (ii) the date this Plan is adopted by the Board.

(p) “Employee” means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an “Employee” for purposes of the Plan.

(q) “Entity” means a corporation, partnership, limited liability company or other entity.


(s) “Exchange Act Person” means any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that “Exchange Act Person” shall not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company’s then outstanding securities.
(t) “Fair Market Value” means, as of any date, the value of the Common Stock determined by the Board in compliance with Section 409A of the Code or, in the case of an Incentive Stock Option, in compliance with Section 422 of the Code.

(u) “Incentive Stock Option” means an option that qualifies as an “incentive stock option” within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(v) “Nonstatutory Stock Option” means an Option that does not qualify as an Incentive Stock Option.

(w) “Officer” means any person designated by the Company as an officer.

(x) “Option” means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(y) “Option Agreement” means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(z) “Optionholder” means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(aa) “Own,” “Owned,” “Owner,” “Ownership.” A person or Entity shall be deemed to “Own,” to have “Owned,” to be the “Owner” of, or to have acquired “Ownership” of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(bb) “Participant” means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(cc) “Plan” means this Cava Group, Inc. 2015 Equity Incentive Plan.

(dd) “Restricted Stock Award” means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

(ee) “Restricted Stock Award Agreement” means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award. Each Restricted Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(ff) “Restricted Stock Unit Award” means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(gg) “Restricted Stock Unit Award Agreement” means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement shall be subject to the terms and conditions of the Plan.
(hh) “Rule 405” means Rule 405 promulgated under the Securities Act.

(ii) “Rule 701” means Rule 701 promulgated under the Securities Act.

(jj) “Securities Act” means the Securities Act of 1933, as amended.

(kk) “Stock Appreciation Right” or “SAR” means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

(ll) “Stock Appreciation Right Agreement” means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement shall be subject to the terms and conditions of the Plan.

(mm) “Stock Award” means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, or a Stock Appreciation Right.

(nn) “Stock Award Agreement” means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(oo) “Subsidiary” means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

(pp) “Ten Percent Stockholder” means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Affiliate.

14. SPECIAL CALIFORNIA PROVISIONS. Notwithstanding any provision to the contrary in this Plan or in any Stock Award Agreement, any Stock Award granted to a Participant who is a resident of the State of California will be subject to the provisions set forth in Appendix A to this Plan (and such provisions will be incorporated into the Participant’s Stock Award Agreement) until such time as the Common Stock becomes a “listed” security under the Securities Act.
APPENDIX A

Cava Group, Inc.

2021 Equity Incentive Plan

California Rider

(For California Residents Only)

This Appendix to the Cava Group, Inc. 2015 Equity Incentive Plan (the “Plan”) will apply only to Participants who are residents of the State of California. Capitalized terms contained herein will have the same meanings given to them in this Plan, unless otherwise provided in this Appendix. Notwithstanding any provision contained in this Plan to the contrary and to the extent required by applicable law, the following terms and conditions will apply to all Stock Awards granted to residents of the State of California, until such time as the Common Stock becomes a “listed security” under the Securities Act:

Section 1. Options will have a term of not more than ten (10) years from the date the Option is granted.

Section 2. Stock Awards will be nontransferable other than by will or the laws of descent and distribution, or as permitted by Rule 701.

Section 3. Unless employment is terminated for Cause, the right to exercise an Option in the event of termination of employment, to the extent that the Participant is otherwise entitled to exercise an Option on the date employment terminates (the “Termination Date”), continues until the earlier of the Option expiration date or:
   a. at least six (6) months from the Termination Date if termination was caused by death or Disability; or
   b. at least thirty (30) days from the Termination Date if termination was caused by other than death or Disability.

Section 4. No Stock Award may be granted to a resident of California more than ten (10) years after the earlier of the date of adoption of this Plan and the date this Plan is approved by the Company’s Shareholders.

Section 5. Any Stock Award exercised by a person in California before shareholder approval is obtained will be rescinded if shareholder approval is not obtained by the later of:
   a. within twelve (12) months before or after this Plan is adopted; or
   b. prior to or within twelve (12) months of the granting of any Option or issuance of any share under this Plan in California.

   Such shares will not be counted in determining whether such approval is obtained.

Section 6. The Company will provide annual financial statements of the Company to each California resident holding an outstanding Stock Award under this Plan. The financial
statements need not be audited and need not be issued to key employees whose duties at the Company assure them access to equivalent information. This Section 6 will not apply if the Plan complies with all conditions of Rule 701; provided, that for purposes of determining such compliance, any registered domestic partner will be considered a “family member” in addition to the manner in which that term is defined in Rule 701.
EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the “Agreement”) is made between Cava Group, Inc., a Delaware corporation ("Employer" or "Company") and Tricia Tolivar ("Executive") (together, the “Parties” and each a “Party”), effective as of October 27, 2020 (the “Effective Date”).

WHEREAS, in the course of Executive’s employment by Employer, the Executive may receive, be taught or otherwise have access to Employer’s information that is confidential and proprietary;

WHEREAS, Employer and its subsidiaries and affiliates have acquired and/or developed certain trade secrets and confidential information, as more fully described in the CPIN Agreement (as defined below), and has expended significant time and expense in acquiring or developing its trade secret or confidential information, and expends significant time and expense on an ongoing basis in supporting its employees, including Executive;

WHEREAS, Employer wishes to employ and/or continue to employ Executive as Employer’s Chief Financial Officer (“CFO”) on the terms and conditions set forth herein; and

WHEREAS, Executive wishes to continue such employment on such terms and conditions in accordance with this Agreement;

ACCORDINGLY, in consideration of, and on the basis of the representations, warranties, and covenants contained in this Agreement, and other good and valuable consideration, the Parties agree as follows:

1. ARTICLE 1 – EMPLOYMENT AND TERM

1.1 Employment. Effective on Executive’s employment start date with the Company and no later than November 16, 2020, Executive agrees to work and Employer agrees to employ Executive as its CFO, and Executive accepts such employment on the terms and conditions set forth in this Agreement. Executive’s employment shall be deemed by the Parties to be continuous until terminated pursuant to this Agreement. Executive shall report directly to the Chief Executive Officer (“CEO”) of the Employer.

1.2 Term. The term of employment under this Agreement shall commence on the Effective Date and shall continue for a period of three (3) years thereafter (such three-year period, the “Initial Term”), unless the Parties otherwise renew or earlier terminate Executive’s employment in accordance with this Agreement. Subject to earlier termination pursuant to Article 4 of this Agreement, the employment relationship hereunder shall extend for successive one-year terms after the Initial Term (each such one-year term an “Extended Term”), unless either party shall have given not less than sixty (60) days prior written notice to the other prior to the expiration of the Initial Term of this Agreement, or the Extended Term, as applicable, that it does not wish to extend this Agreement. If such written notice is given, then this Agreement shall expire as of the last day of the Initial Term or Extended Term to which such written notice relates. As used in this Agreement, the “Term” shall include the Initial Term and any Extended Term, and any period of employment through the date on which Executive’s employment ends or this Agreement is terminated in accordance with Article 4 of this Agreement.

2. ARTICLE 2 – DUTIES OF THE EXECUTIVE

2.1 Duties. Executive agrees to undertake and perform all duties required as CFO of Employer. Executive shall perform the services contemplated herein faithfully,
diligently, to the best of Executive’s ability, and in the best interests of Employer, in a diligent, trustworthy, professional, and efficient manner, and shall comply with Employer’s policies and procedures in all material respects. Executive agrees during the Term to serve without any additional compensation as an officer or director of any subsidiary of the Company, as may be reasonably requested by the CEO from time to time. Executive shall at all times perform such services in compliance with (and, to the extent of Executive’s actual knowledge and authority, shall ensure to the best of his ability that Employer is in compliance with) any and all laws, rules, regulations, and policies applicable to Employer of which Executive is aware. Executive shall, at all times during the Term, adhere to and obey reasonable written rules and policies governing the conduct of Employer’s employees and executives, as established or modified from time to time; provided, however, that, in the event of any conflict between the provisions of this Agreement and any such rules or policies, the provisions of this Agreement shall control.

2.2 **Exclusive Services.** Except as set forth in this Section 2.2, during her or his employment by Employer, Executive shall not, without the prior written consent of the CEO, accept other employment for compensation, perform services for compensation for a Person other than Employer and its subsidiaries and affiliated entities, or serve as an officer or director of any other Person. In cases where no material, bona fide business conflict exists, such consent shall not be unreasonably withheld. Executive shall not engage in any activity that would impair Executive’s ability to act and exercise judgment in the best interest of Employer. For purposes of this Agreement, the term “Person” means an individual, a partnership, a corporation, a limited liability company, an association, an organization, a joint stock company, a trust, a joint venture, an unincorporated association, a government entity, any department, agency or political subdivision of a government entity, or any other form of entity.

2.3 **Indemnification.** Employer shall, to the maximum extent to which it is empowered by Employer’s By-Laws and the Laws of State of Delaware and any other laws that may apply to the benefit of Executive, defend, indemnify and hold harmless Executive from and against any and all demands, claims, and causes of action made against Executive concerning or relating to her or his service, actions or omissions on behalf of Employer and its subsidiaries and affiliated entities as an employee, director, officer, shareholder, unit holder, or agent.

3. **ARTICLE 3 – COMPENSATION, BENEFITS AND EXPENSE REIMBURSEMENT**

As the total consideration for the services that Executive renders under this Agreement, Executive shall be entitled to the following:

3.1 **Base Salary.** Commencing on the first day of the Term, Employer shall pay to Executive a base salary at the annual rate of $500,000, less income tax and other applicable withholdings (the “Salary”) payable in accordance with Employer’s regular payroll practices. Such Salary shall be reviewed for purposes of determining whether a salary increase is warranted, at least annually. The Salary, as adjusted, shall not be reduced during the Term. The reference to Salary at an annual rate in this Agreement shall not entitle Executive to payment of Salary beyond any Salary earned through Executive’s performance of services under this Agreement through the date of termination of Executive’s employment, except as set forth in this Agreement.

3.2 **Annual Bonus.** For calendar year 2020, Executive shall earn for Executive’s services to be rendered under this Agreement a fixed cash bonus of $200,000 provided that Executive remains an employee on the payment date, which payment shall occur on or before March 1, 2021 (the “Guaranteed Bonus”). Commencing with calendar year 2021 and during the period Executive is employed with Employer, Executive shall be eligible to earn for Executive’s services to be rendered under this Agreement a discretionary annual cash bonus.
with a minimum annual bonus opportunity of $250,000 and maximum bonus opportunity of $375,000, which amount is to be
determined by the Board (the “Annual Bonus”), subject to review and upward adjustment by Employer in the sole discretion of the
Employer’s Board or Compensation Committee thereof, payable subject to standard federal and state payroll withholding
requirements. Whether or not Executive earns any Annual Bonus will also be dependent upon (a) Executive’s continuous
performance of services to Employer and remaining in good standing through the date any such bonus is paid (other than as provided
in Article 4 below); provided, however, in the event that Executive meets any applicable target for any fiscal year’s Annual Bonus,
then Executive shall receive such earned and unpaid Annual Bonus notwithstanding that Executive may no longer be employed with
the Company on the payment date; (b) except for the Guaranteed Bonus, the actual achievement by Executive and Employer of the
applicable performance targets and goals set by the Board, and (c) meeting any other applicable eligibility requirements that apply to
all members of the Company’s executive team. The annual period over which performance is measured for purposes of this section
is January 1 through December 31. The Board or the Compensation Committee thereof will determine in its sole discretion the
extent to which Executive and the Employer have achieved the performance goals upon which the bonus is based and the amount of
the bonus. For calendar year 2021 and each year thereafter, Executive will be eligible to receive a bonus in accordance with existing
bonus targets established by the Board or its Compensation Committee and pursuant to any applicable incentive compensation plan
under which such bonus targets were established. Any bonus shall be subject to the terms of any applicable incentive compensation
plan adopted by Employer. Any bonus referenced in this section, if earned, will be paid to Executive within the time period set forth in
the incentive compensation plan applicable to the Company’s executive team, or if no such time period was established, during the
first fiscal quarter following the end of year during which the bonus is earned.

3.3 Initial Equity Grant. At the Board’s next quarterly meeting after the date of execution of this Agreement, a
submission will be made for the Executive to be granted 107,067 restricted stock units (the “RSUs”) which RSUs shall be subject to
the Company’s standard RSU award agreement and will vest over a four (4) year period in four (4) equal annual installments. The
RSUs will be subject to the terms and conditions applicable to RSUs granted under the Equity Plan (defined below) and as described
in such Equity Plan, and the other terms and conditions described in the Employer’s standard form of RSU award agreement.

3.4 Long-Term Incentive. Commencing with calendar year 2021 and during the period Executive is employed
with Employer, Executive shall be eligible to earn for Executive’s services to be rendered under this Agreement an annual equity
award (the “Long-Term Incentive”) to be granted under, and subject to the terms and conditions of, Employer’s 2015 Equity
Incentive Plan, as may be amended from time to time, or a successor stock incentive plan (the “Equity Plan”) in accordance with
Company practices for other senior executives of Employer. Each Long-Term Incentive grant will be made with a grant date fair
value equal to the amount of the Annual Bonus paid based on Employer’s prior year performance and at such time as to be
determined by the Board in its sole discretion. The calendar year 2021 Long-Term Incentive equity award will be granted to
Executive in calendar year 2022 in an amount equal in value to fifty percent (50%) of the Executive’s initial annual base salary as set
forth in Section 3.1 of this Agreement and will vest over a four (4) year period in four (4) equal installments. The form and terms
and conditions of any such Long-Term Incentive will be subject change from time to time in the sole discretion of the Board and
payable subject to standard federal and state payroll withholding requirements. Notwithstanding the foregoing, whether or not
Executive earns any Long-Term Incentive will be dependent upon (a) Executive’s continuous performance of services to Employer
through the date any Long-Term Incentive is granted; (b) the actual achievement by Executive and Employer of the applicable
performance targets and goals set by the Board based on recommendations from the Compensation Committee of the Board; and (c)
the terms and conditions of any Long-Term Incentive, as are provided in the
Equity Plan and any award agreement pursuant to which the Long-Term Incentive is granted. Notwithstanding the foregoing, following Employer’s sale of any common stock pursuant to a registration statement filed under the Securities Act of 1933, as amended, that results in shares of the common stock of Employer being traded on the NASDAQ Stock Market, the New York Stock Exchange or successors thereof or any such other national securities exchange, this Section 3.4 will no longer apply and Executive will not be entitled to any future Long-Term Incentive grants pursuant to this Agreement, but shall remain eligible to participate in any equity incentive plans offered by the Employer.

3.5 **Employer Executive Benefits.** Executive shall be entitled to participate in Employer’s group health, life, and disability insurance plans and any and all other employee benefits, including 401(k) and deferred compensation plans, pursuant to the terms of the applicable benefit plans and to the same extent and on the same basis as Employer’s other senior executives. Employer shall pay the costs for group health, life, and disability insurance plans and all other employee benefits for Executive and any spouse or domestic partner and children of Executive to the same extent that it pays for the costs for other senior executive of Employer. Executive will be provided with a laptop computer and will be required to abide by the Company’s technology policies. Additionally, the Executive shall receive free Company meals during weekdays (and a fifty percent (50%) discount on meals purchased for one guest) and a fifty percent (50%) discount on meals purchased for the Executive and one guest on weekend days.

3.6 **Reimbursement for Business Expenses.** Employer shall reimburse Executive for any and all reasonable business expenses that Executive incurs from time to time in the performance of her or his duties under this Agreement, including authorized business expenses incurred by Executive at the request of, or on behalf of, Employer, in accordance with Employer’s policies and subject to any reporting and documentation requirements set forth in such policies. Employer shall also pay the reasonable costs for electronic communication devices, including smart phones and/or portable computer devices reasonably necessary for the performance of Executive’s duties under this Agreement, including any service plans related thereto. Employer will reimburse the Executive for amounts paid to legal counsel, upon presentation of customary invoices, for the reasonable fees and expenses incurred by the Executive in connection with the review and negotiation of this Agreement and any other documentation related to this Agreement.

3.7 **Vacation.** Executive shall be eligible for the same vacation benefits offered to other senior executives of Employer. The scheduling of vacation shall be consistent with Employer’s vacation policy and operational needs.

3.8 **Relocation Amount.** Executive shall receive a bonus of $100,000 less applicable tax withholdings and such amount shall be payable within thirty (30) days of Executive’s employment start date, to cover Executive’s relocation to the Washington, DC vicinity. Such relocation shall occur within the first twelve (12) months of Executive’s employment with the Company. If relocation expenses during this twelve (12) month period that are considered customary and typical (including house hunting trips, closing costs, real estate commissions, transportation of household goods, temporary housing, storage, moving and similar expenses) exceed $100,000, the Company will reimburse Executive up to an additional $100,000, less applicable tax withholdings. This additional amount shall be subject to the Executive complying with the Company’s expense reimbursement policies. The total amount paid to Executive pursuant to this Section 3.8 shall be referred to as the Relocation Amount. The Company shall use its discretion in securing reasonable hotel or apartment accommodations for Executive during his transition to Washington, DC for the purpose of temporary housing that may be needed until Executive’s home in Washington DC is secured. The Relocation Amount shall be immediately repaid in full by the Executive (or offset from other amounts due
Executive) upon the Company’s written request in the event that Executive voluntarily resigns from the Company or does not relocate to DC within twelve (12) months from Executive’s start date. In the event that Executive voluntarily resigns from the Company between twelve (12) and twenty-four (24) months from Executive’s start date, one-half of the Relocation Amount shall be immediately paid back by the Executive (or offset from other amounts due Executive) to the Company upon the Company’s written request.

4. ARTICLE 4 – TERMINATION

4.1 Termination. Either party shall have the right to terminate this Agreement before the expiration of the Term, subject to the terms of this Article 4, and with the consequences described in this Agreement.

4.2 Termination for Cause by Employer. Executive’s employment may be terminated by Employer for Cause (as defined below) at any time (subject to any opportunities to cure set forth in such definition), upon delivery to Executive of written notice (and effective on the date such notice is given unless another date is specified in such notice). If Executive is terminated for Cause, Employer shall pay to Executive (a) any Salary due under Section 3.1 to the date of termination, (b) benefits set forth in Section 3.5, if any, to the date of termination, (c) all accrued but unused and unpaid vacation due under Section 3.7 to the date of termination, and (d) expenses reimbursable under Section 3.6 incurred but not yet reimbursed to Executive to the date of termination. Executive shall have no right to receive any further compensation or benefits otherwise payable under any other provision of this Agreement. For purposes of this Agreement, Termination for “Cause” shall mean the termination of Executive’s employment for any of the following reasons: (i) refusal by the Executive to materially perform her or his duties hereunder (other than any such failure or refusal resulting from her or his incapacity due to physical or mental illness), provided, however, that Employer shall provide Executive with written notice of such refusal and Executive shall not have substantially remedied such failure or refusal within thirty (30) days after such written notice is given; (ii) the commission by Executive of any material act of dishonesty or breach of trust or gross misconduct or gross negligence in connection with the performance of her or his duties hereunder; (iii) a conviction of, or pleading guilty or no contest to, any felony or any crime having as its predicate element fraud, dishonesty, or misappropriation; (iv) any act or omission aiding or abetting a competitor, supplier or customer of Employer to the material disadvantage or detriment of Employer, (v) Executive’s material failure to comply with one or more of the material policies of the Employer (including any applicable code of conduct or ethics, policies relating to sexual harassment or business conduct) or Executive’s material breach of her or his obligations under this Agreement or under the CPIN Agreement, provided, however, that Employer shall provide Executive with written notice of such breach and Executive shall not have substantially cured such breach (if curable) within thirty (30) days after such written notice is given. For purposes of this paragraph, no failure or refusal on the part of Executive shall be deemed “willful” if done, or omitted to be done, by Executive in the reasonable belief that her or his failure or refusal was in the best interest of Employer or that the requested act was unlawful.

4.3 Termination Without Cause by Employer. Employer may terminate Executive’s employment without Cause upon notice to Executive provided in accordance with Section 4.7. If Employer terminates Executive’s employment without Cause at any time during Executive’s employment, including without limitation any notice by Employer of non-extension or intent to terminate under Sections 1.2 and 4.3 of this Agreement, Employer shall pay to Executive (a) the same payments and benefits set forth in Section 4.2 and, in addition thereto, subject to Executive’s compliance with the obligations in the last sentence of this Section 4.3, (b) in addition to any unpaid amount of the Guaranteed Bonus, Salary for 12 months following termination of employment, paid in normal payroll installments consistent with Employer’s payroll practices as in effect from time to time; (c) if Executive timely elects health insurance
continuation coverage (“COBRA Coverage”) under Employer’s group health plan pursuant to Section 4980B of the Internal Revenue Code and Part 6 of Subtitle B of Title I of ERISA, and so long as Executive abides at all times by the requirements of COBRA, Employer will pay the cost of Employee’s COBRA premiums for the 12 months following termination of employment (subject to the remainder of this Section 4.3); and (d) a pro-rated Annual Bonus for the year in which the termination of employment occurs, based on the Employer’s performance during such year, pro-rated based on the number of days elapsed during such year prior to termination of employment, which shall be paid on the date on which annual bonuses are paid to other senior executives of Employer for such year (items (b), (c) and (d), referred to herein as, the “Severance”). Notwithstanding anything to the contrary herein, Executive’s COBRA Coverage shall terminate when Executive becomes eligible under any employee benefit plan made available by another employer covering substantially similar health and dental benefits. Executive shall notify Employer within ten (10) days after becoming eligible for any such benefits. It is agreed and understood that Executive shall be entitled to receive the Severance if and only if within sixty (60) days following termination of employment (the “Release Period”) Executive has executed and delivered to Employer the General Release substantially in accordance with the Company’s standard release form hereto (the “General Release”) and the General Release has become effective, and so long as Executive has not revoked or breached the provisions of the General Release or breached the provisions of Articles 6, 7, and/or 8 hereof, including the provisions of the CPIN Agreement.

4.4 Termination for Good Reason by Executive. Executive may voluntarily terminate her or his employment at any time for Good Reason (as defined below) upon written notice to Employer (and effective on the date such notice is given unless another date is specified in such notice). In the event of any such termination for Good Reason by Executive, Employer shall pay and provide to Executive the same payments and benefits as are set forth in Section 4.3, above and on the same terms and conditions as if Executive had been terminated by Employer without Cause. For purposes of this Agreement, a termination for “Good Reason” shall mean the termination by Executive of Executive’s employment for any of the following reasons occurring without Executive’s prior written consent, provided Executive has not previously been notified in accordance with the notice provisions of this Agreement of Employer’s intention to terminate Executive’s employment: (a) assigning to him duties materially inconsistent with her or his position, title, authority, or duties which results in a material diminution of such position, title, authority or duties; provided, however, that Executive has given written notice to Employer within sixty (60) days after the first occurrence of such event or, if later, ten (10) days after the most recent occurrence, which has not be remedied by Employer within thirty (30) days and Executive has performed her or his reasonable duties during such notice period and prior to any cure; (b) Employer’s direction to Executive to engage in any unlawful act or act of dishonesty, provided, however, that Executive has given written notice to Employer within sixty (60) days after the first occurrence of such event or, if later, ten (10) days after the most recent occurrence, which has not been remedied by Employer within thirty (30) days; or (c) Employer’s material breach of its obligations under this Agreement, provided, however, that Executive shall provide Employer with written notice within sixty (60) days after the first occurrence of such breach or, if later, ten (10) days after the most recent occurrence and Employer shall not have substantially cured such breach (if curable) within thirty (30) days after such written notice is given. Notwithstanding the foregoing, in order to resign for Good Reason, Executive must resign from all positions Executive then holds with Employer, effective not later than sixty (60) days after the expiration of the cure period if such event is not reasonably cured within such period. Any actions taken by Employer to accommodate a disability of Executive or pursuant to the Family and Medical Leave Act shall not be a Good Reason for purposes of this Agreement. For the avoidance of doubt, any such resignation(s) shall have no effect on Executive’s rights as a shareholder of Employer.
4.5 Termination Without Good Reason by Executive. Executive may terminate her or his employment without Good Reason upon notice to Employer given in accordance with Section 4.7. If Executive terminates her or his employment without Good Reason, including without limitation any notice by Executive of non-extension or intent to terminate under Sections 1.2 or 4.5 of this Agreement, Employer shall pay and provide to Executive an amount equivalent to that set forth in Section 4.2, above.

4.6 Termination by Employer for Death or Disability. Executive’s employment shall terminate immediately upon Executive’s death without notice. Employer may terminate Executive’s employment upon the date of termination specified in a written notice of termination by reason of Executive’s illness, incapacity or injury which results in Executive’s absence from her or his duties with Employer or failure to render the services contemplated by this Agreement for three (3) consecutive calendar months, or for shorter periods aggregating four (4) calendar months in any twelve (12) month period. Prior to any termination under this paragraph for any reason other than death of Executive, Employer shall provide thirty (30) days’ prior written notice of its intent to terminate under this paragraph. Executive may then provide medical certification within the 30-day notice period that she or he will be able to and intends to perform her or his duties as set forth in this Agreement. If, within the 30-day notice period, Executive provides such medical certification and commences and/or continues to perform her or his duties under this Agreement, Employer shall not terminate this Agreement under this paragraph. For any termination of employment under this Section 4.6, Executive shall be entitled to the same payments and benefits set forth in Section 4.2, above.

4.7 Termination Date. Except as provided specifically above, any termination under this Article 4 shall be effected by not less than sixty (60) days’ advance written notice, or, at Employer’s option, pay in lieu of such notice. The effective date of the termination (the “Termination Date”) shall be the date specified in such notice of such termination or, if no date is so specified, the date that is the sixtieth day after the date notice is given. Notices shall be given in accordance with Section 8.8 of this Agreement.

5. ARTICLE 5 – SECTION 409A COMPLIANCE

5.1 Intent. The intent of the Parties is that payments and benefits under this Agreement comply with Internal Revenue Code Section 409A and the regulations and guidance promulgated thereunder (collectively “Code Section 409A”) and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith. In no event whatsoever shall Employer be liable for any additional tax, interest or penalty that may be imposed on Executive by Code Section 409A.

5.2 Specified Employee. Notwithstanding any other payment schedule provided herein to the contrary, if Executive is deemed on the date of termination to be a “specified employee” within the meaning of that term under Code Section 409A(a)(2)(B), then with regard to any payment that is considered deferred compensation under Code Section 409A payable on account of a “separation from service,” such payment shall be made on the date which is the earlier of (i) the expiration of the six (6)-month period measured from the date of such “separation from service” of Executive, and (ii) the date of Executive’s death (the “Delay Period”) to the extent required under Code Section 409A. Upon the expiration of the Delay Period, all payments delayed pursuant to this Section 5.2 (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid to Executive in a lump sum with interest accruing commencing on the date payment would have otherwise been made at the prime rate of interest most recently published in The Wall Street Journal as of such date, and all remaining payments due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.
5.3 Expense Reimbursement Payments. All expenses or other reimbursements under this Agreement shall be made within a reasonable period of time following the satisfaction of Employer’s reasonable requirements with respect to reporting and documentation of such expenses, but in no event later than on or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by Executive (provided that if any such reimbursements constitute taxable income to Executive, such reimbursements shall be paid no later than March 15th of the calendar year following the calendar year in which the expenses to be reimbursed were incurred), any right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit, and no such reimbursement or expenses eligible for reimbursement in any taxable year shall in any way affect the expenses eligible for reimbursement in any other taxable year.

5.4 Installment Payments. For purposes of Code Section 409A, Executive’s right to receive any installment payment pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

6. ARTICLE 6 – CONFIDENTIAL AND PROPRIETARY INFORMATION AND NON-COMPETITION

6.1 As a condition of this Agreement and the Executive’s employment with Employer, the Executive agrees to the terms of and will execute a Confidential and Proprietary Information and Non-Competition Agreement in the form that has been provided herewith based on comparable agreements with other senior executives of the Company (the “CPIN Agreement”), and after execution of the CPIN Agreement, Employer’s obligations hereunder, including the obligations to pay the Severance, are contingent on the Executive’s complying with such CPIN Agreement at all times as described therein.

7. ARTICLE 7 – COOPERATION AND CORPORATE OPPORTUNITIES

7.1 Cooperation. Upon the receipt of reasonable notice from Employer (including, without limitation, notice on behalf of Employer by its outside counsel), Executive agrees that while employed by Employer and, subject to Executive’s other business commitments, thereafter, Executive will respond and provide information with regard to matters in which Executive has knowledge as a result of Executive’s employment with Employer and will provide reasonable assistance to Employer, and affiliated entities and their respective representatives in defense of any claims that may be made against Employer or any affiliated entities of Employer, and will assist Employer and any affiliated entities in the prosecution of any claims that may be made by Employer or such affiliated entity, to the extent that such claims may relate to Executive’s employment or to Executive’s prior employment by Employer. Executive agrees to promptly inform Employer if Executive becomes aware of any lawsuits involving such claims that may be filed or threatened against Employer or any of Employer’s affiliated entities. Executive also agrees to promptly inform Employer (to the extent Executive is legally permitted to do so) if Executive is asked to assist in any investigation of Employer or any affiliated entities (or their respective actions), regardless of whether a lawsuit or other proceeding has then been filed against Employer or any affiliated entities with respect to such investigation, and shall not do so unless legally required. If Executive is required to provide any services pursuant to this Section 7.1 following the termination of Executive’s employment, upon presentation of appropriate documentation, Employer shall reimburse Executive for reasonable out-of-pocket expenses incurred in connection with the performance of such services. In addition, if and to the extent that Executive is required to devote more than two hours during a calendar year to fulfill the obligations set forth in this Section 7.1 at a time when she or he is no longer being compensated by the Company in any way, it will compensate Executive for such cooperation at an hourly rate based on Executive’s Salary during the last pay period of Executive’s active employment by the Employer.
7.2 **Corporate Opportunity.** During the Term, Executive shall submit to Employer all bona-fide business, commercial and investment opportunities or offers presented to Executive or to which Executive becomes aware which relate to Employer’s business or the business of any of Employer’s affiliated entities at any time during such employment (“Corporate Opportunities”). Unless approved by Employer, Executive shall not accept or pursue, directly or indirectly, any Corporate Opportunities on Executive’s own behalf.

8. **ARTICLE 8 – MISCELLANEOUS**

8.1 **Tax Withholding.** Employer is authorized to withhold from any payment or benefit provided hereunder, the amount of withholding taxes due any federal, state or local authority in respect of such benefit or payment and to take such other action as may be necessary in the opinion of Employer to satisfy all obligations for the payment of such withholding taxes. In the event Employer does not make such deductions or withholdings, Executive shall indemnify Employer for any amounts paid with respect to any such taxes, together with any interest, penalties and related expenses thereto.

8.2 **Key Person Insurance.** Employer, in the sole and absolute discretion of the Board, has the right throughout the term of Executive’s employment with Employer to obtain or increase insurance on Executive’s life in such amount as the Board determines, in the name of Employer or an affiliated entity chosen by the Board for Employer’s sole benefit. Upon reasonable advance notice, Executive will cooperate in any and all necessary physical examinations without expense to Executive, supply information, and sign documents, and otherwise cooperate fully with Employer as Employer may request in connection with any such insurance. Executive further agrees, on behalf of himself and his estate, heirs, successors and assigns (collectively, the “Executive Estate”), that the Executive Estate shall have no interest in or rights to receive the benefits of, any key person life insurance policy covering the life of the Executive which is purchased by Employer or an affiliated entity and names Employer or an affiliated entity as the beneficiary under such policy.

8.3 **Severable Provisions.** The provisions of this Agreement are separate and distinct, and if any provisions are determined to be invalid, void, unenforceable or against public policy, in whole or in part, the remaining provisions of this Agreement, and the enforceable parts of any partially invalid, void or unenforceable provisions or provisions partially against public policy, shall nevertheless remain in full force and effect and shall be enforceable. Any unenforceable provisions shall be severed.

8.4 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their personal or legal representatives, executors, administrators, heirs, distributes, devisees, legatees, and permitted successors and assigns. Executive may not assign or delegate her or his rights and duties under this Agreement.

8.5 **Governing Law/Venue.** This Agreement in all respects shall be governed by and interpreted in accordance with the laws of the state of Delaware, both procedural and substantive, without regard to conflicts of law, except to the extent that federal laws and regulations preempt otherwise applicable law. The Parties agree that any and all legal action that may arise out of or relate to this Agreement or Executive’s employment or termination of employment shall take place solely and exclusively within the state of Delaware, and that neither party shall seek to enforce its rights under this Agreement in any place other than the state of Delaware. The Parties agree that they will submit to the jurisdiction of the state of Delaware. Any appellate proceedings shall take place in the appropriate courts having appellate jurisdiction over the courts set forth in this paragraph.
8.6 **Headings.** Article and paragraph headings are not a part of this Agreement. They are included solely for convenience and reference, and they in no way define, limit, or describe the scope of this Agreement or the intent of any of its provisions.

8.7 **Integration/Waiver.** Except as set forth in this Section 8.7, this Agreement, including, without limitation, any documents expressly incorporated into it by the terms of this Agreement, constitutes the entire agreement between the Parties and supersedes all prior oral and written agreements, understandings, negotiations, and discussions relating to the subject matter of this Agreement including Executive’s Prior Employment Agreement. Any outstanding equity awards granted to Executive under the Equity Plan and existing annual bonus arrangements will remain outstanding and are not affected by the Parties entering this Agreement. Any supplement, modification, waiver, or termination of this Agreement and the terms and conditions hereof is valid only if it is set forth in a writing signed by both Parties, or in the case of a waiver, by the Party waiving compliance. The waiver of any provision of this Agreement shall not constitute a waiver of any other provisions and, unless otherwise stated, shall not constitute a continuing waiver.

8.8 **Notice.** Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given (a) if personally delivered, when so delivered, (b) if mailed, three (3) days after having been placed in the United States mail, registered or certified, postage prepaid, addressed to the party to whom it is directed at the address listed below, (c) if sent by reputable overnight courier for overnight delivery to the party to whom it is directed at the address listed below, one (1) business day after delivery to such courier, or (d) if given by electronic mail if sent during normal business hours of the recipient, and if not, then on the next business day:

**If to Employer:**

Cava Group, Inc.
702 H St. NW 2nd Floor
Washington, DC 20001
Attention: General Counsel

**If to Executive:**

Tricia Tolivar
[***]

In order for a Party to change its address or other information for the purpose of this Section, the Party must first provide notice of that change in the manner required by this Section.

8.9 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signature Page Follows]
EACH PARTY ACKNOWLEDGES that it, she or he has had an opportunity to negotiate, carefully consider, and receive advice of counsel on the terms of this Agreement before signing it.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of October 27, 2020.

Cava Group, Inc.

By: /s/ Brett Schulman

Brett Schulman
CEO

Executive

/s/ Tricia Tolivar

Tricia Tolivar
EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the “Agreement”) is made between Cava Group, Inc., a Delaware corporation (“Employer” or “Company”) and Jennifer Somers (“Executive”) (together, the “Parties” and each a “Party”), effective as of October 11, 2021 (the “Effective Date”).

WHEREAS, in the course of Executive’s employment by Employer, the Executive may receive, be taught or otherwise have access to Employer’s information that is confidential and proprietary;

WHEREAS, Employer and its subsidiaries and affiliates have acquired and/or developed certain trade secrets and confidential information, as more fully described in the CPIN Agreement (as defined below), and has expended significant time and expense in acquiring or developing its trade secret or confidential information, and expends significant time and expense on an ongoing basis in supporting its employees, including Executive;

WHEREAS, Employer wishes to employ and/or continue to employ Executive as Employer’s Chief Operations Officer (“COO”) on the terms and conditions set forth herein; and

WHEREAS, Executive wishes to continue such employment on such terms and conditions in accordance with this Agreement;

ACCORDINGLY, in consideration of, and on the basis of the representations, warranties, and covenants contained in this Agreement, and other good and valuable consideration, the Parties agree as follows:

1. ARTICLE 1 – EMPLOYMENT AND TERM

1.1 Employment. Effective on Executive’s actual employment start date with the Company which shall be October 26, 2021, Executive agrees to work and Employer agrees to employ Executive as its COO and Executive accepts such employment on the terms and conditions set forth in this Agreement. Executive’s employment shall be deemed by the Parties to be continuous until terminated pursuant to this Agreement. Executive shall report directly to the Chief Executive Officer (“CEO”) of the Employer.

1.2 Term. The term of employment under this Agreement shall commence on the Effective Date and shall continue for a period of three (3) years thereafter (such three-year period, the “Initial Term”), unless the Parties otherwise renew or earlier terminate Executive’s employment in accordance with this Agreement. Subject to earlier termination pursuant to Article 4 of this Agreement, the employment relationship hereunder shall extend for successive one-year terms after the Initial Term (each such one-year term an “Extended Term”), unless either party shall have given not less than sixty (60) days prior written notice to the other prior to the expiration of the Initial Term of this Agreement, or the Extended Term, as applicable, that it does not wish to extend this Agreement. If such written notice is given, then this Agreement shall expire as of the last day of the Initial Term or Extended Term to
which such written notice relates. As used in this Agreement, the “Term” shall include the Initial Term and any Extended Term, and any period of employment through the date on which Executive’s employment ends or this Agreement is terminated in accordance with Article 4 of this Agreement.

2. **ARTICLE 2 – DUTIES OF THE EXECUTIVE**

2.1 **Duties.** Executive agrees to undertake and perform all duties required as COO of Employer. Executive shall perform the services contemplated herein faithfully, diligently, to the best of Executive’s ability, and in the best interests of Employer, in a diligent, trustworthy, professional, and efficient manner, and shall comply with Employer’s policies and procedures in all material respects. Executive agrees during the Term to serve without any additional compensation as an officer or director of any subsidiary of the Company, as may be reasonably requested by the CEO from time to time. Executive shall at all times perform such services in compliance with (and, to the extent of Executive’s actual knowledge and authority, shall ensure to the best of his ability that Employer is in compliance with) any and all laws, rules, regulations, and policies applicable to Employer of which Executive is aware. Executive shall, at all times during the Term, adhere to and obey reasonable written rules and policies governing the conduct of Employer’s employees and executives, as established or modified from time to time; provided, however, that, in the event of any conflict between the provisions of this Agreement and any such rules or policies, the provisions of this Agreement shall control.

2.2 **Exclusive Services.** Except as set forth in this Section 2.2, during her or his employment by Employer, Executive shall not, without the prior written consent of the CEO or the CEO’s designee, accept other employment for compensation, perform services for compensation for a Person other than Employer and its subsidiaries and affiliated entities, or serve as an officer or director of any other Person. In cases where no material, bona fide business conflict currently exists or is reasonably anticipated to arise, such consent shall not be unreasonably withheld. Such service shall be reviewed on at least an annual basis, consistent with the provisions of this paragraph, and the company conflict of interest policy. In no event shall service on a board for a not for profit or charitable organization require prior approval, provided that such service does not conflict with the following provisions of this Section 2.2. Executive shall not engage in any activity, including, but not limited to, serving as a director of another Person, that would impair Executive’s ability to act and exercise judgment in the best interest of Employer. For purposes of this Agreement, the term “Person” means an individual, a partnership, a corporation, a limited liability company, an association, an organization, a joint stock company, a trust, a joint venture, an unincorporated association, a government entity, any department, agency or political subdivision of a government entity, or any other form of entity.

2.3 **Indemnification.** Employer shall, to the maximum extent to which it is empowered by Employer’s By-Laws and the Laws of State of Delaware and any other laws that may apply to the benefit of Executive, defend, indemnify and hold harmless Executive from and against any and all demands, claims, and causes of action made against Executive concerning or relating to her or his service, actions or omissions on behalf of Employer and its
subsidiaries and affiliated entities as an employee, director, officer, shareholder, unit holder, or agent.

 ARTICLE 3 – COMPENSATION, BENEFITS AND EXPENSE REIMBURSEMENT

As the total consideration for the services that Executive renders under this Agreement, Executive shall be entitled to the following:

3.1 **Base Salary.** Commencing on the first day of the Term, Employer shall pay to Executive a base salary at the annual rate of $500,000, less income tax and other applicable withholdings (the “Salary”) payable in accordance with Employer’s regular payroll practices. Such Salary shall be reviewed for purposes of determining whether a salary increase is warranted, at least annually. The Salary, as adjusted, shall not be reduced during the Term. The reference to Salary at an annual rate in this Agreement shall not entitle Executive to payment of Salary beyond any Salary earned through Executive’s performance of services under this Agreement through the date of termination of Executive’s employment, except as set forth in this Agreement.

3.2 **Annual Bonus.** For calendar year 2021, Executive shall earn for Executive’s services to be rendered under this Agreement a fixed cash bonus of $250,000, provided that Executive remains an employee on the payment date, which payment shall occur on or before June 1, 2022 (the “Guaranteed Bonus”). Commencing with calendar year 2022 and during the period Executive is employed with Employer, Executive shall be eligible to earn for Executive’s services to be rendered under this Agreement a discretionary annual cash bonus with a maximum bonus opportunity of fifty percent (50%) of the Salary, which amount is to be determined by the Board (the “Annual Bonus”), subject to review and upward adjustment by Employer in the sole discretion of the Employer’s Board or Compensation Committee thereof, payable subject to standard federal and state payroll withholding requirements. Whether or not Executive earns any Annual Bonus will also be dependent upon (a) Executive’s continuous performance of services to Employer and remaining in good standing through the date any such bonus is paid (other than as provided in Article 4 below); (b) except for the Guaranteed Bonus, the actual achievement by Executive and Employer of the applicable performance targets and goals set by the Board, and (c) meeting any other applicable eligibility requirements that apply to all members of the Company’s executive team. The annual period over which performance is measured for purposes of this section is January 1 through December 31. The Board or the Compensation Committee thereof will determine in its sole discretion the extent to which Executive and the Employer have achieved the performance goals upon which the bonus is based and the amount of the bonus. For calendar year 2022 and each year thereafter, Executive will be eligible to receive a bonus in accordance with existing bonus targets established by the Board or its Compensation Committee and pursuant to any applicable incentive compensation plan under which such bonus targets were established. Any bonus shall be subject to the terms of any applicable incentive compensation plan adopted by Employer. Any bonus referenced in this section, if earned, will be paid to Executive within the time period set forth in the incentive compensation plan applicable to the Company’s executive team, or if no such time period was

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3.3 Initial Equity Grant. At the Board’s next quarterly meeting after the date of execution of this Agreement, a submission will be made for the Executive to be granted a quantity of restricted stock units (the “RSUs”) in an amount equal to $750,000 based on the latest 409A valuation existing on the date that is sixty (60) days after Executive’s employment start date, which RSUs shall be subject to the Company’s standard RSU award agreement and will vest over a four (4) year period in four (4) equal annual installments. The RSUs will be subject to the terms and conditions applicable to RSUs granted under the Equity Plan (defined below) and as described in such Equity Plan, and the other terms and conditions described in the Employer’s standard form of RSU award agreement.

3.4 Long-Term Incentive. Commencing with calendar year 2022 and during the period Executive is employed with Employer, Executive shall be eligible to earn for Executive’s services to be rendered under this Agreement an annual equity award (the “Long-Term Incentive”) to be granted under, and subject to the terms and conditions of, Employer’s 2015 Equity Incentive Plan, as may be amended from time to time, or a successor stock incentive plan (the “Equity Plan”) in accordance with Company practices for other senior executives of Employer. Each Long-Term Incentive grant will be made with a grant date fair value equal to fifty percent (50%) of the Executive’s Salary and at such time as to be determined by the Board in its sole discretion. The calendar year 2021 Long-Term Incentive equity award will be granted to Executive in calendar year 2022 in an amount equal to fifty percent (50%) of the Executive’s initial annual base salary as set forth in Section 3.1 of this Agreement and will vest over a four (4) year period in four (4) equal installments. The form and terms and conditions of any such Long-Term Incentive will be subject change from time to time in the sole discretion of the Board and payable subject to standard federal and state payroll withholding requirements. Notwithstanding the foregoing, whether or not Executive earns any Long-Term Incentive will be dependent upon (a) Executive’s continuous performance of services to Employer through the date any Long-Term Incentive is granted; (b) the actual achievement by Executive and Employer of the applicable performance targets and goals set by the Board based on recommendations from the Compensation Committee of the Board; and (c) the terms and conditions of any Long-Term Incentive, as are provided in the Equity Plan and any award agreement pursuant to which the Long-Term Incentive is granted. Notwithstanding the foregoing, following Employer’s sale of any common stock pursuant to a registration statement filed under the Securities Act of 1933, as amended, that results in shares of the common stock of Employer being traded on the NASDAQ Stock Market, the New York Stock Exchange or successors thereof or any such other national securities exchange, this Section 3.4 will no longer apply and Executive will not be entitled to any future Long-Term Incentive grants pursuant to this Agreement, but shall remain eligible to participate in any equity incentive plans offered by the Employer.

3.5 Employer Executive Benefits. Executive shall be entitled to participate in Employer’s group health, life, and disability insurance plans and any and all other employee benefits, including 401(k) and deferred compensation plans, pursuant to the terms of the applicable benefit plans and to the same extent and on the same basis as Employer’s other
senior executives. Employer shall pay the costs for group health, life, and disability insurance plans and all other employee benefits for Executive and any spouse or domestic partner and children of Executive to the same extent that it pays for the costs for other senior executives of Employer. Executive will be provided with a laptop computer and will be required to abide by the Company’s technology policies. Additionally, the Executive shall receive free Company meals during weekdays (and a fifty percent (50%) discount on meals purchased for one guest) and a fifty percent (50%) discount on meals purchased for the Executive and one guest on weekend days.

3.6 Reimbursement for Business Expenses. Employer shall reimburse Executive for any and all reasonable business expenses that Executive incurs from time to time in the performance of her or his duties under this Agreement, including authorized business expenses incurred by Executive at the request of, or on behalf of, Employer, in accordance with Employer’s policies and subject to any reporting and documentation requirements set forth in such policies. Employer shall also pay the reasonable costs for electronic communication devices, including smart phones and/or portable computer devices reasonably necessary for the performance of Executive’s duties under this Agreement, including any service plans related thereto. Employer will reimburse the Executive for amounts paid to legal counsel, upon presentation of customary invoices, for the reasonable fees and expenses incurred by the Executive in connection with the review and negotiation of this Agreement and any other documentation related to this Agreement.

3.7 Vacation. Executive shall be eligible for the same vacation benefits offered to other senior executives of Employer. The scheduling of vacation shall be consistent with Employer’s vacation policy and operational needs.

3.8 Sign-On Bonus Amount. Executive shall receive a bonus of $300,000 less applicable tax withholdings and such amount shall be payable at such time as mutually agreed between Executive and Employer. The Sign-On Bonus Amount shall be immediately repaid in full by the Executive (or offset from other amounts due Executive) upon the Company’s written request in the event that Executive voluntarily resigns from the Company within twelve (12) months from Executive’s employment start date. In the event that Executive voluntarily resigns from the Company between twelve (12) and twenty-four (24) months from Executive’s employment start date, one-half of the Sign-On Bonus Amount shall be immediately paid back by the Executive (or offset from other amounts due Executive) to the Company upon the Company’s written request.

3.9 Relocation Reimbursement. Within one (1) year of Executive’s employment start date, Executive shall relocate to the Washington, D.C./Maryland/Virginia area, and Employer shall reimburse Executive in an amount equal to $4,000 per month, as paid in biweekly installments commencing upon payment of the first biweekly installment of Executive’s Salary, until the earlier to occur of the date that Executive’s spouse obtains work in the Washington, D.C./Maryland/Virginia area or the date that is one (1) year after Executive’s employment start date. Such reimbursement shall be in accordance with Employer’s policies and subject to any reporting and documentation requirements set forth in such policies.
3.10 **Car Allowance.** Employer shall provide an annual allowance to Executive for Executive’s automobile transportation in an amount equal to $10,000, as paid in biweekly installments commencing upon payment of the first biweekly installment of Executive’s Salary. Such allowance shall be in accordance with Employer’s policies and subject to any reporting and documentation requirements set forth in such policies.

4. **ARTICLE 4 – TERMINATION**

4.1 **Termination.** Either party shall have the right to terminate this Agreement before the expiration of the Term, subject to the terms of this Article 4, and with the consequences described in this Agreement.

4.2 **Termination for Cause by Employer.** Executive’s employment may be terminated by Employer for Cause (as defined below) at any time (subject to any opportunities to cure set forth in such definition), upon delivery to Executive of written notice (and effective on the date such notice is given unless another date is specified in such notice). If Executive is terminated for Cause, Employer shall pay to Executive (a) any Salary due under Section 3.1 to the date of termination, (b) benefits set forth in Section 3.5, if any, to the date of termination, (c) all accrued but unused and unpaid vacation due under Section 3.7 to the date of termination, and (d) expenses reimbursable under Section 3.6 incurred but not yet reimbursed to Executive to the date of termination. Executive shall have no right to receive any further compensation or benefits otherwise payable under any other provision of this Agreement. For purposes of this Agreement, Termination for “Cause” shall mean the termination of Executive’s employment for any of the following reasons: (i) refusal by the Executive to materially perform her or his duties hereunder (other than any such failure or refusal resulting from her or his incapacity due to physical or mental illness), provided, however, that Employer shall provide Executive with written notice of such refusal and Executive shall not have substantially remedied such failure or refusal within thirty (30) days after such written notice is given; (ii) the commission by Executive of any material act of dishonesty or breach of trust or gross misconduct or gross negligence in connection with the performance of her or his duties hereunder; (iii) a conviction of, or pleading guilty or no contest to, any felony or any crime having as its predicate element fraud, dishonesty, or misappropriation; (iv) any act or omission aiding or abetting a competitor, supplier or customer of Employer to the material disadvantage or detriment of Employer, (v) Executive’s material failure to comply with one or more of the material policies of the Employer (including any applicable code of conduct or ethics, policies relating to sexual harassment or business conduct) or Executive’s material breach of her or his obligations under this Agreement or under the CPIN Agreement, provided, however, that Employer shall provide Executive with written notice of such breach and Executive shall not have substantially cured such breach (if curable) within thirty (30) days after such written notice is given. For purposes of this paragraph, no failure or refusal on the part of Executive shall be deemed “willful” if done, or omitted to be done, by Executive in the reasonable belief that her or his failure or refusal was in the best interest of Employer or that the requested act was unlawful.

4.3 **Termination Without Cause by Employer.** Employer may terminate Executive’s employment without Cause upon notice to Executive provided in accordance with
Section 4.7. If Employer terminates Executive’s employment without Cause at any time during Executive’s employment, including without limitation any notice by Employer of non-extension or intent to terminate under Sections 1.2 and 4.3 of this Agreement, Employer shall pay to Executive (a) the same payments and benefits set forth in Section 4.2 and, in addition thereto, subject to Executive’s compliance with the obligations in the last sentence of this Section 4.3, (b) in addition to any unpaid amount of the Guaranteed Bonus, Salary for 12 months following termination of employment, paid in normal payroll installments consistent with Employer’s payroll practices as in effect from time to time; (c) if Executive timely elects health insurance continuation coverage (“COBRA Coverage”) under Employer’s group health plan pursuant to Section 4980B of the Internal Revenue Code and Part 6 of Subtitle B of Title I of ERISA, and so long as Executive abides at all times by the requirements of COBRA, Employer will pay the cost of Employee’s COBRA premiums for the 12 months following termination of employment (subject to the remainder of this Section 4.3); and (d) a pro-rated Annual Bonus for the year in which the termination of employment occurs, based on the Employer’s performance during such year, pro-rated based on the number of days elapsed during such year prior to termination of employment, which shall be paid on the date on which annual bonuses are paid to other senior executives of Employer for such year (items (b), (c) and (d), referred to herein as, the “Severance”). Notwithstanding anything to the contrary herein, Executive’s COBRA Coverage shall terminate when Executive becomes eligible under any employee benefit plan made available by another employer covering substantially similar health and dental benefits. Executive shall notify Employer within ten (10) days after becoming eligible for any such benefits. It is agreed and understood that Executive shall be entitled to receive the Severance if and only if within sixty (60) days following termination of employment (the “Release Period”) Executive has executed and delivered to Employer the General Release substantially in accordance with the Company’s standard release form hereto (the “General Release”) and the General Release has become effective, and so long as Executive has not revoked or breached the provisions of the General Release or breached the provisions of Articles 6, 7, and/or 8 hereof, including the provisions of the CPIN Agreement.

4.4 Termination for Good Reason by Executive. Executive may voluntarily terminate her or his employment at any time for Good Reason (as defined below) upon written notice to Employer (and effective on the date such notice is given unless another date is specified in such notice). In the event of any such termination for Good Reason by Executive, Employer shall pay and provide to Executive the same payments and benefits as are set forth in Section 4.3, above and on the same terms and conditions as if Executive had been terminated by Employer without Cause. For purposes of this Agreement, a termination for “Good Reason” shall mean the termination by Executive of Executive’s employment for any of the following reasons occurring without Executive’s prior written consent, provided Executive has not previously been notified in accordance with the notice provisions of this Agreement of Employer’s intention to terminate Executive’s employment: (a) assigning to him duties materially inconsistent with her or his position, title, authority, or duties which results in a material diminution of such position, title, authority or duties; provided, however, that Executive has given written notice to Employer within sixty (60) days after the first occurrence of such event or, if later, ten (10) days after the most recent occurrence, which has not be remedied by Employer within thirty (30) days and Executive has performed her or his reasonable duties.
during such notice period and prior to any cure; (b) Employer’s direction to Executive to engage in any unlawful act or act of
dishonesty, provided, however, that Executive has given written notice to Employer within sixty (60) days after the first occurrence
of such event or, if later, ten (10) days after the most recent occurrence, which has not been remedied by Employer within thirty (30)
days; or (c) Employer’s material breach of its obligations under this Agreement, provided, however, that Executive shall provide
Employer with written notice within sixty (60) days after the first occurrence of such breach or, if later, ten (10) days after the most
recent occurrence and Employer shall not have substantially cured such breach (if curable) within thirty (30) days after such written
notice is given. Notwithstanding the foregoing, in order to resign for Good Reason, Executive must resign from all positions
Executive then holds with Employer, effective not later than sixty (60) days after the expiration of the cure period if such event is not
reasonably cured within such period. Any actions taken by Employer to accommodate a disability of Executive or pursuant to the
Family and Medical Leave Act shall not be a Good Reason for purposes of this Agreement. For the avoidance of doubt, any such
resignation(s) shall have no effect on Executive’s rights as a shareholder of Employer.

4.5 Termination Without Good Reason by Executive. Executive may terminate her or his employment without Good
Reason upon notice to Employer given in accordance with Section 4.7. If Executive terminates her or his employment without Good
Reason, including without limitation any notice by Executive of non-extension or intent to terminate under Sections 1.2 or 4.5 of this
Agreement, Employer shall pay and provide to Executive an amount equivalent to that set forth in Section 4.2, above.

4.6 Termination by Employer for Death or Disability. Executive’s employment shall terminate immediately upon
Executive’s death without notice. Employer may terminate Executive’s employment upon the date of termination specified in a
written notice of termination by reason of Executive’s illness, incapacity or injury which results in Executive’s absence from her or
his duties with Employer or failure to render the services contemplated by this Agreement for three (3) consecutive calendar months,
or for shorter periods aggregating four (4) calendar months in any twelve (12) month period. Prior to any termination under this
paragraph for any reason other than death of Executive, Employer shall provide thirty (30) days’ prior written notice of its intent to
terminate under this paragraph. Executive may then provide medical certification within the 30-day notice period that she or he will
be able to and intends to perform her or his duties as set forth in this Agreement. If, within the 30-day notice period, Executive
provides such medical certification and commences and/or continues to perform her or his duties under this Agreement, Employer
shall not terminate this Agreement under this paragraph. For any termination of employment under this Section 4.6, Executive shall
be entitled to the same payments and benefits set forth in Section 4.2, above.

4.7 Termination Date. Except as provided specifically above, any termination under this Article 4 shall be effected
by not less than sixty (60) days’ advance written notice, or, at Employer’s option, pay in lieu of such notice. The effective date of the
termination (the “Termination Date”) shall be the date specified in such notice of such termination or, if no date is so specified, the
date that is the sixtieth day after the date notice is given. Notices shall be given in accordance with Section 8.8 of this Agreement.
5. **ARTICLE 5 – SECTION 409A COMPLIANCE**

5.1 **Intent.** The intent of the Parties is that payments and benefits under this Agreement comply with Internal Revenue Code Section 409A and the regulations and guidance promulgated thereunder (collectively “Code Section 409A”) and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith. In no event whatsoever shall Employer be liable for any additional tax, interest or penalty that may be imposed on Executive by Code Section 409A.

5.2 **Specified Employee.** Notwithstanding any other payment schedule provided herein to the contrary, if Executive is deemed on the date of termination to be a “specified employee” within the meaning of that term under Code Section 409A(a)(2)(B), then with regard to any payment that is considered deferred compensation under Code Section 409A payable on account of a “separation from service,” such payment shall be made on the date which is the earlier of (i) the expiration of the six (6)-month period measured from the date of such “separation from service” of Executive, and (ii) the date of Executive’s death (the “Delay Period”) to the extent required under Code Section 409A. Upon the expiration of the Delay Period, all payments delayed pursuant to this Section 5.2 (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid to Executive in a lump sum with interest accruing commencing on the date payment would have otherwise been made at the prime rate of interest most recently published in The Wall Street Journal as of such date, and all remaining payments due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

5.3 **Expense Reimbursement Payments.** All expenses or other reimbursements under this Agreement shall be made within a reasonable period of time following the satisfaction of Employer’s reasonable requirements with respect to reporting and documentation of such expenses, but in no event later than on or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by Executive (provided that if any such reimbursements constitute taxable income to Executive, such reimbursements shall be paid no later than March 15th of the calendar year following the calendar year in which the expenses to be reimbursed were incurred), any right to reimbursement or in kind benefits is not subject to liquidation or exchange for another benefit, and no such reimbursement or expenses eligible for reimbursement in any taxable year shall in any way affect the expenses eligible for reimbursement in any other taxable year.

5.4 **Installment Payments.** For purposes of Code Section 409A, Executive’s right to receive any installment payment pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

6. **ARTICLE 6 – CONFIDENTIAL AND PROPRIETARY INFORMATION AND NON-COMPETITION**

6.1 As a condition of this Agreement and the Executive’s employment with Employer, the Executive agrees to the terms of and will execute a Confidential and Proprietary Information and Non-Competition Agreement in the form that has been provided herewith based
on comparable agreements with other senior executives of the Company (the “CPIN Agreement”), and after execution of the CPIN Agreement, Employer’s obligations hereunder, including the obligations to pay the Severance, are contingent on the Executive’s complying with such CPIN Agreement at all times as described therein.

7. **ARTICLE 7 – COOPERATION AND CORPORATE OPPORTUNITIES**

7.1 **Cooperation.** Upon the receipt of reasonable notice from Employer (including, without limitation, notice on behalf of Employer by its outside counsel), Executive agrees that while employed by Employer and, subject to Executive’s other business commitments, thereafter, Executive will respond and provide information with regard to matters in which Executive has knowledge as a result of Executive’s employment with Employer and will provide reasonable assistance to Employer, and affiliated entities and their respective representatives in defense of any claims that may be made against Employer or any affiliated entities of Employer, and will assist Employer and any affiliated entities in the prosecution of any claims that may be made by Employer or such affiliated entity, to the extent that such claims may relate to Executive’s employment or to Executive’s prior employment by Employer. Executive agrees to promptly inform Employer if Executive becomes aware of any lawsuits involving such claims that may be filed or threatened against Employer or any of Employer’s affiliated entities. Executive also agrees to promptly inform Employer (to the extent Executive is legally permitted to do so) if Executive is asked to assist in any investigation of Employer or any affiliated entities (or their respective actions), regardless of whether a lawsuit or other proceeding has then been filed against Employer or any affiliated entities with respect to such investigation, and shall not do so unless legally required. If Executive is required to provide any services pursuant to this Section 7.1 following the termination of Executive’s employment, upon presentation of appropriate documentation, Employer shall reimburse Executive for reasonable out-of-pocket expenses incurred in connection with the performance of such services. In addition, if and to the extent that Executive is required to devote more than two hours during a calendar year to fulfill the obligations set forth in this Section 7.1 at a time when she or he is no longer being compensated by the Company in any way, it will compensate Executive for such cooperation at an hourly rate based on Executive’s Salary during the last pay period of Executive’s active employment by the Employer.

7.2 **Corporate Opportunity.** During the Term, Executive shall submit to Employer all bona-fide business, commercial and investment opportunities or offers presented to Executive or to which Executive becomes aware which relate to Employer’s business or the business of any of Employer’s affiliated entities at any time during such employment (“Corporate Opportunities”). Unless approved by Employer, Executive shall not accept or pursue, directly or indirectly, any Corporate Opportunities on Executive’s own behalf.

8. **ARTICLE 8 – MISCELLANEOUS**

8.1 **Tax Withholding.** Employer is authorized to withhold from any payment or benefit provided hereunder, the amount of withholding taxes due any federal, state or local authority in respect of such benefit or payment and to take such other action as may be necessary in the opinion of Employer to satisfy all obligations for the payment of such
withholding taxes. In the event Employer does not make such deductions or withholdings, Executive shall indemnify Employer for any amounts paid with respect to any such taxes, together with any interest, penalties and related expenses thereto.

8.2 **Key Person Insurance.** Employer, in the sole and absolute discretion of the Board, has the right throughout the term of Executive’s employment with Employer to obtain or increase insurance on Executive’s life in such amount as the Board determines, in the name of Employer or an affiliated entity chosen by the Board for Employer’s sole benefit. Upon reasonable advance notice, Executive will cooperate in any and all necessary physical examinations without expense to Executive, supply information, and sign documents, and otherwise cooperate fully with Employer as Employer may request in connection with any such insurance. Executive further agrees, on behalf of himself and his estate, heirs, successors and assigns (collectively, the “Executive Estate”), that the Executive Estate shall have no interest in or rights to receive the benefits of, any key person life insurance policy covering the life of the Executive which is purchased by Employer or an affiliated entity and names Employer or an affiliated entity as the beneficiary under such policy.

8.3 **Severable Provisions.** The provisions of this Agreement are separate and distinct, and if any provisions are determined to be invalid, void, unenforceable or against public policy, in whole or in part, the remaining provisions of this Agreement, and the enforceable parts of any partially invalid, void or unenforceable provisions or provisions partially against public policy, shall nevertheless remain in full force and effect and shall be enforceable. Any unenforceable provisions shall be severed.

8.4 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their personal or legal representatives, executors, administrators, heirs, distributees, devisees, legatees, and permitted successors and assigns. Executive may not assign or delegate her or his rights and duties under this Agreement.

8.5 **Governing Law/Venue.** This Agreement in all respects shall be governed by and interpreted in accordance with the laws of the state of Delaware, both procedural and substantive, without regard to conflicts of law, except to the extent that federal laws and regulations preempt otherwise applicable law. The Parties agree that any and all legal action that may arise out of or relate to this Agreement or Executive’s employment or termination of employment shall take place solely and exclusively within the state of Delaware, and that neither party shall seek to enforce its rights under this Agreement in any place other than the state of Delaware. The Parties agree that they will submit to the jurisdiction of the state of Delaware. Any appellate proceedings shall take place in the appropriate courts having appellate jurisdiction over the courts set forth in this paragraph.

8.6 **Headings.** Article and paragraph headings are not a part of this Agreement. They are included solely for convenience and reference, and they in no way define, limit, or describe the scope of this Agreement or the intent of any of its provisions.

8.7 **Integration/Waiver.** Except as set forth in this Section 8.7, this Agreement, including, without limitation, any documents expressly incorporated into it by the
terms of this Agreement, constitutes the entire agreement between the Parties and supersedes all prior oral and written agreements, understandings, negotiations, and discussions relating to the subject matter of this Agreement including Executive’s Prior Employment Agreement. Any outstanding equity awards granted to Executive under the Equity Plan and existing annual bonus arrangements will remain outstanding and are not affected by the Parties entering this Agreement. Any supplement, modification, waiver, or termination of this Agreement and the terms and conditions hereof is valid only if it is set forth in a writing signed by both Parties, or in the case of a waiver, by the Party waiving compliance. The waiver of any provision of this Agreement shall not constitute a waiver of any other provisions and, unless otherwise stated, shall not constitute a continuing waiver.

8.8 Notice. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given (a) if personally delivered, when so delivered, (b) if mailed, three (3) days after having been placed in the United States mail, registered or certified, postage prepaid, addressed to the party to whom it is directed at the address listed below, (c) if sent by reputable overnight courier for overnight delivery to the party to whom it is directed at the address listed below, one (1) business day after delivery to such courier, or (d) if given by electronic mail if sent during normal business hours of the recipient, and if not, then on the next business day:

If to Employer:

Cava Group, Inc.
702 H St. NW 2nd Floor
Washington, DC 20001
Attention: General Counsel
Email: [***]

If to Executive:

Email: [***]

In order for a Party to change its address or other information for the purpose of this Section, the Party must first provide notice of that change in the manner required by this Section.

8.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signature Page Follows]
EACH PARTY ACKNOWLEDGES that it, she or he has had an opportunity to negotiate, carefully consider, and receive advice of counsel on the terms of this Agreement before signing it.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

Cava Group, Inc.

By: /s/ Brett Schulman

Brett Schulman
CEO

Executive

/s/ Jennifer Somers

Jennifer Somers

Signature Page to Employment Agreement
## SUBSIDIARIES OF CAVA GROUP, INC.

The following is a list of subsidiaries of CAVA Group, Inc.

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<th>Subsidiary Name</th>
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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement on Form S-1 of our report dated March 17, 2023, relating to the financial statements of CAVA Group, Inc. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ Deloitte & Touche LLP

McLean, Virginia

May 19, 2023
The undersigned hereby consents to being named in the registration statement on Form S-1 and in all subsequent amendments and post-effective amendments or supplements thereto and in any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the “Registration Statement”) of CAVA Group, Inc. (the “Company”) as an individual to become a director of the Company and to the inclusion of her biographical and other information in the Registration Statement. The undersigned also hereby consents to being named in any registration statement on Form S-8 filed by the Company that incorporates by reference the prospectus forming part of the Registration Statement.

[The remainder of this page intentionally left blank; signature page follows.]
In witness whereof, this consent is signed and dated as of the date set forth below.

Date: May 17, 2023

/s/ Lauri M. Shanahan

Name: Lauri M. Shanahan