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

FORM 8-K

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

Date of Report (Date of earliest event reported): November 3, 2021

BURGERFI INTERNATIONAL, INC.

(Exact name of registrant as specified in its charter)

001-38417
(Commission
File Number)

Delaware
(State or Other Jurisdiction
of Incorporation)

82-2418815
(I.R.S. Employer
Identification No.)

105 US Highway 1
North Palm Beach, Florida
(Address of Principal Executive Offices)

33408
(Zip Code)

(561) 844-5528
(Registrant's Telephone Number, Including Area Code)

Not Applicable
(Former Name or Former Address, If Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of Each Class	Trading symbol(s)	Name of exchange on which registered
Common stock, par value \$0.0001 per share	BFI	The Nasdaq Stock Market LLC
Redeemable warrants, each exercisable for one share of common stock at an exercise price of \$11.50 per share	BFIW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This current report on Form 8-K (this “Form 8-K”), including the documents incorporated herein by reference, contains forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, with respect to our disclosure concerning our operations, cash flows and financial position and all other statements that do not relate to historical facts.

Forward-looking statements appear in a number of places in this Form 8-K. Any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. Forward-looking statements are typically identified by words such as “plan,” “believe,” “expect,” “anticipate,” “intend,” “outlook,” “estimate,” “forecast,” “project,” “continue,” “could,” “may,” “might,” “possible,” “potential,” “predict,” “should,” “would” and other similar words and expressions, but the absence of these words does not mean that a statement is not forward-looking.

The forward-looking statements are based on the current expectations of the management of the Company and are inherently subject to uncertainties and changes in circumstances and their potential effects and speak only as of the date of such statement. There can be no assurance that future developments will be those that have been anticipated. These forward-looking statements involve a number of risks, uncertainties or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors discussed and identified in public filings made with the Securities and Exchange Commission (the “SEC”) by the Company and the following:

- expectations regarding the Company’s strategies and future financial performance, including its future business plans or objectives, prospective performance and opportunities and competitors, revenues, products and services, pricing, operating expenses, market trends, liquidity, cash flows and uses of cash, capital expenditures, and the Company’s ability to invest in growth initiatives and pursue acquisition opportunities;
- the risk that the consummation of the transactions contemplated by the Purchase Agreement, pursuant to which the Target became a wholly-owned subsidiary of the Company, disrupts the plans and operations of the Company;
- the ability to recognize the anticipated benefits of the Stock Acquisition;

- unexpected costs related to the Stock Acquisition;
- the management and board composition of the Company following the Stock Acquisition;
- limited liquidity and trading of the Company's securities;
- geopolitical risk and changes in applicable laws or regulations;
- the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors;
- operational risk;
- risk that the COVID-19 pandemic, and local, state, and federal responses to addressing the pandemic may have an adverse effect on our business operations, as well as our financial condition and results of operations; and
- litigation and regulatory enforcement risks, including the diversion of management time and attention and the additional costs and demands on the Company's resources.

Should one or more of these risks or uncertainties materialize or should any of the assumptions made by the management of the Company prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements.

The information contained in this Form 8-K and the documents incorporated herein by reference is current only as of the date of that information. All forward-looking statements included in such documents are based upon information available at the time such statements are made, and we assume no obligation to update any forward-looking statements.

Item 1.01 Entry into a Material Definitive Agreement.

As previously announced, on October 8, 2021, BurgerFi International, Inc., a Delaware corporation (the "Company"), entered into a Stock Purchase Agreement (the "Original Purchase Agreement") pursuant to which the Company agreed to acquire (the "Stock Acquisition") 100% of the outstanding shares (the "Shares") of common stock, par value \$0.001 per share, of Hot Air, Inc., a Delaware corporation (the "Target" or "Hot Air"), a wholly-owned subsidiary of Cardboard Box, LLC, a Delaware limited liability company (the "Seller"). The Target, through its subsidiaries (the Target and its subsidiaries, the "ACFP Companies"), owns the business (the "ACFP Business") of operating upscale casual dining restaurants in the specialty pizza and wings segment under the name "Anthony's Coal Fired Pizza & Wings" ("ACFP"). On November 3, 2021, the Company, the Target and the Seller entered into an Amended and Restated Stock Purchase Agreement (the "Purchase Agreement") in order to amend and restate the Original Purchase Agreement with respect to certain provisions, including the treatment of the in-the-money options (the "Hot Air Options") previously issued to employees and directors of the Target under the Hot Air, Inc. Amended and Restated 2016 Stock Option Plan (the "Target Plan").

On November 3, 2021, the Company, the Target and the Seller entered into an Amended and Restated Stock Purchase Agreement (the "Purchase Agreement"), pursuant to which the treatment of the in-the-money options (the "Hot Air Options") previously issued to employees and directors of the Target under the Target Plan was revised such that each Hot Air Option shall, immediately following the Closing, be converted into shares of common stock, par value \$0.0001 per share, of the Company (the "Common Stock") and the Company shall issue to each holder of Hot Air Options, who will become either an employee or a consultant of the Company or its subsidiaries upon the Closing, such number of shares (each, an "Option Consideration Share") of Common Stock equal to the quotient obtained by dividing (i) the product of (A) the aggregate number of shares of common stock of the Target issuable upon exercise of such Hot Air Option by (B) the excess of the Company Per Share Value less (2) the exercise price per share applicable to such Hot Air Option

by (ii) the price per share of Common Stock ending on the trading date immediately prior to the Closing. Terms used herein as defined terms and not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

On November 3, 2021, the Company completed the Stock Acquisition. In consideration for the Shares, the Company paid to the Seller \$87,055,480, subject to adjustments based on net debt levels and Leakage (such adjusted amount, the “BFI Consideration Share Amount”), payable through the issuance to the Seller of: (i) 2,952,900 newly-issued shares (the “BFI Consideration Common Shares”) of Common Stock (valued at \$10.25 per share) representing an amount equal to the BFI Consideration Share Amount, minus \$53,000,000, up to the BFI Common Exchange Cap; and (ii) 2,120,000 newly-issued shares of non-convertible, redeemable Series A junior preferred stock, par value \$0.0001 per share, of the Company (the “Series A Junior Preferred Stock”) (with the number of shares of Series A Junior Preferred Stock issued calculated using a price per share of \$25.00) representing an aggregate value equal to \$53,000,000.

An amount of BFI Consideration Common Shares equal to 1,170,732 (the “Indemnification Escrow Shares”) has been deposited into escrow with Continental Stock Transfer & Trust Company, the Company’s transfer agent (the “Escrow Agent”) for the purpose of securing the indemnification obligations of the Seller set forth in the Purchase Agreement and an amount of BFI Consideration Common Shares equal to 390,244 (the “Purchase Price Adjustment Escrow Shares,” and together with the Indemnification Escrow Shares, the “Escrow Shares”) has been deposited into escrow with the Escrow Agent for the purpose of securing obligations of the Seller with respect to any purchase price adjustments due to the net debt levels or Leakage as set forth in the Purchase Agreement.

In addition, the Company assumed (the “Assumption of Debt”) \$75,608,999 of the Target’s debt, subject to certain post-Closing adjustments. Further, the Company assumed the Target Plan and, on November 3, 2021, entered into an amendment to the non-qualified stock option agreement pursuant to the Target Plan (the “Option Agreement Amendment”) with each recipient of Option Consideration Shares, pursuant to which the Hot Air Options were converted into an aggregate of 409,524 Option Consideration Shares. The form of Option Agreement Amendment was filed as Exhibit 4.6 and the form of non-qualified stock option agreement pursuant to the Target Plan which the Option Agreement Amendments amend was filed as Exhibit 4.5 to the Company’s registration statement on Form S-8 filed with the SEC on November 3, 2021 and each is incorporated herein by reference as Exhibit 10.1 and Exhibit 10.2, respectively. The foregoing description of the Option Agreement Amendments does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the form of Option Agreement Amendment.

In addition, the foregoing description of the Purchase Agreement and the Stock Acquisition does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Purchase Agreement, filed with this Form 8-K as Exhibit 2.1 to the Company’s Current Report on Form 8-K. The Purchase Agreement has been filed with the Commission to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company, the Target or their respective businesses. The Purchase Agreement contains representations and warranties that are the product of negotiations among the parties thereto and made to, and solely for the benefit of, each other as of specified dates. The assertions embodied in those representations and warranties are subject to qualifications and limitations agreed to by the respective parties and are also qualified in important part by confidential disclosure schedules delivered by the parties in connection with the Purchase Agreement. The representations and warranties may have been made for the purpose of allocating contractual risk between the parties to the agreements instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Purchase Agreement, which information may or may not be fully reflected in the Company’s public disclosures.

Share Escrow Agreement

In connection with the Stock Acquisition, on November 3, 2021, the Company, the Seller and the Escrow Agent entered into a share escrow agreement (the “Escrow Agreement”) for the escrow of the Escrow Shares. The Indemnification Escrow Shares shall remain in escrow to satisfy indemnification claims against the Seller under the Purchase Agreement for a period of twelve (12) months after the Closing Date and the Purchase Price Adjustment

Escrow Shares will remain in escrow until determination of the Net Indebtedness Adjustment in accordance with the terms of the Purchase Agreement. During the term of the Escrow Agreement, Seller shall be treated as the holder of the Escrow Shares for voting purposes and shall retain all of its rights as a stockholder of the Company. Any dividends paid with respect to the Escrow Shares shall be deemed part of the Escrow Shares and be delivered to the Escrow Agent to be held in a bank account and be deposited in a non-interest bearing account to be maintained by the Escrow Agent in the name of the Escrow Agent for the benefit of Seller. The form of the Escrow Agreement is attached as Exhibit C to the Purchase Agreement.

The Escrow Agreement is filed with this Form 8-K as Exhibit 10.3 and is incorporated herein by reference. The foregoing description of the Escrow Agreement does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Escrow Agreement, filed with this Form 8-K as Exhibit 10.3.

Registration Rights and Lock-Up Agreement

Also in connection with the Stock Acquisition, on November 3, 2021, the Seller and the Company entered into a registration rights and lock-up agreement (the “RRA”) covering the BFI Consideration Common Shares held by the Seller and/or its permitted assignees (collectively, the “Holders”) as well as any securities of the Company issued as a dividend or other distribution with respect to, in exchange for or in replacement of each of the BFI Consideration Common Shares (collectively, the “Registrable Securities”). Pursuant to the RRA, the Company is obligated to file a registration statement with the SEC within seventy-five (75) days after the Closing Date to register the Registrable Securities for resale on Form S-1 or, if the Company is then eligible to register on Form S-3, on Form S-3, which must be effective within 90 calendar days following the filing date, or, in the event the registration statement receives a “full review” by the SEC, the 120th calendar date following the filing date. In the event the SEC requires a cutback in the number of Registrable Securities being registered, the Registrable Securities will be cut back on a pro rata basis. If the Company is eligible to file on Form S-3, Holders may at any time request that the Company register for resale any or all such the Registrable Securities on Form S-3; provided that such Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities at an aggregate price to the public of at least \$1,000,000; provided, further, that the Company shall not be obligated to effect such request through an underwritten offering. In addition, the Seller is entitled to make up to three (3) demands that the Company register the Registrable Securities, and all Holders have “piggy-back” registration rights with respect to registration statements filed subsequent to the consummation of the Stock Acquisition. Further, the Holders are entitled to, on up to four (4) occasions after a shelf registration statement becomes effective, specify to the Company that the sale of some or all of the Registrable Securities subject to such shelf registration is intended to be conducted through an underwritten offering or block trade or similar registered offering through a broker, sales agent or distribution agent, so long as the anticipated gross proceeds of such offering is not less than \$15,000,000 (unless the Holders are proposing to sell all of their remaining Registrable Securities). At any time that any shelf registration statement is effective, if a Holder delivers notice to the Company that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any shelf registration statement (a “Shelf Offering”), the Company shall amend or supplement the shelf registration statement as necessary to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering. Notwithstanding anything to the contrary in the foregoing, the Company may postpone for up to ninety (90) days the filing or effectiveness of a registration statement for a demand registration or the filing of a shelf registration statement for the purpose of effecting an offering pursuant to Rule 415 under the Securities Act of 1933, as amended (the “Securities Act”), or any successor rule thereto (a “Shelf Takedown”), if the Board makes certain determinations in its reasonable good faith judgment with respect to such demand registration or Shelf Takedown.

The RRA also provides that the BFI Consideration Common Shares, except with respect to transfers to permitted assignees, shall be subject to lock-up until twelve (12) months after the Closing, subject to (i) earlier expiration as follows: (A) 30% of the BFI Consideration Common Shares may be transferred, if after the Closing, the last reported closing price of the Common Stock for any twenty (20) trading days within any consecutive thirty (30) trading day period equals or exceeds \$23.00 per share, (B) 30% of the BFI Consideration Common Shares may be transferred, if after the Closing, the last reported closing price of the Common Stock for any twenty (20) trading days within any consecutive thirty (30) trading day period equals or exceeds \$25.00 per share, and (C) 40% of the BFI Consideration Common Shares may be transferred, if after the Closing, the last reported closing price of the Common Stock for any twenty (20) trading days within any consecutive thirty (30) trading day period equals or

exceeds \$28.00 per share; and (ii) all applicable holding periods and requirements under the Securities Act and the rules and regulations thereunder. In addition, the BFI Consideration Common Shares shall be subject to a lock-up for 180 days after the Closing. The form of the RRA is attached as Exhibit D to the Purchase Agreement.

The RRA is filed with this Form 8-K as Exhibit 10.4 and is incorporated herein by reference. The foregoing description of the RRA does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the RRA, filed with this Form 8-K as Exhibit 10.4.

Restrictive Covenants Agreement

Also in connection with the Stock Acquisition, on November 3, 2021, Catterton Partners VII, L.P., Catterton Partners VII Offshore, L.P. and Catterton Partners VII Special Purposes, L.P. (collectively, the “Restricted Parties”), on the one hand, and the Company, on the other hand, entered into a restrictive covenants agreement (the “RCA”). The RCA subjects the Restricted Parties to confidentiality obligations for so long as the Restricted Parties collectively hold, directly or indirectly, not less than fifty percent (50%) of the BFI Consideration Common Shares, and a prohibition on solicitation of certain employees until the second (2nd) anniversary of the Closing Date. The form of the RCA is attached as Exhibit E to the Purchase Agreement.

The RCA is filed with this Form 8-K as Exhibit 10.5 and is incorporated herein by reference. The foregoing description of the RCA does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the RCA, filed with this Form 8-K as Exhibit 10.5.

Voting Agreement

Also in connection with the Stock Acquisition, on November 3, 2021, the Company, the Seller, Ophir Sternberg and Lionheart Equities, LLC entered into a voting agreement (the “Voting Agreement”) pursuant to which the Seller, Mr. Sternberg and Lionheart Equities, LLC agree to vote (or consent pursuant to an action by written consent of the Company’s stockholders) all securities of the Company that such stockholder owns from time to time and may vote in the election of the Company’s directors in favor of the Company’s post-Closing Board of Directors (the “Board”) until the first to occur of the following: (i) the date that is one (1) year after the Closing Date and (ii) immediately prior to a transaction pursuant to which a person or group other than current stockholders of the Company or the stockholders party to the Voting Agreement, or their respective affiliates, will control greater than fifty percent (50%) of the Company’s voting power with respect to the election of directors of the Company. The Voting Agreement also provides that, if during the term of the Voting Agreement, any stockholder who is a party thereto fails to timely submit a proxy card voting in favor of the election of all of the members of the post-Closing Board who are standing for election, the stockholder appoints the Executive Chairman of the Board of Directors as its true and lawful attorney and proxy with full power of substitution for and its name to act on behalf of the stockholder, for the limited purpose of voting in favor of the election of all of the members of the post-Closing Board; provided, however that such stockholder may attend and vote at the meeting of the Company’s stockholders following exercise of such limited proxy by the Executive Chairman of the Board; provided, further that in the event of such voting by such stockholder at the meeting that is not in favor of the election of all of the members of the post-Closing Board who are standing for election, the Executive Chairman of the Board may again exercise such limited proxy and such stockholder may not vote in such election again. The form of the Voting Agreement is attached as Exhibit F to the Purchase Agreement.

The Voting Agreement is filed with this Form 8-K as Exhibit 10.6 and is incorporated herein by reference. The foregoing description of the Voting Agreement does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Voting Agreement, filed with this Form 8-K as Exhibit 10.6.

Credit Agreement

Also in connection with the Stock Acquisition, on November 3, 2021, the Company, along with all its subsidiaries, joined that certain Credit Agreement dated as of December 15, 2015 (as amended from time to time, the “Credit Agreement”) by and among Plastic Tripod, Inc., a Delaware corporation (“Plastic Tripod”), and together with the Company, the “Borrowers”), the subsidiary guarantors party thereto (collectively, the “Guarantors”), Regions Bank, as administrative agent for the lenders, collateral agent for the lenders, a lender, swingline lender and issuing bank,

Cadence Bank, as a lender, Webster Bank, National Association, as a lender, Synovus Bank, as a lender, CP7 Warming Bag, LP, as a lender and the other lenders party from time to time thereto (collectively, the “Lenders”) by entry into that certain Tenth Amendment to Credit Agreement and Joinder, dated November 3, by and among the Company, the Company’s subsidiaries, Plastic Tripod, Inc., the subsidiary guarantors party thereto, Regions Bank, as administrative agent for the lenders, collateral agent for the lenders, a lender, swingline lender and issuance bank, Cadence Bank, as a lender, Webster Bank, National Association, as a lender, Synovus Bank, as a lender, CP7 Warming Back, LP as a lender and the other lenders party from time to time thereto.

The Credit Agreement provides for a revolving line of credit in the amount of \$4,000,000 (which includes a \$1,500,000 letter of credit sublimit and a \$2,500,000 swingline sublimit that reduce availability of the revolving loans) (the “Revolving Loans”). In addition, \$58,574,929.48 in term loans (the “Term Loan”) and \$10,000,000 under a delayed draw term loan (the “Delayed Draw Term Loan”) were outstanding under the Credit Agreement as of November 3, 2021 (together with the Revolving Loans, the “Loans”).

The interest rates per annum applicable to the Loans (other than the Delayed Draw Term Loan) are set at a fixed rate (i) from November 3, 2021 through June 15, 2023, 4.75% per annum and (ii) from and after June 16, 2023, 6.75% per annum, subject to the implementation of the default rate (i.e., 2.00% per annum above the fixed rate) in accordance with the Credit Agreement. The Delayed Draw Term Loan does not bear interest on the unpaid principal amount thereof. Interest is payable (x)(i) generally on the last day of each interest period selected for LIBOR loans, but in any event, not less frequently than every three months, and (ii) on the last business day of each quarter for base rate loans and (y) at final maturity. The principal amount of the Term Loan must be repaid quarterly in an amount of \$813,000, commencing on December 31, 2021 and continuing at the end of each calendar quarter occurring prior to June 15, 2024 (the “Maturity Date”), with a final payment of any remaining outstanding principal amount and accrued interest on the Term Loan due and payable on the Maturity Date. The entire remaining outstanding principal amount on the Delayed Draw Term Loan is due and payable on the Maturity Date. The Borrowers are also required to pay a fee on the unused portion of the revolving credit facility equal to 0.375% per annum.

The Loans (other than the Delayed Draw Term Loan) may be voluntarily prepaid at any time without premium or penalty. Revolving loans may be borrowed, repaid and reborrowed from time to time in accordance with the terms and conditions of the Credit Agreement. The Borrowers are required to repay the Loans upon receipt of net proceeds upon the disposition of certain property and upon incurrence of indebtedness not permitted by the Credit Agreement. In addition, the Borrowers are required to make mandatory prepayments annually of an amount equal to 50% of the consolidated excess cash flow.

The obligations are secured by substantially all of the assets of the Borrowers and the Guarantors. The Credit Agreement contains customary covenants that limit the Borrowers’ and the Guarantors’ ability to, among other things, grant liens, incur additional indebtedness, make acquisitions or investments, dispose of certain assets, make dividends and distributions, enter into burdensome agreements, use the proceeds of the Loans in contravention to the Credit Agreement, change the nature of their businesses, make fundamental changes, make prepayments on subordinated debt, change their fiscal year, change their organizational documents and make payments of management fees, in each case subject to certain thresholds and exceptions.

The Credit Agreement also contains financial covenants which require the Borrowers and the Guarantors to:

(a) maintain a quarterly consolidated senior lease-adjusted leverage greater than (i) 6.50 to 1.00 as of the end of the fiscal quarter ending on or about March 31, 2022, (ii) 6.25 to 1.00 as of the end of the fiscal quarter ending on or about June 30, 2022, (iii) 6.00 to 1.00 as of the end of the fiscal quarter ending on or about September 30, 2022, (iv) 5.75 to 1.00 as of the end of the fiscal quarter ending on or about December 31, 2022, (v) 5.50 to 1.00 as of the end of the fiscal quarter ending on or about March 31, 2023, (vi) 5.25 to 1.00 as of the end of the fiscal quarter ending on or about June 30, 2023, and (vii) 5.00 to 1.00 as of the end of the fiscal quarter ending on or about September 30, 2023 and the end of each fiscal quarter thereafter;

(b) maintain a quarterly minimum fixed charge coverage ratio of 1.30:1.00 commencing with the fiscal quarter ending on or about March 31, 2022;

(c) maintain liquidity, as of the last business day of each calendar month occurring after November 3, 2021 and maintained in deposit accounts held at one or more of the Lenders, of at least \$12,500,000; and

The consolidated senior lease-adjusted leverage ratio, fixed charge coverage ratio and liquidity are computed in accordance with the Credit Agreement.

The Credit Agreement is filed with this Form 8-K as Exhibit 10.7 and is incorporated herein by reference. The foregoing description of the Credit Agreement does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Credit Agreement, filed with this Form 8-K as Exhibit 10.7.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein.

Item 3.03. Material Modification to Rights of Security Holders.

The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein.

On November 3, 2021, the Company filed a certificate of designation (the “CoD”) with the Delaware Secretary of State that had the effect of designating 2,620,000 shares of preferred stock, par value \$0.0001 per share (“Preferred Stock”), as Series A Preferred Stock with the powers, designations, preferences and other rights set forth therein. The CoD became effective on November 3, 2021.

Dividend Rights

From and after the earlier of (a) June 15, 2024, and (b) the date on which the indebtedness (the “Regions Credit Facility”) of the Company and certain of its direct and indirect subsidiaries pursuant to that certain Credit Agreement, dated as of December 15, 2015, as amended, between Plastic Tripod, Inc. and certain of its subsidiaries, the Target, the lenders party thereto and Regions Bank, as administrative agent and collateral agent, as such credit agreement and related agreements was amended as of the Closing or is refinanced or repaid in full, cumulative payment-in-kind (“PIK”) (including fractional shares of Series A Junior Preferred Stock paid as dividends) dividends (“Preferred Dividends”) shall accrue on the Series A Junior Preferred Stock, whether or not declared by the Board and whether or not there are funds legally available for the payment of dividends, on a daily basis at the Applicable Dividend Rate (as defined below) on the Series A Adjusted Price (as defined in the CoD). Preferred Dividends will be payable in arrears as applicable: (1) upon a liquidation, dissolution, winding up or Deemed Liquidation Event (as defined in the CoD) of the Company, on or prior to the time the holders of Series A Junior Preferred Stock receive an amount per each share of Series A Junior Preferred Stock equal to the Series A Redemption Price (as defined below), (2) upon a redemption (except a redemption upon the occurrence of a Deemed Liquidation Event), on or prior to the Redemption Date (as defined below), or (3) before an Arrearage Event (as defined below). In addition, holders of the Series A Junior Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds legally available therefor, participating dividends (“Participating Dividends”) with respect to dividends declared on Common Stock on an equivalent per share of Series A Junior Preferred Stock basis based on an equivalent number of shares and fractional shares of Common Stock equal to dividing the Series A Adjusted Price by a per share amount equal to the arithmetic average of the VWAP (as defined in the CoD) for each of the 30 consecutive trading days immediately preceding the applicable record date (the “Common Stock Price”) on the applicable record date for such dividends or distributions. For the avoidance of doubt, the calculation of Preferred Dividends shall not result in an increase in the compounding rate of the Applicable Dividend Rate of more than once quarterly, as contemplated in the definition of Applicable Dividend Rate. “Applicable Dividend Rate” shall mean (a) 7.00% per annum, compounded quarterly, with such rate

increasing by an additional 0.35% per quarter commencing with the three month period ending September 30, 2024 and (b) in the event that the Regions Credit Facility is refinanced or repaid in full prior to June 15, 2024 and the Series A Junior Preferred Stock is not redeemed in full on such date, from and after such date, the Applicable Dividend Rate shall be 5.00% per annum, compounded quarterly, until June 15, 2024, at which time the Applicable Dividend Rate shall be determined as set forth in clause (a) of the CoD.

In the event the Company 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 Company (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the foregoing provision does not apply to such dividend or distribution, then the holders of Series A Junior Preferred Stock shall receive an amount equal to the aggregate amount of any such dividends or other distributions on an equivalent per share of Series A Junior Preferred Stock basis, simultaneously with the distribution to the holders of Common Stock, based on the number of equivalent shares and fractional shares of Common Stock equal to dividing the Series A Adjusted Price by the Common Stock Price on the applicable record date for such dividends or distributions.

Arrearage

If the Company fails to comply with its obligations under the CoD with respect to Preferred Dividends or fails to pay or distribute any unpaid Participating Distribution (any of the foregoing events, an "Arrearage Event"), no dividends shall be declared or paid or set apart for payment, or other distribution declared or made, upon the Common Stock and any other classes or series of capital stock, and any rights or options to acquire capital stock, ranking junior to the Series A Junior Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation or upon a Deemed Liquidation Event, or in respect of the payment of dividends or rights of redemption ("Junior Stock"), nor shall any Junior Stock be redeemed, purchased or otherwise acquired for any consideration (nor shall any moneys be paid to or made available for a sinking fund for the redemption or other purchase of any such Junior Stock), directly or indirectly, by the Company or any of its subsidiaries until (i) all such dividends have been paid in full or (ii) all such dividends have been or contemporaneously are declared and a sum sufficient for the payment thereof has been or is set aside for the benefit of the holders of the Series A Junior Preferred Stock.

Liquidation

The Series A Junior Preferred Stock ranks senior to the Common Stock in a distribution of assets in any dissolution or liquidation of the Company. In the event of any voluntary or involuntary liquidation, dissolution or winding up or Deemed Liquidation Event of the Company, the holders of Series A Junior Preferred Stock shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, before any payment shall be made to the holders of Junior Stock, an amount per each share of Series A Junior Preferred Stock equal to the Series A Redemption Price; provided, however, that if there are not sufficient assets available to redeem all outstanding shares of Series A Junior Preferred Stock, then the holders of shares of the Series A Junior 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, and the Company shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders.

Redemption

The shares of Series A Junior Preferred Stock (in whole or in part) shall be redeemable from any holder at the Company's option at any time for cash in an amount (the "Series A Redemption Price") per share equal to the Series A Adjusted Price, plus, without duplication, any dividends unpaid thereon, plus, without duplication, an amount equal to accrued and unpaid dividends and distributions thereon for each share of Series A Junior Preferred Stock held by such holders. The Company shall send written notice of such redemption to each holder of record of Series A Junior Preferred Stock not less than thirty (30) days prior to the date of redemption (the "Redemption Date").

In addition, in the event the Company consummates (i) one or more equity financings for the benefit of the Company or its subsidiaries in which shares of Common Stock, Preferred Stock or securities, directly or indirectly, convertible into or exchangeable or exercisable for shares of Common Stock or Preferred Stock are issued, or (ii) other than with respect to the Regions Credit Facility, one or more debt financings, which raise, in the aggregate and taken together with any prior or concurrent equity and/or debt financings, gross proceeds to the Company of \$50,000,000 or more (each, a “Qualified Financing”), the Company shall (a) send a redemption notice to the holders of the Series A Junior Preferred Stock on the date a Qualified Financing is consummated and set a Redemption Date of thirty (30) days (or if such 30th day is not a business day, the first business day thereafter) following the date a Qualified Financing is consummated and (b) use fifty percent (50%) of the proceeds from any such Qualified Financing for general and other corporate purposes and the remaining fifty percent (50%) of any such proceeds to promptly redeem all or a portion, as applicable, of the Series A Junior Preferred Stock in exchange for the Series A Redemption Price. Notwithstanding the foregoing, if any redemption triggered by a Qualified Financing would otherwise occur before the earlier of (x) the date that is 91 days after June 15, 2024, and (y) the date on which the Regions Credit Facility is repaid in full, and the Regions Credit Facility prohibits or limits such redemption, the Company shall only be obligated to redeem the Series A Junior Preferred Stock as and to the extent permitted under the Regions Credit Facility and, promptly after such prohibition or limitation lapses, the Company shall redeem such shares of Series A Junior Preferred Stock in accordance with the foregoing provisions as if such redemption had not been prohibited or limited by the Regions Credit Facility.

Further, upon the occurrence of a Deemed Liquidation Event, if the Company does not effect a dissolution of the Company within ninety (90) days after such Deemed Liquidation Event, then the Company shall send a written notice to each holder of Series A Junior Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right to require the redemption of such shares of Series A Junior Preferred Stock, and if the holders of at least a majority of the then outstanding shares of Series A Junior Preferred Stock so request in a written instrument delivered to the Company not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Company shall, on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, redeem all outstanding shares of Series A Junior Preferred Stock at a price per share equal to the Series A Redemption Price.

Notwithstanding the foregoing, upon the sixth (6th) anniversary of the Closing, the Company shall redeem all of the Series A Junior Preferred Stock in exchange for the Series A Redemption Price. The Company shall send written notice of such redemption to each holder of record of Series A Junior Preferred Stock not less than thirty (30) days prior to the Redemption Date.

In the event the Company fails to timely redeem any shares of Series A Junior Preferred Stock as required upon a Qualified Financing or in accordance with the preceding paragraph by a date that would be on or after the Regions Maturity Date, the Applicable Dividend Rate shall automatically increase to the lesser of (x) 10% (with such rate increasing by an additional 0.35% per quarter from and after the date any shares of Series A Junior Preferred Stock were required to be redeemed) or (y) the maximum rate that may be applied under applicable law, unless waived in writing by the holders of a majority of the outstanding shares of Series A Junior Preferred Stock.

Voting Rights

The shares of Series A Junior Preferred Stock shall not have voting rights, other than any vote required by law or the Amended and Restated Certificate of Incorporation of the Company (including the CoD). The written consent of the holders of at least a majority of the then outstanding shares of Series A Junior Preferred Stock, consenting or voting separately as a class, shall be required for certain major decisions of the Company such as (i) an amendment of the CoD, Amended and Restated Certificate of Incorporation or Amended and Restated Bylaws, in a manner that adversely affects the holders of the Series A Junior Preferred Stock (other than an amendment contemplated in the CoD), (ii) to create, or authorize the creation of, increase the authorized shares of, or issue shares of, any additional class or series of capital stock that ranks senior or equal to the Series A Junior Preferred Stock, (iii) to reclassify, alter or amend any existing security of the Corporation that is junior to the Series A Junior Preferred Stock, if such reclassification, alteration or amendment would render such other security senior to or equal with the Series A Junior Preferred Stock, (iv) a redemption of any shares of capital stock of the Company other than redemption of the Series A Junior Preferred Stock pursuant to the CoD and certain other exceptions and (v) the issuance of shares of Series A Junior Preferred Stock to persons other than the original holders and their affiliates and any transferees thereof.

Transferability

The Series A Junior Preferred Stock shall be freely transferable by the holders thereof without any consent required of the Company subject to compliance with applicable federal and state securities laws.

Conversion

The holders of shares of Series A Junior Preferred Stock shall not have any conversion rights.

Amendment

At such time as any shares of Series A Junior Preferred Stock are outstanding, any proposed waiver of or amendment to the Amended and Restated Certificate of Incorporation of the Company (including the CoD) that would adversely alter, change or repeal any of the preferences, powers or special rights given to the Series A Junior Preferred Stock, shall require the approval by the Company and the affirmative vote of a majority of the outstanding shares of the Series A Junior Preferred Stock, in addition to such other vote as may be required by the Delaware General Corporation Law.

Other

Holders of Series A Junior Preferred Stock shall have no preemptive or other subscription rights.

The CoD was filed as Exhibit 4.2 to the Company's registration statement on FormS-8 filed with the SEC on November 3, 2021 and is incorporated herein by reference as Exhibit 3.1. The foregoing description of the CoD does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the CoD.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Changes to Management and the Board of the Company

On November 3, 2021, in connection with the Stock Acquisition, the Company agreed to, effective November 8, 2021, (i) remove Julio Ramirez's role as Chief Executive Officer of the Company and provide Mr. Ramirez with the role of Chief Executive Officer and President of the BurgerFi brand and (ii) appoint Ian Baines as the Chief Executive Officer of the Company in place of Julio Ramirez, in each case until their successors are chosen and qualified, or until their earlier resignation or removal and (iii) appoint Andrew Taub as a Class C director of the Company, to serve until his successor is duly elected and qualified. In addition, on November 5, 2021, the Company agreed to, effective November 8, 2021, remove James Esposito's role as Chief Operating Officer of the Company and provide Mr. Esposito with the role of Chief Operating Officer of the BurgerFi brand.

Ian Baines

Mr. Baines served as the President and Chief Executive Officer of ACFP Management, Inc. from January 2020 until November 2021. Mr. Baines has over four decades of experience in the restaurant and hospitality business, beginning as a classically trained chef in his native England, followed by 25 years in Canada with ever increasing roles and responsibilities culminating into Chief Operating Officer of SIR Corp restaurants. In 2004, Mr. Baines was actively recruited to join Brinker International where he served in various executive roles. He joined Darden Restaurants Inc. and led the Smokey Bones brand as President before the sale to Sun Capital, where he continued for several years as President and Chief Executive Officer. He was recruited back to Brinker International in 2011 as Senior Vice President of Strategic Innovation. From 2013 to 2014, Mr. Baines served as President and Chief Executive Officer for Uno Restaurant Holdings Corporation. From 2014 to 2018, he served as President and Chief Executive Officer of Cheddar's Scratch Kitchen; after the sale of Cheddar's to Darden Restaurants Inc. in 2017 he continued as Brand President. In 2019, he was Chief Executive Officer of Del Frisco's during the transition from a public company to three independent brands and ultimately the sale of the steak division. We believe Mr. Baines is qualified to serve on our Board of Directors due to his extensive experience in the industry.

Except for the Purchase Agreement, there are no arrangements or understandings between Mr. Baines and any other person pursuant to which he was appointed. There are also no family relationships between Mr. Baines and any director or executive officer of the Company, and Mr. Baines does not have any direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

On November 4, 2021, the Company and ACFP Management, Inc. entered into an amended and restated employment agreement with Mr. Baines (the "Baines Employment Agreement"), to serve as the Company's Chief Executive Officer effective as of November 8, 2021. Under the terms of the Baines Employment Agreement, Mr. Baines shall earn a base salary of not less than \$523,628, subject to review by the Compensation Committee of the Board (the "Compensation Committee") in consultation with the Executive Chairman of the Board.

In addition, Mr. Baines is eligible to receive an annual cash performance bonus of up to 60% of Mr. Baines' base salary, based upon the achievement of individual and Company performance objectives as mutually agreed by the Board and Mr. Baines.

Mr. Baines will have the right to receive or participate in all employee benefit programs and perquisites generally established by the Company or one of its affiliates for similarly situated employees. In relation to Mr. Baines' previous role as Chief Executive Officer of ACFP, Mr. Baines received Target Options pursuant to a Non-Qualified Stock Option Agreement dated September 30, 2020 under the Target Plan. In relation to the consummation of the Stock Acquisition, the Company and Mr. Baines entered into an Option Agreement Amendment (the "Baines Option Agreement Amendment"), pursuant to which the Target Options held by Mr. Baines were converted into 211,662 shares of Common Stock (the "Baines Issued Shares"). Except with respect to certain permitted transfers by operation of law, permitted transferees or to pay federal and state income tax obligations, Mr. Baines may not, without the express written consent of the Board, (i) transfer any Baines Issued Shares until June 20, 2022 or (ii) during the period beginning on June 20, 2022 and ending on December 31, 2022, transfer more than 50% of any Baines Issued Shares then held by Mr. Baines. Except as otherwise determined by the Compensation Committee or the Board, all restrictions on the transfer of Baines Issued Shares shall cease as of December 31, 2022.

Upon a termination of Mr. Baines' employment without Cause (as defined in the Baines Employment Agreement) or the resignation by Mr. Baines for Good Reason (as defined in the Baines Employment Agreement), Mr. Baines shall be entitled to receive all accrued, determined and unpaid compensation, a pro-rata bonus payment for the fiscal year of termination based on actual performance results for the full annual performance period and severance payment of Mr. Baines' base salary for a period of twelve (12) months after the date of termination.

During the term of the Baines' Employment Agreement and for the twelve (12) months after the date of his employment, Mr. Baines will be bound by confidentiality and non-competition obligations with respect to the Company's existing brands of "BurgerFi" and "Anthony's Coal Fired Pizza" and any future brands that may be acquired by the Company from time to time.

The Baines Employment Agreement and the Baines Option Amendment Agreement are filed with this Form 8-K as Exhibit 10.8 and Exhibit 10.9, respectively, and are incorporated herein by reference. The foregoing description of the Baines Employment Agreement and the Baines Option Amendment Agreement do not purport to be complete and are subject to, and are qualified in its entirety by, the full text of the Baines Employment Agreement and the Baines Option Amendment Agreement, respectively, filed with this Form 8-K as Exhibit 10.8 and Exhibit 10.9, respectively.

Andrew Taub

Mr. Taub has been a Managing Partner of L Catterton, where he focuses on the Flagship Buyout Fund, since 1996. L Catterton is the world's largest consumer-focused private equity firm, with approximately \$30 billion of equity capital across six fund strategies in 17 offices globally. Andrew's investment and operating expertise spans the consumer and healthcare services landscape through investments in the pet, optical, restaurant, food and marketing services industries. In addition to serving on the Company's Board, Andrew currently serves as a director of several L Catterton portfolio companies, including JustFoodForDogs, PatientPoint Health Technologies, and FYidoctors. Andrew holds a Bachelor of Arts degree in Finance and Accounting from the University of Michigan at Ann Arbor and a Master of Business Administration degree from Columbia Business School.

Mr. Taub was selected as a director pursuant to Seller's right under the Purchase Agreement whereby, for so long as Seller, its Affiliates or any Seller Related Persons, directly or indirectly, hold collectively 42.5% or more of the shares of Common Stock issued to Seller at the Closing, Seller shall have the option and the right (but not the obligation), to designate one director. There are no family relationships between Mr. Taub and any director or executive officer of the Company, and Mr. Taub does not have any direct or indirect material interest in any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K. The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein.

Assumption of Target Plan

The disclosure set forth above in Item 1.01 of this Current Report on Form8-K is incorporated by reference herein. The Company assumed the Target Plan for the purposes of accommodating the holders of the Target Options. The Option Consideration Shares were issued from shares available under the Target Plan and the Company does not intend to issue any additional shares under the Target Plan.

The Target Plan was filed as Exhibit 4.4 to the Company's registration statement on FormS-8 filed with the SEC on November 3, 2021 and is incorporated herein by reference as Exhibit 10.10. The description of the Target Plan contained in this Form 8-K does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Target Plan.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The disclosure set forth above in Item 3.03 of this Current Report on Form8-K is incorporated by reference herein.

Item 7.01 Regulation FD Disclosure.

Attached as Exhibit 99.1 to this Current Report on Form8-K and incorporated into this Item 7.01 by reference is a copy of the press release issued November 4, 2021 announcing consummation of the Stock Acquisition.

Exhibit 99.1 is being furnished pursuant to Item 7.01 and shall not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise be subject to the liabilities of that section, nor shall it be deemed to be incorporated by reference in any filing under the Securities Act or the Exchange Act.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

In accordance with Item 9.01(a), the Target's audited financial statements for the years ended January 4, 2021 and December 30, 2019 and the Target's unaudited interim financial statements for the periods ended July 5, 2021 and June 29, 2020 are attached to this Form 8-K as Exhibit 99.2.

(b) Pro Forma Financial Information.

In accordance with Item 9.01(b), Unaudited pro forma condensed combined financial information, an Unaudited pro forma condensed combined balance sheet as of June 30, 2021, Unaudited pro forma condensed combined statement of operations for the year ended December 31, 2020, and Unaudited pro forma condensed combined statement of operations for the six months ended June 30, 2021 are attached to this Form 8-K as Exhibit 99.3.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
2.1	<u>Amended and Restated Stock Purchase Agreement dated November 3, 2021 by and among Hot Air, Inc., Cardboard Box, LLC and the Company.</u>
3.1	<u>Certificate of Designation of Series A Preferred Stock of the Company, dated November 3, 2021 (Incorporated by reference to Exhibit 4.2 to the Company's registration statement on Form S-8 filed by the Company on November 3, 2021).</u>

- 10.1 [Form of Amendment to the Non-Qualified Stock Option Agreement pursuant to the Hot Air, Inc. Amended and Restated 2016 Stock Option Plan \(Incorporated by reference to Exhibit 4.6 to the Company's registration statement on Form S-8 filed by the Company on November 3, 2021\).](#)
- 10.2 [Form of Non-Qualified Stock Option Agreement pursuant to the Hot Air, Inc. Amended and Restated 2016 Stock Option Plan \(Incorporated by reference to Exhibit 4.5 to the Company's registration statement on Form S-8 filed by the Company on November 3, 2021\).](#)
- 10.3 [Share Escrow Agreement, dated November 3, 2021, by and among the Company, the Seller and the Escrow Agent.](#)
- 10.4 [Registration Rights and Lock-Up Agreement, dated November 3, 2021, by and between the Seller and the Company.](#)
- 10.5 [Restrictive Covenants Agreement, dated November 3, 2021, by and among Catterton Partners VII, L.P., Catterton Partners VII Offshore, L.P. and Catterton Partners VII Special Purposes, L.P., on the one hand, and the Company, on the other hand.](#)
- 10.6 [Voting Agreement, dated November 3, 2021, by and among the Company, the Seller, Ophir Sternberg and Lionheart Equities, LLC.](#)
- 10.7 [Tenth Amendment to Credit Agreement and Joinder, dated November 3, 2021, by and among the Company, the Company's subsidiaries, Plastic Tripod, Inc., the subsidiary guarantors party thereto, Regions Bank, as administrative agent for the lenders, collateral agent for the lenders, a lender, swingline lender and issuance bank, Cadence Bank, as a lender, Webster Bank, National Association, as a lender, Synovus Bank, as a lender, CP7 Warming Back, LP as a lender and the other lenders party from time to time thereto.](#)
- 10.8+ [Amended and Restated Employment Agreement, dated November 4, 2021, by and between ACFP Management, Inc., the Company and Ian Baines.](#)
- 10.9+ [Amendment to the Non-Qualified Stock Option Agreement pursuant to the Hot Air, Inc. Amended and Restated 2016 Stock Option Plan, dated November 3, 2021, by and between the Company and Ian Baines.](#)
- 10.10+ [Hot Air, Inc. 2016 Amended and Restated 2016 Option Plan \(Incorporated by reference to Exhibit 4.4 to the Company's registration statement on Form S-8 filed by the Company on November 3, 2021\).](#)
- 23.1 [Consent of BDO USA, LLP](#)
- 99.1 [Press Release, dated November 4, 2021.](#)
- 99.2 [Audited and Unaudited Interim Financial Statements of the Target.](#)
- 99.3 [Pro Forma Financial Information.](#)
- 104 Cover Page Interactive Data File (embedded within the Inline XBRL document).

+ Indicates a management contract or a compensatory plan or agreement.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: November 5, 2021

BURGERFI INTERNATIONAL, INC.

By: /s/ Michael Rabinovitch

Michael Rabinovitch
Chief Financial Officer

AMENDED AND RESTATED STOCK PURCHASE AGREEMENT

BY AND AMONG

HOT AIR, INC.,

CARDBOARD BOX LLC,

AND

BURGERFI INTERNATIONAL, INC.

Dated as of November 3, 2021

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	1
ARTICLE II PURCHASE AND SALE	19
Section 2.01 Purchase and Sale	19
Section 2.02 Total Consideration	19
Section 2.03 Transactions to be Effected at the Closing	19
Section 2.04 Purchase Price Adjustment	23
Section 2.05 Locked Box and Leakage	26
Section 2.06 Compliance with Rules of Principal Market	28
Section 2.07 Treatment of Company Options.	28
Section 2.08 Closing	29
Section 2.09 Withholding Tax	29
ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND SELLER	30
Section 3.01 Organization and Authority	30
Section 3.02 Organization, Authority and Qualification of the Company and the other ACFP Companies	30
Section 3.03 Capitalization	31
Section 3.04 Company Subsidiaries	32
Section 3.05 No Conflicts; Consents	32
Section 3.06 Financial Statements	32
Section 3.07 Undisclosed Liabilities	33
Section 3.08 Absence of Certain Changes, Events and Conditions	33
Section 3.09 Material Contracts	36
Section 3.10 Title to Assets; Real Property	37
Section 3.11 Condition and Sufficiency of Assets	38
Section 3.12 Intellectual Property	39
Section 3.13 Accounts Receivable	41
Section 3.14 Suppliers	41
Section 3.15 Insurance	42
Section 3.16 Legal Proceedings; Governmental Orders	42
Section 3.17 Compliance With Laws; Permits	43
Section 3.18 Environmental Matters	43
Section 3.19 Employee Benefit Matters	44
Section 3.20 Employment Matters	46
Section 3.21 Taxes	48
Section 3.22 Books and Records	50
Section 3.23 Banks; Power of Attorney;	50
Section 3.24 Franchise Matters	50
Section 3.25 Brokers	51
Section 3.26 Investment Experience	51
Section 3.27 Risk of Investment	51
Section 3.28 Investment Purpose	51
Section 3.29 Accredited Investor	51

Section 3.30 No Market	51
Section 3.31 Access to Data	51
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER	51
Section 4.01 Organization, Authority and Qualification of the BFI Companies	52
Section 4.02 Capitalization	53
Section 4.03 Buyer Subsidiaries	54
Section 4.04 No Conflicts; Consents	54
Section 4.05 BFI Reports, Financial Statements	55
Section 4.06 Absence of Certain Changes	56
Section 4.07 Legal Proceedings; Governmental Orders	56
Section 4.08 Related Party Transactions	56
Section 4.09 Investment Purpose	57
Section 4.10 Brokers	57
Section 4.11 Takeover Statutes	57
Section 4.12 Franchise Matters	57
ARTICLE V COVENANTS	59
Section 5.01 Conduct of Business Prior to the Closing	59
Section 5.02 Access to Information	60
Section 5.03 No Solicitation of Other Bids	60
Section 5.04 Notice of Certain Events	61
Section 5.05 Employment Matters	62
Section 5.06 Confidentiality	64
Section 5.07 Governmental Approvals and Consents	64
Section 5.08 Books and Records	66
Section 5.09 Refinancing of ACFP Continuing Indebtedness	67
Section 5.10 Closing Conditions and Deliverables	67
Section 5.11 Public Announcements	67
Section 5.12 Further Assurances	68
Section 5.13 Conduct of Buyer	68
Section 5.14 Takeover Statutes	69
Section 5.15 Listing	69
Section 5.16 Director and Officer Liability	70
Section 5.17 Financing Cooperation	71
Section 5.18 Funds Flow Memorandum; Closing Allocation Table	72
Section 5.19 Section 280G Waiver	72
Section 5.20 BFI Management Compensation	72
Section 5.21 Board of Directors	72
ARTICLE VI TAX MATTERS	74
Section 6.01 Tax Covenants	74
Section 6.02 Termination of Existing Tax Sharing Agreements	75
Section 6.03 Tax Indemnification	75
Section 6.04 Straddle Period	76
Section 6.05 Intended Tax Treatment	76
Section 6.06 Contests	76

Section 6.07 Cooperation and Exchange of Information	77
Section 6.08 Tax Treatment of Indemnification Payments	77
Section 6.09 Payments to Buyer	77
Section 6.10 Buyer Tax Acts	78
Section 6.11 Tax Refunds	78
Section 6.12 Survival	78
Section 6.13 Overlap	78
ARTICLE VII CONDITIONS TO CLOSING	79
Section 7.01 Conditions to Obligations of All Parties	79
Section 7.02 Conditions to Obligations of Buyer	79
Section 7.03 Conditions to Obligations of Seller	80
ARTICLE VIII INDEMNIFICATION	81
Section 8.01 Survival	81
Section 8.02 Indemnification By Seller	81
Section 8.03 Indemnification By Buyer	82
Section 8.04 Certain Limitations	82
Section 8.05 Indemnification Procedures	84
Section 8.06 Payments; Indemnification Escrow Shares	86
Section 8.07 Tax Treatment of Indemnification Payments	87
Section 8.08 Effect of Investigation	87
Section 8.09 Exclusive Remedies	87
ARTICLE IX TERMINATION	87
Section 9.01 Termination	87
Section 9.02 Effect of Termination	88
ARTICLE X MISCELLANEOUS	89
Section 10.01 Expenses	89
Section 10.02 Notices	89
Section 10.03 Interpretation	90
Section 10.04 Headings	90
Section 10.05 Severability	90
Section 10.06 Entire Agreement	90
Section 10.07 Successors and Assigns	90
Section 10.08 No Third-party Beneficiaries	91
Section 10.09 Amendment and Modification; Waiver	91
Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial	91
Section 10.11 Specific Performance	93
Section 10.12 Counterparts	93
Section 10.13 Disclosure Schedules	93
Section 10.14 No Recourse	94
Section 10.15 Representation by Proskauer	94
Section 10.16 Disclaimer	95
Section 10.17 Original SPA	96

EXHIBITS

Exhibit A	Form of Amendment to the Company Stock Option Agreement
Exhibit B	Form of Certificate of Designation
Exhibit C	Form of Escrow Agreement
Exhibit D	Form of Registration Rights Agreement
Exhibit E	Form of Restrictive Covenant Agreement
Exhibit F	Form of Voting Agreement

AMENDED AND RESTATED STOCK PURCHASE AGREEMENT

THIS AMENDED AND RESTATED STOCK PURCHASE AGREEMENT (together with all schedules and exhibits hereto, this “**Agreement**”), dated as of November 3, 2021, is entered into by and among Hot Air, Inc., a Delaware corporation (the “**Company**”), Cardboard Box LLC, a Delaware limited liability company (“**Seller**”) and BurgerFi International, Inc., a Delaware corporation (“**Buyer**”) and together with the Company and Seller, the “**Parties**” and each, a “**Party**”).

RECITALS

WHEREAS, Seller owns all of the issued and outstanding shares of common stock, par value \$0.001 (the “**Shares**”), of the Company;

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, the Shares, subject to the terms and conditions set forth herein; and

WHEREAS, a portion of the consideration payable by Buyer to Seller shall be initially placed in escrow by Buyer at the Closing, the release of which shall be contingent upon certain events and conditions, all as set forth in this Agreement and the Escrow Agreement (as defined herein).

WHEREAS, the Parties entered into the original Stock Purchase Agreement, dated as of October 8, 2021 (the “**Original SPA**”), and the Parties wish to amend and restate the Original SPA in accordance with the terms and provisions hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

The following terms have the meanings specified or referred to in this ARTICLE I:

“**ACFP Business**” means the business of operating upscale casual dining restaurants in the specialty pizza segment under the name “Anthony’s Coal Fired Pizza.”

“**ACFP Company**” means the Company and each Subsidiary of the Company, each, individually, and collectively, the “**ACFP Companies**.”

“**ACFP Company Bank Accounts**” has the meaning set forth in Section 3.23.

“**ACFP Continuing Executive**” means each of Ian Baines, Patrick Renna and Michelle Zavolta, and collectively the “**ACFP Continuing Executives**”.

“**ACFP Continuing Indebtedness**” means the actual Net Indebtedness Amount of Seller and its Subsidiaries at the Closing, including pursuant to (a) the Credit Agreement as of the Closing, (b) that certain Delayed Draw Term Note as of the Closing, which as of the date hereof is equal to \$10,000,000.00 (the “**Catterton ACFP Continuing Indebtedness**”) and (c) that certain Secured Promissory Note issued to Anthony’s Coal Fired Pizza of Springfield, LLC on July 27, 2020, which as of the date hereof is equal to \$215,000.00.

“**ACFP Continuing Officers**” means each of John Reale, Nadia Cronk and Alan LaBatte, and collectively, the “**ACFP Continuing Officers**”.

“**ACFP Material Adverse Effect**” means any event, occurrence, fact, condition or change that results, or would reasonably be expected to result, when considered individually or in the aggregate, in a material adverse effect to (a) the business, results of operations, condition (financial or otherwise) or assets of the ACFP Companies, taken as a whole, or (b) the ability of Seller or the Company to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions in the United States or any other geographic region in which the ACFP Companies operate; (ii) conditions generally affecting the industries in which the ACFP Companies operate, including, but not limited to, any epidemic, pandemic or disease outbreak (including COVID-19), or any Law, regulation, statute, directive, pronouncement or guideline issued by a Governmental Authority in connection thereto; (iii) any changes in financial, banking, debt, credit or securities markets in general (including any disruption thereof and any decline in the price of any security or any market index); (iv) acts of war (whether or not declared), armed hostilities or terrorism or other global unrest or international or national hostilities, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to Section 3.05 and Section 5.07; (vi) any changes in applicable Laws or accounting rules, including GAAP; (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement or any other Transaction Document, including but not limited to (A) any litigation resulting therefrom and (B) any disruption in supplier, distributor, customer, partner or similar relationships; (viii) any earthquake, hurricane, tornado, storm, flood, wildfire or other natural disaster; (ix) changes or proposed changes in GAAP or the interpretation of the foregoing after the date hereof; or (x) any failure of the ACFP Companies to meet any published or internally prepared estimates of revenues, earnings or other economic performance for any period ending on or after the date of this Agreement (provided that the facts and circumstances giving rise to such failure may be deemed to constitute and may be taken into account when determining whether there has been, an ACFP Material Adverse Effect if such facts and circumstances are not otherwise described in clauses (i)-(ix) of this definition); *provided, further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether an ACFP Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a materially disproportionate effect on the ACFP Companies compared to other participants in the industries in which the ACFP Companies conduct its businesses.

“**Acquisition Proposal**” has the meaning set forth in Section 5.03(a).

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Aggregate Option Exercise Price**” means the aggregate amount that would be paid to the Company in respect of all Company Options (other than Out-of-Money Options) had such Company Options been exercised in full (and assuming concurrent payment in full of the exercise price of each such Company Option solely in cash), immediately prior to the Closing in accordance with the terms of the applicable option award agreement with the Company pursuant to which such Company Options were issued.

“**Agreement**” has the meaning set forth in the preamble.

“**Amendment to the Company Stock Option Agreement**” means each Amendment to the Non-Qualified Stock Option Agreement pursuant to the Hot Air, Inc. Amended and Restated 2016 Stock Option Plan, executed by the Company and Buyer, substantially in the form attached hereto as Exhibit A, whereby Buyer agrees to issue Option Consideration Shares to each holder of Company Options (other than Out-of-Money Options).

“**Audited Financial Statements**” has the meaning set forth in Section 3.06.

“**Balance Sheet**” has the meaning set forth in Section 3.06.

“**Balance Sheet Date**” has the meaning set forth in Section 3.06.

“**Basket**” has the meaning set forth in Section 8.04(a).

“**Benefit Plan**” means each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by an ACFP Company for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of such ACFP Company or any spouse or dependent of such individual or under which such ACFP Company or any of its ERISA Affiliates has any Liability.

“**BFI 10-K**” shall mean Buyer’s Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

“**BFI Balance Sheet**” shall mean the consolidated balance sheet of Buyer as of December 31, 2020 and the footnotes thereto set forth in the BFI 10-K.

“**BFI Balance Sheet Date**” has the meaning set forth Section 4.05(c).

“**BFI Business**” means the business of operating a fast-casual “better burger” concept under the name “BurgerFi” with a classic American menu of premium burgers, hot dogs, crispy chicken, frozen custard, hand-cut fries, beer, wine and more.

“**BFI Closing Date Common Shares**” means a number of shares of BFI Common Stock representing the BFI Consideration Common Shares *minus* the Indemnification Escrow Shares *minus* the Purchase Price Adjustment Escrow Shares.

“**BFI Closing Date Price**” means the price per share of BFI Common Stock ending on the trading day immediately prior to the Closing.

“**BFI Closing Date Shares**” means the BFI Closing Date Common Shares and the BFI Consideration Preferred Shares.

“**BFI Common Exchange Cap**” means the number of shares of BFI Common Stock equal to the difference between (i) the Exchange Cap *minus* (ii) the aggregate number of Option Consideration Shares.

“**BFI Common Stock**” has the meaning set forth in Section 4.02(a).

“**BFI Company**” means each of Buyer and each Subsidiary of Buyer, and collectively, the “**BFI Companies**.”

“**BFI Consideration Common Shares**” means an amount of newly-issued shares of BFI Common Stock (valued at the Per Common Share Amount) representing an amount equal to the BFI Consideration Share Amount, *minus* \$53,000,000; *provided, that*, in no event shall such number of shares of BFI Common Stock exceed the BFI Common Exchange Cap, and any such excess amount shall be issued in the form of additional BFI Consideration Preferred Shares.

“**BFI Consideration Preferred Shares**” means an amount of newly-issued shares of BFI Series A Preferred Stock (with the number of shares of BFI Series A Preferred Stock to be issued calculated using a price per share of \$25.00) representing an aggregate value equal to (i) the BFI Consideration Share Amount, *minus* (ii) an amount equal to the product of the Per Common Share Amount *multiplied by* the number of BFI Consideration Common Shares; *provided*, that in no event shall such amount be less than \$53,000,000.

“**BFI Consideration Share Amount**” means an amount equal to: (a) \$87,055,480, plus (b) the amount, if any, by which the Net Indebtedness Amount is less than \$75,608,999.00, *minus* (c) the amount, if any, by which the Net Indebtedness Amount is greater than \$75,608,999.00, as adjusted by the amount of Leakage, if any, pursuant to Section 2.05.

“**BFI Consideration Shares**” means the BFI Consideration Common Shares and the BFI Consideration Preferred Shares.

“**BFI Financial Statements**” means all of the financial statements of the BFI Companies (including all notes thereto) included in the BFI Reports, including the financial statements of the BFI Companies (including all notes thereto) as of June 30, 2021, as filed by Buyer with the SEC prior to the date hereof.

“**BFI Plan**” means the BurgerFi International, Inc. 2020 Omnibus Equity Incentive Plan, as amended from time to time.

“**BFI Preferred Stock**” has the meaning set forth in Section 4.02(a).

“**BFI Reports**” shall mean all forms, reports, statements, certifications, information, registration statements and other documents (as supplemented and amended since the time of filing and including all exhibits and other information incorporated therein) filed or required to be filed by Buyer with the SEC.

“**BFI Series A Preferred Stock**” means the shares designated as Series A Preferred Stock pursuant to the Certificate of Designation.

“**BFI Stockholders**” means the holders of shares of common stock of Buyer.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in New York City, NY are authorized or required by Law to be closed for business.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Board**” means the board of directors of Buyer.

“**Buyer Fundamental Representations**” means the representations and warranties of Buyer set forth in Section 4.01, Section 4.02, Section 4.03, Section 4.05 and Section 4.10.

“**Buyer Indemnitees**” has the meaning set forth in Section 8.02.

“**Buyer Material Adverse Effect**” means any event, occurrence, fact, condition or change that results, or would reasonably be expected to result, when considered individually or in the aggregate, in a material adverse effect to (a) the business, results of operations, condition (financial or otherwise) or assets of the BFI Companies, taken as a whole, or (b) the ability of Buyer to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions in the United States or any other geographic region in which the BFI Companies operate; (ii) conditions generally affecting the industries in which the BFI Companies operate, including, but not limited to, any epidemic, pandemic or disease outbreak (including COVID-19), or any Law, regulation, statute, directive, pronouncement or guideline issued by a Governmental Authority in connection thereto; (iii) any changes in financial, banking, credit or securities markets in general (including any disruption thereof and any decline in the price of any security or any market index); (iv) acts of war (whether or not declared), armed hostilities or terrorism or other global unrest or international or national hostilities, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to Section 4.04 and Section 5.07; (vi) any changes in applicable Laws or accounting rules, including GAAP; (vii) the public announcement, pendency

or completion of the transactions contemplated by this Agreement or any other Transaction Document, including but not limited to (A) any litigation resulting therefrom and (B) any disruption in supplier, distributor, customer, partner or similar relationships; (viii) any earthquake, hurricane, tornado, storm, flood, wildfire or other natural disaster; (ix) changes or proposed changes in GAAP or the interpretation of the foregoing after the date hereof; or (x) any failure of the BFI Companies to meet any published or internally prepared estimates of revenues, earnings or other economic performance for any period ending on or after the date of this Agreement (*provided* that the facts and circumstances giving rise to such failure may be deemed to constitute and may be taken into account when determining whether there has been, a Buyer Material Adverse Effect if such facts and circumstances are not otherwise described in clauses (i)-(ix) of this definition); *provided further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Buyer Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a materially disproportionate effect on the BFI Companies compared to other participants in the industries in which the BFI Companies conduct their businesses.

“**Buyer’s Accountants**” means Marcum LLP.

“**Buyer Tax Act**” has the meaning set forth in Section 6.10.

“**Cash**” means (a) the amount of all unrestricted cash and cash equivalents of any ACFP Company (which for the avoidance of doubt, shall include cash in such ACFP Company’s respective bank, lock box and other accounts (including cash resulting from the clearance of incoming funds in transit, checks deposited, wire transfers and ACH payments in such accounts)), plus (b) the amount of all marketable securities on hand or in the bank accounts of the ACFP Companies, and shall (i) be calculated net of (A) issued but uncleared checks, outbound wires, and drafts, as applicable, issued or commenced but not withdrawn, and (B) cash and cash equivalents of any ACFP Company held in escrow or trust, and (ii) be calculated in accordance with GAAP.

“**Catterton Release**” means (a) that certain letter agreement between Quilvest Capital Partners USA, Inc. and ACFP Management, Inc., dated as of August 31, 2021, (b) that certain letter agreement between Catterton Management Company, L.L.C. and ACFP Management, Inc., dated as of August 17, 2021, and (c) that certain letter agreement between Seller and ACFP Investors, Inc., dated as of September 30, 2021, in each case of the foregoing clauses (a) through (c), releasing the ACFP Companies from all amounts due and owing under the Monitoring Agreement, and effective at and contingent upon the Closing, and (d) that certain notice from Catterton Management Company, L.L.C. to ACFP Management, Inc., delivered prior to the Closing Date, in the case of this clause (d), terminating the Monitoring Agreement effective at and contingent upon the Closing; *provided, that*, the Catterton Release shall not affect obligations under the Catterton ACFP Continuing Indebtedness.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“**Certificate of Designation**” means that certain Certificate of Designation, to be adopted and authorized by the Buyer Board and filed with the Secretary of State of the State of Delaware at or prior to the Closing, substantially in the form of Exhibit B.

“**Closing**” has the meaning set forth in Section 2.08.

“**Closing Allocation Table**” means the Closing Allocation Table delivered by Seller to Buyer pursuant to Section 5.20(a).

“**Closing Date**” has the meaning set forth in Section 2.08.

“**Closing Indebtedness Certificate**” means a certificate executed by the Chief Financial Officer of the Company certifying on behalf of the Company an itemized list of all outstanding Indebtedness as of the close of business on the Closing Date and the Person to whom such outstanding Indebtedness is owed and an aggregate total of such outstanding Indebtedness.

“**Closing Statement**” has the meaning set forth in Section 2.04(b).

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Common Stock**” has the meaning set forth in Section 3.03(a).

“**Company**” has the meaning set forth in the preamble.

“**Company Intellectual Property**” means all Intellectual Property that is owned by the Company or any Subsidiary of the Company.

“**Company IP Agreements**” means all material written licenses, sublicenses, settlements, coexistence agreements and covenants not to sue relating to Intellectual Property to which the Company or any Subsidiary of the Company is a party, excluding (a) licenses to generally available, off-the-shelf Software or other products or technology, (b) non-exclusive licenses granted by the Company or any Subsidiary of the Company in the ordinary course of business, and (c) confidentiality agreements relating to the disclosure of Trade Secrets by or to any ACFP Company.

“**Company IP Registrations**” means all issued patents, registered trademarks, domain names and copyrights and pending applications for any of the foregoing, in each case, included in the Company Intellectual Property.

“**Company IT Systems**” means all software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) by the Company or any Subsidiary of the Company.

“**Company Option**” means an option to purchase shares of Common Stock under the Company Option Plan.

“**Company Option Holder**” means the holders of Company Options, including any Out-of-Money Options.

“**Company Option Plan**” means the Hot Air, Inc. Amended and Restated 2016 Stock Option Plan, as it may be amended from time to time.

“**Company Per Share Value**” means the quotient obtained by dividing (a) the sum of (i) the value of the BFI Consideration Common Shares issued to Seller valued at the BFI Closing Date Price *plus* (ii) the value of the BFI Consideration Preferred Shares, by (b) 122,542.644.

“**Company Related Person**” means a Related Person of the Company.

“**Confidentiality Agreement**” means the Confidentiality and Non-Disclosure Agreement between Buyer and Catterton Management Company, L.L.C. dated December 23, 2020.

“**Continuance of ACFP Debt Documents**” means the definitive agreements entered into at or prior to the Closing whereby BFI assumes and consents to, as applicable, the ACFP Continuing Indebtedness in accordance with, among other things, the Consent Letter.

“**Continuing Employee**” means each employee of an ACFP Company who continues in employment with an ACFP Company immediately after the Closing, other than the ACFP Continuing Executives and the ACFP Continuing Officers.

“**Consent Letter**” means that certain Consent Letter, dated as of the Original SPA Date, between Seller, the ACFP Companies and the administrative agent and lenders under the Credit Agreement, including the Summary of Principal Terms and Conditions attached thereto as Annex I.

“**Contracts**” means all legally binding contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“**Credit Agreement**” means that certain Credit Agreement, dated as of December 15, 2015, as amended as of the date hereof, between Plastic Tripod, Inc. and certain of its Subsidiaries, the Company, the lenders party thereto and Regions Bank, as administrative agent and collateral agent.

“**Data Room**” means, with respect to Buyer, the electronic data room hosted by Box relating to Buyer and captioned “BFI—DD External” and, with respect to Seller, the electronic data room hosted by Arlington Capital Advisors relating to the ACFP Companies and captioned “Project Alphabet—ACFP Dataroom”.

“**DGCL**” means the Delaware General Corporation Law.

“**Direct Claim**” has the meaning set forth in Section 8.05(c).

“**Disclosure Schedules**” means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

“**Disputed Amounts**” has the meaning set forth in Section 2.04(c)(iii).

“**D&O Expenses**” means all costs, charges and expenses paid or incurred in connection with investigating, defending, being a witness in or otherwise participating in (including on appeal), or preparing to defend, to be a witness in or participate in, any D&O Indemnifiable Claim, in each case, other than D&O Losses.

“**D&O Indemnifiable Claim**” means any threatened, pending or completed dispute or litigation that is directly or indirectly based on, arising out of, relating to or in connection with the fact that a D&O Indemnified Person is or was a director, officer, employee or other fiduciary of any ACFP Company or of any of their respective predecessors (including in respect of acts or omissions in connection with this Agreement or the transactions contemplated hereby).

“**D&O Indemnified Person**” means any current or former director, officer or employee of any of the ACFP Companies, or any successor, assign, heir, executor, administrator, or representative of any such Person.

“**D&O Losses**” means all losses, damages, liabilities, claims, judgments, fines, penalties and amounts paid in resolution or settlement of any D&O Indemnifiable Claim.

“**D&O Policy**” has the meaning set forth in Section 2.03(a)(ii)(F).

“**Encumbrance**” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“**Enforceability Exceptions**” has the meaning set forth in Section 3.01.

“**Environmental Claim**” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged, in writing, non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“**Environmental Law**” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes the following (including their implementing regulations and any state analogs): CERCLA; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste

Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“**Environmental Notice**” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“**Environmental Permit**” means any Permit issued, granted, given, authorized by or made pursuant to Environmental Law.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“**ERISA Affiliate**” means all employers (whether or not incorporated) other than the ACFP Companies that would be treated together with any ACFP Company as a “single employer” within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“**Escrow Agent**” means Continental Stock Transfer & Trust Company, a New York corporation.

“**Escrow Agreement**” means the Share Escrow Agreement to be entered into by Buyer, Seller and Escrow Agent at the Closing, substantially in the form of Exhibit C.

“**Estimated ACFP Continuing Indebtedness**” has the meaning set forth in Section 2.04(a).

“**Estimated Cash**” has the meaning set forth in Section 2.04(a).

“**Estimated Closing Statement**” has the meaning set forth in Section 2.04(a).

“**Estimated Net Indebtedness Amount**” has the meaning set forth in Section 2.04(a).

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Exchange Cap**” has the meaning set forth in Section 2.06.

“**Existing Employment Agreement**” has the meaning set forth in Section 3.20(c).

“**Fee Letter**” means that certain Fee Letter, dated as of the Original SPA Date, between Regions Bank and Plastic Tripod, Inc.

“**Final ACFP Continuing Indebtedness**” has the meaning set forth in Section 2.04(d).

“**Final Allocation Table**” means the Final Allocation Table delivered by Seller to Buyer pursuant to Section 5.18(b).

“**Final Cash**” has the meaning set forth in Section 2.04(d).

“**Final Company Transaction Expenses**” has the meaning set forth in Section 2.05(b).

“**Final Net Indebtedness Amount**” has the meaning set forth in Section 2.04(d).

“**Financial Statements**” has the meaning set forth in Section 3.06.

“**Financing Parties**” has the meaning set forth in Section 8.09.

“**Franchise**” means any commercial business arrangement of the Franchise System that is defined as a “franchise” under the FTC Rule or any Franchise Laws and that is owned or operated by any Person other than Buyer, pursuant to a Franchise Agreement.

“**Franchise Agreements**” means any contracts, agreements, licenses and commitments pursuant to which a party has granted any right, or option to acquire a right, to develop or operate, or grant to another the right to develop or operate, any Franchised Business under the Franchise System, including single or multi-unit franchise or license agreements, area development agreements, master franchise or license agreements, area representative agreements, regional developer agreements and similar agreements that cover the development or franchising of Franchised Businesses of the Franchise System, or the delegation of duties by Buyer with respect to its obligations as a franchisor, and including any addenda, amendments, waivers, extensions, renewals, side letters or other modifications, and any guarantees or instruments in favor of Buyer related to any of the foregoing.

“**Franchise Disclosure Document**” or “**FDD**” means a franchise disclosure document prepared in accordance with the FTC Rule or other Franchise Law, and used by Buyer or any of Buyer’s Affiliates or Subsidiaries in connection with the offer or sale of Franchises for the Franchise System in the United States.

“**Franchise Laws**” means the FTC Rule and any other United States federal, state, local or foreign Law regulating the offer or sale of franchises, business opportunities, seller-assisted marketing plans or similar relationships (including any pre-sale registration or disclosure Laws), or governing the relationships between franchisors and franchisees, including those Laws that address unfair practices related to, or the default, termination, non-renewal, or transfer, of Franchises or Franchise Agreements.

“**Franchise System**” means the franchise system for the development, ownership and operation of fast casual restaurants operated under the primary brand name known as “BurgerFi”.

“**Franchised Business**” means any business developed and operated under the Franchise System pursuant to a Franchise Agreement or a Franchise granted from Buyer.

“**Franchisee**” means a Person who is a party to a Franchise Agreement with Buyer.

“**Franchisor**” means Buyer and BurgerFi International, LLC, its predecessor under Franchise Laws.

“**Fraud**” means with respect to a Party, an actual and intentional misrepresentation of a material existing fact with respect to the making of any representation or warranty in ARTICLE III or ARTICLE IV made by such Party, (a) with respect to Seller, to the Knowledge of Seller, or (b) with respect to Buyer, to the Knowledge of Buyer, in each case under (a) and (b) of its falsity and made for the purpose of inducing any other Party to act, and upon which such other Party justifiably relies with resulting Losses.

“**FTC Rule**” means the Federal Trade Commission trade regulation rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising,” 16 CFR Part 436.1 *et. seq.*

“**Funds Flow Memorandum**” has the meaning set forth in Section 5.20.

“**GAAP**” means United States generally accepted accounting principles in effect from time to time, consistently applied.

“**Government Contracts**” has the meaning set forth in Section 3.09(a)(ix).

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority against the applicable Party.

“**Hazardous Materials**” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, or per- and polyfluoroalkyl substances (PFAS). “**Immediate Family Member**” means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of a person, and any person sharing the household of such person.

“**Indebtedness**” means, without duplication and with respect to the Company, all (a) indebtedness for borrowed money, including the ACFP Continuing Indebtedness; (b) obligations for the deferred purchase price of property or services, (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations treated as such under GAAP; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions; (g) guarantees made by the Company on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g).

“**Indemnification Escrow Fund**” means the Indemnification Escrow Shares held at any determination time by the Escrow Agent as part of the Escrow Shares (as that term is defined in the Escrow Agreement).

“**Indemnification Escrow Shares**” means a number of BFI Consideration Common Shares representing \$12,000,000.

“**Indemnified Party**” has the meaning set forth in Section 8.05.

“**Indemnifying Party**” has the meaning set forth in Section 8.05.

“**Independent Accountant**” has the meaning set forth in Section 2.04(c)(iii).

“**Insurance Policies**” has the meaning set forth in Section 3.15.

“**Intellectual Property**” means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) (“**Patents**”); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing (“**Trademarks**”); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing (“**Copyrights**”); (d) internet domain names and social media account or user names (including “handles”), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media sites and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) mask works, and all registrations, applications for registration, and renewals thereof; (f) industrial designs, and all registrations, applications for registration, and renewals thereof; (g) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, and other confidential and proprietary information and all rights therein (“**Trade Secrets**”); (h) computer programs, operating systems, applications, firmware, and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof; (i) rights of publicity; and (j) all other intellectual or industrial property and proprietary rights.

“**Intended Tax Treatment**” has the meaning set forth in Section 6.05.

“**Knowledge of Buyer or Buyer’s Knowledge**” or any other similar knowledge qualification, means the actual knowledge or constructive knowledge of Julio Ramirez and Michael Rabinovitch, after reasonable inquiry.

“**Knowledge of Seller or Seller’s Knowledge**” or any other similar knowledge qualification, means the actual knowledge or constructive knowledge of Ian Baines, Michelle Zavolta, John Reale, and Patrick Renna, after reasonable inquiry.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Leakage**” has the meaning set forth in Section 2.05(a).

“**Leakage Closing Statement**” has the meaning set forth in Section 2.05(b).

“**Liabilities**” means any liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“**Licensed Intellectual Property**” means all Intellectual Property owned by other Persons (including Seller or any of its Affiliates) in which the Company is granted any rights or interests by such other Persons.

“**Locked Box Balance Sheet**” has the meaning set forth in Section 3.06.

“**Locked Box Date**” means July 5, 2021.

“**Locked Box Financial Statements**” has the meaning set forth in Section 3.06.

“**Losses**” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that “**Losses**” shall not include punitive damages, treble or multiple damages except to the extent actually paid in a Third Party Claim.

“**Material Contracts**” has the meaning set forth in Section 3.09(a).

“**Material Suppliers**” has the meaning set forth in Section 3.14.

“**Maximum Premium**” has the meaning set forth in Section 5.16(c).

“**Monitoring Agreement**” means that certain Monitoring Agreement dated as of December 15, 2015, by and among ACFP Management, Inc., Catterton Management Company, L.L.C., Quilvest Capital Partners USA, Inc. and the other parties thereto.

“**Multiemployer Plan**” has the meaning set forth in Section 3.19(c).

“**Nasdaq**” has the meaning set forth in Section 2.06.

“**Nasdaq Listing Application**” has the meaning set forth in Section 5.17.

“**Net Indebtedness Amount**” means the ACFP Continuing Indebtedness *minus* Cash, in each case, determined as of the close of business on the Closing Date, as adjusted pursuant to Section 2.04; provided that, and for the avoidance of doubt, Indebtedness shall not include any Indebtedness incurred after the Closing on behalf (or at the direction) of Buyer.

“**New Plan**” has the meaning set forth in Section 5.05(c).

“**Non-Party Affiliates**” has the meaning set forth in Section 10.14.

“**Option Consideration Shares**” has the meaning set forth in Section 2.07(a).

“**Original SPA**” has the meaning set forth in the Recitals.

“**Original SPA Date**” means October 8, 2021.

“**Out-of-Money Option**” means each Company Option set forth as an Out-of-Money Option on Section 3.19(j) of the Disclosure Schedules on the date hereof, as such Company Options may be updated and set forth on the Final Allocation Table.

“**Per Common Share Amount**” means the volume-weighted average price per share for the thirty (30) trading day period of the BFI Common Stock ending on the trading day immediately before Closing up to a cap per day of \$14.25 per share and down to a minimum per day of \$10.25.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certifications and similar rights obtained, or required to be obtained, from Governmental Authorities.

“**Permitted Encumbrances**” has the meaning set forth in Section 3.10(a).

“**Permitted Leakage**” means any (a) payments (or accruals in respect of payments to be made) of salaries, pensions contributions, expenses, bonuses (whether contractual or discretionary, but only to the extent either historically accrued on the Balance Sheet or approved by Buyer) or directors’ fees (to the extent historically accrued on the Balance Sheet), in each case, in the ordinary course of business, on arm’s length and on a basis consistent with past practice, except with respect to expenses set forth in Section 2.05(a)(ii); (b) payments made or accruals in respect of payments to be made or Liabilities otherwise incurred to the extent that any such payment, accrual or Liability has been or will be reimbursed to any ACFP Company by Seller on or prior to Closing; (c) other payments, accruals, assumptions, indemnifications or the incurrence of any other Liabilities by any ACFP Company to which Buyer has given its prior consent in writing; (d) any Leakage refunded or made to the ACFP Companies on or prior to Closing; (e) any matter undertaken by or on behalf of any ACFP Company at the written request or with the written agreement of Buyer; (f) any payment made or agreed to be made by or on behalf of any ACFP Company to Third Parties in respect of costs reasonably and properly incurred by Seller or any of its Affiliates on behalf of any ACFP Company in the ordinary course of business and/or recharged to any ACFP Company, to the extent such costs are to Third Parties and were accrued in the books and records of ACFP prior to the Locked Box Date and are unrelated to the transaction

contemplated hereby and the related costs thereto; (g) any payment or transfer of assets or Liabilities or provision of services on arms'-length terms or in the ordinary course of business with Third Parties; (h) principal and interest payments made pursuant to the Credit Agreement; (i) any payment or accrual in respect of Pre-Closing Taxes to the extent they are unrelated to the transaction contemplated hereby; and (j) any Taxes arising or amount in respect of Taxes payable or suffered by any ACFP Company in respect of or in consequence of any of the foregoing to the extent they are unrelated to the transaction contemplated hereby.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Post-Closing Tax Period**” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“**Post-Closing Taxes**” means Taxes of the Company for any Post-Closing Tax Period.

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending on and including the Closing Date.

“**Pre-Closing Taxes**” means Taxes of the Company for any Pre-Closing Tax Period.

“**Principal Trading Market**” means initially Nasdaq, and any successor national securities exchange which is the principal trading market for the BFI Common Stock.

“**Proskauer**” has the meaning set forth in Section 10.15.

“**Purchase Price Adjustment Escrow Fund**” means the Purchase Price Adjustment Escrow Shares held at any determination time by the Escrow Agent as part of the Escrow Shares (as that term is defined in the Escrow Agreement).

“**Purchase Price Adjustment Escrow Shares**” means a number of BFI Consideration Common Shares representing \$4,000,000.

“**Qualified Benefit Plan**” has the meaning set forth in Section 3.19(c).

“**Real Property**” means the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon.

“**Registration Rights Agreement**” means the Lock-Up and Registration Rights Agreement substantially in the form of Exhibit D.

“**Related Person**” means, with respect to a Person, means (i) any Affiliate of such Person; (ii) any other Person who is or was a director, manager, officer, employee or consultant of such Person or its Affiliates, (iii) an Immediate Family Member of any such Person; and (iv) any direct or indirect beneficiary of the BFI Consideration Shares issued at Closing pursuant to this Agreement.

“**Release**” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Resolution Period**” has the meaning set forth in Section 2.04(c)(ii).

“**Restrictive Covenant Agreement**” means the restrictive covenant agreement, in the form attached hereto as Exhibit E, by and between Catterton Partners VII, L.P., Catterton Partners VII Offshore, L.P. and Catterton Partners VII Special Purposes, L.P., on the one hand, and Buyer, on the other hand.

“**Review Period**” has the meaning set forth in Section 2.04(c)(i).

“**SEC**” shall mean the U.S. Securities and Exchange Commission.

“**Securities Act**” shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Seller**” has the meaning set forth in the preamble.

“**Seller Designated BFI Board Observer**” has the meaning set forth in Section 5.21.

“**Seller Designated BFI Director**” has the meaning set forth in Section 5.21.

“**Seller Designated Committee Observer**” has the meaning set forth in Section 5.21.

“**Seller Fundamental Representations**” means the representations and warranties of Seller set forth in Section 3.01, Section 3.02, Section 3.03, Section 3.04 and Section 3.25.

“**Seller Indemnitees**” has the meaning set forth in Section 8.03.

“**Seller Ownership Threshold**” has the meaning set forth in Section 5.21.

“**Seller Related Person**” means a Related Person of Seller and any Permitted Assignee as defined in the Registration Rights Agreement, *provided*, that no ACFP Company shall be deemed to be a Seller Related Person.

“**Seller’s Accountants**” means BDO USA.

“**Shares**” has the meaning set forth in the recitals.

“**Statement of Objections**” has the meaning set forth in Section 2.04(c)(ii).

“**Straddle Period**” has the meaning set forth in Section 6.04.

“**Subsidiary**” of any Person means any corporation, partnership, limited liability company, joint venture or other legal entity of which such Person (either directly or through or together with another Subsidiary of such Person) owns more than 50% of the voting stock equity interests or general partnership interests of such corporation, partnership, limited liability company, joint venture or other legal entity, as the case may be.

“**Subsidiary Stock Rights**” means any options, warrants, convertible securities, subscriptions, stock appreciation rights, limited liability company interests, partnership interests, phantom stock plans or stock or equity equivalents or other rights, agreements, arrangements or commitments (contingent or otherwise) of any character issued or authorized by any BFI Company or ACFP Company, as applicable, relating to the issued or unissued capital stock or other equity interests of the Subsidiaries of the Company or BFI, as applicable, or obligating any ACFP Company or BFI Company, as applicable, to issue or sell any shares of capital stock of, or options, warrants, convertible securities, subscriptions or other equity interests in, any Subsidiary of the Company or BFI, as applicable.

“**Takeover Statute**” means “fair price”, “moratorium”, “control share acquisition”, “interested shareholder,” “affiliate transaction”, “business combination” or other similar antitakeover Law or regulations (including the restrictions on business combinations set forth in Section 203 of the DGCL).

“**Tax Claim**” has the meaning set forth in Section 6.06(a).

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Third Party**” means any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Related Person of the foregoing.

“**Third Party Claim**” has the meaning set forth in Section 8.05(a).

“**Total Consideration**” has the meaning set forth in Section 2.02

“**Transaction Communications**” has the meaning set forth in Section 10.15.

“**Transaction Documents**” means the Certificate of Designation, the Continuance of ACFP Debt Documents, the Registration Rights Agreement, the Restrictive Covenant Agreement, the Escrow Agreement, the Voting Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed or delivered by Seller and Buyer.

“**Transaction Expenses**” means all fees and expenses incurred by the Company or Seller at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Transaction Documents, and the performance and consummation of the transactions contemplated hereby and thereby, including, but not limited to, the fees and expenses set forth in the Consent Letter and the Fee Letter.

“**Transfer Agent**” means Continental Stock Transfer & Trust Company, a New York limited purpose trust company.

“**Transfer Taxes**” has the meaning set forth in Section 6.01(b).

“**Undisputed Amounts**” has the meaning set forth in Section 2.04(c)(iii).

“**Union**” has the meaning set forth in Section 3.20(b).

“**Voting Agreement**” means the Voting Agreement, in the form attached hereto as Exhibit F, by and between Buyer, Seller, Ophir Sternberg and Lionheart Equities, LLC.

“**WARN Act**” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

ARTICLE II PURCHASE AND SALE

Section 2.01 Purchase and Sale. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Shares, free and clear of all Encumbrances other than under applicable state and federal securities laws and Encumbrances created by Buyer, for the consideration specified in Section 2.02.

Section 2.02 Total Consideration. In consideration for the Shares, Buyer shall pay to Seller an amount equal to the BFI Consideration Share Amount (the “**Total Consideration**”), which shall be paid by Buyer through the issuance of the BFI Consideration Shares at the Closing in accordance with Section 2.03.

Section 2.03 Transactions to be Effected at the Closing

(a) At the Closing, Buyer shall:

(i) cause the Transfer Agent to:

(A) register Seller as the owner of the BFI Consideration Shares;

(B) issue uncertificated BFI Closing Date Shares represented by book-entry shares, free and clear of all Encumbrances, other

(i) than restrictions on transfer under applicable state and federal securities laws; and (ii) subject to the Registration Rights Agreement, to Seller;

(C) issue uncertificated Purchase Price Adjustment Escrow Shares represented by book-entry shares, free and clear of all Encumbrances, other (i) than restrictions on transfer under applicable state and federal securities laws; and (ii) subject to the Registration Rights Agreement, to the Escrow Agent pursuant to the Escrow Agreement to be held for the purpose of securing the obligations of Seller in Section 2.04(f) and Section 2.05; and

(D) issue uncertificated Indemnification Escrow Shares, represented by book-entry shares, free and clear of all Encumbrances, other (i) than restrictions on transfer under applicable state and federal securities laws; and (ii) subject to the Registration Rights Agreement, to the Escrow Agent pursuant to the Escrow Agreement to be held for the purpose of securing the indemnification obligations of Seller set forth in ARTICLE VIII and the obligations of Seller in Section 2.04(f), Section 2.05 and Section 6.09;

(ii) deliver to Seller:

(A) the Transaction Documents and all other agreements, documents, instruments or certificates required to be delivered by Buyer at or prior to the Closing pursuant to this Agreement, in each case, duly executed by Buyer;

(B) the Restrictive Covenant Agreement, duly executed by Buyer;

(C) the Voting Agreement, duly executed by Buyer, Ophir Sternberg and Lionheart Equities, LLC;

(D) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the Buyer Board authorizing the execution, delivery and performance of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(E) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder;

(F) a copy of a D&O insurance policy or an amendment to an existing D&O Policy (the "**D&O Policy**") in effect at the Closing for the benefit of each of Buyer's and its Subsidiaries' (including each ACFP Company) directors and officers, in form, amount and substance reasonably satisfactory to Seller and generally consistent with industry practice and customs;

(G) true and complete copies of the Continuance of ACFP Debt Documents duly executed and delivered by Buyer and each of its Subsidiaries, including any amendments agreed upon by the Parties pursuant to Section 5.09, and including, with respect to Buyer and each of its Subsidiaries, (1) joinder agreements to the Continuance of ACFP Debt Documents, (2) security agreements, mortgages, pledge agreements or other similar agreements and any other agreements, instruments, documents and deliveries (including certificated capital stock or other equity interests of each of Buyer's Subsidiaries together with undated stock powers executed in blank) for the purpose of creating a lien in favor of the collateral agent as required and pursuant to the Continuance of ACFP Debt Documents, (3) customary secretary's and other officer's certificates certifying as to the certificate or articles of incorporation, certificate of formation or other equivalent organizational documents, including all amendments thereto, of Buyer and each of its Subsidiaries, certified as of a recent date by the secretary of state (or other similar official) of the jurisdiction of its organization or formation, the bylaws (or limited liability company agreement or other equivalent governing documents) of Buyer and each of its Subsidiaries, a certificate as to the good standing of Buyer and each of its Subsidiaries, as of a recent date from the secretary of state (or other similar official) of the jurisdiction of its organization or formation, and a true and complete copy of resolutions duly adopted by the Buyer Board (or its equivalent) and each of its Subsidiaries or such other applicable authorization, authorizing the execution, delivery and performance of the Continuance of ACFP Debt Documents and, in the case of Buyer, the borrowings hereunder, and as to the incumbency and specimen signature of each officer executing any of the Continuance of ACFP Debt Documents or any other document delivered in connection therewith on behalf of Buyer and its Subsidiaries, (4) customary legal opinions with respect to the Continuance of ACFP Debt Documents provided by counsel to Buyer, (5) customary closing certificates of appropriate officers of Buyer and each of its Subsidiaries and (6) a customary solvency certificate with respect to Buyer and its Subsidiaries;

(H) a USB thumb drive or similar electronic storage device containing all of the information uploaded to the Data Room and made available to Seller by Buyer prior to the date of this Agreement; and

(iii) deliver to the Escrow Agent, the Escrow Agreement, duly executed by Buyer;

(iv) deliver a total amount equal to the Final Company Transaction Expenses by wire transfer in immediately available funds to such Persons, accounts and amounts as designated in the Funds Flow Memorandum.

(b) At the Closing, Seller and the Company shall deliver:

(i) to Buyer,

(A) stock certificates evidencing the Shares, free and clear of all Encumbrances other than restrictions on transfer under applicable state and federal securities Laws and Encumbrances created by Buyer, duly endorsed in blank or accompanied by stock powers or other instruments of transfer duly executed in blank;

(B) the Transaction Documents to which Seller or the Company is a party and all other agreements, documents, instruments or certificates required to be delivered by Seller or the Company at or prior to the Closing pursuant to this Agreement, in each case, duly executed by Seller;

(C) each Catterton Release, duly executed by ACFP Management, Inc., Catterton Management Company, L.L.C. and Quilvest Capital Partners USA, Inc.;

(D) the Restrictive Covenant Agreement, duly executed by Catterton Partners VII, L.P., Catterton Partners VII Offshore, L.P. and Catterton Partners VII Special Purposes, L.P.;

(E) the Voting Agreement, duly executed by Seller;

(F) copies of the interim financial statements of the ACFP Companies for the six (6) month period ending June 30, 2021;

(G) a good standing certificate (or its equivalent) for each ACFP Company from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which such ACFP Company is organized;

(H) a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that Seller is not a foreign person within the meaning of Section 1445 of the Code;

(I) a certificate of the Vice President (or equivalent officer) of each of Seller and the Company certifying that attached thereto are true and complete copies of all resolutions adopted by the board of managers of Seller and the board of directors of the Company authorizing the execution, delivery and performance of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

(J) a certificate of the Vice President (or equivalent officer) of each of Seller and the Company certifying the names and signatures of the officers of Seller and the Company, as applicable, authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder;

(K) true and complete copies of the Continuance of ACFP Debt Documents, including any amendments agreed upon by the Parties pursuant to Section 5.09, duly executed and delivered by the administrative agent and the lenders under the Credit Agreement and the Company and each of its Subsidiaries and including, with respect to the Company and each of its Subsidiaries, any other documentation reasonably required to consummate the transactions set forth in the Continuance of ACFP Debt Documents; and

(L) a USB thumb drive or similar electronic storage device containing all of the information uploaded to the Data Room and made available to Buyer by the Company and Seller prior to the date of this Agreement.

(ii) to the Escrow Agent, the Escrow Agreement, duly executed by Seller; and

(iii) to holders of outstanding Indebtedness, if any, other than the ACFP Continuing Indebtedness, by wire transfer of immediately available funds, that amount of money due and owing from the Company to such holder of outstanding Indebtedness as set forth on the Closing Indebtedness Certificate.

Section 2.04 Purchase Price Adjustment.

(a) *Closing Adjustment.* Prior to the Closing Date, Seller shall have prepared and delivered to Buyer a written statement (the **“Estimated Closing Statement”**) setting forth Seller’s good faith estimate of (i) Cash as of the Closing (**“Estimated Cash”**), (ii) ACFP Continuing Indebtedness as of the Closing (**“Estimated ACFP Continuing Indebtedness”**); and (iii) the Net Indebtedness Amount as of the Closing (**“Estimated Net Indebtedness Amount”**), in each case, with reasonable supporting documentation and prepared in accordance with GAAP and the relevant definitions herein, together with a calculation of the BFI Consideration Share Amount, and BFI Consideration Shares, based on such estimates.

(b) *Post-Closing Adjustment.* Within thirty (30) days after the Closing Date, Buyer shall prepare and deliver to Seller a written statement (the **“Closing Statement”**) setting forth its calculation of (i) Cash as of the Closing, (ii) ACFP Continuing Indebtedness as of the Closing and (iii) the Net Indebtedness Amount, as well as a balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein) and a certificate of the Chief Financial Officer of Buyer that the

Closing Statement was prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Closing Statement was being prepared and audited as of a fiscal year end. The calculation of the purchase price adjustments set forth in this Section 2.04 does not permit the introduction of different accounting methods, policies, practices, procedures, conventions, classifications, definitions, principles, assumptions, techniques or estimation methodologies.

(c) *Examination and Review.*

(i) *Examination.* After receipt of the Closing Statement, Seller shall have thirty (30) days (the "**Review Period**") to review the Closing Statement. During the Review Period, Seller and Seller's Accountants shall have full access to the books and records of the Company, the personnel of, and work papers prepared by, Buyer and/or Buyer's Accountants to the extent that they relate to the Closing Statement and to such historical financial information (to the extent in Buyer's possession) relating to the Closing Statement as Seller may reasonably request for the purpose of reviewing the Closing Statement and to prepare a Statement of Objections (defined below); *provided, that* such access shall be in a manner that does not interfere with the normal business operations of Buyer or the ACFP Companies.

(ii) *Objection.* On or prior to the last day of the Review Period, Seller may object to the Closing Statement by delivering to Buyer a written statement setting forth Seller's objections in reasonable detail, indicating each disputed item or amount and the basis for Seller's disagreement therewith (the "**Statement of Objections**"). If Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Statement and the calculations of Cash, ACFP Continuing Indebtedness and Net Indebtedness Amount reflected in the Closing Statement shall be deemed to have been accepted by Seller. If Seller delivers the Statement of Objections before the expiration of the Review Period, Buyer and Seller shall negotiate in good faith to resolve such objections within fifteen (15) days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Closing Statement and the calculations set forth therein with such changes as may have been previously agreed in writing by Buyer and Seller, shall be final and binding.

(iii) *Resolution of Disputes.* If Seller and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ("**Disputed Amounts**") and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to the office of CohnReznick LLP or, if CohnReznick LLP is unable to serve, Buyer and Seller shall appoint by mutual agreement an impartial nationally recognized firm of independent certified public accountants (who, for the avoidance of doubt, shall not be Seller's Accountants or

Buyer's Accountants) (the "**Independent Accountant**"). The Independent Accountant, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Net Indebtedness Amount, as the case may be, and the Closing Statement. The Parties agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items which are then Disputed Items and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Statement and the Statement of Objections, respectively.

(iv) *Fees of the Independent Accountant.* The fees and expenses of the Independent Accountant shall be paid by Seller, on the one hand, and by Buyer, on the other hand, based upon the percentage that the amount actually contested but not awarded to Seller or Buyer, respectively, bears to the aggregate amount actually contested by Seller and Buyer.

(v) *Determination by Independent Accountant.* The Independent Accountant shall make a determination as soon as practicable within thirty (30) days (or such other time as the Parties shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Statement and/or the Net Indebtedness Adjustment shall be conclusive and binding upon the Parties.

(d) The Cash, ACFP Continuing Indebtedness and Net Indebtedness Amount as of the Closing as agreed to by Buyer and Seller pursuant to Section 2.04(c)(ii) or as determined by the Independent Accountant pursuant to Section 2.04(c)(v) shall be deemed the "**Final Cash**," "**Final ACFP Continuing Indebtedness**" and "**Final Net Indebtedness Amount**."

(e) In the event that (i) the Estimated Net Indebtedness Amount is greater than the Final Net Indebtedness Amount, the BFI Consideration Share Amount shall be increased by an amount equal to the Estimated Net Indebtedness Amount minus the Final Net Indebtedness Amount, or (ii) the Final Net Indebtedness Amount is greater than the Estimated Net Indebtedness Amount, the BFI Consideration Share Amount shall be reduced by an amount equal to the Final Net Indebtedness Amount minus the Estimated Net Indebtedness Amount (the amount determined pursuant to clause (i) or (ii), as applicable, the "**Net Indebtedness Adjustment**").

(f) *Payments of Net Indebtedness Adjustment.* Except as otherwise provided herein, any payment of the Net Indebtedness Adjustment, shall (i) be due (x) within five (5) Business Days of acceptance of the applicable Closing Statement or (y) if there are Disputed Amounts, then within five (5) Business Days of the resolution described in clause (ii) or (v) above; and (ii) be paid: (A) to the extent the Net Indebtedness Adjustment is in favor of Buyer, by transferring to Buyer a certain amount of Purchase Price Adjustment Escrow Shares (valued at the Per Common Share Amount) representing such Net Indebtedness Adjustment amount, with the remainder of such Purchase Price Adjustment Escrow Shares held in the Purchase Price Adjustment Escrow Fund (if any) to be transferred to Seller pursuant to joint written instructions to be executed by Buyer and

Seller and delivered to the Escrow Agent within such five (5) Business Day period; (B) to the extent the Net Indebtedness Adjustment is in favor of Seller, by (x) transferring all Purchase Price Adjustment Escrow Shares held in the Purchase Price Adjustment Escrow Fund (if any) to Seller pursuant to joint written instructions to be executed by Buyer and Seller and delivered to the Escrow Agent within such five (5) Business Day period and (y) BFI issuing to Seller, within such five (5) Business Day period, additional shares of BFI Common Stock (valued at the price per share of the BFI Common Stock at the close of trading on the Closing Date) representing such Net Indebtedness Adjustment amount; and (C) to the extent the amount of a Net Indebtedness Adjustment in favor of Buyer exceeds the amount represented by the Purchase Price Adjustment Escrow Fund, by transferring to Buyer an additional amount of Indemnification Escrow Shares equal to such shortfall (valued at the Per Common Share Amount) pursuant to joint written instructions to be executed by Buyer and Seller and delivered to the Escrow Agent within such five (5) Business Day period; *provided*, in such event, Seller shall transfer an amount of BFI Consideration Common Shares equal to such shortfall amount up to \$4,000,000 (valued at the Per Common Share Amount) into the Indemnification Escrow Fund within three (3) Business Days in order to replace the Indemnification Escrow Shares that were used for the shortfall of the Purchase Price Adjustment Escrow Fund.

(g) *Adjustments for Tax Purposes.* Any payments made pursuant to Section 2.04 and Section 2.05 shall be treated as an adjustment to the Total Consideration by the Parties for Tax purposes, unless otherwise required by Law.

Section 2.05 Locked Box and Leakage.

(a) Seller agrees that, except for Permitted Leakage, during the period following the Locked Box Date and ending at the Closing (the occurrence of any of the following events after the Locked Box Date and at or before the Closing, which are not Permitted Leakage, constituting an incidence of “Leakage”):

(i) no ACFP Company has declared, authorized, paid or made, or agreed to pay or make, any dividend, distribution, return of capital or disbursement (whether in cash or in-kind) to, or on behalf of, Seller or any Seller Related Person;

(ii) no ACFP Company has declared, authorized, paid or made, or agreed to pay or make, any other payments to be made (including management fees, consulting fees, professional advisors’ fees, monitoring fees, service or directors’ fees, bonuses, pension, severance or other compensation of any kind) by the Company to, on behalf of, or for the benefit of Seller or any Seller Related Person;

(iii) no ACFP Company has transferred or surrendered any asset to, or assumed, indemnified or incurred any Liability for the benefit of, Seller or any Seller Related Person, or payment by an ACFP Company of Tax due by Seller or any Seller Related Person, or associated with past termination severance agreements, past settled, but unpaid litigation matters or unpaid lease termination costs, or any agreement or obligation to take such action;

(iv) no ACFP Company has made any repayment of principal on any Indebtedness or payment of any interest on or other payment in relation to any Indebtedness obligation to Seller or any Seller Related Person;

(v) no ACFP Company has waived or agreed to waive (i) any amount owed to such ACFP Company by Seller, its Affiliates, their Representatives, the Company Related Persons or the Seller Related Persons; or (ii) any Actions by such ACFP in respect of any Contract or otherwise with Seller or any Seller Related Person;

(vi) no ACFP Company has assumed, incurred, paid or prepaid, or agreed to pay or prepay, any professional fees, broker fees, agent fees or expenses or other similar costs in connection with this Agreement and the Transaction Documents, including the Transaction Expenses (it being acknowledged by Buyer that any payments of Transaction Expenses are not deemed to be a breach of this Agreement and are instead subject to Section 10.01 hereof);

(vii) no ACFP Company has made any other transfer of value of any nature (whether in cash or in kind) from an ACFP Company to or for the benefit of Seller or any Seller Related Person;

(viii) no ACFP Company has granted any indemnity to, or for the benefit, of Seller or any Seller Related Person; and

(ix) no ACFP Company has paid or agreed to pay any fees, costs or Tax or other amounts as a result of the matters set out in the foregoing Section 2.05(a)(i) through (viii).

(b) By no later than two (2) Business Days prior to the Closing, Seller shall deliver to Buyer a statement setting forth any Leakage, if applicable (the "**Leakage Closing Statement**"), including the final amount of the Transaction Expenses to be paid at Closing or which were paid between the Locked Box Date and the Closing (the "**Final Company Transaction Expenses**"). At Closing, in the event of any Leakage, the BFI Consideration Share Amount shall be reduced by an amount equal to such Leakage included on the Leakage Closing Statement.

(c) There shall be no reduction in the BFI Consideration Share Amount under Section 2.05(b) unless Buyer has notified Seller in writing of its breach of Section 2.05(a), or the claim under Section 2.05(b), stating in reasonable detail the nature of the breach and, if practicable, the amount claimed, within sixty (60) days of the Closing Date.

(d) In the event Buyer makes a claim of any additional Leakage not included in the Leakage Closing Statement and notifies Seller in accordance with Section 2.05(c), the dispute resolution mechanics described in Section 2.04(c), and the final resulting determination of Leakage (whether by the parties' mutual agreement or by determination by the Independent Accountant, as applicable), shall apply to such claim of Leakage *mutatis mutandis*. In the event of a final determination of any additional Leakage, Seller shall transfer to Buyer BFI Common Stock representing the cash equivalent value of the

amount of such additional Leakage (valued at the Per Common Share Amount), with such transfer made within five (5) Business Days of the final determination of any additional Leakage pursuant to this Section 2.05(d); *provided*, if Seller does not have sufficient BFI Common Stock to repay Buyer for such Leakage, Seller (or its applicable Affiliate(s), Representative, Company Related Person or Seller Related Person) shall transfer BFI Preferred Stock to Buyer representing the cash equivalent value of the amount of such shortfall, with such transfer made simultaneously with the transfer of BFI Common Stock to Buyer pursuant to this Section 2.05(d).

(e) The aggregate Liability of Seller in respect of this Section 2.05 shall not exceed an amount equal to the Leakage actually received by or benefitted to Seller or any Seller Related Person, *plus* any professional fees incurred by Buyer and Seller in determining the final amount of the Leakage. Buyer shall have no other remedy available to it in respect of any breach of the covenants provided by Seller under Section 2.05(a) other than that provided under Section 2.05(b).

Section 2.06 Compliance with Rules of Principal Market. Buyer shall not issue or sell any shares of BFI Common Stock pursuant to this Agreement, and Seller shall not purchase or acquire any shares of BFI Common Stock pursuant to this Agreement, to the extent that after giving effect thereto, the aggregate number of shares of BFI Common Stock that would be issued pursuant to this Agreement and the transactions contemplated hereby, including with respect to the Option Consideration Shares, would exceed 3,578,405 (representing 19.99% of the shares of BFI Common Stock issued and outstanding immediately prior to the execution of this Agreement), which number of shares shall be (i) reduced, on a share-for-share basis, by the number of shares of BFI Common Stock issued or issuable pursuant to any transaction or series of transactions that may be aggregated with the transactions contemplated by this Agreement under applicable rules of the Nasdaq Stock Market LLC ("**Nasdaq**") and (ii) appropriately adjusted for any reorganization, recapitalization, non-cash dividend, stock split or other similar transaction that occurs after the date of this Agreement (such maximum number of shares, the "**Exchange Cap**"). For the avoidance of any doubt, in the event the issuance of any BFI Common Stock pursuant to this Agreement would otherwise result in the number of shares of BFI Common Stock being in excess of the Exchange Cap, Buyer shall not issue such excess shares in the form of BFI Common Stock and shall instead issue to Seller additional shares of BFI Series A Preferred Stock (valued at a price per share of \$25.00) in an amount equal to the aggregate value of such excess shares of BFI Common Stock (valued at the Per Common Share Amount).

Section 2.07 Treatment of Company Options.

(a) Effective as of the Closing, Buyer shall assume the Company Option Plan and all of the Company Options (other than Out-of-Money Options) that are outstanding and unexercised at the time of the Closing. Immediately following the Closing, the Company and Buyer shall cause the applicable award agreements issued to each Company Option Holder under the Company Option Plan to be amended pursuant to the applicable Amendment to the Company Stock Option Agreement and without any action on the part of the Company Option Holder thereof. Pursuant to each Amendment to the Company Stock Option Agreement and subject to the terms and conditions thereof, each Company Option (other than Out-of-Money Options) that is outstanding and unexercised

immediately following the Closing shall be converted into a number of shares of BFI Common Stock (each such share of BFI Common Stock, an “**Option Consideration Share**”) equal to the quotient obtained by dividing (i) the product of (A) the aggregate number of shares of Common Stock issuable upon exercise of each such Company Option by (B) the excess of (1) the Company Per Share Value less (2) the exercise price per share applicable to such Company Option, by (ii) the BFI Closing Date Price.

(b) Notwithstanding the foregoing, effective as of the Closing, each Out-of-Money Option shall be cancelled without any consideration in respect thereof.

(c) As soon as reasonably practicable following the final delivery of the Final Allocation Table as provided in Section 5.18(b), the Company and Buyer will use commercially reasonable efforts to deliver to each applicable Company Option Holder such Company Option Holder’s Amendment to the Company Stock Option Agreement pursuant to this Section 2.07, duly executed by the Company and Buyer.

(d) Prior to the Closing, (i) the Company shall take, or cause to be taken, all corporate action reasonably necessary under the Company Option Plan or otherwise to give effect to the provisions of this Section 2.07 and (ii) Buyer shall take all corporate action reasonably necessary to reserve for issuance a sufficient number of shares of BFI Common Stock for delivery with respect to the Option Consideration Shares issued by it in accordance with this Section 2.07.

(e) On the Closing Date, Buyer shall prepare and file with the SEC a registration statement on FormS-8 covering the issuance of all of the Option Consideration Shares. The registration statement will become effective under the Securities Act automatically upon filing with the SEC.

Section 2.08 Closing. Subject to the terms and conditions of this Agreement, the purchase and sale of the Shares contemplated hereby shall take place at a closing (the “**Closing**”) to be held at 9 a.m., Eastern time, no later than two (2) Business Days after the last of the conditions to Closing set forth in ARTICLE VII have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), at the offices of Holland & Knight, LLP, 701 Brickell Avenue, Suite 3300, Miami, Florida 33131 or remotely by exchange of documents and signatures (or their electronic counterparts), or at such other time or on such other date or at such other place as Seller and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the “**Closing Date**”). The Parties shall use commercially reasonable best efforts to cause the Closing Date to occur on or before November 15, 2021.

Section 2.09 Withholding Tax. Buyer and the Company shall be entitled to deduct and withhold from the Total Consideration all Taxes that Buyer and the Company may be required to deduct and withhold under any provision of Tax Law; *provided* that Buyer provides Seller with at least five (5) days’ advance notice of the applicability of any withholding Tax and Buyer shall use commercially reasonable efforts to work together with Seller during such five (5) day period to reduce or eliminate any such withholding Tax, to the extent possible under applicable Laws. Any amounts so deducted and withheld will be remitted by Buyer to the appropriate Governmental Authority on a timely basis. To the extent that amounts are so deducted and withheld and remitted to the applicable Governmental Authority, such amounts will be treated for all purposes as having been paid to Seller.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND SELLER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this ARTICLE III are true and correct as of the Original SPA Date and shall be true and correct as of the Closing Date.

Section 3.01 Organization and Authority. Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Seller has full limited liability company power and authority to enter into this Agreement and the Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder, and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer and the Company) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, reorganization, insolvency, moratorium and other similar Laws of general application from time to time in effect affecting creditors' rights generally, (ii) by general principles of equity and (iii) the power of a court to deny enforcement of remedies generally based upon public policy (collectively, the "**Enforceability Exceptions**"). When each Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller, enforceable against it in accordance with its terms, except with respect to the Enforceability Exceptions.

Section 3.02 Organization, Authority and Qualification of the Company and the other ACFP Companies

(a) The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. The Company has full corporate power and authority to enter into this Agreement and the Transaction Documents to which the Company is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Company of this Agreement and any Transaction Document to which the Company is a party, the performance by the Company of its obligations hereunder and thereunder, and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Company. This Agreement has been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by Buyer and Seller) this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by the

Enforceability Exceptions. When each Transaction Document to which the Company is or will be a party has been duly executed and delivered by the Company (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of the Company, enforceable against it in accordance with its terms, except with respect to the Enforceability Exceptions.

(b) Each other ACFP Company is a corporation or limited liability company duly organized, validly existing and in good standing under the Laws of the state of each such entity's organization or formation and has full corporate or limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.02(b) of the Disclosure Schedules sets forth: (i) the type of entity of each ACFP Company; and (ii) the state in which each ACFP Company was formed or organized, and each ACFP Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not be material to the ACFP Companies, taken as a whole. All corporate actions taken by each ACFP Company in connection with this Agreement and the Transaction Documents will be duly authorized on or prior to the Closing. Seller has heretofore delivered true and complete copies of the organizational documents as currently in full force and effect for each ACFP Company.

Section 3.03 Capitalization.

(a) The authorized capital stock of the Company consists of 170,000 shares of common stock, par value \$0.001 ("**Common Stock**"), of which 122,542.644 shares are issued and outstanding and constitute the Shares. All of the Shares have been duly authorized, are validly issued, fully paid and non-assessable, and are owned of record and beneficially by Seller, free and clear of all Encumbrances, other than restrictions on transfer under applicable state and federal securities Laws. Upon consummation of the transactions contemplated by this Agreement, Buyer shall own all of the Shares, representing 100% of the capital stock of the Company on a fully-diluted basis, free and clear of all Encumbrances, other than restrictions on transfer under applicable state and federal securities Laws.

(b) All of the Shares were issued in compliance with applicable Laws. None of the Shares were issued in violation of any Contract to which Seller or the Company is a party or is subject to or in violation of any preemptive or similar rights of any Person.

(c) Except for the Company Options, there are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of the Company or obligating Seller or the Company to issue or sell any shares of capital stock of, or any other interest in, the Company. The Company does not have outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights. There are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares.

Section 3.04 Company Subsidiaries. An organizational chart and a true and complete list of all the Subsidiaries of the Company and the ownership of such ACFP Company as of the Original SPA Date is set forth in Section 3.04 of the Disclosure Schedules. Except as set forth in Section 3.04 of the Disclosure Schedules, (i) the Company is the direct or indirect owner of all outstanding shares of capital stock or membership interests of each Subsidiary of the Company and all such shares or membership interests are duly authorized, validly issued, fully paid and nonassessable, (ii) all of the outstanding shares of capital stock or membership interests of each Subsidiary of the Company are directly or indirectly owned by the Company free and clear of all Encumbrances, other than restrictions on transfer under applicable state and federal securities Laws or pursuant to the Credit Agreement, (iii) there are no outstanding Subsidiary Stock Rights solely with respect to the ACFP Companies, (iv) there are no outstanding contractual obligations of any ACFP Company to repurchase, redeem or otherwise acquire any capital stock or membership interest of any Subsidiary of the Company or any Subsidiary Stock Rights solely with respect to the ACFP Companies and (v) the Company does not own, directly or indirectly, any class of capital stock or other equity or voting interests of any Person other than the capital stock of its Subsidiaries set forth in Section 3.04 of the Disclosure Schedules.

Section 3.05 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Seller or any ACFP Company; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller or any ACFP Company, in each case, except where such conflict, violation or default would not, individually or in the aggregate, be material to the ACFP Companies, taken as a whole; (c) except as set forth in Section 3.05 of the Disclosure Schedules, require the consent or notice by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Material Contract or any Permit required by the ACFP Companies to conduct the ACFP Business as currently conducted except as would not, individually or in the aggregate, be material to the ACFP Companies, taken as a whole; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of any ACFP Company other than those relating to the ACFP Continuing Indebtedness. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller or any ACFP Company in connection with the execution and delivery of this Agreement and the Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby, except for such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not have an ACFP Material Adverse Effect.

Section 3.06 Financial Statements. Complete copies of the Company's consolidated audited financial statements consisting of the balance sheet of the Company as at December 31, 2018, December 30, 2019 and January 4, 2021 and the related statements of income and retained earnings, stockholders' equity and cash flow for the 12-month periods then ended (the "**Audited Financial Statements**"), and consolidated unaudited financial statements consisting of the balance sheet of the Company as at July 5, 2021 and the related statements of income and retained earnings,

stockholders' equity and cash flow for the six-month period then ended (the "**Locked Box Financial Statements**") and together with the Audited Financial Statements, the "**Financial Statements**") have been delivered to Buyer. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Locked Box Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse in the aggregate) and the absence of notes (the effect of which will not be materially adverse in the aggregate). The Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial condition of the ACFP Companies as of the respective dates they were prepared and the results of the operations of the ACFP Companies for the periods indicated. The balance sheet of the Company as of January 4, 2021, is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the balance sheet of the Company as of Locked Box Date is referred to herein as the "**Locked Box Balance Sheet**." The Company maintains a standard system of accounting established and administered in accordance with GAAP.

Section 3.07 Undisclosed Liabilities. Except as set forth on Section 3.07 of the Disclosure Schedules, no ACFP Company has any Liabilities, except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date, including Liabilities for future performance under Contracts entered into by an ACFP Company in the ordinary course of business or as otherwise provided in the Data Room (none of which is a Liability for a breach of any such Contract, breach of warranty, tort, infringement or violation of applicable Law); provided, however, no ACFP Company has any Liabilities associated with past termination severance agreements, past settled, but unpaid litigation matters or unpaid lease termination costs.

Section 3.08 Absence of Certain Changes, Events and Conditions. Since the Locked Box Date, and other than in the ordinary course of business consistent with past practice or permitted or required under this Agreement, there has not been as of the Original SPA Date, with respect to any ACFP Company, any:

- (a) event, occurrence or development that has had, or would reasonably be expected to have, individually or in the aggregate, an ACFP Material Adverse Effect;
- (b) amendment of the charter, by-laws or other organizational documents of any ACFP Company;
- (c) split, combination or reclassification of any shares of its capital stock;
- (d) issuance, sale or other disposition of any of its capital stock, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;
- (e) declaration or payment of any dividends or distributions on or in respect of any of its capital stock or redemption, purchase or acquisition of its capital stock;

(f) material change in any method of accounting or accounting practice of any ACFP Company, except as required by applicable Law or GAAP or as disclosed in the notes to the Financial Statements;

(g) material change in an ACFP Company's cash management practices or acceleration with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, or delay of payment of any account payable or other Indebtedness beyond its due date or the date when such payment would have been paid in the ordinary course of business consistent with past practice;

(h) entry into any Contract that would constitute a Material Contract, except as set forth in Section 3.08(h) of the Disclosure Schedules;

(i) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(j) transfer, assignment, sale or other disposition of any of the material assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements;

(k) transfer or assignment of or grant of any license or sublicense under or with respect to any Company Intellectual Property, except (i) for non-exclusive licenses granted in the ordinary course of business or (ii) pursuant to Company IP Agreements set forth in Section 3.12(b) of the Disclosure Schedules;

(l) abandonment or lapse of or failure to maintain in full force and effect any Company IP Registration, or failure to take or maintain reasonable measures to protect the confidentiality or value of any Trade Secrets included in the Company Intellectual Property;

(m) material damage, destruction or loss (whether or not covered by insurance) to its property;

(n) any capital investment in, or any loan to, any other Person;

(o) acceleration, termination, material modification to or cancellation of any Material Contract;

(p) any material capital expenditures;

(q) imposition of any Encumbrance, other than a Permitted Encumbrance, upon any of the ACFP Companies properties, capital stock or assets, tangible or intangible;

(r) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of its current or former officers or directors, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment of any of the ACFP Continuing Executives or the ACFP Continuing Officers or, with respect to the ACFP

Continuing Employees, termination of any employees for which the aggregate costs and expenses exceed \$100,000, in each case without the prior written consent of Buyer, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor or consultant, in each case except as required by applicable Law or the terms of any Benefit Plan in effect as of the Original SPA Date;

(s) hiring or promoting any person as or to (as the case may be) to be an officer;

(t) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant with compensation in excess of \$100,000 or any of the ACFP Continuing Executives, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral, in each case, except in the ordinary course of business or as required by applicable Law or the terms of any Benefit Plan in effect as of the Original SPA Date;

(u) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders or current or former directors, officers and employees;

(v) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(w) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(x) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of \$100,000, individually (in the case of a lease, per annum) or \$250,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice;

(y) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(z) action by the Company to make, change or rescind any Tax election or take any position on any Tax Return, amend any Tax Return, take any action, omit to take any action or enter into any transaction, in each case, that would have the effect of materially increasing the Tax liability or materially reducing any Tax asset of Buyer in respect of any Post-Closing Tax Period; or

(aa) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 3.09 Material Contracts.

(a) Section 3.09(a) of the Disclosure Schedules lists as of the Original SPA Date each of the following Contracts of each ACFP Company, excluding, in each case, any Benefit Plan, as of the Original SPA Date (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Real Property (including brokerage contracts) listed or otherwise disclosed in Section 3.10(b) of the Disclosure Schedules and all Company IP Agreements set forth in Section 3.12(b) of the Disclosure Schedules, being “**Material Contracts**”):

- (i) each Contract of any ACFP Company involving aggregate consideration in excess of \$100,000 and which, in each case, cannot be cancelled by the Company without penalty or without more than sixty (60) days’ notice;
- (ii) all Contracts with food suppliers material to the ACFP Companies (taken as a whole);
- (iii) all Contracts related to the lease of restaurant locations or real property;
- (iv) all Contracts that require any ACFP Company to purchase its total requirements of any product or service from a third party or that contain “take or pay” provisions;
- (v) all Contracts that provide for the assumption of any Tax, environmental or other Liability of any Person;
- (vi) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);
- (vii) all Contracts for the employment, engagement or services of any employees, independent contractors or consultants with an annual base salary (or annual base wages or fees) in excess of \$100,000 to which any ACFP Company is a party;
- (viii) except for Contracts relating to trade payables, all Contracts relating to indebtedness (including guarantees) of any ACFP Company;
- (ix) all Contracts with any Governmental Authority to which any ACFP Company is a party (“**Government Contracts**”);
- (x) all Contracts that limit or purport to limit the ability of any ACFP Company to compete in any line of business or with any Person or in any geographic area or during any period of time;
- (xi) any Contracts to which any ACFP Company is a party that provide for any joint venture, partnership or similar arrangement by the Company;

(xii) all Contracts between or among any ACFP Company on the one hand and Seller or any Affiliate of Seller (other than the Company) on the other hand; and

(xiii) all collective bargaining agreements or Contracts with any Union to which any ACFP Company is a party.

(b) Each Material Contract is valid and binding on an ACFP Company, as applicable, in accordance with its terms and is in full force and effect, in each case subject to the Enforceability Exceptions. None of the ACFP Companies or, to Seller's Knowledge, any other party thereto is in breach of or default in any material respect under any Material Contract. No ACFP Company has received any written or, to the Seller's Knowledge, oral notice from a party to a Material Contract of an intention to terminate any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or the loss of any material benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

Section 3.10 Title to Assets; Real Property.

(a) No ACFP Company owns or has owned any Real Property. An ACFP Company has, or will have at the Closing, good and valid title to, or a valid leasehold interest in, all Real Property and personal property and other assets (except, in all cases, with respect to Intellectual Property, which is addressed in Section 3.12(c)) reflected in the Audited Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(i) Encumbrances for Taxes not yet due and payable, that are due but not yet delinquent or that are being contested in good faith and by appropriate proceedings;

(ii) mechanics, carriers', workmen's, repairmen's or other like Encumbrances arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent;

(iii) easements, rights of way, zoning ordinances and other similar Encumbrances affecting Real Property which are not, individually or in the aggregate, material to the ACFP Business;

(iv) non-exclusive licenses granted in the ordinary course of business;

(v) Encumbrances arising under equipment leases and other similar agreements with third parties entered into in the ordinary course of business consistent with past practice, which are not, individually or in the aggregate, material to the ACFP Business;

(vi) other than with respect to owned Real Property, Encumbrances arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice, which are not, individually or in the aggregate, material to the ACFP Business; and

(vii) Encumbrances arising under or relating to the Credit Agreement.

(b) Section 3.10(b) of the Disclosure Schedules lists as of the Original SPA Date: (i) the street address of each parcel of Real Property; (ii) if such property is leased or subleased by an ACFP Company, the ACFP Company and the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (iii) the use as of the Original SPA Date of such property. With respect to owned Real Property, Seller has delivered or made available to Buyer true, complete and correct copies of the deeds and other instruments (as recorded) by which the applicable ACFP Company acquired such Real Property, and copies of all title insurance policies, opinions, abstracts and surveys in the possession of Seller or any ACFP Company and relating to the Real Property. With respect to leased Real Property, Seller has delivered or made available to Buyer true, complete and correct copies of any leases affecting the Real Property. No ACFP Company is a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property. To Seller's Knowledge, the use and operation of the Real Property in the conduct of the ACFP Business does not violate in any material respect any Law, Permit, lease or real property license. To Seller's Knowledge, no material improvements constituting a part of the Real Property encroach on real property owned or leased by a Person other than an ACFP Company. There are no Actions pending nor, to the Seller's Knowledge, threatened against or affecting the Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

Section 3.11 Condition and Sufficiency of Assets. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of an ACFP Company are: (i) structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put in all material respects, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of material maintenance or material repairs except for ordinary, routine maintenance and repairs; and (ii) sufficient to permit the ACFP Business, taken as a whole, to be conducted and operated, immediately following the Closing Date, as presently conducted in all material respects.

Section 3.12 Intellectual Property.

(a) Section 3.12(a) of the Disclosure Schedules contains a correct, current, and complete list of all Company IP Registrations as of the Original SPA Date, specifying as to each, as applicable: the title, mark, or design; the record owner; the jurisdiction by or in which it has been issued, registered, or filed; the patent, registration, or application serial number; the issue, registration, or filing date; and the current status.

(b) Section 3.12(b) of the Disclosure Schedules contains a correct, current, and complete list of all Company IP Agreements as of the Original SPA Date, specifying for each the date, title, and parties thereto, and separately identifying the Company IP Agreements: (i) under which an ACFP Company is a licensor or otherwise grants to any Person any right or interest relating to any Company Intellectual Property; (ii) under which an ACFP Company is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person; and (iii) which otherwise relate to an ACFP Company's ownership or use (including any restrictions on use) of Intellectual Property, in each case identifying the Intellectual Property covered by such Company IP Agreement. Seller has provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all Company IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Company IP Agreement is valid and binding on an ACFP Company in accordance with its terms and is in full force and effect. Neither any ACFP Company nor any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Company IP Agreement.

(c) An ACFP Company is the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title, and interest in and to the material Company Intellectual Property, and has the valid and enforceable right to use all other material Intellectual Property used or held for use in or necessary for the conduct of the ACFP Business as currently conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances and Company IP Agreements. Except as would not reasonably be expected, individually or in the aggregate, to be material to the ACFP Companies, an ACFP Company has entered into binding, valid and enforceable, written Contracts with each current and former employee and independent contractor who is or was involved in or has contributed to the invention, creation, or development of any Intellectual Property during the course of employment or engagement with an ACFP Company whereby such employee or independent contractor granted to an ACFP Company a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property, to the extent such Intellectual Property does not constitute a "work made for hire" under applicable Law. Seller has *provided* Buyer with true and complete copies of all such Contracts. All assignments and other instruments necessary to establish, record, and perfect the ownership interest of an ACFP Company in the Company IP Registrations have been validly executed, delivered, and filed with the relevant Governmental Authorities and authorized registrars.

(d) Except as set forth in Section 3.05 of the Disclosure Schedules, neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of, or require the consent of any other Person in respect of, the right to own or use of any ACFP Company of any Company Intellectual Property or Licensed Intellectual Property.

(e) The Company Intellectual Property is valid and enforceable, all Company IP Registrations are subsisting and in full force and effect, and each of the ACFP Companies has taken commercially reasonable steps to maintain and enforce the Company Intellectual Property and to preserve the confidentiality of all material Trade Secrets included in the Company Intellectual Property, including by requiring all Persons having access thereto to execute binding, written non-disclosure agreements. All required filings and fees related to the Company IP Registrations have been timely submitted with and paid to the relevant Governmental Authorities and authorized registrars.

(f) Except as would not reasonably be expected, individually or in the aggregate, to be material to the ACFP Companies, the conduct of the ACFP Business as currently conducted and formerly conducted, including the use of the Company Intellectual Property and Licensed Intellectual Property in connection therewith and the products, processes and services of any ACFP Company, have not infringed, misappropriated or otherwise violated the Intellectual Property rights of any Person. To the Knowledge of the Seller, no person has infringed, misappropriated or otherwise violated any Company Intellectual Property.

(g) Except as would not reasonably be expected, individually or in the aggregate, to be material to the ACFP Companies, there are no Actions (including any opposition, cancellation, revocation, review, or other proceeding), whether settled, pending or, to the Knowledge of Seller, threatened in writing (including in the form of offers to obtain a license); (i) alleging any infringement, misappropriation, or other violation by any ACFP Company of the Intellectual Property of any Person; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Company Intellectual Property or the right, title, or interest in or to any Company Intellectual Property or Licensed Intellectual Property of any ACFP Company; or (iii) by any ACFP Company alleging any infringement, misappropriation, or other violation by any Person of the Company Intellectual Property. Neither Seller nor any ACFP Company is aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. No ACFP Company is subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that materially restricts or impairs its use of any Company Intellectual Property or Licensed Intellectual Property.

(h) Section 3.12(h) of the Disclosure Schedules contains a correct, current, and complete list of all material social media accounts used in the ACFP Business and accessible by, or under the control of, management of ACFP Management, Inc. The ACFP Companies have complied in all material respects with all terms of use, terms of service, and other Contracts and all associated policies and guidelines relating to any ACFP Company's use of any social media platforms, sites, or services (collectively, "**Platform Agreements**"). There are no Actions, whether settled or, to the Knowledge of the Seller, pending or threatened, alleging any (i) breach or other violation of any Platform Agreement by an ACFP Company; or (ii) defamation, violation of publicity rights of any Person or any other violation by any ACFP Company in connection with its use of social media.

(i) Except as would not reasonably be expected, individually or in the aggregate, to be material to the ACFP Companies, the Company IT Systems are in good working condition and are sufficient for the operation of the ACFP Business as currently conducted. In the past three (3) years, there has been no malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the Company IT Systems that has resulted or is reasonably likely to result in material disruption or damage to the ACFP Business and that has not been remedied. Each ACFP Company has taken commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of the Company IT Systems (to the extent such Company IT Systems are in such ACFP Company's possession or control), including implementing and maintaining appropriate backup, disaster recovery, and software and hardware support arrangements.

(j) Each ACFP Company has complied in all material respects with all applicable Laws and all of its publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the ACFP Business. In the past three (3) years, no ACFP Company has (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning an ACFP Company's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification.

Section 3.13 Accounts Receivable. The accounts receivable reflected on the Locked Box Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by an ACFP Company involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) are not, to Seller's Knowledge, subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (c) subject to reserves for bad debts consistent with past practice shown on the Locked Box Balance Sheet or, with respect to accounts receivable arising after the Locked Box Balance Sheet Date, on the accounting records of an ACFP Company, are to Seller's Knowledge, collectible in full within sixty (60) days after billing. The reserve for bad debts shown on the Locked Box Balance Sheet or, with respect to accounts receivable arising after the Locked Box Date, on the accounting records of an ACFP Company, have been determined in accordance with GAAP and past practices, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

Section 3.14 Suppliers. Section 3.14 of the Disclosure Schedules sets forth (i) the top ten (10) suppliers to whom the ACFP Companies have paid consideration for goods or services rendered for each of fiscal year 2020 and year-to-date 2021 (as of June 18, 2021) (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material Supplier during such period. No ACFP Company has received any notice that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to an ACFP Company or to otherwise terminate or materially reduce its relationship with an ACFP Company.

Section 3.15 Insurance. Section 3.15 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by the ACFP Companies as of the Original SPA Date (collectively, the "**Insurance Policies**") and true and complete copies of such Insurance Policies have been made available to Buyer. Such Insurance Policies are in full force and effect. Neither Seller nor any of its Affiliates (including the ACFP Companies) has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies within the previous three (3) years. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of any ACFP Company. All such Insurance Policies (a) are valid and binding in accordance with their terms; and (b) have not been subject to any lapse in coverage. There are no claims related to the ACFP Business pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. None of Seller or any of its Affiliates (including the ACFP Companies) is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the ACFP Business and are sufficient for compliance in all material respects with all applicable Laws and Material Contracts.

Section 3.16 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 3.16(a) of the Disclosure Schedules, there are no Actions pending or, to Seller's Knowledge, threatened (a) against or by any ACFP Company affecting any of its properties or assets (or by or against Seller or any Affiliate thereof and relating to the ACFP Companies); (b) against or by any ACFP Company Seller or any Affiliate of Seller that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement or (c) against or by any D&O Indemnified Person in relation its rights of exculpation, indemnification and advancement of expenses for acts or omissions for actions pursuant to the certificate of incorporation, by-laws or other equivalent governing documents of any ACFP Company or in any Contract in which an ACFP Company is a party.

(b) Except as set forth in Section 3.16(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against any ACFP Company. Each ACFP Company, as applicable, is in material compliance with the terms of each Governmental Order set forth in Section 3.16(b) of the Disclosure Schedules. To Seller's Knowledge, no event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

Section 3.17 Compliance With Laws; Permits

(a) Except as set forth in Section 3.17(a) of the Disclosure Schedules, each ACFP Company has complied since January 1, 2018, with and is now complying, in all material respects with all Laws applicable to it or the ACFP Business (except with respect to Laws addressed in Section 3.12(j)).

(b) All material Permits required for the ACFP Companies to conduct the ACFP Business, including all Permits related to liquor and alcohol, have been obtained by it and are valid and in full force and effect. All material outstanding fees and charges with respect to such Permits as of the Original SPA Date have been paid in full. Section 3.17(b) of the Disclosure Schedules lists all Permits issued as of the Original SPA Date to each ACFP Company, including the names of the Permits, the ACFP Company permit holder and the applicable jurisdiction. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation or suspension of any Permit set forth in Section 3.17(b) of the Disclosure Schedules.

Section 3.18 Environmental Matters. Except as set forth in Section 3.18 of the Disclosure Schedules:

(a) Each ACFP Company is currently and has been for the last five (5) years in material compliance with all Environmental Laws and has not, and Seller has not received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Each ACFP Company has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in Section 3.17(b) of the Disclosure Schedules) necessary for the ownership, lease, operation or use of the ACFP Business as currently conducted or assets of such ACFP Company and all such Environmental Permits are in full force and effect. None of any ACFP Company nor Seller has received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the Environmental Permit.

(c) Each ACFP Company and Seller have disposed of all Hazardous Materials in compliance with Environmental Laws and have not sent or disposed of Hazardous Materials to or at a site which, pursuant to CERCLA, or any similar state, federal or foreign law, is currently listed on or proposed for listing on the National Priorities List (or CERCLIS) and no real property currently owned, operated or leased by an ACFP Company is listed on, or has been proposed for listing on, CERCLIS, or any similar state list requiring investigation or remediation of the real property.

(d) There has been no Release of Hazardous Materials by Seller or an ACFP Company in contravention of Environmental Law with respect to the business or assets of an ACFP Company or any real property currently or formerly owned, operated or leased by an ACFP Company, and neither an ACFP Company nor Seller has received an Environmental Notice that any real property currently or formerly owned, operated or leased in connection with the ACFP Business (including soils, groundwater, surface water,

buildings and other structure located on any such real property) has been contaminated with any Hazardous Material which would reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Seller or an ACFP Company.

(e) To Seller's Knowledge, other than as required and specified under the leases of the ACFP Companies' Real Property, no ACFP Company has retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(f) Seller has provided or otherwise made available to Buyer all material environmental reports, studies, audits, records, sampling data, site assessments and risk assessments with respect to the ACFP Business or assets of an ACFP Company or any currently or formerly owned, operated or leased real property which are in the possession of Seller or an ACFP Company related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials.

(g) This Section 3.18 is the exclusive section containing representations and warranties relating to environmental matters.

Section 3.19 Employee Benefit Matters.

(a) Section 3.19(a) of the Disclosure Schedules contains a true and complete list as of the Original SPA Date of each Benefit Plan. The ACFP Companies have no employees outside of the United States.

(b) With respect to each Benefit Plan, Seller has made available to Buyer accurate, current and complete copies of each of the following:

(i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements, and investment management or investment advisory agreements; (iv) copies of any summary plan descriptions, summaries of material modifications, summaries of benefits and coverage, COBRA communications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service and any legal opinions issued thereafter with respect to such Benefit Plan's continued qualification; (vi) in the case of any Benefit Plan for which a Form 5500 must be filed, a copy of the two (2) most recently filed Forms 5500, with all corresponding schedules and financial statements attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the two (2) most recently completed plan years; (viii) the most recent nondiscrimination tests performed under the Code; and (ix) copies of material notices, letters or other non-routine correspondence from the Internal Revenue Service, Department of Labor, Department of Health and Human Services, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan.

(c) Each Benefit Plan and any related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a “**Multiemployer Plan**”)) has been established, administered and maintained in compliance in all material respects with its terms and with all applicable Laws (including ERISA, the Code and any applicable local Laws). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a “**Qualified Benefit Plan**”) received a favorable and current determination letter from the Internal Revenue Service with respect to the most recent five (5) year filing cycle, or with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that would reasonably be expected to materially adversely affect the qualified status of any Qualified Benefit Plan. To the Knowledge of Seller, nothing has occurred with respect to any Benefit Plan that has subjected or would reasonably be expected to subject the Company or any of its ERISA Affiliates or, with respect to any period on or after the Closing Date, Buyer or any of its Affiliates, to a penalty under Section 502 of ERISA or to tax or penalty under Sections 4975 or 4980H of the Code.

(d) Neither any ACFP Company nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Benefit Plan; (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA; (v) incurred Taxes under Section 4971 of the Code with respect to any Single Employer Plan; or (vi) participated in a multiple employer welfare arrangements (MEWA).

(e) With respect to each Benefit Plan: (i) no such plan is a Multiemployer Plan; (ii) no such plan is a “multiple employer plan” within the meaning of Section 413(c) of the Code or a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA); (iii) no such plan or the plan of any ERISA Affiliate maintained or contributed to within the last six (6) years is a “defined benefit plan” (as defined in Section 3(35) of ERISA, whether or not subject to ERISA) or any other plan subject to Sections 412 or 430 of the Code or Section 302, or Title IV of ERISA.

(f) Other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Benefit Plan provides post-termination or retiree health benefits to any individual for any reason, and neither any ACFP Company nor any of its ERISA Affiliates has any Liability to provide post-termination or retiree health benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree health benefits.

(g) There is no pending or, to Seller's Knowledge, threatened Action relating to a Benefit Plan (other than claims for benefits in the ordinary course), and no Benefit Plan has within the three (3) years prior to the date hereof been the subject of an examination or audit by a Governmental Authority.

(h) Each Benefit Plan that is subject to Section 409A of the Code has in all material respects been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. No ACFP Company has any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.

(i) Neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events), except as set forth on Section 3.19(i) of the Disclosure Schedules: (i) entitle any current or former director, officer, employee, independent contractor or consultant of an ACFP Company to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or materially increase the amount of compensation (including stock-based compensation) due to any such individual; (iii) limit or restrict the right of an ACFP Company to merge, amend, or terminate any Benefit Plan; (iv) result in "excess parachute payments" within the meaning of Section 280G(b) of the Code; or (v) require a "gross-up" or other payment to any "disqualified individual" within the meaning of Section 280G(c) of the Code. Prior to the Closing, Seller will make available to Buyer true and complete copies of any Section 280G calculations prepared (whether or not final) with respect to any disqualified individual in connection with the transactions contemplated by this Agreement.

(j) Section 3.19(j) of the Disclosure Schedules sets forth a list of the Company Option Holders and the number of Company Options, including Out-of-Money Options, held by each Company Option Holders that are outstanding and unexercised as of the Original SPA Date.

Section 3.20 Employment Matters.

(a) Section 3.20(a) of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the ACFP Companies as of the Original SPA Date, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base compensation rate or contract fee; (v) commission, bonus or other incentive-based compensation; (vi) a description of the fringe benefits provided to each such individual as of the Original SPA Date; (vii) the ACFP Company employer; and (viii) location of employment. As of the Original SPA Date, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the ACFP Companies for services performed on or prior to the date hereof have been paid in full (or adequately accrued in accordance with applicable Law). As of the Original SPA Date, no ACFP Company is bound by any severance payment obligations with respect to the Continuing Employees.

(b) No ACFP Company is, and no ACFP Company has been for the past three (3) years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “**Unions**”), and there is not, and has not been for the past three (3) years, any Union representing any employee of an ACFP Company, and, to Seller’s Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor to Seller’s Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime affecting any ACFP Company or any of its employees. No ACFP Company has a duty to bargain with any Union.

(c) Each ACFP Company is and for the past three (3) years has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees, volunteers, interns, consultants and independent contractors of the Company, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, health and safety, workers’ compensation, leaves of absence, paid sick leave and unemployment insurance. All individuals characterized and treated by an ACFP Company as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. All employees of each ACFP Company classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified. Each ACFP Company is in compliance with and has complied with all immigration laws, including Form I-9 and any applicable E-Verify obligations. There are no Actions against the Company pending, or to the Seller’s Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern, worker or independent contractor of the Company, including any charge, investigation or claim relating to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, health and safety, workers’ compensation, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws. Except as set forth on Section 3.16(a) of the Disclosure Schedules, there are no Actions against the Company pending, or to the Seller’s Knowledge, threatened to be brought or filed by any current or former applicant, employee, consultant, volunteer, intern, worker or independent contractor of the Company, including with respect to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee

classification, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, health and safety, workers' compensation, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws.

(d) Within the past three (3) years, each ACFP Company has complied in all material respects with the WARN Act, and as of the Original SPA Date, no ACFP Company has any plans to undertake any action that would trigger the WARN Act.

(e) Section 3.20(e) of the Disclosure Schedules sets forth a list of all of the employment agreements by and between an ACFP Company and any employee thereof (the "**Existing Employment Agreements**").

Section 3.21 Taxes.

(a) All income and other material Tax Returns required to be filed on or before the Closing Date by an ACFP Company have been, or will be, timely filed (taking into account any available extensions). Such Tax Returns are, or will be, true, complete and correct in all material respects. All income and other material Taxes due and owing by an ACFP Company (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Each ACFP Company has withheld and paid each material Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied in all material respects with all information reporting and backup withholding provisions of applicable Law.

(c) No written claim has been made by any taxing authority in any jurisdiction where an ACFP Company does not file Tax Returns that such ACFP Company is, or may be, subject to Tax by that jurisdiction.

(d) No extensions (other than automatic extensions) or waivers of statutes of limitations have been given or requested with respect to any Taxes of any ACFP Company which waiver or extension is currently in effect.

(e) The amount of the Liability of an ACFP Company for unpaid Taxes for all periods ending on or before June 30, 2021 does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements. All Taxes for which an ACFP Company has become liable since the most recent Balance Sheet Date have been incurred in the ordinary course of business consistent with past practice.

(f) All material deficiencies asserted, or assessments made, against an ACFP Company as a result of any examinations by any taxing authority have been fully paid.

(g) No ACFP Company is a party to any Action by any taxing authority with respect to material Taxes. There are no pending or threatened Actions by any taxing authority against any ACFP Company with respect to material Taxes.

(h) Seller has delivered or made available to Buyer copies of all income and other material Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, any ACFP Company for all Tax periods ending after December 31, 2016.

(i) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable, or that are due but not delinquent) upon the assets of any ACFP Company.

(j) No ACFP Company is a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement (other than agreements entered into by such ACFP Company in the ordinary course of business, the primary purpose of which does not relate to Taxes).

(k) No private letter rulings, technical advice memoranda or similar agreement or rulings have been requested, entered into or issued by any taxing authority with respect to an ACFP Company.

(l) No ACFP Company has been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes, other than the consolidated group of which the Company is parent. No ACFP Company has Liability for Taxes of any Person (other than the such ACFP Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise (other than agreements entered into by such ACFP Company in the ordinary course of business, the primary purpose of which does not relate to Taxes).

(m) No ACFP Company will be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of:

(i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) prepaid amount received on or before the Closing Date;

(iv) any election under Section 108(i) of the Code; or

(v) any closing agreement under Section 7121 of the Code, or similar provision of state, local or foreign Law.

(n) No ACFP Company has been a “distributing corporation” or a “controlled corporation” in connection with a distribution described in Section 355 of the Code.

(o) No ACFP Company is, and no ACFP Company been, a party to a “listed transaction” as defined in Treasury Regulations Section 1.6011-4(b).

(p) No ACFP Company has a permanent establishment (within the meaning of an applicable Tax treaty or convention) outside of the United States. No ACFP Company has entered into a gain recognition agreement pursuant to Treasury Regulations Section 1.367(a)-8.

(q) There is currently no limitation on the utilization of net operating losses, capital losses, built-in losses, Tax credits or similar items of any ACFP Company under Sections 269, 382, 383, 384 or 1502 of the Code and the Treasury Regulations thereunder (and comparable provisions of state, local or foreign Law).

The representations and warranties set forth in this Section 3.21, Section 3.08(z) and so much of Section 3.19 as relates to Taxes are the only representations and warranties of the ACFP Companies in this Agreement with respect to Tax matters. Such representations and warranties, other than those in Section 3.21(d), (j), (k), (l) and (m), may only be relied upon for Tax periods (or portions thereof) ending on or before the Closing Date, and not for any Tax periods (or portions thereof) beginning after the Closing Date.

Section 3.22 Books and Records. The minute books and stock record books of each ACFP Company, all of which, to the extent in Seller’s or an ACFP Company’s possession, have been made available to Buyer, are complete and correct and have been maintained in accordance with sound business practices. The minute books of each ACFP Company contain materially accurate and complete records of all meetings, and actions taken by written consent of, the stockholders, the board of directors and any committees of the board of directors of such ACFP Company. At the Closing, all of those books and records will be in the possession of the applicable ACFP Company.

Section 3.23 Banks; Power of Attorney;

(a) Section 3.23(a) of the Disclosure Schedule contains a complete and correct list of the names and locations of all banks in which any ACFP Company has accounts or safe deposit boxes (the “**ACFP Company Bank Accounts**”), the amounts of Cash in such ACFP Company Bank Accounts and the names of all Persons authorized to draft thereon or to have access thereto.

(b) Except as set forth on Section 3.23(a) of the Disclosure Schedule, no Person holds a power of attorney to act on behalf of any ACFP Company.

Section 3.24 Franchise Matters. None of the restaurants in the ACFP Business are subject to a franchise agreement. The ACFP Business has not been operated, nor have franchise agreements been offered in writing or executed for operations of an ACFP Business restaurant. Neither Seller nor any ACFP Company has owned or operated any franchise system.

Section 3.25 Brokers. Except as set forth in Section 3.25 of the Disclosure Schedules, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or the Transaction Documents based upon arrangements made by or on behalf of Seller.

Section 3.26 Investment Experience. Seller has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to Buyer, and has such knowledge and experience in financial or business matters so that it is capable of evaluating the merits and risks of its investment in Buyer and protecting its own interests.

Section 3.27 Risk of Investment. Seller understands and acknowledges that its investment in Buyer involves risks. Seller can bear the economic risk of its investment and is able, without impairing its financial condition, to hold the securities for an indefinite period of time and to suffer a complete loss of its investment.

Section 3.28 Investment Purpose. Seller is acquiring the BFI Consideration Shares solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Seller acknowledges that the Shares are not registered under the Securities Act or any state securities laws and the offer and sale of the BFI Consideration Shares are being made in reliance on one or more exemptions for private offerings under Section 4(a)(2) of the Securities Act and applicable securities laws. Accordingly, the BFI Consideration Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable. The book-entry shares evidencing the BFI Consideration Shares will bear a restrictive legend.

Section 3.29 Accredited Investor. Seller and each of its equity holders is an "accredited investor" as defined in Rule 501(a) under the Securities Act. Seller agrees to furnish any additional information requested by Buyer or any of its Affiliates to assure compliance with applicable U.S. federal and state securities laws in connection with the issuance of the BFI Consideration Shares.

Section 3.30 No Market. No market for the resale of any of the BFI Consideration Shares currently exists, and no such market may ever exist. Accordingly, Seller must bear the economic and financial risk of an investment in the BFI Consideration Shares for an indefinite period of time.

Section 3.31 Access to Data. Seller has had an opportunity to conduct due diligence and ask questions of officers of Buyer, which questions were answered to its reasonable satisfaction. Seller understands that any such discussions, as well as any information *provided* by Buyer, were intended to describe certain aspects of Buyer's business and prospects, but were not necessarily a thorough or exhaustive description.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Except (i) solely with respect to Section 4.05(c), Section 4.05(d), Section 4.06, Section 4.07, Section 4.08 and Section 4.12 as disclosed in the BFI Reports (and excluding any disclosures set forth in the BFI Reports (x) under the captions "Risk Factors" or "Forward-Looking and

Cautionary Statements” and (y) in any other section relating to forward-looking statements to the extent they are cautionary, predictive or forward-looking in nature) or (ii) as set forth in the numbered Section of the Disclosure Schedules, Buyer represents and warrants to Seller that the statements contained in this ARTICLE IV are true and correct as of the Original SPA Date and shall be true and correct as of the Closing Date.

Section 4.01 Organization, Authority and Qualification of the BFI Companies.

(a) Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Except for Buyer, each other BFI Company is a corporation or limited liability company duly organized, validly existing and in good standing under the Laws of the state of each such entity’s organization or formation and has full corporate or limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 4.01(a) of the Disclosure Schedules sets forth as of the date hereof: (i) the type of entity of each BFI Company and (ii) the state in which each BFI Company was formed or organized, and each BFI Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not be material to the BFI Companies, taken as a whole.

(b) Buyer has full corporate power and authority to enter into this Agreement and the Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and Transaction Documents to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller and the Company) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except with respect to the Enforceability Exceptions. When each Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except with respect to the Enforceability Exceptions. The copies of the Buyer Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws that are incorporated by reference into the BFI 10-K are complete and correct copies thereof as in effect on the date hereof. The Buyer Board, at a duly called and held meeting, has adopted resolutions (i) determining that this Agreement and the transactions contemplated hereby are advisable, fair to and in the best interests of Buyer and Buyer’s stockholders, (ii) approving the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, (iii) and adopting and approving a resolution having the effect of

causing Buyer not to be subject to Section 203 of the DGCL that might otherwise apply to this Agreement or the transactions contemplated by this Agreement, which resolutions, as of the date of this Agreement, have not been subsequently withdrawn or modified in any manner adverse to Seller.

Section 4.02 Capitalization.

(a) As of the Original SPA Date, the authorized capital stock of Buyer consists of (i) 100,000,000 shares of common stock, par value \$0.0001 (“**BFI Common Stock**”) and (ii) 10,000,000 shares of preferred stock, par value \$0.0001 (the “**BFI Preferred Stock**”). At the Closing, the authorized capital stock of Buyer shall consist of (i) 100,000,000 shares of BFI Common Stock and (ii) 10,000,000 shares of BFI Preferred Stock (of which there shall be no shares of BFI Preferred Stock designated by Buyer other than BFI Series A Preferred Stock to the extent required for Buyer to comply with its obligations to issue the BFI Series A Preferred Stock under this Agreement). Buyer is also authorized to issue redeemable warrants, each exercisable for one share of BFI Common Stock at an exercise price of \$11.50 per share. As of November 2, 2021, 17,900,976 shares of BFI Common Stock are issued and outstanding; (ii) no shares of BFI Preferred Stock are issued and outstanding; and (iii) Buyer has the following warrants and options outstanding: (A) 15,063,900 warrants outstanding, each exercisable for one share of BFI Common Stock at an exercise price of \$11.50; (B) an option to purchase 75,000 units (each unit comprising one share of common stock and one warrant exercisable for one share of common stock at an exercise price of \$11.50), at an exercise price of \$10.00 per unit, with each unit consisting of one share of BFI Common Stock and one warrant exercisable for one share of BFI Common Stock at an exercise price of \$11.50; (C) 2,700,000 shares of BFI Common Stock were reserved for issuance pursuant to outstanding restricted stock units and 9,356,459 shares of BFI Common Stock were reserved for contingent consideration as part of the December 16, 2020 acquisition of BurgerFi International, LLC. Except as set forth in the foregoing sentence, as of the Original SPA Date, there are no issued and outstanding shares of capital stock of Buyer and there are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of Buyer or obligating Buyer to issue or sell any shares of capital stock of, or any other interest in, Buyer.

(b) As of the date hereof, all of the BFI Consideration Shares and Option Consideration Shares have been duly authorized. Upon consummation of the transactions contemplated by this Agreement, Seller shall own all of the BFI Consideration Shares, free and clear of all Encumbrances, other than restrictions on transfer under applicable state and federal securities Laws and all of the BFI Consideration Shares and the Option Consideration Shares shall be validly issued, fully paid and non-assessable. Buyer has, and will continue to have through the Closing, sufficient authorized but unissued BFI Common Stock and BFI Series A Preferred Stock for Buyer to meet its obligation to deliver the BFI Consideration Shares and the Option Consideration Shares under this Agreement.

Section 4.03 Buyer Subsidiaries. An organizational chart and a true and complete list of all the Subsidiaries of Buyer and the ownership as of such BFI Company as of the date hereof is set forth in Section 4.03 of the Disclosure Schedules. Except as set forth in Section 4.03 of the Disclosure Schedules, (i) Buyer is the direct or indirect owner of all outstanding shares of capital stock or membership interests of each Subsidiary of Buyer and all such shares or membership interests are duly authorized, validly issued, fully paid and nonassessable, (ii) all of the outstanding shares of capital stock or membership interests of each Subsidiary of Buyer are directly or indirectly owned by Buyer free and clear of all Encumbrances, other than restrictions on transfer under applicable state and federal securities Laws and Permitted Encumbrances, (iii) there are no outstanding Subsidiary Stock Rights solely with respect to the BFI Companies, (iv) there are no outstanding contractual obligations of any BFI Company to repurchase, redeem or otherwise acquire any capital stock or membership interest of any Subsidiary of Buyer or any Subsidiary Stock Rights solely with respect to the BFI Companies and (v) Buyer does not own, directly or indirectly, any class of capital stock or other equity or voting interests of any Person other than the capital stock of its Subsidiaries set forth in Section 4.03 of the Disclosure Schedules.

Section 4.04 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Amended and Restated Certificate of Incorporation, the Amended and Restated Bylaws or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer, in each case, except where such conflict, violation or default would not, individually or in the aggregate, be material to the BFI Companies, taken as a whole; (c) except as set forth in Section 4.04 of the Disclosure Schedules, require the consent or notice by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract material to the BFI Business to which Buyer is a party or any Permit required by the BFI Companies to conduct the BFI Business as currently conducted, except as would not, individually or in the aggregate, be material to the BFI Companies, taken as a whole; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of any BFI Company, except, in the case of each of clauses (b), (c), and (d), for any conflicts, violations, breaches, defaults, accelerations, cancellations, termination or Encumbrances that, or where the failure to obtain any consents or notices, in each case, would not reasonably be expected to have, individually or in the aggregate, a material effect on Buyer's ability to consummate the transactions contemplated hereby. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for (i) any filings required under, and compliance with other applicable requirements of, the Exchange Act, the Securities Act, state securities laws or "blue sky" laws and the rules the Nasdaq; and (ii) such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not reasonably be expected to have a Buyer Material Adverse Effect. There are no preemptive rights or similar rights of Buyer and there are no warrants, convertible securities or other derivative securities issued by Buyer which contain anti-dilution adjustments or similar provisions (other than customary corporate structural anti-dilution adjustments none of which are, or will be, triggered by the issuance of capital stock by Buyer in connection with the transactions contemplated hereby).

Section 4.05 BFI Reports, Financial Statements.

(a) Buyer has filed or otherwise transmitted or furnished all BFI Reports required to be filed with the SEC. As of their respective dates, or, if amended or superseded by a subsequent filing made prior to the date of this Agreement, as of the date of the last such amendment or superseding filing prior to the date of this Agreement, the BFI Reports complied as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act of 2002, as the case may be, and the applicable rules and regulations promulgated thereunder, each as in effect on the date of any such filing. None of the BFI Reports (including any financial statements or schedules included or incorporated by reference therein) contained when filed (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of mailing, respectively) any untrue statement of a material fact or omitted to state a material fact required to be stated or incorporated by reference therein or necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading. Buyer currently is in compliance in all material respects with the applicable listing and corporate governance rules and regulations of Nasdaq, and has received no notices of non-compliance from Nasdaq other than any such notices that have been disclosed in the BFI Reports. To Buyer's Knowledge, there is no basis upon which any BFI Reports (including any financial statements or schedules included or incorporated by reference therein) may be required to be amended (or restated in the face of financial statements). As of the date of this Agreement, there are no material outstanding or unresolved comments in comment letters or other correspondence from the SEC staff with respect to any of the BFI Reports and there are no unresolved matters required or requested by Nasdaq in any correspondence from Nasdaq.

(b) Buyer has made available (including via the SEC's EDGAR system, as applicable) to Seller all of the BFI Financial Statements. All of the BFI Financial Statements comply, as of their respective dates of filing with the SEC, in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, and have been prepared in accordance with GAAP in all material respects applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the BFI Companies at the respective dates thereof (taking into account the notes thereto) and the consolidated results of the BFI Companies' operations, changes in stockholders equity and cash flows for the periods indicated (subject, in the case of unaudited statements, to normal year-end audit adjustments consistent with GAAP, the absence of notes and other adjustments described therein).

(c) Except as set forth on Section 4.05(c) of the Disclosure Schedules, as of the Original SPA Date, there are no Liabilities of any BFI Company required to be reflected or reserved against on a consolidated balance sheet of Buyer prepared in accordance with GAAP or the notes thereto, other than (i) Liabilities disclosed and provided for in the BFI Balance Sheet or in the notes thereto or in the BFI Reports, (ii) Liabilities incurred on

behalf of the Company in connection with the transactions contemplated by this Agreement, and (iii) Liabilities incurred in the ordinary course of business since the date of the most recent balance sheet contained in the BFI Financial Statements available prior to the date of this Agreement (the “**BFI Balance Sheet Date**”) (none of which is a Liability for a breach of any such Contract, breach of warranty, tort, infringement or violation of applicable Law).

(d) Buyer has established and maintains disclosure controls and procedures and internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) required by Rule 13a-15 and 15d-15 of the Exchange Act. Except as disclosed in the BFI Reports, such disclosure controls and procedures are effective to ensure that material information required to be disclosed by Buyer is recorded and reported on a timely basis to the individuals responsible for the preparation of Buyer’s filings with the SEC and other public disclosure documents.

Section 4.06 Absence of Certain Changes. Except as set forth in the BFI Reports or as set forth on Section 4.06 of the Disclosure Schedules, and except as contemplated by, or as disclosed in, this Agreement, since the BFI Balance Sheet Date (a) each BFI Company has conducted its business, in all material respects, in the ordinary course (except with respect to this Agreement and discussions, negotiations and transactions related thereto) and (b) there has not been, with respect to any BFI Company, any event, occurrence, development or state of circumstances or facts that has had or would reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect.

Section 4.07 Legal Proceedings; Governmental Orders.

(a) Except as set forth in the BFI Reports or as set forth in Section 4.07(a) of the Disclosure Schedules, there are no Actions pending or, to Buyer’s Knowledge, threatened (a) against or by any BFI Company affecting any of its properties or assets (or by or against Buyer or any Affiliate thereof and relating to the BFI Companies); or (b) against or by any BFI Company or any Affiliate of BFI that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in the BFI Reports or Section 4.07(b) of the Disclosure Schedule, to Buyer’s Knowledge, there are no outstanding material Governmental Orders and no material unsatisfied judgments, penalties or awards against or affecting any BFI Company or any of its properties or assets. Each BFI Company, as applicable, is in material compliance with the terms of each Governmental Order set forth in the BFI Reports. No event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a material violation of any such Governmental Order.

Section 4.08 Related Party Transactions. Except as set forth in the BFI Reports, no “related party” as defined in Item 404 of Regulation S-K is a party to any Contract with or binding upon a BFI Company (other than employment agreements and commercial agreements entered into on arm’s length terms by the a BFI Company in the ordinary course of business) that is of a type that would be required to be disclosed in the BFI Documents pursuant to Item 404 of Regulation S-K that has not been so disclosed.

Section 4.09 Investment Purpose. Buyer is acquiring the Shares solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Buyer acknowledges that the Shares are not registered under the Securities Act or any state securities laws, and that the Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable.

Section 4.10 Brokers. Except as set forth in Section 4.10 of the Disclosure Schedules, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or Transaction Documents based upon arrangements made by or on behalf of Buyer.

Section 4.11 Takeover Statutes. Neither the restrictions on business combinations set forth in Section 203 of the DGCL nor, to the Buyer's Knowledge, any other Takeover Statute apply to this Agreement, any agreement executed in connection herewith or any of the transactions contemplated hereby or thereby.

Section 4.12 Franchise Matters.

(a) Except as set forth in Section 4.12(a) of the Disclosure Schedules, the Franchise System has not been operated, nor have Franchise Agreements been offered in writing or executed for operations, outside of the United States as of January 1, 2020. Other than the Franchise System, Franchisor has not owned or operated any other franchise system.

(b) Section 4.12(b) of the Disclosure Schedules sets forth a list of all Franchise Agreements that are currently in effect between the Franchisor and any Franchisee. Franchisor has made available to Seller accurate and complete copies of all Franchise Agreements. Franchisor has not entered into any material addenda, amendments, waivers, extensions, renewals, side letters, or other modifications of any Franchise Agreement, except in a document separate from the standard form or version of the franchise agreement provided in the FDD used in connection with the sale of such Franchise Agreement. Except as set forth in Section 4.12(b) of the Disclosure Schedules, Franchisor has not guaranteed the obligations of any Franchisee, Franchisee owner or their respective Affiliates with respect to any obligations, liabilities, or indebtedness of the Franchised Business, including regarding any lease.

(c) Franchisor has been, and continues to be, in material compliance with all Franchise Agreements, and, except as set forth in Section 4.13(c) of the Disclosure Schedules, has not received any formal notice, demand or claim from a Franchisee that Franchisor is in material default under a Franchise Agreement. Except as set forth in Section 4.12(c) of the Disclosure Schedules, Franchisor is not in, or to Buyer's Knowledge, no Franchisee or other party to any Franchise Agreement is in, or has received written notice of any, violation of, threatened violation of, or default under (including any condition that with the passage of time or the giving of notice would cause such a violation or default under) any Franchise Agreement.

(d) Franchisor has consistently enforced the terms of the Franchise Agreements and the Franchise Systems standards and requirements, except for such failure to enforce that would not, individually or in the aggregate, have a Buyer Material Adverse Effect. Except as set forth on Section 4.12(d) of the Disclosure Schedules, Franchisor has not amended or modified the economic terms of any Franchise Agreement, or granted any Franchisee the right to terminate the applicable Franchise Agreement earlier than as otherwise permitted in the standard form of franchise agreement that was included in the FDD provided to the Franchisee, to the extent that such amendment, modification or grant of termination rights would individually or in the aggregate have a Buyer Material Adverse Effect.

(e) Except as set forth on Section 4.12(e) of the Disclosure Schedules, each of the Franchise Agreements set forth on Section 4.12(b) of the Disclosure Schedules is in full force and effect and is the legal, valid and binding obligation of (i) Franchisor thereto and (ii) to Buyer's Knowledge, each Franchisee thereto, and enforceable in accordance with its terms, and not subject to any claim of, or right to, termination or rescission by any Franchisee, or to Buyer's Knowledge, any third party thereto, except as such enforceability may be limited by the Enforceability Exceptions.

(f) Section 4.12(f) of the Disclosure Schedules sets forth a list of all forms of FDDs that Franchisor has used to offer or sell Franchises at any time since January 1, 2018. Franchisor has made available to Seller accurate and complete copies of each such form of FDD. Since January 1, 2018, (i) all FDDs that Franchisor has used to offer or sell franchises at any time since January 1, 2018 have contained all information required by the FTC Rule and other Franchise Laws in all material respects, (ii) no such FDD contains any statement which is false or misleading with respect to any material fact, or omits to state any material fact required to be stated therein or necessary in order to make the statements made therein not false or misleading in light of the circumstances under which they are made, (iii) Franchisor has been in compliance with all Franchise Laws in all material respects and have not offered or sold any Franchise in material violation of any Franchise Law, and (iv) Franchisor has complied in all material respects with all the proper cause for default, default notice, time to cure, and actual termination requirements of any Franchise Agreement and as required by any Franchise Law.

(g) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby: (i) will require the consent or approval by any Franchisee or Franchise council or association, Governmental Authority or other Third Party, or (ii) will result in a violation of or a default under, or give rise to a right of termination, modification, cancellation, rescission or acceleration of any obligation or loss of material benefits under, any Franchise Agreement.

**ARTICLE V
COVENANTS**

Section 5.01 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), the Company shall, and Seller shall and shall cause the Company to, (x) conduct the ACFP Business in the ordinary course of business consistent with past practice; (y) maintain the ACFP properties and other assets in good working condition (normal wear and tear excepted); and (z) use commercially reasonable best efforts to maintain and preserve intact the current organization and business and franchise of each ACFP Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers and others having business relationships with any ACFP Company. Without limiting the foregoing, from the date hereof until the Closing Date, the Company and Seller shall:

- (a) cause each ACFP Company to preserve and maintain all of its material Permits, including all Permits related to liquor and alcohol;
- (b) cause each ACFP Company to pay its debts, Taxes and other obligations when due;
- (c) cause each ACFP Company to maintain in all material respects the properties and assets owned, operated or used by such ACFP Company in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (d) cause each ACFP Company to continue in full force and effect all Insurance Policies, except as required by applicable Law;
- (e) cause each ACFP Company to perform all of its material obligations under all Material Contracts to which such ACFP Company is a party;
- (f) cause each ACFP Company to maintain its books and records in accordance with past practice;
- (g) cause each ACFP Company to comply in all material respects with all applicable Laws;
- (h) maintain a minimum balance of \$3,000,000 in the ACFP Company Bank Accounts;
- (i) maintain the terms of employment of the ACFP Continuing Executives and the ACFP Continuing Officers, including the annual base salary or wages and incentive compensation opportunities of such individuals, unless otherwise consented to in writing by Buyer; and
- (j) cause each ACFP Company not to take or permit any action that would cause any of the changes, events or conditions described in Section 3.08 to occur.

Section 5.02 Access to Information. Subject to compliance with applicable Law, from the date hereof until the Closing, the Company and Seller shall, and each shall cause each ACFP Company to, at Buyer's sole cost and expense, (a) afford Buyer and its Representatives, upon reasonable advance notice and during normal business hours, full and free access to and the right to inspect all of the Real Property, properties, assets, premises, personnel, books and records, Contracts and other documents and data related to each ACFP Company; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the ACFP Companies as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller and each ACFP Company to cooperate with Buyer in its investigation of the ACFP Companies. Any investigation pursuant to this Section 5.02 shall be upon reasonable advance notice to Seller and the Company conducted in such manner as not to interfere unreasonably with the conduct of the business of Seller or the ACFP Companies and Seller, the ACFP Companies and their respective Representatives shall not be required to provide any information that is protected by attorney-client or other legal privilege or concept, in which case Seller shall use commercially reasonable efforts to identify and implement an alternative means, if and to the extent permitted by applicable Law or such Contract(s), as applicable, for Buyer to be granted access to such information. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller or the Company in this Agreement. All such information and access shall be subject to the terms and conditions of the Confidentiality Agreement.

Section 5.03 No Solicitation of Other Bids.

(a) Neither the Company nor Seller shall, and neither shall authorize or permit any of its Affiliates (including any ACFP Company) or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. The Company and Seller shall immediately cease and cause to be terminated, and shall cause its Affiliates (including any ACFP Company) and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "**Acquisition Proposal**" shall mean any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization, share exchange or other business combination transaction involving any ACFP Company; (ii) the issuance or acquisition of shares of capital stock or other equity securities of any ACFP Company; or (iii) the sale, lease, exchange or other disposition of any significant portion of any ACFP Company's properties or assets.

(b) In addition to the obligations under this Section 5.03, the Company and Seller shall promptly (and in any event within three (3) Business Days after receipt thereof by Seller, the Company or their Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) The Company and Seller agrees that the rights and remedies for noncompliance with this Section 5.03 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

Section 5.04 Notice of Certain Events.

(a) From the date hereof until the Closing, the Company and Seller shall promptly notify Buyer in writing of:

(i) the Company, Seller or their Representatives becoming aware of any fact, circumstance, event or action the existence, occurrence or taking of which: (A) has had, or would reasonably be expected to have, individually or in the aggregate, an ACFP Material Adverse Effect; (B) has resulted in, or would reasonably be expected to result in, any representation or warranty made by Seller or the Company hereunder not being true and correct in any material respect; or (C) has resulted in, or would reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.02 to be satisfied;

(ii) the Company's or Seller's receipt of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) the Company's or Seller's receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement;

(iv) any Actions commenced, or to the Seller's Knowledge, threatened against, relating to or involving or otherwise affecting Seller or the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.16 or that relates to the consummation of the transactions contemplated by this Agreement;

(v) any occurrences of Leakage material to the ACFP Companies, taken as a whole, other than Permitted Leakage; and

(vi) the Company's or Seller's receipt of any notice or other communication from a Company Option Holder that such Company Option Holder wishes to exercise such Company Option Holder's Company Option.

(b) Buyer's receipt of information pursuant to this Section 5.04 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the Company or Seller in this Agreement (including Section 8.02 or Section 9.01(b)) and shall not be deemed to amend or supplement the Disclosure Schedules.

(c) From the date hereof until the Closing, Buyer shall promptly notify Seller and the Company in writing of:

(i) Buyer becoming aware of any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or would reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect, (B) has resulted in, or would reasonably be expected to result in, any representation or warranty made by Buyer hereunder not being true and correct or (C) has resulted in, or would reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.03 to be satisfied;

(ii) Buyer's receipt of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) Buyer's receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced, or to the Buyer's Knowledge, threatened against, relating to or involving or otherwise affecting Buyer that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.07 or that relates to the consummation of the transactions contemplated by this Agreement.

(d) From and after the Closing, the failure to give any notification described in this Section 5.04 shall not be treated as a breach of covenant for purposes of the indemnification obligations of the Parties pursuant to Section 8.02 and Section 8.03.

Section 5.05 Employment Matters.

(a) For the period beginning on the Closing Date and ending on December 31, 2022, Buyer will provide (or cause an Affiliate of Buyer, including after the Closing, the ACFP Companies to provide): (i) each ACFP Continuing Executive and ACFP Continuing Officer with annual base salary or wages and incentive compensation opportunities that are no less than the annual base salary, wages and incentive compensation opportunities, respectively, provided to such ACFP Continuing Officer immediately prior to the Closing Date, (ii) each ACFP Continuing Executive, ACFP Continuing Officer and each Continuing Employee with employee benefits (including, solely with respect to the ACFP Continuing Executives and the ACFP Continuing Officers, severance benefits) that are not less favorable to such ACFP Continuing Executive, ACFP Continuing Officer or Continuing Employee, as applicable, than the most favorable of (A) those benefits provided to such ACFP Continuing Officer or Continuing Employee, as applicable, immediately prior to the Closing Date and (B) those benefits that Buyer provides to its similarly situated employees during such period.

(b) Buyer shall use its commercially reasonable efforts to enter into an amended and restated employment agreement with each of the ACFP Continuing Executives so that each such ACFP Continuing Executive's Existing Employment Agreement would be subject to a term expiring on December 31, 2022.

(c) From and after the Closing, Buyer shall give or cause to be given to each Continuing Employee, each ACFP Continuing Executive and each ACFP Continuing Officer full credit for all purposes (including for purposes of eligibility to participate or receive benefits, vesting, benefit accrual, level of benefits and early retirement subsidies and including for purposes of severance, vacation/paid time off and similar benefits and for any purposes as may be required under applicable Law), other than for benefit accrual purposes under any defined benefit pension plan, or for purposes of any equity, deferred compensation or long term incentive plan, under each employee benefit plan, program or arrangement established or maintained by Buyer under which such Continuing Employees, ACFP Continuing Executives and ACFP Continuing Officers are eligible to participate on or after the Closing for service accrued or deemed accrued on or prior to the Closing with an ACFP Company to the same extent that such credit was recognized by Seller under comparable Benefit Plans immediately prior to the Closing; *provided, however*, that such credit need not be provided to the extent that such credit would result in any duplication of benefits for the same period of service. In addition, Buyer shall use commercially reasonable efforts to (i) cause to be waived all pre-existing condition exclusions and actively at work requirements, eligibility waiting periods and evidence of insurability requirements under any benefit or compensation plan, program, agreement or arrangement maintained by Buyer or the ACFP Companies or any of their Affiliates for the benefit of Continuing Employees, ACFP Continuing Executives and ACFP Continuing Officers on or after the Closing Date (each, a “**New Plan**”) to the extent waived or satisfied by any Continuing Employee, ACFP Continuing Executive, ACFP Continuing Officer or any covered dependent thereof, as of the Closing Date under an analogous Benefit Plan and (ii) cause any deductible, co-insurance and covered out-of-pocket expenses paid on or before the Closing Date by any Continuing Employee, ACFP Continuing Executive, ACFP Continuing Officer or any covered dependent thereof, to be taken into account for purposes of satisfying the corresponding deductible, coinsurance and maximum out of pocket provisions after the Closing Date under any applicable New Plan in the plan year in which the Closing Date occurs (to the same extent as such expenses would have been taken into account under the analogous Benefit Plan prior to the Closing). For the avoidance of doubt, this Section 5.05(c) does not apply to a Continuing Employee’s annual base salary, wages, layoff or any other incentive compensation opportunities and neither Buyer nor any Affiliate of Buyer shall have any restrictions related thereto as a result of this Section 5.05(c).

(d) The provisions contained in this Section 5.05 are included for the sole benefit of the Parties and shall not create any rights or remedies (including any third party beneficiary right) in any Person that is not a Party, including any employee or any participant in any Benefit Plan (or any dependent or beneficiary thereof). Without limiting the requirements of the foregoing, nothing in this Agreement shall or shall be construed so as to create any Benefit Plan.

Section 5.06 Confidentiality.

(a) The Parties acknowledge and agree that the Confidentiality Agreement is incorporated hereby by reference and existence and terms of this Agreement and the transactions contemplated hereby are strictly confidential; *provided, that* such information may be disclosed (i) by Buyer to potential investors in order to gauge their support of, or considering providing financing, for the transactions contemplated hereby; (ii) as required by applicable Law; (iii) by order of a court of competent jurisdiction; or (iv) the rules of Nasdaq or any other national securities exchange or association.

(b) Each of the Company and Seller acknowledges and agrees that (i) federal securities laws prohibit any person who has “material non-public information” concerning a public company such as Buyer from purchasing or selling any of that company’s securities, and from communicating such information to any person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities; (ii) some of the confidential information of Buyer (including this Agreement) may be considered “material non-public information” for purposes of federal securities laws and that Seller, each ACFP Company and their Representatives will abide by all securities laws relating to the handling of and acting upon material non-public information; and (iii) trading in Buyer’s securities while in possession of material non-public information or communicating that information to another Person who trades in such securities could subject Seller, each ACFP Company and their Representatives, as applicable, to liability under the U.S. federal and state securities laws, and the rules and regulations promulgated thereunder, including Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. Each of the Company and Seller acknowledges and agrees that it and its Affiliates will not trade in Buyer’s securities while in possession of material non-public information or at all until such party can do so in compliance with all applicable Laws, in compliance with the lock-up provision in the Registration Rights Agreement and without breach of this Agreement.

Section 5.07 Governmental Approvals and Consents.

(a) Each Party shall: (i) within ten (10) Business Days of the execution of this Agreement, make, or cause or be made, all filings and submissions to the extent required under any Law applicable to such party or any of its Affiliates; and (ii) use commercially reasonable best efforts to obtain, or cause to be obtained, as promptly as possible all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Transaction Documents. Each Party shall cooperate fully with the other Parties and their Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The Parties shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) The Parties shall use commercially reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 3.05 and Section 4.04 of the Disclosure Schedules.

(c) Without limiting the generality of the Parties' undertakings pursuant to subsections (a) and (b) above, each of the Parties shall use all commercially reasonable best efforts to:

(i) respond promptly to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or the Transaction Documents;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or the Transaction Documents; and

(iii) in the event any Governmental Order adversely affecting the ability of the Parties to consummate the transactions contemplated by this Agreement or the Transaction Documents has been issued, to have such Governmental Order vacated or lifted.

(d) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which an ACFP Company is a party is not obtained prior to the Closing, the Company and Seller shall, subsequent to the Closing, cooperate with Buyer and the ACFP Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, the Company and Seller shall use its commercially reasonable best efforts to provide the applicable ACFP Company with the rights and benefits of the affected Contract for the term thereof, and, if the Company or Seller provides such rights and benefits, the ACFP Company shall assume all obligations and burdens thereunder.

(e) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of any Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Buyer, Seller or the Company with Governmental Authorities in the ordinary course of business or any disclosure which is not permitted by Law) shall be disclosed to the other Party's outside counsel hereunder in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Parties with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other Parties with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(f) Notwithstanding the foregoing, nothing in this Section 5.07 shall require, or be construed to require, Buyer or any of its Affiliates to: (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, the BFI Companies, the ACFP Companies or any of their respective Affiliates; (ii) agree to

any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Buyer Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) agree to any material modification or waiver of the terms and conditions of this Agreement.

(g) After the date hereof, Buyer shall not, and shall cause its Affiliates not to, acquire or agree to acquire any assets (including any equity interest in any Person) prior to the Closing if such acquisition or agreement would reasonably be expected to: (i) delay or increase the risk of not obtaining any consent or other approval necessary from any Governmental Authority under any applicable Law for the consummation of the Closing; or (ii) increase the risk of any Governmental Authority entering or not vacating, lifting, reversing or otherwise overturning any injunction, judgment or other order under any Law that would prevent, prohibit, restrict or delay the consummation of the Closing; *provided, however*, the Parties acknowledge and agree that Buyer and its Affiliates may enter into a lease agreement, including with a Related Person, in relation to office space for the BFI Companies and/or the ACFP Companies.

Section 5.08 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of seven (7) years after the Closing, Buyer shall:

(i) retain the books, records, ledgers, files, reports, plans and other documents (including personnel files) of the ACFP Companies relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of such ACFP Company; and

(ii) upon reasonable notice, afford the Representatives of Seller reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such books, records, ledgers, files, reports, plans and other documents;

provided, however, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in ARTICLE VI.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the ACFP Companies after the Closing, or for any other reasonable purpose, for a period of seven (7) years following the Closing, Seller shall:

(i) retain the books, records, ledgers, files, reports, plans and other documents (including personnel files) of Seller which relate to the ACFP Companies and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Representatives of Buyer or an ACFP Company reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books, records, ledgers, files, reports, plans and other documents; *provided, however*, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in ARTICLE VI.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 5.08 where such access would violate any Law.

Section 5.09 Refinancing of ACFP Continuing Indebtedness. From the date hereof until the Closing, Seller and the Company shall, and shall cause each ACFP Company to, on the one hand, and Buyer shall, and shall cause each of its Subsidiaries, on the other hand, to use commercially reasonable best efforts to assist the other party and its Affiliates in connection with amending the terms related to the ACFP Continuing Indebtedness in accordance with the Consent Letter.

Section 5.10 Closing Conditions and Deliverables. From the date hereof until the Closing, each Party shall use its commercially reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII hereof and deliver the items set forth in Section 2.03.

Section 5.11 Public Announcements. Prior to the Closing, the Parties shall consult with each other before issuing any press release, announcing or disclosing to employees of the Parties other than senior executives, making any other public statement, or scheduling any press conference or conference call with investors or analysts with respect to this Agreement or the transactions contemplated hereby, and except as may be required by applicable Law (including Franchise Law), order of a court of competent jurisdiction or the rules of Nasdaq or any other national securities exchange or association, shall not issue any such press release, make such announcement or disclosures to employees other than senior executives, make any such other public statement or schedule any such press conference or conference call before any required consultation as contemplated by this Section 5.11; *provided, that* after the issuance of a press release, Buyer's investor relations personnel may discuss with investors the information included in all press releases and public statements previously released or made, including in the BFI Reports. Following the Closing, no public announcement, press release or disclosure will be made by any Seller or such Seller's Affiliates or representatives with respect to the subject matter of this Agreement or the transactions contemplated herein, including the existence and terms of this Agreement, without obtaining the prior written consent of Buyer; *provided, however*, that the provisions of this Section 5.11 will not prohibit (i) any disclosure required by any applicable Law, including any disclosure necessary or desirable to provide proper disclosure under the securities Laws or under any rules or regulations of any securities exchange on which the securities of such party may be listed or traded, or (ii) any disclosure made in connection with the enforcement of any right or remedy relating to, or the performance of any obligation arising under, this Agreement or the transactions contemplated herein.

Section 5.12 Further Assurances. Following the Closing, each of the Parties shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

Section 5.13 Conduct of Buyer. Buyer agrees that, from the date of this Agreement until the earlier of the Closing and the valid termination of this Agreement in accordance with ARTICLE IX, except: (w) as required or expressly permitted by this Agreement or the transactions contemplated hereby; (x) as set forth in Section 5.13 of the Disclosure Schedules, (y) as required by applicable Law (including by any Governmental Authority or Franchise Law); or (z) as Seller shall otherwise consent in writing (which consent shall not be unreasonably withheld, conditioned or delayed), Buyer shall not and shall cause each of its Subsidiaries not to:

(a) amend, adopt any amendment or otherwise change Buyer's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws as in effect on the date hereof or other applicable governing instruments or organizational documents in any manner that would materially and adversely affect the holders of the BFI Common Stock or BFI Preferred Stock;

(b) make any acquisition of (whether by merger, consolidation or acquisition of stock or equity interests or substantially all of the assets), or make any investment in any interest in, any corporation, partnership or other business organization or division thereof, in each case that would reasonably be expected to prevent, impede, or materially delay the consummation of the transactions contemplated by this Agreement;

(c) issue, sell, grant, pledge, transfer, lease, encumber or dispose of (or authorize the issuance, sale, grant, transfer, lease, encumbrance or disposition of), any shares of capital stock, voting securities or other ownership interest, or any options, warrants, convertible securities or other rights of any kind to acquire or receive any shares of capital stock, any voting securities or other ownership interest (including stock appreciation rights, phantom stock or similar instruments), of Buyer or any of its Subsidiaries, except: (i) for any issuance, sale or disposition to Buyer or a Subsidiary of Buyer by any Subsidiary of Buyer; (ii) the issuance, sale or disposition of any securities of any of the Subsidiaries of Buyer in connection with a bona fide financing; or (iii) for any issuance of BFI Common Stock upon the settlement of outstanding restricted stock units or the exercise of outstanding warrants;

(d) reclassify, combine, split or subdivide any shares of BFI Common Stock or BFI Preferred Stock or designate any series of BFI Preferred Stock other than the BFI Series A Preferred Stock for purposes of complying with Buyer's obligations under this Agreement;

(e) establish a record date for, declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock (except for any dividend or distribution by a wholly owned Subsidiary of Buyer to Buyer or any wholly owned Subsidiary of Buyer);

(f) become party to or approve or adopt any stockholder rights plan or “poison pill” agreement or similar takeover protection that would apply to Seller or the transactions contemplated hereby;

(g) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization, or take any action with respect to any securities owned by such Person that would reasonably be expected to prevent, materially impede or materially delay the consummation of the transactions contemplated by this Agreement;

(h) amend in any material respect, renew, waive any material right under, consent to a transfer or terminate (except in the event the term thereof ends) any material Franchise Agreement to which Buyer is a party; *provided, however*, that the foregoing shall not prohibit Buyer from amending, renewing, terminating or extending Franchise Agreements in the ordinary course of business;

(i) enter into any Franchise Agreement without providing the prospective Franchisee such information concerning the transactions contemplated hereby, if required by applicable Franchise Laws, whether in an amended FDD or otherwise; or

(j) agree, authorize or commit to do any of the foregoing actions described in this Section 5.14.

Notwithstanding the foregoing, Buyer shall not be prohibited from operating the BFI Business in the ordinary course of business, including with respect to the acquisition or closure of “BurgerFi” Restaurants or the execution of a lease agreement, including with a Related Party, in relation to office space for the BFI Companies and/or the ACFP Companies.

Section 5.14 Takeover Statutes. Neither Buyer, Seller, the Company nor their Boards of Directors (or equivalent governing body) shall take any action that would cause any Takeover Statute to become applicable to this Agreement or any of the transactions contemplated hereby, and Buyer and Company shall take all necessary steps to exempt (or ensure the continued exemption of) the transactions contemplated hereby from any applicable Takeover Statute. If any Takeover Statute is, purports to be or may become applicable to the transactions contemplated by this Agreement, then Buyer and the Company and the members of their Boards of Directors shall grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise act to eliminate or minimize the effects of such statute or regulation on such transactions.

Section 5.15 Listing. Buyer shall prepare and submit to Nasdaq an additional listing application for the listing of the BFI Consideration Common Shares (the “**Nasdaq Listing Application**”) and Buyer shall cause such Nasdaq Listing Application to be approved on or prior to the Closing Date, subject only to official notice to Nasdaq of issuance. Seller will cooperate with Buyer as reasonably requested by Buyer with respect to the Nasdaq Listing Application and furnish to Buyer all information concerning the ACFP Companies and Seller that may be required or reasonably requested in connection with any action contemplated by this Section 5.17.

Section 5.16 Director and Officer Liability.

(a) All rights to exculpation, indemnification and advancement of expenses for acts or omissions occurring at or prior to the Closing, whether or not asserted or claimed prior to, at or after Closing, in favor of any D&O Indemnified Person contained in the certificate of incorporation, by-laws or other equivalent governing documents of any ACFP Company, shall survive the transactions contemplated hereby and shall continue in full force and effect pursuant to the terms of such governing document, as applicable. For a period of at least six (6) years after the Closing Date, (i) Buyer shall not, and shall not permit any ACFP Companies to, amend, repeal or modify any provision in the certificate of incorporation, by-laws or other equivalent governing documents of any of them relating to the exculpation, indemnification or advancement of expenses of any D&O Indemnified Person with respect to acts or omissions occurring at or prior to the Closing, whether or not asserted or claimed prior to, at or after the Closing and (ii) all D&O Indemnified Persons shall continue to be entitled to such exculpation, indemnification and advancement of expenses to the fullest extent permitted by applicable Law and no change, modification or amendment of such documents or arrangements shall be made that could adversely affect any D&O Indemnified Person's right thereto without the prior written consent of such D&O Indemnified Person (which shall not be unreasonably withheld or delayed).

(b) From and after the Closing, Buyer shall, and shall cause the ACFP Companies to, pursuant to the D&O Policy, (i) indemnify and hold harmless (and exculpate and release from any liability to Buyer, its Subsidiaries, or any ACFP Company) the D&O Indemnified Persons against all D&O Expenses and D&O Losses and (ii) advance, unconditionally and interest-free, to such D&O Indemnified Persons, all D&O Expenses incurred in connection with any D&O Indemnifiable Claim promptly after receipt of statements therefor. Pursuant to the D&O Policy, advance payment of D&O Expenses in connection with any D&O Indemnifiable Claim shall continue until such D&O Indemnifiable Claim is disposed of or all judgments, orders, decrees or other rulings in connection with such D&O Indemnifiable Claim become final and nonappealable and are fully and finally satisfied. None of Buyer or any of the ACFP Companies shall settle, compromise or consent to the entry of judgment in any action or investigation or threatened action or investigation, in each case, against a D&O Indemnified Person without the prior written consent of such D&O Indemnified Person (not to be unreasonably withheld).

(c) Buyer shall maintain the D&O Policy (or a successor policy with terms substantially similar to the D&O Policy) for so long as the holders of BFI Series A Preferred Stock elect to designate a member of the Buyer Board in accordance with the Certificate of Designation, unless otherwise approved by the Buyer Board with the consent of the Series A Preferred Stock Director (as defined in the Certificate of Designation); *provided, however*, that in no event shall Buyer be required to expend an annual premium for such coverage in excess of one hundred and fifty percent (150%) of the last annual premium paid by Buyer or an ACFP Company for such insurance period prior to the date of this Agreement (the "**Maximum Premium**"). If such insurance coverage cannot be obtained at an annual premium equal to or less than the Maximum Premium, the Company and Buyer shall cause the applicable ACFP Company to obtain that amount of D&O Insurance obtainable for an annual premium equal to the Maximum Premium.

(d) If Buyer, any ACFP Company or any of their respective successors or assigns (i) consolidates with or merges into any other Person and is not the continuing or surviving Person of such consolidation or merger or (ii) transfers or conveys 50% or more of its properties and other assets to any Person (including by liquidation, dissolution or assignment for the benefit of creditors or similar action), then in each such case Buyer or the ACFP Company shall use its commercially reasonable efforts to cause proper provisions to be made so that the applicable successors and assigns or transferees expressly assume the obligations set forth in this Section 5.18.

(e) Notwithstanding anything herein to the contrary, the rights and benefits of the D&O Indemnified Persons under this Section 5.18 shall not be terminated or modified in any manner adverse to any D&O Indemnified Person without the prior written consent of such D&O Indemnified Person. The provisions of this Section 5.18 are intended to be for the benefit of, and shall be enforceable by, each D&O Indemnified Person, his or her heirs and his or her executors, administrators and personal representatives, each of whom is an intended third-party beneficiary of this Section 5.18, and are in addition to, and not in substitution for, any other rights, including rights to indemnification or contribution that any such Person may have by Contract or otherwise.

Section 5.17 Financing Cooperation. From and after the date hereof, Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, as promptly as possible, all things reasonably necessary, proper or advisable to (i) satisfy, or cause to be satisfied, on a timely basis (or obtain a waiver of) all conditions to Buyer assuming the ACFP Continuing Indebtedness, in each case, to the extent within Buyer's control and (ii) negotiate and enter into the Continuance of ACFP Debt Documents substantially on the terms and conditions set forth in the Consent Letter and in a form reasonably acceptable to Buyer. Buyer shall use commercially reasonable efforts to, and shall cause each of its controlled Affiliates to use commercially reasonable efforts to, cooperate with Seller in connection with the assumption of the ACFP Continuing Indebtedness, which shall include: (i) furnishing Seller and the Financing Parties customary financial and other information regarding Buyer and its Subsidiaries reasonably requested by Seller and the Financing Parties to consummate assumption of the ACFP Continuing Indebtedness, (ii) upon prior written notice and at reasonable times, making appropriate officers of Buyer and its Subsidiaries available for participation in a reasonable number of meetings or due diligence sessions with the Financing Parties (it being understood that such meetings and sessions may occur telephonically or by videoconferencing), (iii) assisting Seller in connection with its preparation of one or more credit agreements, as well as other pledge and security documents or other documents, certificates (including a solvency certificate), incumbencies and authorizations, in each case as may be reasonably requested by Seller and (iv) at least three (3) Business Days prior to the Closing, providing all documentation and other information about Buyer and its Subsidiaries as the Financing Parties reasonably determine is required by applicable "know your customer" and anti-money laundering rules and regulations including the USA PATRIOT Act, to the extent requested by Seller in writing at least ten (10) Business Days prior to the Closing. Buyer and each of its controlled Affiliates hereby consents to the customary and reasonable use of its logos solely for the purpose of the assumption of the ACFP Continuing Indebtedness.

Section 5.18 Funds Flow Memorandum; Closing Allocation Table. Prior to the Closing, Seller shall deliver to Buyer: (i) a Funds Flow Memorandum (the “**Funds Flow Memorandum**”) setting forth the Final Company Transaction Expenses in a customary form and (ii) the Closing Allocation Table setting forth Seller’s good faith final determination of the Option Consideration Shares allocated to each holder of Company Options pursuant to Section 2.07.

Section 5.19 Section 280G Waiver. Prior to the Closing, the Company shall determine, in its reasonable discretion, if any payments or benefits provided in connection with the execution of this Agreement or the transactions contemplated hereby would otherwise result in “excess parachute payments” within the meaning of Section 280G(b)(1) of the Code. If the Company determines that such “excess parachute payments” would result, then the Company will use its commercially reasonable efforts to solicit waivers from the recipients of such payments and benefits and conduct a shareholder vote in a manner intended to comply with Section 280G(b)(5)(B) of the Code.

Section 5.20 BFI Management Compensation. The Parties acknowledge and agree that Buyer shall have the option to award up to \$500,000 of discretionary performance bonuses to certain members of Buyer management and consultants as soon as practicable after the Closing in relation to the transactions contemplated by this Agreement.

Section 5.21 Board of Directors. For so long as Seller, its Affiliates and any Seller Related Persons, directly or indirectly, hold collectively 42.5% or more of the shares of BFI Common Stock issued to Seller at Closing (the “**Seller Ownership Threshold**”), Seller shall have the option and right (but not the obligation), by delivering a written notice of such designation to Buyer, to designate one director (who shall be a Class C director if Buyer’s board of directors remains so classified) (the “**Seller Designated BFI Director**”) and one non-voting observer (the “**Seller Designated BFI Board Observer**”) to the Buyer Board. As of, or following the Closing, at Seller’s election, its Seller Designated BFI Director and/or Seller Designated BFI Board Observer shall be promptly appointed to the Buyer Board subject to the other terms of this Section 5.21. If the Seller Designated BFI Director ceases to serve as a member of the Buyer Board prior to the expiration of such director’s term, then Seller shall be entitled to designate a director nominee as such director’s successor, it being understood that any such designee shall serve the remainder of the term of the director whom such designee shall replace, or until her or his successor is duly elected and qualified or until her or his earlier resignation or removal. No Seller Designated BFI Director may serve as a director and no Seller Designated BFI Board Observer may serve as an observer if such person would be prohibited from serving as a director or observer, as applicable, pursuant to applicable securities law or rule or regulation of the SEC or applicable rules of the Principal Trading Market or other applicable Law, or opposed by a majority of the other members of Buyer Board based on an exercise of their fiduciary duties to Buyer’s stockholders acting in good faith and without limiting the rights of Seller to designate an alternate designee. Seller shall further have the option and right (but not the obligation) to (x) in the event Seller elects to designate a Seller Designated BFI Director, have representation on each committee of Buyer’s board of directors, and (y) to the extent Seller does not have representation on a committee of Buyer’s board of directors, appoint a non-voting observer (a “**Seller Designated Committee Observer**”) to any or all committees of which a Seller Designated BFI Director is not a member. Subject to the other provisions of this Section 5.21 and applicable Law, the initial Seller Designated BFI Director (if any) designated by Seller shall serve as the Seller Designated BFI

Director until the expiration of her or his term of office or such earlier time as Seller elects to replace the initial Seller Designated BFI Director or any successors thereof upon written notice to Buyer as provided herein. Any Seller Designated BFI Director may be removed by Seller upon written notice in accordance with the Certificate of Incorporation and Bylaws and applicable Law, or by the stockholders of Buyer at a duly called special meeting or annual meeting for the purpose of electing the Seller Designated BFI Director. In the event of the resignation, death or removal of any Seller Designated BFI Director, Seller Designated BFI Board Observer or Seller Designated Committee Observer from Buyer's board of directors or any committee thereof, as applicable, provided the Seller Ownership Threshold continues to be met, Seller shall have the continuing right to appoint a successor Seller Designated BFI Director, Seller Designated BFI Board Observer or Seller Designated Committee Observer, as applicable, to the Buyer Board or any committee thereof, as applicable, to fill the resulting vacancy on the Buyer Board or any applicable committee thereof; *provided, however*, that the successor Seller Designated BFI Director, Seller Designated BFI Board Observer, or Seller Designated Committee Observer shall not be prohibited from serving as a director, committee member, or observer pursuant to applicable securities law or rule or regulation of the SEC or applicable rules of the Principal Trading Market or other applicable Law, or shall not be opposed by a majority of the other members of the Buyer Board based on an exercise of their fiduciary duties to Buyer's stockholders acting in good faith and without limiting the rights of Seller to designate an alternate designee. Annually with respect to the Seller Designated BFI Director, including the initial Seller Designated BFI Director, and promptly upon the request of Buyer, Seller shall provide the following information to Buyer: (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment and a biography of the Seller Designated BFI Director, (C) the class or series and number of shares of capital stock of Buyer that are beneficially owned or owned of record by the Seller Designated BFI Director and (D) any other information relating to the Seller Designated BFI Director that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act. So long as Seller has the right to designate the Seller Designated BFI Director pursuant to this Section 5.21 and the Seller Designated BFI Director meets the suitability requirements specified herein, Buyer shall ensure that (x) such Seller Designated BFI Director is included as the sole nominee for the applicable board seat in the Buyer Board's slate of nominees to the stockholders for the applicable election of directors together with a recommendation of the Buyer Board to stockholders to vote in favor of such nominee and (y) such Seller Designated BFI Director is included in the proxy statement prepared by the management of Buyer in connection with the solicitation of proxies for the applicable meeting of the stockholders of Buyer called with respect to the election of the members of the Buyer Board, and at every adjournment or postponement thereof, and on any applicable action or approval by written consent of the stockholders of Buyer with respect to the election of members of the Buyer Board in each case in a manner consistent with the foregoing clause (x). For so long as Seller shall have the right to designate the Seller Designated BFI Board Observer pursuant to this Section 5.21, the Executive Chairman of the Buyer Board shall also have the option and right (but not the obligation) to designate one non-voting observer to the board of directors and any and all committees on the same terms as stated herein.

**ARTICLE VI
TAX MATTERS**

Section 6.01 Tax Covenants.

(a) Without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed), Seller (and, prior to the Closing, Company, any other ACFP Company, their Affiliates and their respective Representatives) shall not, to the extent it may affect, or relate to, an ACFP Company, make, change or rescind any material Tax election or amend any Tax Return, in each case, that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer or an ACFP Company in respect of any Post-Closing Tax Period, in each case, other than in the ordinary course of business and in accordance with past practice.

(b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Transaction Documents (including any real property transfer Tax and any other similar Tax) (collectively, "**Transfer Taxes**") shall be borne 50% by Buyer and 50% by Seller. The Party required under applicable Law to file a Tax Return with respect to such Transfer Taxes shall do so within the time period prescribed by applicable Law, and the non-filing Party shall promptly pay the filing Party for its share of any Transfer Taxes (and associated costs) so payable by such filing Party, if practicable prior to the payment of such Transfer Taxes by the filing Party and in all events within ten (10) days of receipt of written notice that such Transfer Taxes are payable. To the extent permitted by applicable Law, Buyer and Seller shall cooperate in taking reasonable steps to minimize any Transfer Taxes.

(c) Seller shall prepare, or cause to be prepared, and Buyer shall cause each ACFP Company to file, all income Tax Returns required to be filed by an ACFP Company after the Closing Date with respect to a Pre-Closing Tax Period (other than any Pre-Closing Tax Period included in a Straddle Period). Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law). Buyer shall have at least ten (10) Business Days to review all such Tax Returns prior to filing, and Seller shall consider in good faith all reasonable comments proposed by Buyer. Notwithstanding the foregoing, if any such Tax Return would adversely affect the Company and/or Buyer in a Post-Closing Tax Period, and Buyer and Seller are unable to reach an agreement within ten (10) days after receipt by Seller of Buyer's comments, the disputed items shall be resolved by the Independent Accountant and, absent fraud or manifest error, any determination by the Independent Accountant shall be final and binding on the Parties. The Independent Accountant shall resolve any disputed items within twenty (20) days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Seller and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Seller.

(d) Buyer shall prepare and timely file, or shall cause to be prepared and timely filed, all Tax Returns required to be filed by an ACFP Company after the Closing Date with respect to a Pre-Closing Tax Period (other than those covered by Section 6.01(c)), including any Tax Returns that relate to a Straddle Period, and such Tax Returns shall be prepared in a manner consistent with past practice (unless otherwise required by Law). Seller shall have at least ten (10) Business Days to review all such Tax Returns prior to filing, and Buyer shall consider in good faith and include all reasonable comments proposed by Seller. If Buyer and Seller are unable to reach an agreement within ten (10) days after receipt by Buyer of Seller's comments, the disputed items shall be resolved by the Independent Accountant and, absent fraud or manifest error, any determination by the Independent Accountant shall be final and binding on the Parties. The Independent Accountant shall resolve any disputed items within twenty (20) days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Seller.

(e) The preparation and filing of any Tax Return of an ACFP Company that does not relate to a Pre-Closing Tax Period shall be exclusively within the control of Buyer.

Section 6.02 Termination of Existing Tax Sharing Agreements. Any and all existing Tax sharing agreements (whether written or not) binding upon an ACFP Company shall be terminated as of the Closing Date. After such date none of the ACFP Companies, Seller nor any of Seller's Affiliates and their respective Representatives shall have any further rights or liabilities thereunder.

Section 6.03 Tax Indemnification. Other than any Loss or Taxes (x) that are a direct result of a Buyer Tax Act and only to the extent thereof or (y) that were taken into account in the calculation of Leakage, Seller shall indemnify each ACFP Company, Buyer, and each Buyer Indemnitee and hold them harmless from and against (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in Section 3.21; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in ARTICLE VI; (c) all Taxes of the Company or relating to the ACFP Business for all Pre-Closing Tax Periods; (d) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of an ACFP Company) was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; and (e) any and all Taxes of any person imposed on an ACFP Company arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date. Any Taxes of any ACFP Company that are the responsibility of Seller pursuant to this Section 6.03, together with any reasonable out-of-pocket fees and expenses (including attorneys' and accountants' fees), shall be satisfied in the manner described in Section 6.09.

Section 6.04 Straddle Period. In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a “**Straddle Period**”), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and

(b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

Exemptions, allowances, or deductions that are not covered under the rules of Section 461 of the Code shall be prorated on the basis of the number of days in the annual period elapsed through the Closing Date as compared to the number of days in the annual period elapsing after the Closing Date.

Section 6.05 Intended Tax Treatment. The Parties agree that it is their intention that the purchase of the Shares by Buyer from Seller pursuant to this agreement be treated as an exchange governed by Section 1001(c) of the Code and not be treated as a reorganization within the meaning of Section 368 of the Code (the “**Intended Tax Treatment**”). Except as may be required upon a final determination by a Tax authority, the Parties agree that they shall prepare all applicable Tax filings in a manner consistent with the Intended Tax Treatment, and shall not take any action inconsistent with the Intended Tax Treatment.

Section 6.06 Contests.

(a) Buyer agrees to give written notice to Seller of the receipt of any written notice by the Company, Buyer or any of Buyer’s Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Buyer pursuant to this ARTICLE VI (a “**Tax Claim**”); *provided, that* failure to comply with this provision shall not affect Buyer’s right to indemnification hereunder except to the extent Seller was actually and materially prejudiced as a result thereof.

(b) Seller shall control the contest or resolution of any Tax Claim relating to a Pre-Closing Tax Period (other than any Pre-Closing Tax Period included in a Straddle Period); *provided, however,* that (i) Seller shall keep Buyer reasonably informed of the progress of any such Tax Claim, (ii) Buyer shall have the right to participate in the defense of any such Tax Claim at Buyer’s sole cost and expense, and (iii) solely with respect to a Tax Claim that would adversely affect Buyer in a Post-Closing Tax Period, Seller shall obtain the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement of such Tax Claim or ceasing to defend such Tax Claim; *provided however,* that if Seller determines that such Tax Claim would not adversely affect Buyer in a Post-Closing Tax Period and therefore does not require Seller to obtain Buyer’s prior written consent pursuant to this clause (iii), Seller shall provide written confirmation to Buyer of Seller’s obligation pursuant to Section

6.03 to indemnify Buyer with respect to such Tax Claim within ten (10) days of entering into any settlement of such Tax Claim or ceasing to defend such Tax Claim. If Seller fails to, or does not elect to, timely exercise control over the conduct with respect to any such Tax Claim, Buyer shall have control over the conduct with respect to such Tax Claim; *provided, however*, that Seller shall have the right, but not the obligation, to participate in such defense with separate counsel of its choosing at its sole cost and expense. Buyer shall obtain the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement of such Tax Claim or ceasing to defend such Tax Claim.

(c) Buyer shall control the contest or resolution of any Tax Claim relating to a Straddle Period; provided, however, that (i) Buyer shall keep Seller reasonably informed of the progress of any such Tax Claim, (ii) Seller shall have the right to participate in the defense of any such Tax Claim at Seller's sole cost and expense, and (iii) Buyer shall obtain the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement of such Tax Claim or ceasing to defend such Tax Claim.

Section 6.07 Cooperation and Exchange of Information. Seller and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other that would be necessary or useful in filing any Tax Return pursuant to this ARTICLE VI or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of Seller and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the ACFP Companies for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the ACFP Companies for any taxable period beginning before the Closing Date, Seller or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

Section 6.08 Tax Treatment of Indemnification Payments. Any indemnification payments pursuant to this ARTICLE VI shall be treated as an adjustment to the Total Consideration by the parties for Tax purposes, unless otherwise required by Law.

Section 6.09 Payments to Buyer. Any amounts payable to Buyer pursuant to this ARTICLE VI shall be satisfied in the manner described in Section 8.06; *provided, however*, that the aggregate amount of all amounts for which Seller shall be liable pursuant to this ARTICLE VI shall not exceed an amount equal to the BFI Consideration Share Amount.

Section 6.10 Buyer Tax Acts. Without the prior written consent of Seller (such consent not to be unreasonably withheld, conditioned or delayed), from and after the Closing, neither Buyer nor any ACFP Company shall (and they shall not permit any of the ACFP Companies' Subsidiaries to) (each of the following, a "**Buyer Tax Act**");

- (a) make, change or rescind any Tax election, amend, file (with respect to a Pre-Closing Tax Period) or re-file or otherwise modify any Tax Return or take any position on any Tax Return for any Pre-Closing Tax Period that would have the effect of increasing the Tax liability of any ACFP Company in respect of any Pre-Closing Tax Period;
- (b) file any ruling or request with any Governmental Authority that relates to Taxes or Tax Returns of any Pre-Closing Tax Period;
- (c) extend any statute of limitations with respect to any Pre-Closing Tax Period;
- (d) surrender any Tax refund attributable to any Pre-Closing Tax Period;
- (e) initiate any voluntary contact, or enter into a voluntary disclosure, with a Governmental Authority with respect to a Tax Return for a Pre-Closing Tax Period; or
- (f) file a Tax Return for a Pre-Closing Tax Period in a jurisdiction in which the ACFP Company did not file such type of Tax Return prior to the Closing.

Section 6.11 Tax Refunds. To the extent any of the ACFP Companies receive any Tax refund or is otherwise given credit for any overpayment of Taxes (including as a result of installments or estimated Tax payments) paid prior to the Closing Date with respect to any taxable period (or portion thereof) ending on or before the Closing Date, such ACFP Company shall pay to Seller within five (5) Business Days of receiving such Tax refund from the relevant Governmental Authority or filing of a Tax Return claiming such credit against Taxes for overpayment, by wire transfer of immediately available funds to accounts designated by Seller to Buyer, the amount of such Tax refund or overpayment (net of reasonable costs and expenses) and any interest received thereon; provided that such Tax refund or credit for overpayment shall not include any Tax refunds to the extent they relate to an increase in Tax liability in a Post-Closing Tax Period, or are attributable to a Tax attribute arising in a Post-Closing Tax Period. In the event that any such amount paid to Seller pursuant to this Section 6.11 is subsequently denied, lost or reduced pursuant to any applicable Law or by a Governmental Authority, Seller shall pay such denied, lost or reduced amount, including the amount of any interest or penalties that the applicable ACFP Company shall owe to Governmental Authority in connection with such denial, loss or reduction, back to the such ACFP Company ten (10) Business Days of any such denial, loss or reduction.

Section 6.12 Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.21 and this ARTICLE VI shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) *plus* sixty (60) days.

Section 6.13 Overlap. To the extent that any obligation or responsibility pursuant to ARTICLE VIII may overlap with an obligation or responsibility pursuant to this ARTICLE VI, the provisions of this ARTICLE VI shall govern.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of the following condition: no Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

Section 7.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Seller contained in the Seller Fundamental Representations, the representations and warranties of the Company and Seller contained in this Agreement, the Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects on and as of the Original SPA Date and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects), except where the failure of such representations or warranties to be true and correct would not, individually or in the aggregate, have an ACFP Material Adverse Effect (in each case, without giving effect to any qualifications as to "material" or "ACFP Material Adverse Effect" contained in such representations and warranties). The representations and warranties of Seller contained in the Seller Fundamental Representations shall be, except for de minimis inaccuracies, true and correct in all respects on and as of the Original SPA Date and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) The Company and Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and Transaction Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, the Company and Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects; and further, *provided, that*, Seller and the Company shall have complied with Section 2.03(b) in all respects.

(c) All approvals, consents and waivers that are listed on Section 7.02(c) of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(d) From the date of this Agreement, there shall not have occurred any ACFP Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, would reasonably be expected to result in an ACFP Material Adverse Effect.

(e) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller and the Company, that each of the conditions set forth in this Section 7.02 have been satisfied.

Section 7.03 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in the Buyer Fundamental Representations, the representations and warranties of Buyer contained in this Agreement, the Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects on and as of the Original SPA Date and on and as of the Closing Date with the same effect as though made at and as of that specified date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects), except where the failure of such representations or warranties to be true and correct would not, individually or in the aggregate, have a Buyer Material Adverse Effect (in each case, without giving effect to any qualifications as to "material" or "Buyer Material Adverse Effect" contained in such representations and warranties). The representations and warranties of Buyer contained in the Buyer Fundamental Representations shall be, except for *de minimis* inaccuracies, true and correct in all respects on and as of the Original SPA Date and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Transaction Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that* with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects; and *further, provided, that*, Buyer shall have complied with Section 2.03(a) in all respects.

(c) All approvals, consents and waivers that are listed on Section 4.04 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Seller at or prior to the Closing.

(d) From the date of this Agreement, there shall not have occurred any Buyer Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, would reasonably be expected to result in a Buyer Material Adverse Effect.

(e) Seller shall have received evidence that Buyer has filed the Certificate of Designation with the Secretary of State of the State of Delaware at or prior to the Closing, which shall continue to be in full force and effect as of Closing.

(f) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in this Section 7.03 have been satisfied.

ARTICLE VIII INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein (other than any representations or warranties contained in Section 3.21 which are subject to ARTICLE VI) shall survive the Closing and shall remain in full force and effect until the date that is twelve (12) months from the Closing Date; *provided, that* claims based on Fraud shall survive indefinitely; and *further, provided, that* the Seller Fundamental Representations, the Buyer Fundamental Representations and the representations and warranties set forth in Section 3.12(c) (solely with respect to the first sentence thereof), Section 3.18 and Section 3.19 (solely insofar as it relates to Taxes) shall survive until sixty (60) days past the applicable statute of limitations. All covenants and agreements of the parties contained herein (other than any covenants or agreements contained in ARTICLE VI which are subject to ARTICLE VI) shall survive the Closing indefinitely or for the period explicitly specified therein until performed. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 8.02 Indemnification By Seller. From and after the Closing and subject to the other terms and conditions of this ARTICLE VIII, Seller shall indemnify, hold harmless, reimburse and defend each of Buyer and its Affiliates (including, following the Closing, the Company and the other ACFP Companies) and their respective Representatives (collectively, the "**Buyer Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by the Buyer Indemnitees arising out of or resulting from:

(a) any inaccuracy in or breach of any of the representations or warranties of the Company and Seller contained in this Agreement or in any certificate or transfer instrument delivered by or on behalf of Seller pursuant to this Agreement (other than in respect of Section 3.21, it being understood that the sole remedy for any such inaccuracy in or breach thereof shall be pursuant to ARTICLE VI), as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement (other than any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in ARTICLE VI, it being understood that the sole remedy for any such breach, violation or failure shall be pursuant to ARTICLE VI); or

(c) any Transaction Expenses or Indebtedness of the Company (other than the ACFP Continuing Indebtedness) outstanding as of the Closing to the extent not included in the calculation of BFI Consideration Share Amount.

Section 8.03 Indemnification By Buyer. From and after the Closing and subject to the other terms and conditions of this ARTICLE VIII, Buyer shall indemnify, hold harmless, reimburse and defend each of Seller and its Affiliates and their respective Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by the Seller Indemnitees arising out of or resulting from:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or transfer instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement (other than ARTICLE VI, it being understood that the sole remedy for any such breach thereof shall be pursuant to ARTICLE VI).

Section 8.04 Certain Limitations. The indemnification *provided* for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

(a) Seller shall not be liable to the Buyer Indemnitees for indemnification under Section 8.02(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) exceeds \$350,000 (the “**Basket**”), in which event Seller shall be required to pay or be liable for only those Losses in excess of the Basket, subject to the other limitations on indemnification set forth herein. The aggregate amount of all Losses for which Seller shall be liable pursuant to Section 8.02(a) shall not exceed \$15,000,000.

(b) [Reserved].

(c) Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 8.03(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.03(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses from the first dollar. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 8.03(a) shall not exceed \$5,000,000.

(d) Subject to Section 8.04(e), (i) the aggregate amount of all Losses for which Seller shall be liable pursuant to Section 8.02 shall not exceed an amount equal to the BFI Consideration Share Amount and (ii) the aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 8.03 shall not exceed an amount equal to \$15,000,000.

(e) Notwithstanding the foregoing, the limitations set forth in Section 8.04(a), Section 8.04(c) and Section 8.04(d) shall not apply to Losses based upon, arising out of, (i) with respect to or by reason of any inaccuracy in or breach of any representation or warranty in the Seller Fundamental Representations and the Buyer Fundamental Representations; or (ii) the Fraud of the indemnifying party.

(f) Solely for purposes of ARTICLE VI and this ARTICLE VIII, notwithstanding anything to the contrary contained herein, in determining the amount of Losses suffered by the Seller Indemnitees or the Buyer Indemnitees related to (but not the existence of) a breach of any representation, warranty, agreement, or covenant in this Agreement, the representations and warranties set forth in this Agreement and any such applicable agreement or covenant contained in this Agreement shall be considered without regard to any "material," "Material Adverse Effect," or similar qualifications set forth therein.

(g) The amount of any Losses for which indemnification is provided for under this Agreement shall be: (i) reduced by (A) any amounts received by the Indemnified Party as a result of any indemnification, contribution or other payment by any third party; provided, however, for the avoidance of doubt, that, following the Closing, the Company shall not have any contribution obligations with respect to Seller's indemnification obligations set forth herein, (B) any insurance proceeds or other amounts received by the Indemnified Party from third parties with respect to such Losses, and (C) any Tax benefit actually realized by the Indemnified Party from the incurrence or payment of any such Losses in the taxable year, or the four (4) subsequent taxable years, of the incurrence or payment of any such Losses; and (ii) increased by an amount equal to any Tax imposed on the receipt of such indemnity payment. Any such payment under this Section 8.04(g) shall be treated as an adjustment to the Total Consideration.

(h) No claim for indemnification may be made by a Buyer Indemnitee and no indemnification shall be required to the extent that (i) the Losses sustained or incurred by such member of the Buyer Indemnitees for which indemnification is sought were accrued or reflected on the Financial Statements, or (ii) such Losses are attributable to any action taken by Buyer or an Affiliate thereof after the Closing.

(i) If the Indemnifying Party makes any payment on any indemnifiable claim, the Indemnifying Party shall be subrogated, to the extent of such payment, to all rights and remedies of the Indemnified Party against any third party in respect of the Losses to which the payment related. The Parties will execute upon request all instruments reasonably necessary to evidence and perfect the above subrogation rights.

(j) Each Indemnified Party shall take, and cause its Affiliates to take, all commercially reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto.

(k) Notwithstanding anything to the contrary in this ARTICLE VIII, no Indemnified Party shall be entitled to be indemnified under this ARTICLE VIII for any Losses to the extent such Losses were (i) recovered pursuant ARTICLE VI (Tax Matters) or (ii) recovered pursuant to Section 2.05 (Locked Box and Leakage).

Section 8.05 Indemnification Procedures. The party making a claim under this ARTICLE VIII is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this ARTICLE VIII is referred to as the “**Indemnifying Party**”.

(a) *Third Party Claims.* If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Third Party (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is actually prejudiced by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* the Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim where the primary remedy sought is seeking an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party; *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, there exists an actual and material conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as *provided* in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.05(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 5.06) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) *Settlement of Third Party Claims.* Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.05(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which indemnification would not be provided by the Indemnifying Party pursuant to this ARTICLE VIII and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim without the prior written consent of the Indemnified Party. If the Indemnified Party has assumed the defense pursuant to Section 8.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) *Direct Claims.* Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a **Direct Claim**) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is actually prejudiced by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(d) *Tax Claims.* Notwithstanding any other provision of this Agreement, the control of any claim, assertion, event or proceeding in respect of Taxes of the Company (including, but not limited to, any such claim in respect of a breach of the representations and warranties in Section 3.21 hereof or any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation in ARTICLE VI) shall be governed exclusively by ARTICLE VI hereof.

Section 8.06 Payments; Indemnification Escrow Shares.

(a) Once a Loss is agreed to be paid by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE VIII, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication solely as follows:

(i) with respect to a Direct Claim or Third Party Claim whereby Seller is the Indemnifying Party, (A) first, by the transfer to the Buyer Indemnitee of a number of shares of BFI Common Stock (valued at the volume-weighted average price per share for the thirty (30) trading day period ending on the trading day immediately prior to payment of such indemnification obligation) representing the amount of the Losses, and (B) second, if an amount of the Loss remains outstanding following the transfer of the BFI Common Stock as set forth in clause (A), by the transfer to the Buyer Indemnitee of a number of shares of BFI Series A Preferred Stock (valued at a per share amount based on the Series A Redemption Price); and

(ii) with respect to a Direct Claim or Third Party Claim whereby Buyer is the Indemnifying Party, by the issuance to the Seller Indemnitee of a number of additional shares of BFI Common Stock (valued at the volume-weighted average price per share for the thirty (30) trading day period ending on the trading day immediately prior to payment of such indemnification obligation) representing the amount of the Loss.

(b) Any Losses payable to a Buyer Indemnitee pursuant to Section 8.06(a)(i)(A) shall be satisfied solely as follows: (i) first, from the Indemnification Escrow Shares pursuant to joint written instructions executed by Buyer and Seller and delivered to the Escrow Agent; and (ii) second, to the extent the amount of Losses exceeds the value of the Indemnification Escrow Shares (valued at the volume-weighted average price per share for the thirty (30) trading day period ending on the trading day immediately prior to payment of such indemnification obligation), from Seller in accordance with Section 8.06(a)(i).

(c) All Indemnification Escrow Shares remaining in the Indemnification Escrow Fund for which no claim for indemnification is pending pursuant to this ARTICLE VIII shall be released to Seller pursuant to joint written instructions executed by Buyer and Seller and delivered to the Escrow Agent no later than five (5) Business Days following the twelve (12) month anniversary of the Closing Date.

(d) For the avoidance of doubt, except with respect to claims for Fraud, under no circumstances shall Seller or Buyer have any obligation to make any wire transfer of funds, or other cash payment, in connection with its indemnification obligations set forth in this ARTICLE VIII.

Section 8.07 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Total Consideration for Tax purposes, unless otherwise required by Law.

Section 8.08 Effect of Investigation. Seller shall not be liable under this Agreement for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if, to Buyer's Knowledge, Buyer or its Affiliates or Representatives had knowledge of such inaccuracy or breach prior to the Closing. Buyer shall not be liable under this Agreement for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement if, to Seller's Knowledge, Seller or its Affiliates or Representatives had knowledge of such inaccuracy or breach prior to the Closing.

Section 8.09 Exclusive Remedies. Subject to Section 2.04, Section 2.05, Section 5.06 and Section 10.11, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from Fraud on the part of a Party in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in ARTICLE VI and this ARTICLE VIII. In furtherance of the foregoing, each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in ARTICLE VI and this ARTICLE VIII. Nothing in this Section 8.09 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled, including with respect to Section 10.11, any right or remedy under any Transaction Document, or to seek any remedy on account of any party's fraudulent or criminal misconduct. Notwithstanding anything to the contrary contained herein, none of the Parties nor any of their respective Affiliates or equityholders shall have any rights or claims against any of the agents or lenders under the Credit Agreement or any of their respective Affiliates or equityholders (collectively, the "**Financing Parties**") in connection with this Agreement or any of the transactions contemplated hereby. No Financing Party shall be subject to any special, consequential, punitive or indirect damages or at law or in equity, in contract, in tort or otherwise.

ARTICLE IX TERMINATION

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by Buyer by written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller or the Company pursuant to this Agreement that would cause the failure of any of the conditions specified in ARTICLE VII at the Closing and such breach, inaccuracy or failure has not been cured by Seller or the Company, as applicable, within thirty (30) days of Seller's receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in Section 7.01 or Section 7.02 shall not have been, or if it becomes reasonably apparent that any of such conditions will not be, fulfilled by January 31, 2022 or such later date mutually agreed upon by Buyer and Seller, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Seller by written notice to Buyer if:

(i) Neither Seller nor the Company is then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would cause the failure of any of the conditions specified in ARTICLE VII at the Closing and such breach, inaccuracy or failure has not been cured by Buyer within thirty (30) days of Buyer's receipt of written notice of such breach from Seller; or

(ii) any of the conditions set forth in Section 7.01 or Section 7.03 shall not have been, or if it becomes reasonably apparent that any of such conditions will not be, fulfilled by January 31, 2022 or such later date mutually agreed upon by Buyer and Seller, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority having competent jurisdiction shall have issued a Governmental Order permanently restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any Party or Non-Party Affiliate except:

(a) as set forth in this ARTICLE IX and Section 5.06 and ARTICLE X hereof; and

(b) that nothing herein shall relieve any Party from liability for any intentional or willful breach of any provision hereof.

**ARTICLE X
MISCELLANEOUS**

Section 10.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred. For the avoidance of doubt, Seller or the Company shall be permitted to pay all Transaction Expenses and Indebtedness of the Company (other than the ACFP Continuing Indebtedness) at or prior to the Closing, but such payments to the extent paid by the Company shall be considered Leakage for the purposes of the calculation of the BFI Consideration Share Amount and Buyer shall pay such amounts at Closing pursuant to Section 2.05.

Section 10.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

If to Seller or the Company (prior to the Closing):	599 West Putnam Avenue Greenwich, CT 06830 Attention: Andrew Taub; Matt Leeds; Dan Reid E-mail: andrew.taub@lcatterton.com; matt.leeds@lcatterton.com; legalnotice@lcatterton.com
with a copy to (which shall not constitute notice):	Proskauer Rose, LLP Eleven Times Square New York, NY 10036-8299 Attention: Michael E. Callahan; Matt O'Loughlin Email: mcallahan@proskauer.com; moloughlin@proskauer.com
If to Buyer or the Company (after the Closing):	BurgerFi International, Inc. 105 U.S. Highway 1 North Palm Beach, FL 33408 Attention: Julio Ramirez; Mike Rabinovitch E-mail: julio@burgerfi.com; mike@burgerfi.com

with a copy to (which shall not constitute notice):

Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Attention: Enrique A. Conde
E-mail: enrique.conde@hkllaw.com

Section 10.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. The terms “delivered”, “provided”, “furnished” or “made available” means posted to the Data Room at least two (2) Business Days prior to the date hereof.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 Entire Agreement. Except for the Confidentiality Agreement, this Agreement and the Transaction Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

Section 10.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, that* Buyer may, without the prior written consent of Seller and without being released from any of its obligations hereunder, transfer, pledge or assign this Agreement as security for any financing. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.08 No Third-party Beneficiaries. Except as *provided* in Section 6.03 and ARTICLE VIII and, with respect to the Financing Parties, Section 8.09, Section 10.07, this Section 10.08, Section 10.09 and Section 10.10, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. For the avoidance of doubt, each of the Financing Parties is a third party beneficiary of Section 8.09, Section 10.07, Section 10.08, Section 10.09 and Section 10.10 of this Agreement.

Section 10.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Notwithstanding anything to the contrary contained in the foregoing or elsewhere in this Agreement, any amendment, restatement, supplement, modification or waiver of Section 8.09, Section 10.07, Section 10.08, this Section 10.09 and Section 10.10 (and the related definitions to the extent used in such Sections), in each case that is adverse in any material respect to any of the Financing Parties, will not be enforceable against any of the Financing Parties without the prior written consent of such Person(s). Any purported amendment, restatement, supplement, modification or waiver by any Party in a manner which does not comply with this Section 10.09 will be void.

Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY MAY BE INSTITUTED IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE OR, SOLELY IF SUCH COURT LACKS SUBJECT MATTER JURISDICTION, THE UNITED STATES DISTRICT COURT SITTING IN NEW CASTLE COUNTY IN THE STATE OF DELAWARE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT AND THE TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (INCLUDING IN CONNECTION WITH THE ACFP CONTINUING INDEBTEDNESS OR THE PERFORMANCE THEREOF OR INVOLVING ANY OF THE FINANCING PARTIES). EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

(d) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE FOREGOING, ALL DISPUTES AGAINST ANY OF THE FINANCING PARTIES UNDER OR IN RESPECT OF ACFP CONTINUING INDEBTEDNESS OR RELATED TO THIS AGREEMENT OR THE FACTS AND CIRCUMSTANCES LEADING TO ITS EXECUTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED IN AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK. FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE FOREGOING AND WITHOUT LIMITING THE FOREGOING, EACH OF THE PARTIES, ON BEHALF OF ITSELF AND ITS AFFILIATES, AGREES (I) THAT IT WILL NOT BRING OR SUPPORT ANY PROCEEDING, CROSS-CLAIM OR THIRD-PARTY CLAIM OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR IN EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY OF THE FINANCING PARTIES IN ANY WAY RELATING TO THIS AGREEMENT, THE ACFP CONTINUING INDEBTEDNESS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING ANY DISPUTE ARISING OUT OF ANY OTHER LETTER OR AGREEMENT RELATED TO THE ACFP CONTINUING INDEBTEDNESS OR THE PERFORMANCE THEREOF, IN ANY FORUM OTHER

THAN ANY STATE OR FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK (AND THE APPELLATE COURTS THEREOF), (II) TO WAIVE AND HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF, AND THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF, ANY SUCH ACTION IN ANY FORUM OTHER THAN ANY STATE OR FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK (AND THE APPELLATE COURTS THEREOF), AND (III) THAT ANY SUCH ACTION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 10.11 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity. The Parties agree not to assert that a remedy of specific performance or other equitable relief is unenforceable, invalid, contrary to law or inequitable for any reason, and agree not to assert that a remedy of monetary damages would provide an adequate remedy or that the Parties otherwise have an adequate remedy at Law. The Parties acknowledge and agree that any non-breaching Party seeking an injunction or injunctions to prevent breaches of this Agreement and/or to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.11 shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 10.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 10.13 Disclosure Schedules.

(a) Matters reflected in the Disclosure Schedules that are disclosed in one section shall be deemed to be disclosed on any section to the extent that it is reasonably apparent from the face of such disclosure that such disclosure is applicable to such other section or sections without the necessity of a cross-reference. Nothing in the Disclosure Schedules will be deemed or will constitute an admission of any Liability of any Party to any third party, nor an admission to any third party against the interests of any or all of the Parties. Headings have been inserted within the Disclosure Schedules for convenience of reference only and will not change the express description of corresponding sections of this Agreement. The numbering of the Disclosure Schedules reflects the corresponding numbering in this Agreement. It is specifically acknowledged that the Disclosure Schedules may expressly provide exceptions to a particular section of ARTICLE III or ARTICLE IV notwithstanding that the section does not state "except as set forth in Section '___' of the Disclosure Schedules" or words of similar effect.

(b) Neither the specification of any dollar amount in any representation or warranty contained in this Agreement nor the inclusion of any specific item in the Disclosure Schedules is intended to vary the definition of "ACFP Material Adverse Effect" or "Buyer Material Adverse Effect" or to imply that such amount, or higher or lower amounts, or the item so included or other items, are or are not material, and no Party shall use the fact of the setting forth of any such amount or the inclusion of any such item in any dispute or controversy between or among the Parties as to whether any obligation, item or matter not described herein or included in the Disclosure Schedules is or is not material for purposes of this Agreement. Unless this Agreement specifically provides otherwise, neither the specification of any item or matter in any representation or warranty contained in this Agreement nor the inclusion of any specific item in the Disclosure Schedules is intended to imply that such item or matter, or other items or matters, are or are not in the ordinary course of business, and no Party shall use the fact of the setting forth or the inclusion of any such item or matter in any dispute or controversy between or among the Parties as to whether any obligation, item or matter not described herein or included in the Disclosure Schedules is or is not in the ordinary course of business for purposes of this Agreement.

(c) Certain matters set forth in the Disclosure Schedules are included for informational purposes only notwithstanding that, because they do not rise above applicable materiality thresholds or otherwise, they may not be required by the terms of this Agreement to be set forth herein. All attachments to the Disclosure Schedules are incorporated by reference into the section of the Disclosure Schedules in which they are referenced.

Section 10.14 No Recourse. Other than claims for Fraud, this Agreement may only be enforced against, and any claim, action, suit or other Action based upon, arising out of, or related to this Agreement or the negotiation, execution or performance of this Agreement, may only be brought against the Persons that are expressly named as Parties and then only with respect to the specific obligations set forth herein with respect to such Party. Other than claims for Fraud, no past, present or future director, officer, employee, incorporator, manager, member, partner, equityholder, Affiliate, agent, attorney or other Representative (collectively, the "**Non-Party Affiliates**") of any Party or of any Affiliate of any Party, or any of their successors or permitted assigns, shall have any liability (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, causes of action, obligations or liabilities of any Party arising out of, in connection with, under or related to in any manner this Agreement or by reason of this Agreement or its negotiation, execution, performance or breach. The Parties expressly agree that the Non-Party Affiliates to whom this Section 10.14 applies shall be third-party beneficiaries of this Section 10.14 each of whom may enforce the provisions of this Section 10.14.

Section 10.15 Representation by Proskauer. Recognizing that Proskauer Rose LLP ("**Proskauer**") has acted as legal counsel to Seller and the ACFP Companies and their Affiliates prior to the Closing, and Proskauer may act as legal counsel to Seller and its Affiliates after the Closing, Buyer hereby waives, on its own behalf and agrees to cause its Affiliates (including, after the Closing, the Company and the other ACFP Companies) to waive, any conflicts that may arise in connection with Proskauer representing Seller or its Affiliates after the Closing in any matter relating to the transactions contemplated hereby or in the Transaction Documents or any disagreement or dispute relating thereto. In addition, all attorney-client privilege attaching to any

communications between any ACFP Company or Affiliate prior to the Closing, on the one hand, and Proskauer, on the other hand, occurring prior to the Closing in the course of the negotiation, documentation and consummation of the transactions contemplated by this Agreement (the “**Transaction Communications**”) will belong solely to Seller (and not to any ACFP Company). For the avoidance of doubt, the Parties acknowledge and agree that the Transaction Communications do not include communications between the ACFP Companies, on the one hand, and Proskauer, on the other hand, relating to the general business matters of the ACFP Companies not related to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, upon and after the Closing, (x) Proskauer shall be permitted to represent Seller or any of its Affiliates in connection with any matter whatsoever, including any negotiation, transaction or dispute (“dispute” includes litigation, arbitration, mediation, negotiation or other adversary proceeding) with Buyer, an ACFP Company or any of their respective agents or Affiliates under or relating to this Agreement or any Transaction Document, any transaction contemplated hereby or thereby, and any related matter (such as claims for indemnification and disputes involving noncompetition or other agreements entered into in connection with this Agreement), and (y) (i) Seller (and not the applicable ACFP Company) will be the sole holders of the attorney-client privilege with respect to the Transaction Communications, (ii) to the extent that files of Proskauer in respect of Proskauer’s engagement by Seller or any ACFP Company in connection with the transactions contemplated hereby constitute property of the client, only Seller and not the applicable ACFP Company will hold such property rights, and (iii) Proskauer will have no duty whatsoever to reveal or disclose, and the ACFP Companies will not have any access to, Transaction Communications or files in respect of Proskauer’s engagement by any ACFP Company in connection with the transactions contemplated hereby by reason of any attorney-client relationship between Proskauer and an ACFP Company or otherwise.

Section 10.16 Disclaimer.

(a) Except for the representations and warranties expressly set forth in ARTICLE III (as modified by the Disclosure Schedules) or in any Transaction Document, none of Seller, the ACFP Companies or any other Person has made, makes or shall be deemed to make any other representation or warranty of any kind whatsoever, express or implied, written or oral, at law or in equity, on behalf of Seller or the ACFP Companies or any of their respective Affiliates, including any representation or warranty regarding any ACFP Company, Seller, any Liabilities of any ACFP Company or Seller, the ACFP Business, the transactions contemplated hereby, any other rights or obligations to be transferred pursuant to this Agreement and the Transaction Documents or any other matter, and the ACFP Companies and Seller hereby disclaim all other representations and warranties of any kind whatsoever, express or implied, written or oral, at law or in equity, whether made by or on behalf of Seller, any ACFP Company or any other Person. Except for the representations and warranties expressly set forth in ARTICLE III (in each case, as qualified by the Disclosure Schedules) or in any Transaction Document, Seller and the ACFP Companies hereby disclaim all Liability and responsibility for all projections, forecasts, estimates, financial statements, financial information, appraisals, statements, promises, advice, data or information made, communicated or furnished (orally or in writing, including electronically) to Buyer or any of its Affiliates or any Representatives of Buyer or any of Buyer’s Affiliates, including omissions therefrom. Without limiting the foregoing, none of Seller or the ACFP Companies makes any representation or warranty of any kind whatsoever, express or implied, written or oral, at law or in equity, to Buyer or any of its Affiliates or any Representatives of Buyer or any of its Affiliates regarding the future success, profitability or value of the ACFP Companies or the ACFP Business.

(b) Except for the representations and warranties expressly set forth in ARTICLE IV (as modified by the Disclosure Schedules) or in any Transaction Document, none of Buyer, the BFI Companies or any other Person has made, makes or shall be deemed to make any other representation or warranty of any kind whatsoever, express or implied, written or oral, at law or in equity, on behalf of Buyer or the BFI Companies or any of their respective Affiliates, including any representation or warranty regarding any BFI Company, Buyer, any Liabilities of any BFI Company or Buyer, the BFI Business, the transactions contemplated hereby, any other rights or obligations to be transferred pursuant to this Agreement and the Transaction Documents or any other matter, and the BFI Companies and Buyer hereby disclaim all other representations and warranties of any kind whatsoever, express or implied, written or oral, at law or in equity, whether made by or on behalf of Buyer, any BFI Company or any other Person. Except for the representations and warranties expressly set forth in ARTICLE IV (in each case, as qualified by the Disclosure Schedules) or in any Transaction Document, Buyer and the BFI Companies hereby disclaim all Liability and responsibility for all projections, forecasts, estimates, financial statements, financial information, appraisals, statements, promises, advice, data or information made, communicated or furnished (orally or in writing, including electronically) to Seller or any of its Affiliates or any Representatives of Seller or any of Seller's Affiliates, including omissions therefrom. Without limiting the foregoing, none of Buyer or the BFI Companies makes any representation or warranty of any kind whatsoever, express or implied, written or oral, at law or in equity, to Seller or any of its Affiliates or any Representatives of Seller or any of its Affiliates regarding the success, profitability or value of the BFI Companies or the BFI Business.

Section 10.17 Original SPA. This Agreement supersedes and replaces in its entirety the Original SPA.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

COMPANY:

HOT AIR, INC.

By /s/ Matthew Leeds

Name: Matthew Leeds

Title: Vice President

SELLER:

CARDBOARD BOX LLC

By /s/ Matthew Leeds

Name: Matthew Leeds

Title: Vice President

BUYER:

BURGERFI INTERNATIONAL, INC.

By /s/ Ophir Sternberg

Name: Ophir Sternberg

Title: Executive Chairman of the Board

Exhibit A

Form of Amendment to the Company Stock Option Agreement

[See attached.]

Exhibit B

Form of Certificate of Designation

[See attached.]

Exhibit C

Form of Escrow Agreement

[See attached.]

Exhibit D

Form of Registration Rights Agreement

[See attached.]

Exhibit E

Form of Restrictive Covenant Agreement

[See attached.]

Exhibit F

Form of Voting Agreement

[See attached.]

SHARE ESCROW AGREEMENT

THIS ESCROW AGREEMENT (“**Agreement**”) is made and entered into as of November 3, 2021, by and among Cardboard Box, LLC, a Delaware limited liability company (“**Seller**”), BurgerFi International, Inc., a Delaware corporation (“**Buyer**”), and Continental Stock Transfer & Trust Company, a New York limited purpose trust company (“**Escrow Agent**”).

WHEREAS, Buyer and Seller have entered into a Stock Purchase Agreement, dated as of October 8, 2021, as amended and restated pursuant to that certain Amended and Restated Stock Purchase Agreement, dated as of November 3, 2021 (the “**Purchase Agreement**”), pursuant to which, among other things, Buyer will purchase all of the issued and outstanding shares of common stock of Hot Air Inc., a Delaware corporation (the “**Company**”). The Purchase Agreement provides that the Buyer shall deposit stock certificates evidencing the Purchase Price Adjustment Escrow Shares (as defined below) and the Indemnification Escrow Shares (as defined below) with the Escrow Agent for the purpose of securing certain of Seller’s obligations under the Purchase Agreement, to be released to the Buyer or the Seller, as applicable, in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Appointment**

- (a) Buyer and Seller hereby appoint the Escrow Agent as escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.
- (b) All capitalized terms with respect to the Escrow Agent shall be defined herein. The Escrow Agent shall act only in accordance with the terms and conditions contained in this Agreement and shall have no duties or obligations with respect to the Purchase Agreement.

2. **Escrow Shares**

- (a) Simultaneously with the execution of this Agreement, Buyer shall deposit with the Escrow Agent (i) 390,244 shares of Buyer’s common stock, par value \$0.0001 (“**BFI Common Stock**”) (the “**Purchase Price Adjustment Escrow Shares**”) and (ii) 1,170,732 shares of BFI Common Stock (the “**Indemnification Escrow Shares**” and, collectively with the Purchase Price Adjustment Escrow Shares, the “**Escrow Shares**”). The Escrow Agent shall hold the Escrow Shares as a book-entry position registered in the name of “Cardboard Box, LLC[Continental Stock Transfer & Trust as Escrow Agent for the benefit of Seller]”.
- (b) During the term of this Agreement, Seller shall be treated as the holder of the Escrow Shares for voting purposes and, accordingly, shall retain all of its rights as a stockholder of Buyer, including the right to vote or cause the Escrow Agent to vote such Escrow Shares, for so long as the Escrow Shares are held by the Escrow Agent hereunder.
- (c) Any dividends paid with respect to the Escrow Shares shall be deemed part of the Escrow Shares and be delivered to the Escrow Agent to be held in a bank account and be deposited in a non-interest bearing account to be maintained by the Escrow Agent in the name of the Escrow Agent for the benefit of Seller.

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- (d) In the event of any stock split, reverse stock split, stock dividend, recapitalization, reorganization, merger, consolidation, combination, exchange of shares, liquidation, spin-off or other similar change in capitalization or event, or any distribution to holders of the common stock of Buyer, other than a regular cash dividend, (i) such distribution or dividend shall be delivered to the Escrow Agent to hold in accordance with the terms hereof as if they were Purchase Price Adjustment Escrow Shares or Indemnification Escrow Shares based on the related Escrow Share upon which such dividend or distribution was made, or (ii), in the case of a stock split, reverse stock split or similar adjustment, the Purchase Price Adjustment Escrow Shares or Indemnification Escrow Shares, as applicable, shall be appropriately adjusted on the same basis as for all other shares of BFI Common Stock.

3. Disposition and Termination

- (a) The Escrow Agent shall administer the Escrow Shares in accordance with joint written instruction signed by Buyer and Seller and provided to the Escrow Agent to release the Escrow Shares, or any portion thereof, as set forth in such instruction. The Escrow Agent shall make distributions of the Escrow Shares only in accordance with a joint written instruction.
- (b) Upon the delivery of all the Escrow Shares by the Escrow Agent in accordance with the terms of this Agreement and instructions, this Agreement shall terminate, subject to the provisions of Section 6.

4. Escrow Agent

- (a) The Escrow Agent shall have only those duties as are specifically and expressly provided herein, which shall be deemed purely ministerial in nature, and no other duties shall be implied. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between Buyer and Seller and any other person or entity, in connection herewith, if any, including without limitation the Purchase Agreement or nor shall the Escrow Agent be required to determine if any person or entity has complied with any such agreements, nor shall any additional obligation of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement.
- (b) In the event of any conflict between the terms and provisions of this Agreement, those of the Purchase Agreement, any schedule or exhibit attached to this Agreement, or any other agreement between Buyer and Seller or any other person or entity related to the Escrow Agent's duties hereunder, the terms and conditions of this Agreement shall control.
- (c) The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by Buyer or Seller without inquiry and without requiring substantiating evidence of any kind. The Escrow Agent shall not be liable to any beneficiary or other person for refraining from acting upon any instruction setting forth, claiming, containing, objecting to, or related to the transfer or distribution of the Escrow Shares, or any portion thereof, unless such instruction shall have been delivered to the Escrow Agent in accordance with Section 9 below and the Escrow Agent has been able to satisfy any applicable security procedures as may be required hereunder and as set forth in Section 10. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Escrow Agent shall have no duty to solicit any payments which may be due nor shall the Escrow Agent have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder.

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- (d) The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that a final adjudication of a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to either Buyer, Seller or any beneficiary of the Escrow Shares. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents.
 - (e) The Escrow Agent may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in accordance with, or in reliance upon, the advice or opinion of any such counsel, accountants or other skilled persons except to the extent that a final adjudication of a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to either Buyer or Seller or any beneficiary of the Escrow Shares. In the event that the Escrow Agent shall be uncertain or believe there is some ambiguity as to its duties or rights hereunder or shall receive instructions, claims or demands from hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all the property held in escrow until it shall be given a direction in writing which eliminates such ambiguity or uncertainty to the satisfaction of the Escrow Agent or by a final and non-appealable order or judgement of a court of competent jurisdiction agrees to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same.

5. Succession

- (a) The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving thirty (30) days' advance notice in writing of such resignation to Buyer and Seller specifying a date when such resignation shall take *effect*, provided that such resignation shall not take effect until a successor Escrow Agent has been appointed in accordance with this Section 5. If Buyer and Seller have failed to appoint a successor Escrow Agent prior to the expiration of thirty (30) days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto. The Escrow Agent's sole responsibility after such thirty (30) day notice period expires shall be to hold the Escrow Shares (without any obligation to reinvest the same) and to deliver the same to a designated substitute Escrow Agent, if any, or in accordance with the directions of a final order or judgement of a court of competent jurisdiction, at which time of delivery the Escrow Agent's obligations hereunder shall ease and terminate, subject to the provisions of Section 7 below. In accordance with Section 7 below, the Escrow Agent shall have the right to withhold, as security, an amount of shares equal to any dollar amount due and owing to the Escrow Agent, plus any costs and expenses the Escrow Agent shall reasonably believe may be incurred by the Escrow Agent in connection with the termination of this Agreement.
- (b) Any entity into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business may be transferred, shall be the Escrow Agent under this Agreement without further act.

6. **Compensation and Reimbursement**

The Escrow Agent shall be entitled to compensation for its services under this Agreement as Escrow Agent and for reimbursement for its reasonable out-of-pocket costs and expenses, in the amounts and payable as set forth on Schedule 2. The Escrow Agent shall also be entitled to payments of any amounts to which the Escrow Agent is entitled under the indemnification provisions contained herein as set forth in Section 7. The obligations of Buyer set forth in this Section 6 shall survive the resignation, replacement or removal of the Escrow Agent or the termination of this Agreement.

7. **Indemnity**

- (a) The Escrow Agent shall be indemnified and held harmless by Buyer from and against any expenses, including counsel fees and disbursements, or loss suffered by the Escrow Agent in connection with any action, suit or other proceeding involving any claim which in any way, directly or indirectly, arises out of or relates to this Agreement, the services of the Escrow Agent hereunder, other than expenses or losses arising from the gross negligence or willful misconduct of the Escrow Agent. Promptly after the receipt by the Escrow Agent of notice of any demand or claim or the commencement of any action, suit or proceeding, the Escrow Agent shall notify the other parties hereto in writing. In the event of the receipt of such notice, the Escrow Agent, in its sole discretion, may commence an action in the Nature of Interpleader in any state of federal court located in New York County, State of New York.
- (b) The Escrow Agent shall not be liable for any action taken or omitted by it in good faith and in the exercise of its own best judgement, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by the Escrow Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Escrow Agent to be genuine and to be signed or presented by the proper person or persons. The Escrow Agent shall not be bound by any notice or demand, or any waiver, modification, termination or rescission of this Agreement unless evidenced by a writing delivered to the Escrow Agent are affected, unless it shall have given its prior written consent thereto.
- (c) The Escrow Agent shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement, and may consult with counsel of its own choice and shall have full and complete authorization and indemnification, for any action take or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.
- (d) This Section 7 shall survive termination of this Agreement or the resignation, replacement or removal of the Escrow Agent for any reason.

8. **Patriot Act Disclosure/Taxpayer Identification Numbers/Tax Reporting**

- (a) Patriot Act Disclosure. Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“**USA PATRIOT Act**”) requires the Escrow Agent to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, each of Buyer and Seller acknowledges that Section 326 of the USA PATRIOT Act and the Escrow Agents’ identity verification procedures require the Escrow Agent to obtain information which may be used to confirm the identity of Buyer or Seller, as applicable, including without limitation name, address and organizational documents (“**identifying information**”). Each of Buyer and Seller agrees to provide the Escrow Agent with and consent to the Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Escrow Agent.
- (b) Such underlying transaction does not constitute an installment sale requiring any tax reporting or withholding of imputed interest or original issue discount to the IRS or other taxing authority.

9. **Notices**

All communications hereunder shall be in writing and except for joint written instructions (which shall be specifically governed by Section 10 below), all notices and communications hereunder shall be deemed to have been duly given and made if in writing and if (i) served by personal delivery upon the party for whom it is intended, (ii) delivered by registered or certified mail, return receipt requested, or by Federal Express or similar overnight courier, or (iii) sent by facsimile or email, electronically or otherwise, to the party at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such party:

If to the Escrow Agent:	Continental Stock Transfer and Trust One State Street — 30th Floor New York, New York 10004 Facsimile No: (212) 616-7615 Email: Accountadmin@continentalstock.com Attention: Account Administration
If to Seller:	599 West Putnam Avenue Greenwich, CT 06830 Attention: Andrew Taub; Matt Leeds; Dan Reid E-mail: andrew.taub@lcatterton.com; matt.leeds@lcatterton.com; legalnotice@lcatterton.com
with a copy to:	Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299 Attention: Michael E. Callahan; Matt O’Loughlin Email: mcallahan@proskauer.com; moloughlin@proskauer.com
If to Buyer:	BurgerFi International, Inc. 105 U.S. Highway 1 North Palm Beach, FL 33408 Attention: Julio Ramirez; Mike Rabinovitch E-mail: julio@burgerfi.com; mike@burgerfi.com
with a copy to:	Holland & Knight LLP 701 Brickell Avenue, Suite 3300 Miami, Florida 33131 Attention: Enrique A. Conde E-mail: enrique.conde@hklaw.com Facsimile: 305.789.7799

Notwithstanding the above, in the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by an officer of the Escrow Agent or any employee of the Escrow Agent who reports directly to any such officer at the above-referenced office. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate. For purposes of this Agreement, “**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which the Escrow Agent located at the notice address set forth above is authorized or required by law or executive order to remain closed.

10. **Security Procedures**

- (a) Notwithstanding anything to the contrary as set forth in Section 9, any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer distribution, including but not limited to any transfer instructions that may otherwise be set forth in a joint written instruction permitted pursuant to Section 3 of this Agreement, may be given to the Escrow Agent only by confirmed facsimile or other electronic transmission (including e-mail) and no instruction for or related to the transfer or distribution of the Escrow Shares, or any portion thereof, shall be deemed delivered and effective unless the Escrow Agent actually shall have received such instruction by facsimile or other electronic transmission (including e-mail) at the number or e-mail address provided to Buyer and Seller by the Escrow Agent in accordance with Section 9 and as further evidenced by a confirmed transmittal to that number.
- (b) In the event transfer instructions are so received by the Escrow Agent by facsimile or other electronic transmission (including e-mail), the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on Schedule 1 hereto, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by the Escrow Agent. If the Escrow Agent is unable to contact any of the authorized representatives identified in Schedule 1, the Escrow Agent is hereby authorized both to receive written instructions from and seek confirmation of such instructions by officers of Buyer and/or Seller (collectively, the “**Senior Officers**”), as the case may be, which shall include the titles of Chief Executive Officer, General Counsel, Chief Financial Officer, President or Executive Vice President, as the Escrow Agent may select. Such Senior Officer shall deliver to the Escrow Agent a fully executed incumbency certificate, and the Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer.
- (c) The parties hereto acknowledge that the Escrow Agent is authorized to deliver the Escrow Shares to the custodian account of recipient designated by Buyer and Seller pursuant to joint written instructions.

11. **Compliance with Court Officers**

In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgement of decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or whether with or without jurisdiction, and in the event that the Escrow Agent reasonably obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person, entity, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree by subsequently reversed, modified, annulled, set aside or vacated.

12. **Miscellaneous**

- (a) Except for changes to transfer instructions as provided in Section 10, the provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by the Escrow Agent and both Buyer and Seller. Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by the Escrow Agent, Buyer or Seller except as provided in Section 5, without the prior consent of the Escrow Agent, Buyer and Seller. This Agreement shall be governed by and construed under the laws of the State of New York. Each of Buyer and Seller and the Escrow Agent irrevocably waives any objection on the grounds of venue, forum non-convenience or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of any court of the State of New York or United States federal court, in each case, sitting in New York County, New York. To the extent that in any jurisdiction any party may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution attachment (before or after judgement), or other legal process, such party shall not claim, and it hereby irrevocably waives, such immunity. The parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceedings arising or relating to this Agreement. No party to this Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.
- (b) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties to this Agreement may be transmitted by facsimile or other electronic transmission (including e-mail), and such facsimile or other electronic transmission (including e-mail) will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement. The parties represent, warrant and covenant that each document, notice, instruction or request provided by such party to the other party shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written. Except as expressly provided in Section 7 above, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent, Buyer and Seller any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or the Escrow Shares escrowed hereunder.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

SELLER:

CARDBOARD BOX, LLC

By: /s/ Matthew Leeds

Name: Matthew Leeds

Title: Vice President

BUYER:

BURGERFI INTERNATIONAL, INC.

By: /s/ Ophir Sternberg

Name: Ophir Sternberg

Title: Executive Chairman of the Board

ESCROW AGENT:

**CONTINENTAL STOCK TRANSFER AND TRUST
COMPANY**

By: /s/ Doug C. Reed

Name: Doug C. Reed

Title: Vice President

[Signature Page to Escrow Agreement]

Schedule 1

Telephone Number(s) and authorized signature(s) for
Person(s) Designated to give Escrow Asset Transfer Instructions

Name

Telephone Number

Signature

Compensation and Reimbursement

- Review and Acceptance Fee: **USD \$2,500.00**
- Annual Fee: **USD \$5,000.00**

REGISTRATION RIGHTS AND LOCK-UP AGREEMENT

THIS REGISTRATION RIGHTS AND LOCK-UP AGREEMENT (collectively, this "**Agreement**") is entered into as of November 3, 2021, and effective as of November 3, 2021 with respect to Sections 5, 6, 7 and the relevant defined terms in Section 1 only and effective as of December 17, 2021 with respect to all other provisions of the Agreement, by and between Cardboard Box, LLC, a Delaware Limited Liability Company ("**Cardboard Box**") and BurgerFi International, Inc., a Delaware corporation (the "**Company**").

Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Stock Purchase Agreement, dated as of October 8, 2021, as amended and restated pursuant to that certain Amended and Restated Stock Purchase Agreement, dated as of November 3, 2021 (the "**Purchase Agreement**"), by and among the Company, Cardboard Box and Hot Air, Inc. ("**Hot Air**").

WHEREAS, in order to induce Cardboard Box to execute and deliver the Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act and applicable state securities laws.

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

1. **DEFINITIONS.** The following capitalized terms used herein have the following meanings:

"**Agreement**" means this Agreement, as amended, restated, supplemented, or otherwise modified from time to time.

"**BFI Consideration Common Shares**" means the shares of Common Stock issued pursuant to the Purchase Agreement.

"**Cardboard Box**" is defined as Cardboard Box, LLC.

"**Cardboard Box Securities**" means the BFI Consideration Common Shares.

"**Closing Date**" means the Closing Date described in the Purchase Agreement.

"**Commission**" means the Securities and Exchange Commission, or any other Federal agency then administering the Securities Act or the Exchange Act.

"**Common Stock**" means common stock of the Company, par value \$0.0001 per share.

"**Demand Registration**" is defined in Section 2.2.1.

"**Demand Holder**" is defined in Section 2.2.1.

"**Effectiveness Date**" means, with respect to the Initial Registration Statement, the 90th calendar day following the Filing Date (or in the event the Registration Statement receives a "full review" by the Commission, the 120th day following the Filing Date) and with respect to any additional Registration Statements which may be required pursuant to Sections 2.2 and 2.3, the 90th calendar day following the date on which an additional Registration Statement is required to be filed hereunder; provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, or the Company is eligible to register the Registrable Securities on Form S-3, the Effectiveness Date as to such Registration Statement shall be the earlier of (i) the fifth Business Day following the date on which the Company is so notified if such date precedes the dates otherwise required above or (ii) the filing date if the Registration Statement is automatically effective; provided, further, that, if the Effectiveness Date falls on a Saturday, Sunday or any other day which shall be a legal holiday or a day on which the Commission is authorized or required by law or other government actions to close, the Effectiveness Date shall be the following Business Day.

“**Effectiveness Period**” is defined in Section 2.1.1.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder, all as the same shall be in effect at the time.

“**Filing Date**” means, with respect to the Initial Registration Statement, the 75th calendar day following the Closing Date and, with respect to any additional Registration Statements which may be required pursuant to Section 2.1, the earliest practical date on which the Company is permitted by the Commission to file such additional Registration Statement related to the Registrable Securities; provided, however, that, if the Filing Date falls on a Saturday, Sunday or any other day which shall be a legal holiday or a day on which the Commission is authorized or required by law or other government actions to close, the Filing Date shall be the following Business Day.

“**Form S-3**” is defined in Section 2.1.1.

“**Holder**” or “**Holders**” means Cardboard Box and any Permitted Assignee.

“**Holder Indemnified Party**” is defined in Section 4.1.

“**Indemnified Party**” is defined in Section 4.3.

“**Indemnifying Party**” is defined in Section 4.3.

“**Initial Registration Statement**” means the Registration Statement required to be filed pursuant to Section 2.1.

“**Lock-Up**” is defined in Section 6.1.

“**Maximum Number of Shares**” is defined in Section 2.2.4.

“**Notices**” is defined in Section 7.3.

“**Permitted Assignee**” means any member of Cardboard Box (or any affiliate thereof) to which Cardboard Box, or any such affiliate, has transferred or distributed Registrable Securities following the Closing Date.

“**Piggy-Back Registration**” is defined in Section 2.3.1.

“**Pro Rata**” is defined in Section 2.2.1.

“**Register**,” “**Registered**” and “**Registration**” mean a registration effected by preparing and filing a registration statement or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

“**Registrable Securities**” means the BFI Consideration Common Shares. Registrable Securities shall also include any securities of the Company issued as a dividend or other distribution with respect to, in exchange for or in replacement of each of the BFI Consideration Common Shares. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) when: (a) a Registration Statement with respect to the sale of all of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement; (b) such securities shall have been otherwise transferred or distributed by Cardboard Box to a person that is not a Permitted Assignee, new certificates for them not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of them shall not require registration under the Securities Act; (c) such securities shall have ceased to be outstanding; or (d) such Registrable Securities have been previously sold to a third party that is not a Permitted Assignee or an affiliate of the Company in accordance with Rule 144.

“**Registration Statement**” means a registration statement filed by the Company with the Commission in compliance with the Securities Act and the rules and regulations promulgated thereunder, for a public offering and sale of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities (other than a registration statement on Form S-4 or Form S-8, or their successors, or any registration statement covering only securities proposed to be issued in exchange for securities or assets of another entity).

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder, all as the same shall be in effect at the time.

“**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 of Registrable Securities, except for the reasonable fees and disbursements of counsel for the Holders of Registrable Securities required to be paid by the Company pursuant to Subsection 3.3.

“**Selling Stockholder Questionnaire**” is defined in Section 2.1.3.

“**Shelf Takedown**” is defined in Section 2.2.6.

“**Transfer**” means to, directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any interest owned by a person or any interest (including a beneficial interest) in, or the ownership, control or possession of, any interest owned by a person.

“**Underwriter**” means, solely for the purposes of this Agreement, a securities dealer who purchases any Registrable Securities as principal in an underwritten offering and not as part of such dealer’s market-making activities.

2. REGISTRATION RIGHTS.

2.1 Shelf Registration.

2.1.1 On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all or such maximum portion of the Registrable Securities as permitted by the Commission that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-1 (except if the Company is then eligible to register for resale the Registrable Securities on Form S-3, such registration shall be on Form S-3 in accordance herewith (or any successor form to Form S-3, or any similar short-form Registration Statement) (“**Form S-3**”). Subject to the terms of this Agreement, the Company shall use its commercially reasonable efforts to cause a Registration Statement to be declared effective under the Securities Act as promptly as practicable after the filing thereof, but in any event prior to the applicable Effectiveness Date, and shall use its commercially reasonable efforts to keep such Registration Statement continuously effective under the Securities Act until all such Registrable Securities shall cease to be Registrable Securities upon the occurrence of one or more events described in the definition of Registrable Securities herein (the “**Effectiveness Period**”). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. New York City time on a Business Day. The Company shall, no later than the second Business Day after the effective date of such Registration Statement, file a final prospectus or post-effective amendment thereto with the Commission if required by the rules and regulations of the Commission.

2.1.2 Notwithstanding any other provision of this Agreement, if the rules and regulations of the Commission sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement, the number of Registrable Securities to be registered shall be allocated on a pro rata basis based on the total number of Registrable Securities held by Cardboard Box and by any other Holders (such proportion is referred to herein as “**Pro Rata**”). In the event of a reduction hereunder, the Company shall give each Holder at least five (5) Business Days prior written notice along with the calculations as to such Holder’s allotment. Promptly after such rules and regulations of the Commission are no longer applicable with respect to some or all of the remaining unregistered Registrable Securities, the Company shall file an additional Registration Statement in accordance with this Section 2 with respect to such shares.

2.1.3 Cardboard Box agrees to furnish to the Company a completed customary selling stockholder questionnaire (the "**Selling Stockholder Questionnaire**") within fifteen (15) Business Days following the date of the Closing, or within ten (10) Business Days of the Company's written request (which may be by email) of Cardboard Box, in the case of a Permitted Assignee, a form of which will be provided by the Company within five (5) Business Days of the date of the Closing. Each Holder further acknowledges and agrees that it shall not be entitled to be named as a selling security Holder in the Registration Statement or use the Prospectus for offers and resales of Registrable Securities at any time, unless such Holder has returned to the Company a completed and signed Selling Stockholder Questionnaire. If a Holder of Registrable Securities returns a Selling Stockholder Questionnaire after the deadline specified in the previous sentence, the Company shall use its commercially reasonable efforts to take such actions as are required to name such Holder as a selling security Holder in the Registration Statement or any pre-effective or post-effective amendment or supplement thereto and to include (to the extent not theretofore included) in the Registration Statement the Registrable Securities identified in such late Selling Stockholder Questionnaire; provided that the Company shall not be required to file an additional Registration Statement solely for such shares. Each Holder acknowledges and agrees that the information in the Selling Stockholder Questionnaire will be used by the Company in the preparation of the Registration Statement and hereby consents to the inclusion of such information in the Registration Statement. In the case of a transfer to a Permitted Assignee following the effectiveness of a shelf registration statement described in Section 2.1.1 above, the Company shall use commercially reasonable efforts to ensure that such Permitted Assignee is able to sell Registrable Securities pursuant to such shelf registration statement; provided that the Company shall not be required to file an additional Registration Statement solely for such Permitted Assignee.

2.2 Demand Registration.

2.2.1 Request for Registration. At any time and on or after the Filing Date, Cardboard Box may make a written demand for registration under the Securities Act of all or part of the Registrable Securities held by the Holders (a "**Demand Registration**"). Any Demand Registration shall specify the number of shares proposed to be sold and the intended method(s) of distribution thereof. As promptly as practicable, but no later than ten (10) days after receipt of the Demand Registration request, the Company will notify all Holders of Registrable Securities of the demand, and each such Holder that wishes to include all or a portion of such Holder's Registrable Securities in the Demand Registration (each such Holder a "**Demanding Holder**") shall so notify the Company within fifteen (15) days after the receipt by the Holder of the notice from the Company. Upon any such request, the Demanding Holders shall be entitled to have their Registrable Securities included in the Demand Registration, subject to Section 2.2.4. The Company shall not be obligated to effect more than three (3) Demand Registrations under this Section 2.2.1 in respect of all Registrable Securities.

2.2.2 Effective Registration. A registration will not count as a Demand Registration until the Registration Statement filed with the Commission with respect to such Demand Registration has been declared effective and the Company has complied with all of its obligations under this Agreement with respect thereto; provided, however, that if, after such Registration Statement has been declared effective, the offering of Registrable Securities pursuant to a Demand Registration is interfered with by any stop order or injunction of the Commission or any other governmental agency or court, the Registration Statement with respect to such Demand Registration will be deemed not to have been declared effective, unless and until, (i) such stop order or injunction is removed, rescinded or otherwise terminated, and (ii) a majority-in-interest of the Demanding Holders thereafter elect to continue the offering; provided, further, that the Company shall not be obligated to file a second Registration Statement until a Registration Statement that has been filed is counted as a Demand Registration or is terminated unless the Commission requires that a new Registration Statement be filed to replace the first Registration Statement, or the Company determines that it is otherwise necessary or desirable to file a new Registration Statement to replace the first filing.

2.2.3 Underwritten Offering. If a majority-in-interest of the Demanding Holders so elect and such Holders so advise the Company as part of their written demand for a Demand Registration, the offering of such Registrable Securities pursuant to such Demand Registration shall be in the form of an underwritten offering. In such event, the right of any Holder to include its 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 Demanding Holders proposing to distribute their Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the Underwriter or Underwriters selected for such underwriting by a majority-in-interest of the Holders initiating the Demand Registration, provided, that such selection shall be subject to the consent of the Company, which consent shall not be unreasonably withheld or delayed.

2.2.4 Reduction of Offering. If the managing Underwriter or Underwriters for a Demand Registration that is to be an underwritten offering advises the Company and the Demanding Holders in writing that the dollar amount or number of shares of Registrable Securities which the Demanding Holders desire to sell, taken together with all other shares of Common Stock or other securities which the Company desires to sell and the shares of Common Stock, if any, as to which registration has been requested pursuant to written contractual piggy-back registration rights held by the other Holders who desire to sell, exceeds the maximum dollar amount or maximum number of shares that can be sold in such offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of shares, as applicable, the “**Maximum Number of Shares**”), then the Company shall include in such registration: (i) first, the Registrable Securities as to which Demand Registration has been requested by the Demanding Holders (on a Pro Rata basis) in accordance with the number of shares that each such Holder has requested be included in such registration, regardless of the number of shares held by each such Holder that can be sold without exceeding the Maximum Number of Shares; (ii) second, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (i), the Registrable Securities as to which “piggy-back” registration under Section 2.3.1 has been requested by the Holders, Pro Rata, that can be sold without exceeding the Maximum Number of Shares; (iii) third, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (i) and (ii), the shares of Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Shares; and (iv) fourth, to the extent that the Maximum Number of Shares have not been reached under the foregoing clauses (i), (ii) and (iii), the shares of Common Stock or other securities for the account of other persons that the Company is obligated to register pursuant to written contractual arrangements with such persons and that can be sold without exceeding the Maximum Number of Shares.

2.2.5 Withdrawal. If a majority-in-interest of the Demanding Holders disapprove of the terms of any underwriting or are not entitled to include all of their Registrable Securities in any offering, such majority-in-interest of the Demanding Holders may elect to withdraw from such offering by giving written notice to the Company and the Underwriter or Underwriters of their request to withdraw prior to the effectiveness of the Registration Statement filed with the Commission with respect to such Demand Registration. If the majority-in-interest of the Demanding Holders withdraws from a proposed offering relating to a Demand Registration, then such registration shall not count as a Demand Registration provided for in Section 2.2.

2.2.6 Delay of Registration. The Company may postpone for up to ninety (90) days the filing or effectiveness of a Registration Statement for a Demand Registration or the filing of a shelf registration statement for the purpose of effecting an offering pursuant to Rule 415 under the Securities Act or any successor rule thereto (a “**Shelf Takedown**”) if the Company’s board of directors determines in its reasonable good faith judgment that such Demand Registration or Shelf Takedown would (i) materially interfere with a significant acquisition, corporate organization, financing, securities offering or other similar significant transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act; or (iv) result in the filing of a Registration Statement that contains stale financial statements under Regulation S-X; provided, that in such event the Holders initiating such Demand Registration shall be entitled to withdraw such request and, if such request for a Demand Registration is withdrawn, such Demand Registration shall not count as one of the permitted Demand Registrations hereunder and the Company shall pay all registration expenses in connection with such registration required to be paid in Section 3.3. The Company may delay a Demand Registration or Shelf Takedown hereunder only once in any period of 12 consecutive months.

2.3 Piggy-Back Registration.

2.3.1 Piggy-Back Rights. If, at any time on or after the date hereof, the Company proposes to file a Registration Statement under the Securities Act with respect to an offering of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities, by the Company for its own account

or for shareholders of the Company for their account (or by the Company and by shareholders of the Company including, without limitation, pursuant to Section 2.2), other than a Registration Statement (i) filed in connection with any employee equity incentive plan, restricted stock, restricted stock unit, stock option or other benefit plan, (ii) for an exchange offer or offering of securities solely to the Company's existing shareholders, (iii) for a dividend reinvestment plan and/or stock purchase plan, or (iv) securities proposed to be issued in exchange for securities or assets of another entity, then the Company shall (x) give written notice of such proposed filing to the Holders of Registrable Securities as soon as practicable but in no event less than ten (10) days before the anticipated filing date, which notice shall describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, of the offering, and (y) offer to the Holders of Registrable Securities in such notice the opportunity to register the sale of such number of shares of Registrable Securities as such Holders may request in writing within ten (10) days following receipt of such notice (a "**Piggy-Back Registration**"). The Company shall cause such Registrable Securities to be included in such registration and shall use its commercially reasonable efforts to cause the managing Underwriter or Underwriters of a proposed underwritten offering to permit the Registrable Securities requested to be included in a Piggy-Back Registration on the same terms and conditions as any similar securities of the Company and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. All Holders of Registrable Securities proposing to distribute their securities through a Piggy-Back Registration that involves an Underwriter or Underwriters shall enter into an underwriting agreement in customary form with the Underwriter or Underwriters for such Piggy-Back Registration. Notwithstanding the provisions set forth in the immediately preceding sentences, the right to a Piggy-Back Registration set forth under this Section 2.3.1 with respect to the Registrable Securities shall terminate when all such Registrable Securities shall cease to be Registrable Securities upon the occurrence of one or more events described in the definition of Registrable Securities herein.

2.3.2 **Reduction of Offering.** If the managing Underwriter or Underwriters for a Piggy-Back Registration that is to be an underwritten offering advises the Company and the Holders of Registrable Securities in writing that the dollar amount or number of Common Stock which the Company desires to sell, taken together with the Common Stock, if any, as to which registration has been demanded pursuant to written contractual arrangements with persons other than the Holders of Registrable Securities hereunder, the Registrable Securities as to which registration has been requested under this Section 2.3, and the Common Stock, if any, as to which registration has been requested pursuant to the written contractual piggy-back registration rights of other shareholders of the Company, exceeds the Maximum Number of Shares, then if the registration is undertaken for the Company's account, the Company shall include in such registration: (i) first, the Common Stock or other securities that the Company desires to sell that can be sold without exceeding the Maximum Number of Shares; (ii) second, to the extent that the Maximum Number of Shares has not been reached under the foregoing clause (i), all of the Cardboard Box Securities; (iii) to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (i) and (ii), the Registrable Securities held by Holders other than holders of Cardboard Box Securities, if any, as to which registration has been requested pursuant to this Section 2.3, Pro Rata; and (iv) fourth, to the extent that the Maximum Number of Shares has not been reached under the foregoing clauses (i),(ii) and (iii), the Common Stock or other securities for the account of other persons that the Company is obligated to register pursuant to written contractual piggy-back registration rights with such persons.

2.3.3 **Withdrawal.** Any Holder of Registrable Securities may elect to withdraw such Holder's request for inclusion of Registrable Securities in any Piggy-Back Registration by giving written notice to the Company of such request to withdraw prior to the effectiveness of the Registration Statement. The Company (whether on its own determination or as the result of a withdrawal by persons making a demand pursuant to written contractual obligations) may withdraw a Registration Statement at any time prior to the effectiveness of such Piggy-Back Registration Statement. Notwithstanding any such withdrawal, the Company shall pay the expenses incurred by the holders of Registrable Securities in connection with such Piggy-Back Registration as provided in Section 3.3.

2.4 **Registrations on Form S-3.** The Holders of Registrable Securities may at any time and from time to time, request in writing that the Company register the resale of any or all of such Registrable Securities on Form S-3; provided, however, that the Company shall not be obligated to effect such request through an underwritten offering. Upon receipt of such written request, the Company will promptly, but no later than ten (10) days thereafter, give written notice of the proposed registration to all other Holders of Registrable Securities, and, as soon as practicable thereafter (but, in the case of a registration of such Registrable Securities pursuant to section 2.1, subject to the time periods and procedures in Section 2.1), effect the registration of all or such portion of such Holder's or Holders'

Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities or other securities of the Company, if any, of any other Holder or Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company; provided, however, that the Company shall not be obligated to effect any such registration pursuant to this Section 2.4: (i) if Form S-3 is not available for such offering; or (ii) if the Holders of the Registrable Securities, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at any aggregate price to the public of less than \$1,000,000.

2.5 Underwritten Shelf Offering. The Holders may, on up to four (4) occasions after a shelf registration statement becomes effective, deliver a written notice to the Company specifying that the sale of some or all of the Registrable Securities subject to such shelf registration is intended to be conducted through an underwritten offering or block trade or similar registered offering through a broker, sales agent or distribution agent, whether as agent or principal, so long as the anticipated gross proceeds of such registered offering is not less than fifteen million dollars (\$15,000,000) (unless the Holders are proposing to sell all of their remaining Registrable Securities) (in each case, an “Underwritten Shelf Offering”). No Holder may participate in any registration hereunder which is underwritten unless such Holder (a) agrees to sell such Holder’s securities on the basis provided in any underwriting arrangements approved by the Holder and (b) subject to the qualifications in Section 3.1.6, completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements. In the event of an Underwritten Shelf Offering:

2.5.1 The Holders of a majority of the Registrable Securities participating in the Underwritten Shelf Offering shall select the managing Underwriter or underwriters to administer the Underwritten Shelf Offering; provided, that the choice of such managing Underwriter or Underwriters shall be subject to the consent of the Company, which is not to be unreasonably withheld, conditioned or delayed.

2.5.2 Notwithstanding any other provision of this Section 2.5, if the managing Underwriter or Underwriters of a proposed Underwritten Shelf Offering advises the board of directors of the Company that in its or their opinion the number of Registrable Securities requested to be included in such Underwritten Shelf Offering exceeds the number which can be sold in such Underwritten Shelf Offering in light of market conditions, the Registrable Securities shall be included on a Pro Rata basis upon the number of securities that each Holder shall have requested to be included in such offering. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing Underwriter or Underwriters.

2.6. Take-Down Notice. Subject to the other applicable provisions of this Agreement, at any time that any shelf registration statement is effective, if a Holder delivers a notice to the Company (a “Take-Down Notice”) stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any shelf registration statement (a “Shelf Offering”) and stating the number of Registrable Securities to be included in such Shelf Offering, then, subject to the other applicable provisions of this Agreement, the Company shall amend or supplement the shelf registration statement as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

3. REGISTRATION PROCEDURES.

3.1 Filings; Information. Whenever the Company is required to effect the registration of any Registrable Securities pursuant to Section 2, the Company shall make commercially reasonable efforts to effect the registration and sale of such Registrable Securities in accordance with the intended method(s) of distribution thereof as expeditiously as practicable, and in connection with any such request:

3.1.1. Form. The Company shall prepare and file with the Commission the requisite Registration Statement, which shall comply as to form in all material respects with the requirements of the applicable form and shall include all financial statements required by the Commission to be filed therewith, and use commercially reasonable efforts to cause such Registration Statement to become and remain effective (provided, however, that before filing a Registration Statement or prospectus or any amendments or supplements thereto, or comparable statements under securities or blue sky laws of any jurisdiction, the Company will furnish to one counsel for the

Holders participating in the planned offering (selected by a majority-in-interest of the Holders, in the case of a registration pursuant to Section 2.1, and selected by the lead managing Underwriter, in the case of a registration pursuant to Section 2.2, and in each case reasonably acceptable to the Company) and the lead managing Underwriter, if any, copies of all such documents proposed to be filed (including all exhibits thereto), which documents will be subject to the reasonable review and reasonable comment of such counsel, and the Company shall not file any registration statement, amendment, prospectus or supplement thereto, to which the applicable Holders or the underwriters, if any, shall reasonably object);

3.1.2 Copies. The Company shall, prior to filing a Registration Statement or prospectus, or any amendment or supplement thereto, furnish without charge to the Holders of Registrable Securities included in such registration, and such Holders' legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such Registration Statement (including each preliminary prospectus), and such other documents as the Holders of the Registrable Securities included in such registration or legal counsel for any such Holders may request in order to facilitate the disposition of the Registrable Securities owned by such Holders.

3.1.3 Amendments and Supplements. The Company shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements to such Registration Statement and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and in compliance with the provisions of the Securities Act until all Registrable Securities and other securities covered by such Registration Statement have been disposed of in accordance with the intended method(s) of distribution set forth in such Registration Statement or such securities have been withdrawn.

3.1.4 Notification. After the filing of a Registration Statement, the Company shall promptly, and in no event more than two (2) business days after such filing, notify the Holders of Registrable Securities included in such Registration Statement of such filing, and shall further notify such Holders promptly and confirm such advice in writing in all events within two (2) business days of the occurrence of any of the following: (i) when such Registration Statement becomes effective; (ii) when any post-effective amendment to such Registration Statement becomes effective; (iii) the issuance or threatened issuance by the Commission of any stop order (and the Company shall take all actions required to prevent the entry of such stop order or to remove it if entered); and (iv) any request by the Commission for any amendment or supplement to such Registration Statement or any prospectus relating thereto or for additional information or of the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of the securities covered by such Registration Statement, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and promptly make available to the Holders of Registrable Securities included in such Registration Statement (and promptly thereafter file no later than 30 calendar days following the request or event requiring the filing of a supplement or amendment) any such supplement or amendment; except that before filing with the Commission a Registration Statement or prospectus or any amendment or supplement thereto, including documents incorporated by reference, the Company shall furnish to the Holders of Registrable Securities included in such Registration Statement and to the legal counsel for any such Holders, copies of all such documents proposed to be filed sufficiently in advance of filing to provide such Holders and legal counsel with a reasonable opportunity to review such documents and comment thereon, and the Company shall not file any Registration Statement or prospectus or amendment or supplement thereto, including documents incorporated by reference, to which such Holders or their legal counsel shall reasonably object.

3.1.5 State Securities Laws Compliance. The Company shall use its commercially reasonable efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as the Holders of Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may request and if applicable, and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be reasonably necessary or advisable to enable the Holders of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that the Company shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph or subject itself to taxation in any such jurisdiction.

3.1.6 Agreements for Disposition. The Company shall enter into customary agreements (including, if applicable, an underwriting agreement in customary form) and take such other actions as are reasonably required in order to expedite or facilitate the registration of such Registrable Securities. The representations, warranties and covenants of the Company in any underwriting agreement which are made to or for the benefit of any Underwriters, to the extent applicable, shall also be made to and for the benefit of the Holders of Registrable Securities included in such registration statement. No Holder of Registrable Securities included in such registration statement shall be required to make any representations or warranties in the underwriting agreement except, if applicable, with respect to such Holder's organization, good standing, authority, title to Registrable Securities, lack of conflict of such sale with such Holder's material agreements and organizational documents, and with respect to written information relating to such Holder that such Holder has furnished in writing expressly for inclusion in such Registration Statement.

3.1.7 Cooperation. The principal executive officer of the Company, the principal financial officer of the Company and all other officers and members of the management of the Company shall cooperate fully in any offering of Registrable Securities hereunder, which cooperation shall include, without limitation, the preparation of the Registration Statement with respect to such offering and all other offering materials and related documents, and participation in meetings with Underwriters (if applicable), attorneys, accountants and potential investors. In addition, if the registration involves the registration of Registrable Securities in an underwritten offering the Company shall use commercially reasonable efforts to obtain an opinion and a negative assurance letter from the Company's counsel and a "cold comfort" letter from the Company's independent public accountants in customary form and covering such matters as are customarily covered by such opinions and "cold comfort" letters delivered to underwriters in underwritten public offerings, which opinion and letter shall be reasonably satisfactory to the underwriter, if any.

3.1.8 Records. The Company shall make available for inspection by the Holders of Registrable Securities included in such Registration Statement, any Underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other professional retained by any Holder of Registrable Securities included in such Registration Statement or any Underwriter, all financial and other records, pertinent corporate documents and properties of the Company, as shall be necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply all information requested by any of them in connection with such Registration Statement.

3.1.9 Listing. The Company shall use its commercially reasonable efforts to cause all Registrable Securities included in any registration to be listed on the Nasdaq Stock Market or, if no such similar securities are then listed or designated, in a manner satisfactory to the Company and the Holders of a majority of the Registrable Securities included in such registration.

3.1.10 Road Show. If the registration involves the registration of Registrable Securities in an underwritten offering, the Company shall use its commercially reasonable efforts to make available senior executives of the Company to participate in customary road show presentations that may be reasonably requested by the Underwriter in any underwritten offering.

3.1.11 Stop Orders. The Company shall use commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of the Registration Statement.

3.2 Obligation to Suspend Use of the Prospectus. Upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3.1.4(iv), each Holder of Registrable Securities included in any registration shall immediately discontinue disposition of such Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until the Company has filed the supplemented or amended prospectus contemplated by Section 3.1.4(iv), and, if so directed by the Company, each such Holder will deliver to the Company all copies, other than permanent file copies then in such Holder's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice.

3.3 Registration Expenses. The Company shall bear all costs and expenses, except for Selling Expenses, incurred in connection with the filing of the Registration Statement(s) pursuant to Section 2.1 and Section 2.2, any Piggy-Back Registration pursuant to Section 2.3, and any registration on Form S-3 effected pursuant to Section 2.4, and all expenses incurred in performing or complying with its other obligations under this Agreement, whether or not the Registration Statement becomes effective, including, without limitation: (i) all registration and filing fees; (ii) fees and expenses of compliance with securities or "blue sky" laws (including fees and disbursements of counsel in connection with blue sky qualifications of the Registrable Securities); (iii) printing expenses; (iv) the Company's internal expenses (including, without limitation, all salaries and expenses of its officers and employees); (v) the fees and expenses incurred in connection with the listing of the Registrable Securities as required by Section 3.1.9; (vi) Financial Industry Regulatory Authority fees; (vii) fees and disbursements of counsel for the Company and fees and expenses for independent certified public accountants retained by the Company (including the expenses or costs associated with the delivery of any required opinions or comfort letters); (viii) the reasonable fees and expenses of any special experts retained by the Company in connection with such registration and (ix) the reasonable fees and expenses of one legal counsel selected by the Holders of a majority-in-interest of the Registrable Securities included in such registration. The Company shall have no obligation to pay any underwriting discounts or selling commissions attributable to the Registrable Securities being sold by the Holders thereof, which underwriting discounts or selling commissions shall be borne by such Holders.

3.4 Information. The Holders of Registrable Securities shall provide such information as may reasonably be requested by the Company, or the managing Underwriter, if any, in connection with the preparation of any Registration Statement, including amendments and supplements thereto, in order to effect the registration of any Registrable Securities under the Securities Act pursuant to Section 2 and in connection with the Company's obligation to comply with Federal and applicable state securities laws.

4. INDEMNIFICATION AND CONTRIBUTION.

4.1 Indemnification by the Company. The Company agrees to indemnify and hold harmless each Holder of Registrable Securities, and each of their respective officers, employees, affiliates, directors, partners, members, attorneys and agents, and each person, if any, who controls a Holder of Registrable Securities (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) (each, a "**Holder Indemnified Party**"), from and against any expenses (including reasonable fees of counsel and any amounts paid in any settlement effected with the Company's consent, which consent shall not be unreasonably withheld or delayed), losses, judgments, claims, damages or liabilities, whether joint or several, actions or proceedings (whether commenced or threatened) arising out of or based upon any untrue statement (or allegedly untrue statement) of a material fact contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to such Registration Statement, or arising out of or based upon any omission (or alleged omission) to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and the Company shall promptly reimburse the Holder Indemnified Party for any legal and any other expenses reasonably incurred by such Holder Indemnified Party in connection with investigating and defending any such expense, loss, judgment, claim, damage, liability or action whether or not any such person is a party to any such claim or action; provided, however, that the Company will not be liable in any such case to the extent that any such expense, loss, claim, damage or liability arises out of or is based upon any untrue statement or allegedly untrue statement or omission or alleged omission made in such Registration Statement, preliminary prospectus, final prospectus, or summary prospectus, or any such amendment or supplement, in reliance upon and in conformity with information furnished to the Company, in writing, by such selling holder expressly for use therein.

4.2 Indemnification by Holders of Registrable Securities. Subject to the limitations set forth in Section 4.4.3 hereof, each selling Holder of Registrable Securities will, in the event that any registration is being effected under the Securities Act pursuant to this Agreement of any Registrable Securities held by such selling holder, indemnify and hold harmless the Company, each of its directors and officers and each other selling Holder and each other person, if any, who controls another selling Holder within the meaning of the Securities Act, against any expenses (including reasonable fees of counsel and any amounts paid in any settlement effected with the Holder's consent, which consent shall not be unreasonably withheld or delayed), losses, claims, judgments, damages or liabilities, whether joint or several, actions or proceedings (whether commenced or threatened), insofar as such losses, claims, judgments, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or allegedly untrue statement of a material fact contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus

contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or arise out of or are based upon any omission or the alleged omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading, if the statement or omission was made in reliance upon and in conformity with information furnished in writing to the Company by such selling Holder expressly for use therein, and shall reimburse the Company, its directors and officers, and each other selling Holder or controlling person for any legal or other expenses reasonably incurred by any of them in connection with investigation or defending any such loss, claim, damage, liability or action. Each selling holder's indemnification obligations hereunder shall be several and not joint and shall be limited to the amount of any net proceeds actually received by such selling holder.

4.3 Conduct of Indemnification Proceedings. Promptly after receipt by any person of any notice of any loss, claim, damage or liability or any action in respect of which indemnity may be sought pursuant to Section 4.1 or 4.2, such person (the "**Indemnified Party**") shall, if a claim in respect thereof is to be made against any other person for indemnification hereunder, notify such other person (the "**Indemnifying Party**") in writing of the loss, claim, judgment, damage, liability or action; provided, however, that the failure by the Indemnified Party to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which the Indemnifying Party may have to such Indemnified Party hereunder, except and solely to the extent the Indemnifying Party is actually prejudiced by such failure. If the Indemnified Party is seeking indemnification with respect to any claim or action brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in such claim or action, and, to the extent that it wishes, jointly with all other Indemnifying Parties, to assume control of the defense thereof with counsel satisfactory to the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume control of the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that in any action in which both the Indemnified Party and the Indemnifying Party are named as defendants, the Indemnified Party shall have the right to employ separate counsel (but no more than one such separate counsel) to represent the Indemnified Party and its controlling persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Indemnified Party against the Indemnifying Party, with the fees and expenses of such counsel to be paid by such Indemnifying Party if, based upon the written advice of counsel of such Indemnified Party, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, consent to entry of judgment or effect any settlement of any claim or pending or threatened proceeding in respect of which the Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such judgment or settlement includes an unconditional release of such Indemnified Party from all liability arising out of such claim or proceeding.

4.4 Contribution.

4.4.1 If the indemnification provided for in the foregoing Sections 4.1, 4.2 and 4.3 is unavailable to any Indemnified Party in respect of any loss, claim, damage, liability or action referred to herein, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties and the Indemnifying Parties in connection with the actions or omissions which resulted in such loss, claim, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of any Indemnified Party and any Indemnifying Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such Indemnified Party or such Indemnifying Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

4.4.2 The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding Section 4.4.1.

4.4.3 The amount paid or payable by an Indemnified Party as a result of any loss, claim, damage, liability or action referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Party in connection with

investigating or defending any such action or claim. Notwithstanding the provisions of this Section 4.4, no Holder of Registrable Securities shall be required to contribute any amount in excess of the dollar amount of the net proceeds (after payment of any underwriting fees, discounts, commissions or taxes) actually received by such Holder from the sale of Registrable Securities which gave rise to such contribution obligation. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

4.4.4 The indemnity and contribution agreements contained herein shall be in addition to any other rights to indemnification or contribution which any indemnified party may have pursuant to law or contract and shall remain operative and in full force and effect regardless of any investigation made or omitted by or on behalf of any indemnified party and shall survive the transfer of the Registrable Securities by any such party.

4.4.5 The indemnification and contribution required by this Section 4 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or expense, loss, damage or liability is incurred. The indemnified party shall reimburse the indemnifying party for any payment made under this Section 4 to the extent such indemnified party is determined not to be entitled to indemnification hereunder for Losses.

5. RULE 144.

5.1 Rule 144. The Company covenants that it shall file any reports required to be filed by it under the Securities Act and the Exchange Act and shall take such further action as the Holders of Registrable Securities may reasonably request, all to the extent required from time to time to enable such Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 under the Securities Act, as such Rules may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements.

6. LOCK-UP.

6.1 Locked-Up Company Securities. Notwithstanding any other provision in this Agreement, each Holder of BFI Consideration Common Shares shall not, subject to the exception in the last sentence of this Section 6.1, Transfer any such shares of Common Stock beneficially owned or owned of record by such Holder pursuant to a Registration Statement filed in accordance with this Agreement or in any other manner until the date that is twelve (12) months from the date hereof, subject to (i) earlier expiration of the restrictions on Transfer hereunder as follows: (A) 30% of the BFI Consideration Common Shares may be Transferred, if after the Closing, the last reported closing price of the Common Stock for any twenty (20) trading days within any consecutive thirty (30) trading day period equals or exceeds \$23.00 per share, (B) 30% of the BFI Consideration Common Shares may be Transferred, if after the Closing, the last reported closing price of the Common Stock for any twenty (20) trading days within any consecutive thirty (30) trading day period equals or exceeds \$25.00 per share, and (C) 40% of the BFI Consideration Common Shares may be Transferred, if after the Closing, the last reported closing price of the common stock for any twenty (20) trading days within any consecutive thirty (30) trading day period equals or exceeds \$28.00 per share; and (ii) all applicable holding periods and requirements under the Securities Act of 1933, as amended and the rules and regulations thereunder. Furthermore, the holders of the BFI Consideration Common Shares will not transfer, hypothecate, or pledge either their BFI Consideration Common Shares as of the Closing Date or the economic benefits thereof (other than in accordance with the laws of descent) for 180 days from the Closing (this Section 6.1 constituting the "Lock-Up"). Notwithstanding the foregoing, Cardboard Box may Transfer Registrable Securities to any Permitted Assignee during the Lock-Up, provided that such transferee enters into a written agreement with the Company agreeing to be bound by the restrictions of the Lock-Up

7. MISCELLANEOUS.

7.1 Other Registration Rights. The Company represents and warrants that (a), except for the registrable securities disclosed in and registered for resale pursuant to, the Company's registration statement on Form S-1, as amended (File No. 333-255667) and the Registration Rights Agreement, dated December 16, 2020, among the Company and the holders party thereto, and Form S-8 registration rights of certain holders of shares of Common Stock

issued by the Company in exchange for outstanding options of Hot Air pursuant to the Purchase Agreement, no person, other than the Holders of the Registrable Securities, has any right to require the Company to register any of the Company's equity securities, or securities exercisable for or exchangeable into Company equity securities in any registration filed by the Company for the sale of equity securities for its own account or for the account of any other person and (b) neither the execution, delivery or performance by the Company of this Agreement does or will constitute a default under or breach of (with or without the giving of notice or the passage of time or both) or violate or give rise to any breach of any contract or agreement to which the Company is a party.

7.2 Assignment; No Third Party Beneficiaries. This Agreement and the rights, duties and obligations of the Company hereunder may not be assigned or delegated by the Company in whole or in part (except in a sale or acquisition of the Company, whether by merger, consolidation, sale of all or substantially all of the Company's assets, or similar transaction). This Agreement and the rights, duties and obligations of the Holders of Registrable Securities hereunder may be freely assigned or delegated by such Holder of Registrable Securities in conjunction with and to the extent of any transfer of Registrable Securities by any such holder to a Permitted Assignee; provided, that such assignee shall, as a condition to the effectiveness of such assignment, be required to execute a counterpart to this Agreement agreeing to be treated as a party whereupon such assignee shall have the benefits of, and shall be subject to the restrictions contained in, this Agreement as if such assignee was originally included in the definition of a Holder herein and had originally been a party hereto. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties, to the Permitted Assignees of the Holders or Holder of Registrable Securities. This Agreement is not intended to confer any rights or benefits on any persons that are not party hereto other than as expressly set forth in Section 4 and this Subsection 7.2.

7.3 Notices. All notices, demands, requests, consents, approvals or other communications (collectively, "**Notices**") required or permitted to be given hereunder or which are given with respect to this Agreement shall be in writing and shall be personally served, delivered by reputable air courier service with charges prepaid, or transmitted by hand delivery, telegram, e-mail, telex or facsimile, addressed as set forth below, or to such other address as such party shall have specified most recently by written notice. Notice shall be deemed given on the date of service or transmission if personally served or transmitted by telegram, e-mail, telex or facsimile; provided, that if such service or transmission is not on a business day or is after normal business hours, then such notice shall be deemed given on the next business day. Notice otherwise sent as provided herein shall be deemed given on the next business day following timely delivery of such notice to a reputable air courier service with an order for next-day delivery.

To the Company:

105 U.S. HIGHWAY ONE
NORTH PALM BEACH, FL 33408
Attn: Michael Rabinovitch
Email: mike@burgerfi.com

with a copy to (which shall not constitute notice):

Lionheart Equities, LLC
4218 NE 2nd Avenue
Miami, Florida 33137
Attention: General Counsel
Email: notices@lheartequities.com

And to:

Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, Florida
Attn: Enrique Conde, Esq. and Bradley Houser, Esq.
Email: Enrique.Conde@hkklaw.com; bradley.houser@hkklaw.com

To a Holder, to the address set forth below such Holder's name on Exhibit A hereto.

7.4 Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible that is valid and enforceable.

7.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. This Agreement shall become effective upon delivery to each party of an executed counterpart or the earlier delivery to each party of original, photocopied, or electronically transmitted signature pages that together (but need not individually) bear the signatures of all other parties.

7.6 Entire Agreement. This Agreement (including all agreements entered into pursuant hereto and all certificates and instruments delivered pursuant hereto and thereto) constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, representations, understandings, negotiations and discussions between the parties, whether oral or written. Furthermore, this Agreement supersedes any and all other registration rights agreements between the Company and any Holder that is a party hereto.

7.7 Modifications and Amendments. No amendment, modification or termination of this Agreement shall be binding upon the Company unless executed in writing by the Company. No amendment, modification or termination of this Agreement shall be binding upon the Holders of the Registrable Securities unless executed in writing by the Holders of the majority Registrable Securities.

7.8 Titles and Headings. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

7.9 Waivers and Extensions. Any party to this Agreement may waive any right, breach or default which such party has the right to waive, provided that such waiver will not be effective against the waiving party unless it is in writing, is signed by such party, and specifically refers to this Agreement. Waivers may be made in advance or after the right waived has arisen or the breach or default waived has occurred. Any waiver may be conditional. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof nor of any other agreement or provision herein contained. No waiver or extension of time for performance of any obligations or acts shall be deemed a waiver or extension of the time for performance of any other obligations or acts.

7.10 Remedies Cumulative. In the event that the Company fails to observe or perform any covenant or agreement to be observed or performed under this Agreement, the Holder or any other Holder of Registrable Securities may proceed to protect and enforce its rights by suit in equity or action at law, whether for specific performance of any term contained in this Agreement or for an injunction against the breach of any such term or in aid of the exercise of any power granted in this Agreement or to enforce any other legal or equitable right, or to take any one or more of such actions, without being required to post a bond. None of the rights, powers or remedies conferred under this Agreement shall be mutually exclusive, and each such right, power or remedy shall be cumulative and in addition to any other right, power or remedy, whether conferred by this Agreement or now or hereafter available at law, in equity, by statute or otherwise.

7.11 Governing Law/Venue. This Agreement shall be governed by, interpreted under, and construed in accordance with the internal laws of the State of Delaware applicable to agreements made and to be performed within the State of Delaware, without giving effect to any choice-of-law provisions thereof that would compel the application of the substantive laws of any other jurisdiction. Any legal suit, action or proceeding arising out of or based upon this agreement, the other additional agreements or the transactions contemplated hereby or thereby may be instituted in the Federal courts of the United States of America or the courts of the State of Delaware, in each case located in the City of Wilmington, New Castle County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

7.12 Waiver of Trial by Jury. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, COUNTERCLAIM OR OTHER PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF, CONNECTED WITH OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE ACTIONS OF THE HOLDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

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IN WITNESS WHEREOF, the parties have caused this Registration Rights Agreement to be executed and delivered by their duly authorized representatives as of the date first written above.

COMPANY:

BURGERFI INTERNATIONAL, INC.

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Executive Chairman

HOLDER:

CARBOARD BOX LLC
a Delaware Limited Liability Company

By: /s/ Matthew Leeds
Name: Matthew Leeds
Title: Vice President

EXHIBIT A

Name and Address of Holder

<u>Holder</u>	<u>Address</u>	<u>Legal Counsel (If Applicable)</u>
Cardboard Box, LLC	599 West Putnam Avenue Greenwich, CT 06830 Attention: Andrew Taub; Matt Leeds; Dan Reid Email: andrew.taub@lcatterton.com ; matt.leeds@lcatterton.com ; legalnotice@lcatterton.com	Proskauer Rose, LLP Eleven Times Square New York, NY 10036- 8299 Attention: Michael E. Callahan; Matt O'Loughlin Email: mcallahan@proskauer.com ; moloughlin@proskauer.com

RESTRICTIVE COVENANTS AGREEMENT

This **RESTRICTIVE COVENANTS AGREEMENT** (this "Agreement") is made and entered as of November 3, 2021 (the "Effective Date"), by and among BurgerFi International, Inc., a Delaware corporation ("Buyer"), and Catterton Partners VII, L.P., Catterton Partners VII Offshore, L.P. and Catterton Partners VII Special Purposes, L.P. (each, a "Restricted Party" and collectively, the "Restricted Parties"). Each of the foregoing parties is referred to herein as a "Party" and together as the "Parties".

WHEREAS, Buyer has entered into that certain Stock Purchase Agreement, dated as of October 8, 2021, as amended and restated pursuant to that certain Amended and Restated Stock Purchase Agreement, dated as of November 3, 2021 (the "Purchase Agreement"), by and among Buyer, Hot Air, Inc., a Delaware corporation (the "Company"), and Cardboard Box, LLC, a Delaware limited liability company ("Seller"), pursuant to which Buyer agreed to acquire all of the issued and outstanding shares of common stock of the Company from Seller;

WHEREAS, the Restricted Parties will receive an indirect benefit as a result of the sale of the shares of common stock of the Company by Seller to Buyer in exchange for the consideration set forth in the Purchase Agreement; and

WHEREAS, as a material inducement to Buyer to enter into the Purchase Agreement, Buyer and the Restricted Parties desire that the provisions of this Agreement be enforced to the maximum extent permitted by the laws of the State of Delaware.

NOW, THEREFORE, in consideration of the premises and the promises herein made, and in consideration of the covenants herein contained, the receipt and adequacy of which are hereby conclusively acknowledged, the Parties, intending to become legally bound, hereby agree as follows.

1. Confidentiality; Information Screens. For so long as the Restricted Parties collectively hold, directly or indirectly through one or more of their respective Affiliates, not less than fifty percent (50%) of the shares of BFI Consideration Common Shares (as defined in the Purchase Agreement) (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the BFI Common Stock) issued to the Seller at the Closing pursuant to the Purchase Agreement, each Restricted Party will (a) hold in confidence all BFI Confidential Information, and (b) in connection with any Competing Investment by any Restricted Party or any Restricted Party Affiliate, implement customary "information screens" such that (i) none of the Persons identified on Exhibit A hereto (the "ACFP Deal Team") shall share any BFI Confidential Information with any other Person working for or on behalf of a Restricted Party or a Restricted Party Affiliate in connection with a Competing Investment, (ii) each Person working for or at the direction of a Restricted Party or a Restricted Party Affiliate in respect of a Competing Investment will be prohibited from accessing any documents, files, or databases of any member of the ACFP Deal Team, and (iii) no member of the ACFP Deal Team will be permitted to be a member of the deal team pursuing such Competing Investment.

2. Non-Solicitation. For a period commencing on the Effective Date and ending on the second (2nd) anniversary of the Effective Date, no Restricted Party will, directly or indirectly through one or more of its controlled Affiliates (which controlled Affiliates shall exclude, for the avoidance of doubt, any controlled Affiliated portfolio companies of such Restricted Party):

(a) solicit or induce or attempt to solicit or induce (including by recruiting, interviewing or identifying or targeting as a candidate for recruitment) any Person identified on Exhibit B attached hereto (each, a "Restricted Employee" and collectively, the "Restricted Employees") to terminate, restrict or hinder such Restricted Employee's employment with Buyer or the Company; or

(b) hire or otherwise retain the services of any Restricted Employee as an employee, officer, director, independent contractor, licensee, consultant, advisor, agent or in any other capacity, or attempt or assist anyone else to do so.

Notwithstanding the foregoing, (x) no Restricted Party shall be deemed to be in violation of the covenants in this Section 2 for any actions taken by any of its Affiliated portfolio companies, unless such Affiliated portfolio company acts at the direction or knowing and express encouragement of a Restricted Party, (y) general solicitations published in a newspaper, trade journal, or other publication or posted on an internet job site and not specifically directed toward Transferred Employees will not constitute a breach of the covenants in Section 2(a) (assuming that such Restricted Party remains in compliance with Section 2(b)) and (z) this Section 2 shall not preclude any Restricted Party from hiring or attempting to hire or engaging any Restricted Employee who contacts such Restricted Party on his or her own initiative without any direct or indirect solicitation or encouragement from such Restricted Party, other than any general solicitation or advertisement, if such Restricted Employee's employment with Buyer or any Subsidiary of Buyer has been terminated by Buyer or such Subsidiary of Buyer for at least six (6) months prior to such engagement.

3. Enforcement. If the final judgment of a court of competent jurisdiction declares that any term or provision of Sections 1 or 2 is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration or area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closer to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed. The existence of any claim or cause of action by a Restricted Party against Buyer or any of its Affiliates, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by Buyer of the provisions of Section 1 or Section 2, which Sections will be enforceable notwithstanding the existence of any breach by Buyer or any of its Affiliates. Notwithstanding the foregoing, no Restricted Party will be prohibited from pursuing such claims or causes of action against Buyer or any of its Affiliates.

4. Consultation with Counsel; Acknowledgement. Each Restricted Party has consulted with counsel regarding the restrictions set forth in this Agreement and based on such consultation has determined and hereby acknowledges that such restrictions contained herein are reasonable in terms of time and type of activity and are necessary to protect the goodwill of Buyer

and the substantial investment made by Buyer under the Purchase Agreement. Each Restricted Party further acknowledges and agrees that the restrictions set forth in this Agreement are being entered into by it in connection with the Purchase Agreement, that such Restricted Party will receive good and valuable consideration as a result of the consummation of the transactions contemplated by the Purchase Agreement and that Buyer would not have entered into the Purchase Agreement in the absence of this Agreement.

5. Remedies. Each of Buyer and each Restricted Party acknowledges and agrees that remedies at law shall be inadequate to protect Buyer against any breach of this Agreement by a Restricted Party, and, without prejudice to any other rights and remedies otherwise available to Buyer, Buyer and each Restricted Party agrees that Buyers shall be entitled to injunctive relief to enforce the provisions of this Agreement without the posting of any bond or other security.

6. Representations and Warranties. Each Restricted Party represents and warrants to Buyers as follows:

(a) Such Restricted Party has full power and authority to execute, deliver and perform its obligations under this Agreement. All actions and proceedings required to be taken by or on the part of such Restricted Party to authorize and permit the execution, delivery and performance by it of this Agreement have been duly and properly taken.

(b) This Agreement has been duly executed and delivered by such Restricted Party. This Agreement constitutes a valid and binding obligation of such Restricted Party, enforceable against it in accordance with its terms, in each case subject to the effect of any bankruptcy and equity exceptions.

(c) Such Restricted Party has received adequate and sufficient consideration for entering into this Agreement.

7. Amendment and Waiver. Any provision of this Agreement may be amended or waived only in a writing signed by Buyer and each Restricted Party. No waiver of any provision hereunder or of any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default, and no failure or delay to enforce, or partial enforcement of, any provision hereof shall operate as a waiver of such provisions or any other provision.

8. Choice of Law; Exclusive Venue. THIS AGREEMENT, AND ALL ISSUES AND QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT, WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW RULES OR PROVISIONS (WHETHER OF THE STATE OF DELAWARE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE. THE PARTIES AGREE THAT ALL DISPUTES, LEGAL ACTIONS, SUITS AND PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT EXCLUSIVELY IN A FEDERAL DISTRICT COURT LOCATED IN THE STATE OF DELAWARE OR ANY STATE

COURT IN THE STATE OF DELAWARE, IN EACH CASE LOCATED IN THE CITY OF DELAWARE AND COUNTY OF DELAWARE (COLLECTIVELY, THE "DESIGNATED COURTS"). EACH PARTY HEREBY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE DESIGNATED COURTS. NO LEGAL ACTION, SUIT OR PROCEEDING WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN ANY OTHER FORUM. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL CLAIMS OF IMMUNITY FROM JURISDICTION AND ANY OBJECTION THAT SUCH PARTY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING IN ANY DESIGNATED COURT, INCLUDING ANY RIGHT TO OBJECT ON THE BASIS THAT ANY DISPUTE, ACTION, SUIT OR PROCEEDING BROUGHT IN THE DESIGNATED COURTS HAS BEEN BROUGHT IN AN IMPROPER OR INCONVENIENT FORUM OR VENUE. EACH OF THE PARTIES ALSO AGREES THAT DELIVERY OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT TO A PARTY HEREOF IN COMPLIANCE WITH SECTION 12 OF THIS AGREEMENT SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING IN A DESIGNATED COURT WITH RESPECT TO ANY MATTERS TO THAT THE PARTIES HAVE SUBMITTED TO JURISDICTION AS SET FORTH ABOVE.

9. Defined Terms. Capitalized terms used herein but not specifically defined herein shall have the meanings ascribed to them in the Purchase Agreement.

"Affiliate" means, with respect to a particular Person, (i) any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person, (ii) if such Person is a partnership, any partner thereof, (iii) any of such Person's spouse, siblings (by law or marriage), ancestors and descendants and (iv) any trust for the primary benefit of such Person or any of the foregoing. The term "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities or equity interests, by contract or otherwise.

"BFI Confidential Information" means all material non-public information of Buyer and its Subsidiaries.

"Competing Business" means any business enterprise other than Buyer and its Subsidiaries that operates a fast-casual dining chain with a focus on specialty pizza and/or hamburgers.

"Competing Investment" means any direct or indirect equity investment by any Restricted Party or a Restricted Party Affiliate.

"Person" means any individual, sole proprietorship, partnership, corporation, limited liability company, joint venture, unincorporated society or association, trust or other legal entity or governmental authority.

"Restricted Party Affiliate" means any successor flagship buyout investment fund of a Restricted Party.

10. Entire Agreement; Severability. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

11. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective heirs, personal representatives, successors and assigns, as applicable; provided, however, that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any of the Parties hereto without the prior written consent of the other Party; provided further, that Buyer may assign this Agreement to its lenders solely for collateral security purposes.

12. Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) upon delivery in person, (b) on the earlier of receipt or next business day if sent by a nationally recognized overnight courier, (c) on the earlier of receipt or three (3) business days after dispatch by registered or certified U.S. mail or (d) on the business day when sent by e-mail (or next business day if not sent on a business day during normal business hours), addressed as follows:

If to the Restricted Parties:

599 West Putnam Avenue Greenwich, CT 06830
Attention: Andrew
Taub; Matt Leeds; Dan Reid
Email: andrew.taub@lcatterton.com;
matt.leeds@lcatterton.com;
legalnotice@lcatterton.com

with a copy
(which shall not constitute notice) to:

Proskauer Rose LLP
Eleven Times Square
New York, NY 10036-8299
Attention: Michael E. Callahan;
Matt O'Loughlin
Email: mcallahan@proskauer.com;
moloughlin@proskauer.com

If to Buyer:

BurgerFi International, Inc.
105 U.S. Highway 1
North Palm Beach, FL 33408
Attention: Julio Ramirez; Mike Rabinovitch
E-mail: julio@burgerfi.com;
mike@burgerfi.com

with a copy
(which shall not constitute notice) to:

Holland & Knight LLP
701 Brickell Avenue
Suite 3300
Miami, FL 33131
Attn: Enrique A. Conde
Email: enrique.conde@hklaw.com

Any Party may change its notice address by giving notice of a new address.

13. Counterparts. This Agreement may be executed in multiple counterparts (including by means of facsimile or electronically transmitted portable document format (PDF) signature pages), any one of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same instrument.

[Signatures on the following page]

IN WITNESS WHEREOF, the Parties have caused this Restrictive Covenants Agreement to be duly executed as of the Effective Date.

BUYER:

BURGERFI INTERNATIONAL, INC.

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Executive Chairman of the Board

RESTRICTED PARTIES:

CATTERTON PARTNERS VII, L.P.

By: Catterton Managing Partner VII, L.L.C.
Its: General Partner

By: CP7 Management, L.L.C.
Its: Managing Member

By: /s/ Matthew Leeds
Name: Matthew Leeds
Title: Authorized Signatory

CATTERTON PARTNERS VII OFFSHORE, L.P.

By: Catterton Managing Partner VII, L.L.C.
Its: General Partner

By: CP7 Management, L.L.C.
Its: Managing Member

By: /s/ Matthew Leeds
Name: Matthew Leeds
Title: Authorized Signatory

CATTERTON PARTNERS VII SPACIAL PURPOSES, L.P.

By: Catterton Managing Partner VII, L.L.C.
Its: General Partner

By: CP7 Management, L.L.C.
Its: Managing Member

By: /s/ Matthew Leeds
Name: Matthew Leeds
Title: Authorized Signatory

[Signature Page to Restrictive Covenants Agreement]

EXHIBIT A
ACFP Deal Team

Andrew Taub
Matt Leeds
Brittany Serafino
Elle Blake

EXHIBIT B
Restricted Employees

Ian Baines
Patrick Renna
John Reale
Michelle Zavolta
Brett Damato

VOTING AGREEMENT

This Voting Agreement (this "Agreement") is made as of November 3, 2021, by and among BurgerFi International, Inc., a Delaware corporation (the "Company"), and each of the individuals and entities set forth on the signature page hereto (each a "Voting Party" and collectively, the "Voting Parties"). For purposes of this Agreement, capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Stock Purchase Agreement (as defined below).

RECITALS

WHEREAS, the Company, Hot Air, Inc., a Delaware limited liability company, and Cardboard Box, LLC, a Delaware limited liability company ("Seller"), entered into a stock purchase agreement, dated as of October 8, 2021, as amended and restated pursuant to that certain Amended and Restated Stock Purchase Agreement, dated as of November 3, 2021 (the "Stock Purchase Agreement");

WHEREAS, each of the Voting Parties currently owns, or on closing of the transactions contemplated by the Stock Purchase Agreement, will own, shares of the Company's common stock, par value \$0.0001 per share ("Common Stock") and wishes to provide for orderly elections of the members of the Company's board of directors set forth below (the "Post-Closing Board of Directors") and as described herein.

NOW, THEREFORE, in consideration of the foregoing and of the promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Agreement to Vote. During the term of this Agreement, each Voting Party agrees to vote (or consent pursuant to an action by written consent of Company's stockholders) all securities of the Company that such Voting Party owns from time to time and may vote in the election of the Company's directors (hereinafter referred to as the "Voting Shares"), in accordance with the provisions of this Agreement, whether at a regular or special meeting of stockholders or by written consent.

2. Election of Boards of Directors.

2.1. Voting; Initial Designees. During the term of this Agreement, each Voting Party agrees to vote all Voting Shares in such manner as may be necessary to elect (and maintain in office) the following six (6) members of the Company's Post-Closing Board of Directors, consisting of: Ophir Sternberg, as Executive Chairman of the board of directors (the "Board"), Allison Greenfield, Vivian Lopez-Blanco, Gregory Mann, and Martha Stewart (collectively, the "Incumbent BFI Directors") and Andrew Taub (or any successor director designee of Seller, the "Seller Designated BFI Director").

2.2. Obligations; Removal of Directors; Vacancies. The obligations of the Voting Parties pursuant to this Section 2 shall include any stockholder vote to amend the Company's Amended and Restated Certificate of Incorporation and bylaws as required to effect the intent of this Agreement. Each of the Voting Parties and the Company agree not to take any actions that would contravene or materially and adversely affect the provisions of this Agreement and the intention of the parties with respect to the composition of the Company's Post-Closing Board of Directors as herein stated. The parties acknowledge that the fiduciary duties of each member of the Company's Post-Closing Board of Directors are to the Company's stockholders as a whole, including the stockholders not party hereto. In the event any director elected pursuant to the terms hereof ceases to serve as a member of the Company's Post-Closing Board of Directors, the Company and the Voting Parties agree to take all such action as is reasonable and necessary, including the voting of shares of capital stock of the Company by the Voting Parties as to which they have beneficial ownership, to cause the election or appointment of such other person designated by the Chairman or the Board (in the case of an Incumbent BFI Director ceasing to serve as a director), or, designated by the Seller (in the case of the Seller Designated BFI Director ceasing to serve as a director), to the Post-Closing Board of Directors as may be designated on the terms provided herein and in Section 5.21 of the Stock Purchase Agreement. The Voting Parties acknowledge and agree (i) that Seller shall be entitled to the rights and is subject to the conditions and limitations set forth in Section 5.21 of the Stock Purchase Agreement, the terms of which are incorporated herein by reference, and (ii) not to take any actions that would contravene or materially and adversely affect the rights of Seller set forth in Section 5.21 of the Stock Purchase Agreement.

2.3. Power of Attorney. During the term of this Agreement, in the event a Voting Party fails to timely submit a proxy card voting in favor of the election of all of the directors set forth in Section 2.1 hereof who are standing for election, the Voting Party hereby appoints the Executive Chairman of the Board of Directors as its true and lawful attorney and proxy with full power of substitution for and its name to act on behalf of the Voting Party, for the limited purpose of voting in favor of the election of all of the directors set forth in Section 2.1 hereof; provided, however that such Voting Party may attend and vote at the meeting of the Company's stockholders following exercise of such limited proxy by the Executive Chairman of the Board; provided, further that in the event of such voting by such Voting Party at the meeting that is not in favor of the election of all of the directors set forth in Section 2.1 hereof who are standing for election, the Executive Chairman of the Board may again exercise such limited proxy and such Voting Party may not vote in such election again. The Voting Party understands and agrees that this limited proxy is irrevocable and coupled with an interest and, except as otherwise provided herein, shall terminate upon the termination of this Agreement.

3. Successors in Interest of the Voting Parties and the Company. The provisions of this Agreement shall be binding upon the successors in interest, assignees or transferees of any Voting Party with respect to any of such Voting Party's Voting Shares or any voting rights therein, unless the Voting Shares are sold into any of the following markets or exchanges (each, a "Trading Market") on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing). Each Voting Party shall not, and the Company shall not, permit the transfer of any Voting Party's Voting Shares (except for sales of Voting Shares, including block trades, into the Trading Market), unless and until the person to whom such securities are to be transferred shall have executed a written agreement pursuant to which such person agrees to become a party to this Agreement and agrees to be bound by all the provisions hereof as if such person was a Voting Party hereunder.

4. Covenants. The Company and each Voting Party agrees to take all actions required to ensure that the rights given to each Voting Party hereunder are effective and that each Voting Party enjoys the benefits thereof. Such actions include, without limitation, the use of commercially reasonable efforts to cause the nomination of the directors and the designee, as provided herein, for election as a directors of the Company. Neither the Company nor any Voting Party will, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be performed hereunder by the Company or any such Voting Party, as applicable, but will at all times in good faith assist in the carrying out of all of the provisions of this Agreement and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of each Voting Party hereunder against impairment.

5. Schedule 13D. Each Voting Party shall, to the extent required by law solely in the determination of such Voting Party file a Schedule 13D (or, if applicable, a Schedule 13G) with the Securities and Exchange Commission within the time required to file such schedule by applicable rules and, thereafter, file any required amendments to the Schedule 13D or Schedule 13G with the Securities and Exchange Commission promptly upon termination of this Agreement as to any or all parties hereto and at such other times as may be required by applicable law. Each Voting Party acknowledges that such party shall be responsible for the timely filing of such amendments and the completeness and accuracy of the information concerning such Voting Party contained therein, but shall not be responsible for the completeness and accuracy of the information concerning other Voting Parties in any filing by such other Voting Party. Each Voting Party shall cooperate in good faith to provide any information required by another Voting Party to comply with any obligation to file a Schedule 13D (or, if applicable, a Schedule 13G).

6. Grant of Proxy. The parties agree that this Agreement does not constitute the granting of a proxy to any party or any other person; provided, however, that should the provisions of this Agreement be construed to constitute the granting of proxies, such proxies shall be deemed coupled with an interest and are irrevocable for the term of this Agreement but solely to the extent required to give effect to this Agreement and not for any other purpose.

7. Specific Enforcement. It is agreed and understood that monetary damages would not adequately compensate an injured party for the breach of this Agreement by any party hereto, that this Agreement shall be specifically enforceable, and that any breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach and agrees that a party's rights would be materially and adversely affected if the obligations of the other parties under this Agreement were not carried out in accordance with the terms and conditions hereof.

8. Manner of Voting. The voting of the Voting Shares pursuant to this Agreement may be effected in person, by proxy, by written consent or in any other manner permitted by applicable law.

9. Termination. This Agreement shall terminate upon the first to occur of the following:

9.1 The date that is one (1) year from the closing date of the transactions contemplated by the Stock Purchase Agreement; or

9.2 immediately prior to a transaction pursuant to which a person or group other than current stockholders of the Company or the Voting Parties, or their respective affiliates, will control greater than 50% of the Company's voting power with respect to the election of directors of the Company.

10. Amendments and Waivers. Except as otherwise provided herein, any provision of this Agreement may be amended or the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of (a) the Company, (b) Seller, (c) Ophir Sternberg and (d) Lionheart Equities, LLC.

11. Stock Splits, Stock Dividends, etc. In the event of any stock split, stock dividend, recapitalization, reorganization or the like, any securities issued with respect to Voting Shares held by Voting Parties shall become Voting Shares for purposes of this Agreement.

12. Severability. In the event that any provision of the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

13. Governing Law. This Agreement and the legal relations between the parties arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware without reference to its conflicts of laws provisions that would cause the application of the laws of another jurisdiction. Any legal suit, action or proceeding arising out of or based upon this agreement, the other additional agreements or the transactions contemplated hereby or thereby may be instituted in the Federal courts of the United States of America or the courts of the State of Delaware, in each case located in the New Castle County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument, and electronic signatures shall have the same effect as original signatures.

15. Successors and Assigns. Except as otherwise expressly provided in this Agreement, the provisions hereof shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

16. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement among the parties, and supersedes any prior agreement or understanding among the parties, with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Notwithstanding the foregoing, the Seller's rights to designate the Seller Designated BFI Director pursuant to the Stock Purchase Agreement shall extend beyond the term of this Agreement as an agreement solely between the Company and the Seller. Nothing in this Agreement shall impair such rights to extend beyond the term of this Agreement.

[Remainder of page intentionally left blank; signature page follows]

This Voting Agreement is hereby executed effective as of the date first set forth above.

COMPANY:

BurgerFi International, Inc.
a Delaware corporation

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Executive Chairman of the Board

Address: 105 US-1
North Palm Beach, FL 33408

VOTING PARTIES:

/s/ Ophir Sternberg
Ophir Sternberg

Address: 4218 NE 2nd Avenue
Miami, FL 33137

Lionheart Equities, LLC
a Delaware limited liability company

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Manager

Address: 4218 NE 2nd Avenue
Miami, FL 33137

Cardboard Box LLC
a Delaware limited liability company

By: /s/ Matthew Leeds
Name: Matthew Leeds
Title: Vice President

Address: 599 West Putnam Avenue
Greenwich, CT 06830
Attention: Andrew Taub; Matt Leeds; Dan Reid

TENTH AMENDMENT TO CREDIT AGREEMENT AND JOINDER

THIS TENTH AMENDMENT TO CREDIT AGREEMENT AND JOINDER (this "Agreement"), dated as of November 3, 2021, is entered into by and among BURGERFI INTERNATIONAL, INC., a Delaware corporation ("Parent"), PLASTIC TRIPOD, INC., a Delaware corporation ("PTI" and together with Parent, each a "Borrower" and collectively, the "Borrowers"), HOT AIR, INC., a Delaware corporation ("Hot Air"), the Subsidiaries of Hot Air party hereto and described on the signature pages as the Existing Guarantors (together with Hot Air, each an "Existing Guarantor" and collectively, the "Existing Guarantors"), certain Subsidiaries of Parent party hereto and described on the signature pages as the Joining Guarantors (each a "Joining Guarantor" and collectively, the "Joining Guarantors"), the Lenders party hereto, and REGIONS BANK, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), collateral agent for the Lenders (in such capacity, the "Collateral Agent"), Swingline Lender, and Issuing Bank.

RECITALS

WHEREAS, PTI, the Existing Guarantors, the Lenders from time to time party thereto, the Administrative Agent, the Collateral Agent, the Swingline Lender, and the Issuing Bank are parties to that certain Credit Agreement dated as of December 15, 2015 (as amended by that certain First Amendment to Credit Agreement dated as of March 31, 2017, that certain Second Amendment to Credit Agreement dated as of March 9, 2018, that certain Third Amendment to Credit Agreement dated as of March 29, 2019, that certain Fourth Amendment and Waiver dated as of October 30 2019, that certain Forbearance Agreement and Fifth Amendment to Credit Agreement dated as of March 25, 2020, that certain Sixth Amendment to Credit Agreement dated as of March 30, 2020, that certain Seventh Amendment to Credit Agreement dated as of May 15, 2020, that certain Eighth Amendment to Credit Agreement dated as of May 19, 2020, that certain Ninth Amendment to Credit Agreement and Waiver dated as of April 1, 2021, and as further amended, modified, extended, restated, replaced, or supplemented in writing from time to time, the "Credit Agreement").

WHEREAS, pursuant to that certain letter agreement dated as of October 8, 2021 (the "Consent Letter"): (a) PTI and the Existing Guarantors informed the Administrative Agent and the Lenders that (i) Cardboard Box intended to sell, and Parent intended to acquire, 100% of the Equity Interests of Hot Air and its Subsidiaries on the terms set forth in the ACFP Purchase Agreement (as defined below) (such transaction, the "ACFP Acquisition"), and (ii) Parent and its Subsidiaries intended to join the Credit Documents as a co-borrower and as guarantors, respectively, in each case contemporaneously with the consummation of the ACFP Acquisition; (b) at the request of PTI and the Existing Guarantors, the Lenders consented to the ACFP Acquisition and, in connection therewith, waived the Events of Default that would otherwise arise pursuant to (i) Section 9.1(k) of the Credit Agreement as a result of the ACFP Acquisition constituting a Change of Control and (ii) Sections 8.10 and 9.1(c) of the Credit Agreement as a result of the ACFP Acquisition, in each case without the Lenders' provision of such consent; and (c) at the request of PTI and the Existing Guarantors, the Administrative Agent, the Collateral Agent, the Lenders, the Swingline Lender, and the Issuing Bank committed to execute and close an amendment to the Credit Agreement on the terms described in the Consent Letter contemporaneously with the consummation of the ACFP Acquisition.

WHEREAS, pursuant to that certain Amended and Restated Stock Purchase Agreement, dated November 3, 2021, by and among Parent, Hot Air, and Cardboard Box (the "ACFP Purchase Agreement"), Parent has consummated the ACFP Acquisition and has acquired from Cardboard Box 100% of the Equity Interests of Hot Air and its Subsidiaries, including PTI.

WHEREAS, in accordance with the Consent Letter, (a) the Credit Agreement and certain of the Credit Documents will be amended or amended and restated, as the case may be, and (b) Parent and its Subsidiaries not party to the Credit Documents will join the Credit Documents as a co-borrower and as guarantors, respectively, in each case pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Credit Agreement (as in effect immediately after giving effect to the transactions contemplated hereby). The rules of interpretation set forth in Section 1.3(a) of the Credit Agreement are applicable to this Agreement. As used in this Agreement, the following terms shall have the meanings set forth below:

“ACFP Acquisition” has the meaning set forth in the Recitals.

“ACFP Purchase Agreement” has the meaning set forth in the Recitals.

“Administrative Agent” has the meaning set forth in the preamble.

“Agreement” has the meaning set forth in the preamble.

“Borrower” and “Borrowers” have the meanings set forth in the preamble.

“Collateral Agent” has the meaning set forth in the preamble.

“Consent Letter” has the meaning set forth in the Recitals.

“Credit Agreement” has the meaning set forth in the Recitals.

“Credit Parties” means, collectively, the Existing Credit Parties and the Joining Credit Parties, and “Credit Party” means any of them, individually.

“Effective Date” has the meaning set forth in Section 10 hereto.

“Existing Credit Parties” means, collectively, PTI and each Existing Guarantor, and “Existing Credit Party” means any of them, individually.

“Existing Guarantor” and “Existing Guarantors” have the meanings set forth in the preamble.

“Hot Air” has the meaning set forth in the preamble.

“Joining Credit Parties” means, collectively, Parent and each Joining Guarantor, and “Joining Credit Party” means any of them, individually.

“Joining Guarantor” and “Joining Guarantors” have the meanings set forth in the preamble.

“Lender Party” has the meaning set forth in Section 12 hereto.

“Parent” has the meaning set forth in the preamble.

“PTI” has the meaning set forth in the preamble.

2. Estoppels, Consents, Acknowledgements, and Reaffirmations from the Existing Credit Parties.

(a) *Estoppel (Loans Other Than Delayed Draw Term Loan)*. Each Existing Credit Party hereby acknowledges and agrees that, as of November 3, 2021 immediately prior to the effectiveness of this Agreement, (i) the Outstanding Amount of the Revolving Loans was \$2,500,000.00, (ii) the Outstanding Amount of the Term Loan was \$66,851,356.85, (iii) the Outstanding Amount of the Swingline Loans was \$0.00, and (iv) the Outstanding Amount of the Letter of Credit Obligations was \$0.00, each of which constitutes a valid and subsisting obligation, as a borrower or a guarantor, as applicable, of each Existing Credit Party, jointly and severally, owed to the Lenders (other than the Delayed Draw Term Loan Lenders) that is not subject to any credits, offsets, defenses, claims, counterclaims, or adjustments of any kind.

(b) *Estoppel (Delayed Draw Term Loan)*. Each Existing Credit Party hereby acknowledges and agrees that, as of November 3, 2021 immediately prior to the effectiveness of this Agreement, the Outstanding Amount of the Delayed Draw Term Loan was \$10,000,000.00, which constitutes a valid and subsisting obligation, as a borrower or a guarantor, as applicable, of each Existing Credit Party, jointly and severally, owed to the Delayed Draw Term Loan Lenders that is not subject to any credits, offsets, defenses, claims, counterclaims, or adjustments of any kind.

(c) *Consents, Acknowledgements, and Reaffirmations*. Each Existing Credit Party hereby: (i) acknowledges and consents to this Agreement and the terms and provisions hereof; (ii) reaffirms the covenants and agreements contained in each Credit Document to which such Person is party, including, in each case, as such covenants and agreements may be modified by this Agreement and the transactions contemplated hereby; (iii) reaffirms that each of the Liens created and granted in or pursuant to the Credit Documents in favor of the Collateral Agent for the benefit of the holders of the Obligations is valid and subsisting, and acknowledges and agrees that this Agreement shall in no manner impair or otherwise adversely affect such Liens; and (iv) confirms that each Credit Document to which such Person is a party is and shall continue to be in full force and effect and the same is hereby ratified and confirmed in all respects, except that upon the effectiveness of this Agreement, all references in such Credit Documents to the “Credit Agreement”, “thereunder”, “thereof”, or words of like import shall mean the Credit Agreement and the other Credit Documents, as the case may be, as in effect and as modified by this Agreement.

3. Joinder of Joining Credit Parties: Estoppels from the Joining Credit Parties.

(a) *Parent’s Joinder to Credit Documents*. Parent hereby acknowledges, agrees, and confirms that, by its execution of this Agreement, Parent will be deemed to be a party to the Credit Agreement and each other Credit Document to which the “Borrowers” are party and a “Borrower” for all purposes of the Credit Agreement and the other Credit Documents, in each case as amended hereby, and shall have all of the obligations of a “Borrower” thereunder as if it had executed the Credit Agreement and each other Credit Document to which the “Borrowers” are party, in each case as amended hereby. Parent hereby ratifies, as of the Effective Date, and agrees to be bound by, all of the terms, provisions, and conditions applicable to any “Borrower” contained in the Credit

Agreement or any other Credit Document, in each case as amended hereby. Without limiting the generality of the foregoing terms of this Section 3(a), Parent hereby, jointly and severally together with the other Borrowers (including PTI), promises to each holder of the Obligations, in each case as provided in the Credit Agreement (as amended hereby), the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, or otherwise) strictly in accordance with the terms thereof.

(b) *Joining Guarantors' Joinder to Credit Documents.* Each Joining Guarantor acknowledges, agrees, and confirms that, by its execution of this Agreement, such Joining Guarantor will be deemed to be a party to the Credit Agreement and each other Credit Document to which the "Guarantors" are party and a "Guarantor" for all purposes of the Credit Agreement and the other Credit Documents, in each case as amended hereby, and shall have all of the obligations of a "Guarantor" thereunder as if it had executed the Credit Agreement and each other Credit Document to which the "Guarantors" are party, in each case as amended hereby. Each Joining Guarantor hereby ratifies, as of the Effective Date, and agrees to be bound by, all of the terms, provisions, and conditions applicable to any "Guarantor" contained in the Credit Agreement or any other Credit Document, in each case as amended hereby. Without limiting the generality of the foregoing terms of this Section 3(b), each Joining Guarantor hereby, jointly and severally together with the other Guarantors (including the Existing Guarantors and the other Joining Guarantors), guarantees to each holder of the Obligations, in each case as provided in Section 4 of the Credit Agreement (as amended hereby), the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, or otherwise) strictly in accordance with the terms thereof.

(c) *Estoppel (Loans Other Than Delayed Draw Term Loan).* Each Joining Credit Party hereby acknowledges and agrees that, as of November 3, 2021 immediately prior to the effectiveness of this Agreement, (i) the Outstanding Amount of the Revolving Loans was \$2,500,000.00, (ii) the Outstanding Amount of the Term Loan was \$66,851,356.85, (iii) the Outstanding Amount of the Swingline Loans was \$0.00, and (iv) the Outstanding Amount of the Letter of Credit Obligations was \$0.00, each of which constitutes, after giving effect to this Agreement, a valid and subsisting obligation, as a borrower or a guarantor, as applicable, of each Joining Credit Party, jointly and severally, owed to the Lenders (other than the Delayed Draw Term Loan Lenders) that is not subject to any credits, offsets, defenses, claims, counterclaims, or adjustments of any kind.

(d) *Estoppel (Delayed Draw Term Loan).* Each Joining Credit Party hereby acknowledges and agrees that, as of November 3, 2021 immediately prior to the effectiveness of this Agreement, the Outstanding Amount of the Delayed Draw Term Loan was \$10,000,000.00, which constitutes, after giving effect to this Agreement, a valid and subsisting obligation, as a borrower or a guarantor, as applicable, of each Joining Credit Party, jointly and severally, owed to the Delayed Draw Term Loan Lenders that is not subject to any credits, offsets, defenses, claims, counterclaims, or adjustments of any kind.

4. LIBOR Breakage. The Borrowers shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for the calculation of such amounts due hereunder), for all reasonable out-of-pocket losses, expenses, and liabilities (including any interest paid or calculated to be due and payable by such Lender to lenders of funds borrowed by it to make or carry its Adjusted LIBOR Rate Loans (as defined in the Credit Agreement without giving effect to the transactions contemplated hereby) and any loss, expense, or liability sustained by such Lender in connection with the liquidation or reemployment of such funds but excluding loss of anticipated profits) which such Lender sustains if any prepayment or other principal payment of, or any conversion from a floating rate to a fixed rate of, any of

its Adjusted LIBOR Rate Loans occurs on or about the Effective Date to the extent it is on any day other than the last day of an Interest Period (as defined in the Credit Agreement without giving effect to the transactions contemplated hereby) applicable to that Loan. The Borrowers shall make such payment to each such requesting Lender within five (5) Business Days of their receipt of such request from such Lender. Each Lender's calculation of the amount due hereunder shall be presumed to be correct absent manifest error.

5. Amended Credit Agreement. The Credit Agreement (but excluding the Appendices, Schedules and Exhibits thereto) is hereby amended in its entirety to read in the form attached hereto as Appendix A.

6. Amended Appendices to Credit Agreement. Appendix B, Appendix C, and Appendix D to the Credit Agreement are each hereby amended in their entirety to read in the form attached hereto as Appendix B, Appendix C, and Appendix D, respectively.

7. Amended Schedules to Credit Agreement. Schedule 1.1 to the Credit Agreement is hereby deleted in its entirety. Schedule 6.10(b), Schedule 6.14, Schedule 6.21, Schedule 8.1, Schedule 8.2, and Schedule 8.6 to the Credit Agreement are each hereby amended in their entirety to read in the form attached hereto as Schedule 6.10(b), Schedule 6.14, Schedule 6.21, Schedule 8.1, Schedule 8.2, Schedule 8.6, respectively.

8. Amended Exhibits to Credit Agreement. Exhibit 2.8 to the Credit Agreement is hereby deleted in its entirety. Exhibit 1.1, Exhibit 2.1, Exhibit 2.3, Exhibit 2.5-1, Exhibit 2.5-2, Exhibit 2.5-3, Exhibit 2.5-4, Exhibit 3.3, Exhibit 7.1(c), Exhibit 7.13, and Exhibit 11.5 are each hereby amended in their entirety to read in the form attached hereto as Exhibit 1.1, Exhibit 2.1, Exhibit 2.3, Exhibit 2.5-1, Exhibit 2.5-2, Exhibit 2.5-3, Exhibit 2.5-4, Exhibit 3.3, Exhibit 7.1(c), Exhibit 7.13, and Exhibit 11.5, respectively.

9. Fees and Expenses. Without in any way limiting the obligations of the Credit Parties under the Credit Documents, including Section 11.2 of the Credit Agreement (as amended hereby), the Credit Parties shall on the Effective Date, and thereafter within ten (10) Business Days of any written demand therefor, reimburse the Administrative Agent for the reasonable, documented, and invoiced fees and expenses incurred by the Administrative Agent in connection with this Agreement, the Credit Agreement, and the other Credit Documents (including the reasonable, documented, and invoiced fees and expenses of Moore & Van Allen PLLC, as counsel to the Administrative Agent, and of Gulf Atlantic Capital Corporation in connection with the preparation of an enterprise valuation of the Borrowers on a consolidated basis).

10. Conditions Precedent. This Agreement shall be effective on the date (the "Effective Date") that each of the following conditions have been satisfied or waived by the Administrative Agent and each Lender, in each case as determined by the Administrative Agent and each Lender in their sole discretion:

(a) Executed Agreement. The Administrative Agent shall have received a copy of this Amendment duly executed by each of the Credit Parties, the Administrative Agent, the Collateral Agent, the Lenders, and the Issuing Bank.

(b) Executed Amended and Restated Credit Documents. The Administrative Agent shall have received executed counterparts of the amended and restated Notes and the amended and restated Pledge and Security Agreement, in each case in form and substance satisfactory to the Administrative Agent and the Lenders and duly executed by the appropriate parties thereto.

(c) *Organizational Documents.* The Administrative Agent shall have received certified articles of incorporation or organization (or equivalent), good standing certificates (with respect to the applicable jurisdiction of incorporation or organization of each Credit Party), certified copies of bylaws, operating agreements, partnership agreements, and other Organizational Documents of the Credit Parties, customary authorizing resolutions of the appropriate governing body of each Credit Party, and customary incumbency certificates for each Credit Party; provided that to the extent that any of the foregoing (other than customary authorizing resolutions) has previously been delivered to the Administrative Agent by a Credit Party, then an Authorized Officer of such Credit Party may deliver a certificate certifying that such Credit Party has not modified its bylaws, operating agreement, partnership agreement, or other Organizational Document since the Closing Date (or such later date that such documents were delivered to the Administrative Agent).

(d) *Legal Opinions; Insurance Certificates.* The Administrative Agent shall have received: (i) customary opinions of counsel for the Joining Credit Parties (which shall cover, among other things, authority, legality, validity, binding effect, and enforceability of the Credit Agreement and the other Credit Documents with respect to the Joining Credit Parties, and which shall expressly permit reliance by the successors and permitted assigns of each of the Administrative Agent, the Collateral Agent, and the Lenders); and (ii) customary insurance certificates with respect to the Joining Credit Parties, their Subsidiaries, and their respective assets.

(e) *Personal Property Collateral.* Receipt by the Collateral Agent of the following: (i) such UCC financing statements necessary or appropriate to perfect the Liens in the personal property of the Joining Credit Parties that constitute Collateral (upon giving effect to the transactions contemplated hereby), as determined by the Collateral Agent; (ii) such patent, trademark and copyright notices, filings, and recordings necessary or appropriate to perfect the Liens in intellectual property and intellectual property rights of the Joining Credit Parties, as determined by the Collateral Agent; provided that nothing in this Agreement shall require any Joining Credit Party to make any filings or take any actions to record or perfect the Collateral Agent's Liens in any intellectual property or intellectual property rights outside of the United States; (iii) to the extent in Parent's possession on or prior to the Effective Date, original certificates evidencing any certificated Equity Interests pledged as collateral, together with undated stock transfer powers executed in blank; and (iv) confirmation that all filing and recording fees and taxes shall have been duly paid.

(f) *ACFP Acquisition.* The ACFP Acquisition shall have been consummated in accordance with the terms of the ACFP Purchase Agreement, without giving effect to any amendment, waiver, modification, supplement, or consent of or to the ACFP Purchase Agreement (or any exhibit or schedule thereto) that is materially adverse to the interests of the Lenders (in their capacities as such) without the prior written consent of each Lender, such consent not to be unreasonably withheld, delayed, or conditioned, and receipt by the Administrative Agent of an executed copy of the ACFP Purchase Agreement certified by Parent as being true and complete as of the Effective Date.

(g) *Series A Preferred Convertible Preferred Stock.* The Series A Convertible Preferred Stock shall have been issued to Cardboard Box in connection with the ACFP Acquisition in form and substance reasonably satisfactory to each Lender, and receipt by the Administrative Agent of an executed copy thereof certified by Parent as being true and complete as of the Effective Date.

(h) *Existing Indebtedness of Joining Credit Parties.* The Administrative Agent shall have received evidence that all existing Indebtedness of the Joining Credit Parties (excluding any Indebtedness permitted pursuant to Section 8.1 of the Credit Agreement after giving effect to the transactions contemplated hereby) shall be repaid in full and terminated and all Liens securing obligations thereunder released concurrently with the Effective Date.

(i) *KYC Matters.* The Lenders and the Administrative Agent shall have received, at least 3 Business Days prior to the Effective Date, all documentation and other information that the Administrative Agent or any Lender determines is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, and that the Administrative Agent or any Lender has requested at least five (5) Business Days prior to the Effective Date.

(j) *Termination of Management Agreement.* The Administrative Agent shall have received documents terminating the Management Agreement (as defined in the Credit Agreement without giving effect to the transactions contemplated hereby) and releasing the Credit Parties from all obligations due and owing thereunder, which documents shall be in form and substance reasonably satisfactory to the Administrative Agent, duly executed by ACFP Management, the Sponsor (as defined in the Credit Agreement without giving effect to the transactions contemplated hereby), and the other Management Companies (as defined in the Credit Agreement without giving effect to the transactions contemplated hereby), and certified by Parent as being true and complete as of the Effective Date.

(k) *Closing Date and Solvency Certificate.* The Administrative Agent shall have received a certification from the chief financial officer of Parent, in form and substance satisfactory to the Administrative Agent, setting forth a representation that each Borrower, individually, and the Credit Parties and their Subsidiaries taken as a whole on a consolidated basis are, and after giving effect to the ACFP Acquisition and the other transactions to occur on the Effective Date will be, Solvent and confirming among other things that: (i) the ACFP Acquisition has been consummated in accordance with the terms of the ACFP Purchase Agreement and the copy of the ACFP Purchase Agreement that the Borrowers delivered to the Administrative Agent is true and complete as of the Effective Date; (ii) the Series A Convertible Preferred Stock of Parent has been issued to Cardboard Box in connection with the ACFP Acquisition and the copy of the certificate of designation thereof that the Borrowers delivered to the Administrative Agent is true and complete as of the Effective Date; (iii) the Management Agreement (as defined in the Credit Agreement without giving effect to the transactions contemplated hereby) has been terminated and the Credit Parties have been released from all obligations due and owing thereunder, and the Borrowers have delivered to the Administrative Agent copies of all of the documents effectuating such termination and release, each of which are true and complete as of the Effective Date; and (iv) after giving effect to the ACFP Acquisition and the other transactions to occur on the Effective Date, including the principal paydown required in respect of the Term Loan as set forth in this Agreement, the aggregate unrestricted cash of the Credit Parties is not less than \$20,000,000.

(l) *Term Loan Prepayment.* The Administrative Agent shall have received payment from the Borrowers in an amount equal to \$8,276,427.37, which payment the Administrative Agent shall apply ratably for the benefit of the Lenders to the Outstanding Amount of the Term Loan.

(m) *Accrued Interest and Fees.* The Administrative Agent shall have received payment from the Borrowers, for the ratable benefit of the Lenders (other than the Delayed Draw Term Loan Lenders), in an amount equal to the sum of (i) accrued and unpaid interest in respect of the Loans plus (ii) accrued and unpaid fees due to the Lenders pursuant to Section 2.10 of the Credit Agreement.

(n) *Lenders' Amendment Fee.* The Administrative Agent shall have received, for the ratable benefit of the Lenders (other than the Delayed Draw Term Loan Lenders), in immediately available funds a one-time fee in an amount equal to 10 basis points (0.10%) of the sum of (i) the Outstanding Amount of the Term Loan as of the Effective Date plus (ii) the amount of the Aggregate Revolving Commitments as of the Effective Date.

(o) *Administrative Agent's Fees and Expenses.* The Administrative Agent shall have: (i) been paid all fees payable to the Administrative Agent required to be paid on the Effective Date pursuant to the Amendment Fee Letter (as defined in the Consent Letter); and (ii) received reimbursement from the Borrowers for all of the Administrative Agent's reasonable, documented, and invoiced (at least one (1) Business Day prior to the Effective Date) fees and expenses incurred in connection with the Consent Letter, this Agreement, the Credit Agreement, and the other Credit Documents (including the reasonable, documented, and invoiced fees and expenses of Moore & Van Allen PLLC, as counsel to the Administrative Agent, and of Gulf Atlantic Capital Corporation assisting counsel).

11. Representations of Credit Parties. Each Credit Party represents and warrants to the Administrative Agent and the Lenders as follows:

(a) Each Credit Party (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (iii) is qualified to do business and in good standing in every jurisdiction where necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing, and could not be reasonably expected to have, a Material Adverse Effect; provided that the failure of any of the following entities to not be in good standing in any jurisdiction shall not constitute a breach of this representation: Anthony's Coal Fired Pizza of Englewood LLC, Anthony's Coal Fired Pizza of Newton LLC, and Anthony's Coal Fired Pizza of Great Neck, LLC.

(b) This Agreement has been duly executed and delivered by each Credit Party and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by Debtor Relief Laws or by equitable principles relating to enforceability.

(c) The execution, delivery, and performance by the Credit Parties of this Agreement and the consummation of the transactions contemplated by this Agreement do not and will not: (i) violate in any material respect any provision of any Applicable Laws relating to any Credit Party, any of the Organizational Documents of any Credit Party, or any order, judgment, or decree of any court or other agency of government binding on any Credit Party; or (ii) require, as a condition to the effectiveness thereof, any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for (A) filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Collateral Agent for filing and/or recordation, as of the Closing Date or the Effective Date, as the case may be, (B) those consents, approvals, notices or other actions, the failure of which to obtain or make would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect and (C) other filings, recordings or consents which have been obtained or made, as applicable.

(d) After giving effect to this Agreement, those representations and warranties set forth in Section 6.15 of the Credit Agreement are true and correct in all respects as of the Effective Date.

(e) Each Borrower, individually, and the Credit Parties and their Subsidiaries taken as a whole on a consolidated basis are, and after giving effect to the ACFP Acquisition and the other transactions to occur on the Effective Date will be, Solvent.

(f) There exists no Indebtedness of any Credit Party except to the extent permitted by Section 8.1 of the Credit Agreement (as amended hereby).

(g) After giving effect to the ACFP Acquisition and the other transactions to occur on the Effective Date, including the principal paydown required in respect of the Term Loan as set forth in this Agreement, the aggregate unrestricted cash of the Credit Parties shall not be less than \$20,000,000.

(h) The parties executing this Agreement: (i) as Existing Guarantors include each Subsidiary of any Existing Credit Party that is required pursuant to Section 7.13 of the Credit Agreement to become a Credit Party as of the date hereof; and (ii) as Joining Guarantors include each Subsidiary of Parent not constituting an Existing Guarantor.

12. Release. Each Credit Party hereby releases and forever discharges the Administrative Agent, the Collateral Agent, the Swingline Lender, the Issuing Bank, each Lender, and their respective predecessors, successors, assigns, attorneys, and Related Parties (each and every of the foregoing, a "Lender Party") from any and all claims, counterclaims, demands, damages, debts, suits, liabilities, actions, and causes of action of any nature whatsoever, in each case to the extent arising in connection with any of the Credit Documents through the Effective Date, whether arising at law or in equity, whether known or unknown, whether liability be direct or indirect, whether liquidated or unliquidated, whether absolute or contingent, whether foreseen or unforeseen, and whether or not heretofore asserted, which any Credit Party may have or claim to have against any Lender Party.

13. No Actions, Claims. Each Credit Party represents, warrants, acknowledges, and confirms that, as of the date hereof, it has no knowledge of any action, cause of action, claim, demand, damage, or liability of whatever kind or nature, in law or in equity, it has against any Lender Party arising from any action by such Persons, or failure of such Persons to act, under or in connection with any of the Credit Documents.

14. Incorporation of Agreement. Except as specifically modified herein, the terms of the Credit Documents shall remain in full force and effect. The execution, delivery, and effectiveness of this Agreement shall not operate as a waiver of any right, power, or remedy of the Administrative Agent, the Collateral Agent, or the Lenders under the Credit Documents, or constitute a waiver or amendment of any provision of the Credit Documents, except as expressly set forth herein. This Agreement shall constitute a Credit Document.

15. No Third-Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns, and the obligations hereof shall be binding upon the Credit Parties. No other Person shall have or be entitled to assert rights or benefits under this Agreement, other than any non-party Lender Party with respect to Section 12 and Section 13 hereof.

16. Entirety. This Agreement, the Consent Letter, the Credit Agreement, and the other Credit Documents embody the entire agreement among the parties hereto and supersede all prior agreements and understandings, oral or written, if any, relating to the subject matter hereof. This Agreement, the Consent Letter, the Credit Agreement, and the other Credit Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

17. Counterparts/Telecopy. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of executed counterparts of this Agreement by telecopy or other secure electronic format (.pdf) shall be effective as an original.

18. Governing Law; Submission to Jurisdiction; Waiver of Venue; Service of Process; Waiver of Jury Trial The governing law, submission to jurisdiction, waiver of venue, service of process, and waiver of jury trial provisions contained in Sections 11.13 and 11.14 of the Credit Agreement are hereby incorporated by reference *mutatis mutandis*.

19. Further Assurances. Each of the parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments as may reasonably be requested to effectuate the intent and purposes, and to carry out the terms, of this Agreement.

20. Miscellaneous. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, then such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Except as otherwise provided in this Agreement, if any provision contained in this Agreement conflicts with, or is inconsistent with, any provision in any Credit Document, then the provision contained in this Agreement shall govern and control.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Tenth Amendment to Credit Agreement and Joinder to be duly executed as of the date first above written.

BORROWERS:

BURGERFI INTERNATIONAL, INC.,
a Delaware corporation

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

PLASTIC TRIPOD, INC.,
a Delaware corporation

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

EXISTING GUARANTORS:

HOT AIR, INC.,
a Delaware corporation

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

ACFP MANAGEMENT, INC.,
a Delaware corporation

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

ANTHONY'S PIZZA HOLDING COMPANY, LLC,
a Florida limited liability company

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

[Signature pages for Credit Parties continue.]

ANTHONY'S COAL FIRED PIZZA OF PIKE CREEK, LLC,
a Delaware limited liability company

ANTHONY'S COAL FIRED PIZZA OF WILMINGTON, LLC,
a Delaware limited liability company

ACFP/NYNJ VENTURES LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF AVENTURA, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF BOCA RATON, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF CORAL SPRINGS, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF PEMBROKE PINES, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF PALM BEACH GARDENS, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF PLANTATION, LLC,
a Florida limited liability company

ANTHONY'S SPORTS BAR AND GRILL, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF WESTON, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF STUART LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF CORAL GABLES, LLC,
a Florida limited liability company

ANTHONY'S COAL-FIRED PIZZA, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF SOUTH TAMPA, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF DORAL LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF PINECREST, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF WELLINGTON, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF MIAMI LAKES, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF KENDALL, LLC,
a Florida limited liability company

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

[Signature pages for Credit Parties continue.]

ANTHONY'S COAL FIRED PIZZA OF NORTH TAMPA, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF CLEARWATER, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF SAND LAKE, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF BRANDON, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF ALTAMONTE SPRINGS, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF EAST BOCA LLC,
a Florida limited liability company

ACFP BOCA MGT LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF NORTH LAUDERDALE LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF NORTH MIAMI LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF MIRAMAR LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF DELRAY BEACH, LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF LITTLETON LLC,
a Massachusetts limited liability company

ANTHONY'S COAL FIRED PIZZA OF WESTWOOD LLC,
a Massachusetts limited liability company

ANTHONY'S COAL FIRED PIZZA OF READING LLC,
a Massachusetts limited liability company

ANTHONY'S COAL FIRED PIZZA OF CLIFTON, LLC,
a New Jersey limited liability company

ANTHONY'S COAL FIRED PIZZA OF EDISON LLC,
a New Jersey limited liability company

ANTHONY'S COAL FIRED PIZZA OF RAMSEY, LLC,
a New Jersey limited liability company

ANTHONY'S COAL FIRED PIZZA OF FAIR LAWN, LLC,
a New Jersey limited liability company

ANTHONY'S COAL FIRED PIZZA OF WAYNE NJ LLC,
a New Jersey limited liability company

ANTHONY'S COAL FIRED PIZZA OF LIVINGSTON LLC,
a New Jersey limited liability company

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

[Signature pages for Credit Parties continue.]

ANTHONY'S COAL FIRED PIZZA OF MARLBORO LLC,
a New Jersey limited liability company

ANTHONY'S COAL FIRED PIZZA OF ENGLEWOOD LLC,
a New Jersey limited liability company

ANTHONY'S COAL FIRED PIZZA OF MOUNT LAUREL LLC,
a New Jersey limited liability company

ANTHONY'S COAL FIRED PIZZA OF COMMACK LLC,
a New York limited liability company

ANTHONY'S COAL FIRED PIZZA OF WHITE PLAINS, LLC,
a New York limited liability company

ANTHONY'S COAL FIRED PIZZA OF CARLE PLACE, LLC,
a New York limited liability company

ANTHONY'S COAL FIRED PIZZA OF WOODBURY, LLC,
a New York limited liability company

ANTHONY'S COAL FIRED PIZZA OF WANTAGH, LLC,
a New York limited liability company

ANTHONY'S COAL FIRED PIZZA OF BOHEMIA, LLC,
a New York limited liability company

ANTHONY'S COAL FIRED PIZZA OF GREAT NECK, LLC,
a New York limited liability company

ANTHONY'S COAL FIRED PIZZA OF FARMINGDALE LLC,
a New York limited liability company

BH SAUCE, LLC,
a Nevada limited liability company

ANTHONY'S COAL FIRED PIZZA OF HORSHAM, LLC,
a Pennsylvania limited liability company

ANTHONY'S COAL FIRED PIZZA OF WAYNE, LLC,
a Pennsylvania limited liability company

ANTHONY'S COAL-FIRED PIZZA OF MONROEVILLE, LLC,
a Pennsylvania limited liability company

ANTHONY'S COAL-FIRED PIZZA OF SETTLER'S RIDGE, LLC,
a Pennsylvania limited liability company

ANTHONY'S COAL FIRED PIZZA OF CRANBERRY, LLC,
a Pennsylvania limited liability company

ANTHONY'S COAL FIRED PIZZA OF MCMURRAY, LLC,
a Pennsylvania limited liability company

ANTHONY'S COAL FIRED PIZZA OF EXTON, LLC,
a Pennsylvania limited liability company

ANTHONY'S COAL FIRED PIZZA OF WYOMISSING, LLC,
a Pennsylvania limited liability company

ANTHONY'S COAL FIRED PIZZA OF WYNNEWOOD LLC,
a Pennsylvania limited liability company

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

[Signature pages for Credit Parties continue.]

ANTHONY'S COAL FIRED PIZZA OF TREXLERTOWN LLC,
a Pennsylvania limited liability company

ANTHONY'S COAL FIRED PIZZA OF BLUE BELL LLC,
a Pennsylvania limited liability company

ANTHONY'S COAL FIRED PIZZA OF NEWTON LLC,
a Massachusetts limited liability company

ANTHONY'S COAL FIRED PIZZA OF STONY BROOK LLC,
a New York limited liability company

ANTHONY'S COAL FIRED PIZZA OF CRANSTON LLC,
a Rhode Island limited liability company

ANTHONY'S COAL FIRED PIZZA OF NATICK LLC,
a Massachusetts limited liability company

ANTHONY'S COAL FIRED PIZZA OF WEST PALM BEACH LLC,
a Florida limited liability company

ANTHONY'S COAL FIRED PIZZA OF BETHESDA LLC,
a Maryland limited liability company

ANTHONY'S COAL FIRED PIZZA OF SPRINGFIELD LLC,
a Pennsylvania limited liability company

By: /s/ Michael Rabinovitch

Name: Michael Rabinovitch

Title: Chief Financial Officer

[Signature pages for Credit Parties continue.]

JOINING GUARANTORS:

BURGERFI INTERNATIONAL, LLC,
a Delaware limited liability company

BF RESTAURANT MANAGEMENT, LLC,
a Florida limited liability company

BURGERFI IP, LLC,
a Florida limited liability company

BURGERFI-DELRAY BEACH, LLC,
a Delaware limited liability company

BF CORAL SPRINGS, LLC,
a Florida limited liability company

BF CITY PLACE-WEST PALM, LLC,
a Florida limited liability company

BF JUPITER, LLC,
a Florida limited liability company

BF WEST DELRAY, LLC,
a Florida limited liability company

BF LBTS, LLC,
a Florida limited liability company

BF PHILADELPHIA, LLC,
a Florida limited liability company

BF COMMACK, LLC,
a New York limited liability company

BF JACKSONVILLE TOWN CENTER, LLC,
a Florida limited liability company

BF JACKSONVILLE RIVERSIDE, LLC,
a Florida limited liability company

BF DELRAY—LINTON, LLC,
a Florida limited liability company

BF PINES CITY CENTER, LLC,
a Florida limited liability company

BF ORLANDO – DR. PHILLIPS, LLC,
a Florida limited liability company

BF DANIA BEACH, LLC,
a Florida limited liability company

BF FORT MYERS—DANIELS, LLC,
a Florida limited liability company

BF BOCA RATON—BOCA POINTE, LLC,
a Florida limited liability company

BF BOCA RATON, LLC,
a Florida limited liability company

BF PBG, LLC,
a Florida limited liability company

BF JUPITER—INDIANTOWN, LLC,
a Florida limited liability company

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

[Signature pages for Credit Parties continue.]

BF WELLINGTON, LLC,
a Florida limited liability company

BF NEPTUNE BEACH, LLC,
a Florida limited liability company

BF POUGHKEEPSIE, LLC,
a Florida limited liability company

BF ATLANTA—PERIMETER MARKETPLACE, LLC,
a Georgia limited liability company

BF FOOD TRUCK, LLC,
a Florida limited liability company

BF ODESSA, LLC,
a Florida limited liability company

BF MIAMI BEACH—MERIDIAN, LLC,
a Florida limited liability company

BF MIRAMAR LLC,
a Florida limited liability company

BF TAMPA BAY, LLC,
a Florida limited liability company

BF TAMPA—CHANNELSIDE, LLC,
a Florida limited liability company

BF WILLIAMSBURG, LLC,
a Florida limited liability company

BF TAMPA—WESTCHASE, LLC,
a Florida limited liability company

BF HENDERSONVILLE, LLC,
a Tennessee limited liability company

BF CHARLOTTESVILLE, LLC,
a Virginia limited liability company

BF TALLAHASSEE VARSITY, LLC,
a Florida limited liability company

BURGERFI MANAGEMENT SERVICES, LLC,
a Florida limited liability company

BF COMMISSARY, LLC,
a Florida limited liability company

BGM PEMBROKE PINES, LLC,
a Florida limited liability company

BF BABCOCK, LLC,
a Florida limited liability company

BF MIAMI LAKES, LLC,
a Florida limited liability company

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

[Signature pages for Credit Parties continue.]

BF GALLATIN AVENUE NASHVILLE, LLC,
a Tennessee limited liability company
BF HERMITAGE LLC,
a Tennessee limited liability company
BURGERFI ENTERPRISES, LLC,
a Florida limited liability company

By: /s/ Michael Rabinovitch
Name: Michael Rabinovitch
Title: Chief Financial Officer

[Signature pages for Credit Parties end.]

ADMINISTRATIVE AGENT
AND COLLATERAL AGENT:

REGIONS BANK

By: /s/ J. Richard Baker
Name: J. Richard Baker
Title: Senior Vice President

LENDERS:

REGIONS BANK,
as a Lender, Swingline Lender, and Issuing Bank

By: /s/ J. Richard Baker

Name: J. Richard Baker

Title: Senior Vice President

By: /s/ Vance Waldron
Name: Vance Waldron
Title: VP

WEBSTER BANK, NATIONAL ASSOCIATION, as a
Lender

By: /s/ Andrew Bella

Name: Andrew Bella

Title: Senior Vice President

SYNOVUS BANK, as a Lender

By: /s/ Gregory Felix
Name: Gregory Felix
Title: Special Assets Officer, Sr.

By: /s/ Matt Leeds
Name: Matt Leeds
Title: Authorized Officer

APPENDIX A

Amended Credit Agreement

[See attached]

**APPENDIX A TO
TENTH AMENDMENT TO CREDIT AGREEMENT AND JOINDER**

CREDIT AGREEMENT

dated as of December 15, 2015
(amended in its entirety as of November 3, 2021 by
that certain Tenth Amendment to Credit Agreement and Joinder)

among

BURGERFI INTERNATIONAL, INC. and PLASTIC TRIPOD, INC.
as Borrowers,

CERTAIN SUBSIDIARIES OF BURGERFI INTERNATIONAL, INC.
PARTY HERETO FROM TIME TO TIME,
as Guarantors,

THE LENDERS PARTY HERETO FROM TIME TO TIME,

REGIONS BANK,
as Administrative Agent and Collateral Agent,

and

REGIONS CAPITAL MARKETS,
a division of Regions Bank,
and
CADENCE BANK,
as Joint Lead Arrangers and Joint Book Managers

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1 DEFINITIONS AND INTERPRETATION	5
Section 1.1 Definitions	5
Section 1.2 Accounting Terms	35
Section 1.3 Rules of Interpretation	36
SECTION 2 LOANS AND LETTERS OF CREDIT	37
Section 2.1 Revolving Loans, Term Loan and Delayed Draw Term Loan	37
Section 2.2 Swingline Loans	38
Section 2.3 Issuances of Letters of Credit and Purchase of Participations Therein	40
Section 2.4 Pro Rata Shares; Availability of Funds	44
Section 2.5 Evidence of Debt; Register; Lenders' Books and Records; Notes	45
Section 2.6 Scheduled Principal Payments	46
Section 2.7 Interest on Loans	47
Section 2.8 [Reserved.]	48
Section 2.9 Default Rate of Interest	48
Section 2.10 Fees	48
Section 2.11 Prepayments/Commitment Reductions	50
Section 2.12 Application of Prepayments	52
Section 2.13 General Provisions Regarding Payments	53
Section 2.14 Sharing of Payments by Lenders	54
Section 2.15 Cash Collateral	54
Section 2.16 Defaulting Lenders	55
Section 2.17 Removal or Replacement of Lenders	58
Section 2.18 Joint and Several Liability	59
SECTION 3 YIELD PROTECTION	60
Section 3.1 [Reserved.]	60
Section 3.2 Increased Costs	60
Section 3.3 Taxes	61
Section 3.4 Mitigation Obligations; Designation of a Different Lending Office	65
SECTION 4 GUARANTY	65
Section 4.1 The Guaranty	65
Section 4.2 Obligations Unconditional	66
Section 4.3 Reinstatement	67
Section 4.4 Certain Additional Waivers	67
Section 4.5 Remedies	67
Section 4.6 Rights of Contribution	68
Section 4.7 Guarantee of Payment; Continuing Guarantee	68
Section 4.8 Keepwell	68
SECTION 5 CONDITIONS PRECEDENT	68
Section 5.1 [Reserved.]	68
Section 5.2 Conditions to Each Credit Extension (Revolving Loans; Term Loan)	68
SECTION 6 REPRESENTATIONS AND WARRANTIES	69
Section 6.1 Organization; Requisite Power and Authority; Qualification	69
Section 6.2 Equity Interests and Ownership	69
Section 6.3 Due Authorization	69
Section 6.4 No Conflict	69

Section 6.5	Governmental Consents	69
Section 6.6	Binding Obligation	70
Section 6.7	Financial Statements	70
Section 6.8	No Material Adverse Effect; No Default	71
Section 6.9	Tax Matters	71
Section 6.10	Properties	71
Section 6.11	Environmental Matters	71
Section 6.12	No Defaults	72
Section 6.13	No Litigation or other Adverse Proceedings	72
Section 6.14	Information Regarding Parent and its Subsidiaries	72
Section 6.15	Governmental Regulation	72
Section 6.16	Employee Matters	73
Section 6.17	Pension Plans	74
Section 6.18	Solvency	74
Section 6.19	Compliance with Laws	74
Section 6.20	Disclosure	74
Section 6.21	Insurance	75
Section 6.22	Pledge and Security Agreement	75
SECTION 7 AFFIRMATIVE COVENANTS		75
Section 7.1	Financial Statements and Other Reports	75
Section 7.2	Existence	78
Section 7.3	Payment of Taxes and Claims	78
Section 7.4	Maintenance of Properties	78
Section 7.5	Insurance	79
Section 7.6	Inspections	79
Section 7.7	Compliance with Laws	79
Section 7.8	Use of Proceeds	79
Section 7.9	Environmental Matters	80
Section 7.10	Additional Real Estate Assets	80
Section 7.11	Pledge of Personal Property Assets	81
Section 7.12	Books and Records	82
Section 7.13	Additional Subsidiaries	82
Section 7.14	Primary Treasury Management	83
SECTION 8 NEGATIVE COVENANTS		83
Section 8.1	Indebtedness	83
Section 8.2	Liens	84
Section 8.3	No Further Negative Pledges	86
Section 8.4	Restricted Payments	87
Section 8.5	Burdensome Agreements	88
Section 8.6	Investments	88
Section 8.7	Use of Proceeds	89
Section 8.8	Financial Covenants	89
Section 8.9	[Reserved.]	90
Section 8.10	Fundamental Changes; Disposition of Assets; Acquisitions	90
Section 8.11	Transactions with Affiliates and Insiders	91
Section 8.12	[Reserved.]	91
Section 8.13	Conduct of Business	91
Section 8.14	Fiscal Year	91
Section 8.15	Amendments to Organizational Agreements	92
Section 8.16	Management Fees	92

SECTION 9	EVENTS OF DEFAULT; REMEDIES; APPLICATION OF FUNDS	92
Section 9.1	Events of Default	92
Section 9.2	Remedies	94
Section 9.3	Application of Funds	95
SECTION 10	AGENCY	96
Section 10.1	Appointment and Authority	96
Section 10.2	Rights as a Lender	97
Section 10.3	Exculpatory Provisions	97
Section 10.4	Reliance by Administrative Agent	98
Section 10.5	Delegation of Duties	98
Section 10.6	Resignation of Administrative Agent	98
Section 10.7	Non-Reliance on Administrative Agent and Other Lenders	99
Section 10.8	No Other Duties, etc.	99
Section 10.9	Administrative Agent May File Proofs of Claim	100
Section 10.10	Collateral Matters	100
Section 10.11	Recovery of Erroneous Payments	101
SECTION 11	MISCELLANEOUS	102
Section 11.1	Notices; Effectiveness; Electronic Communications	102
Section 11.2	Expenses; Indemnity; Damage Waiver	103
Section 11.3	Set-Off	105
Section 11.4	Amendments and Waivers	106
Section 11.5	Successors and Assigns	108
Section 11.6	Independence of Covenants	112
Section 11.7	Survival of Representations, Warranties and Agreements	112
Section 11.8	No Waiver; Remedies Cumulative	112
Section 11.9	Marshalling; Payments Set Aside	112
Section 11.10	Severability	112
Section 11.11	Obligations Several; Independent Nature of Lenders' Rights	113
Section 11.12	Headings	113
Section 11.13	Applicable Laws	113
Section 11.14	WAIVER OF JURY TRIAL	113
Section 11.15	Confidentiality	114
Section 11.16	Usury Savings Clause	114
Section 11.17	Counterparts; Integration; Effectiveness	115
Section 11.18	No Advisory of Fiduciary Relationship	115
Section 11.19	Electronic Execution of Assignments and Other Documents	116
Section 11.20	USA PATRIOT Act	116
Section 11.21	Acknowledgement and Consent to Bail-In of Affected Financial Institutions	116
Section 11.22	Certain ERISA Matters	116
Section 11.23	Acknowledgement Regarding Any Supported QFCs	117

Appendices

Appendix A	Revolving Commitments and Revolving Commitment Percentages
Appendix B	Notice Information
Appendix C	Outstanding Amount of Term Loan
Appendix D	Outstanding Amount of Delayed Draw Term Loan, Delayed Draw Term Loan Commitments and Delayed Draw Term Loan Commitment Percentages

Schedules

Schedule 6.10(b)	Real Estate Assets
Schedule 6.14	Name, Jurisdiction and Tax Identification Numbers of Borrower and its Subsidiaries
Schedule 6.21	Insurance Coverage
Schedule 8.1	Existing Indebtedness
Schedule 8.2	Existing Liens
Schedule 8.6	Existing Investments

Exhibits

Exhibit 1.1	Form of Secured Party Designation Notice
Exhibit 2.1	Form of Funding Notice
Exhibit 2.3	Form of Issuance Notice
Exhibit 2.5-1	Form of Amended and Restated Revolving Loan Note
Exhibit 2.5-2	Form of Amended and Restated Swingline Note
Exhibit 2.5-3	Form of Amended and Restated Term Loan Note
Exhibit 2.5-4	Form of Amended and Restated Delayed Draw Term Loan Note
Exhibit 3.3	Forms of U.S. Tax Compliance Certificates (Forms 1 – 4)
Exhibit 7.1(c)	Form of Compliance Certificate
Exhibit 7.13	Form of Guarantor Joinder Agreement
Exhibit 11.5	Form of Assignment Agreement

CREDIT AGREEMENT

This CREDIT AGREEMENT, dated as of December 15, 2015 (as amended in its entirety pursuant to that certain Tenth Amendment to Credit Agreement and Joinder, dated as of November 3, 2021, and as further amended, restated, supplemented, increased, extended, supplemented or otherwise modified from time to time, this "Agreement"), is entered into by and among BURGERFI INTERNATIONAL, INC., a Delaware corporation ("Parent"), PLASTIC TRIPOD, INC., a Delaware corporation ("PTI") and together with Parent, each a "Borrower" and collectively, the "Borrowers"), certain Subsidiaries of Parent from time to time party hereto, as Guarantors, the Lenders from time to time party hereto, and REGIONS BANK, as administrative agent (in such capacity, "Administrative Agent") and collateral agent (in such capacity, "Collateral Agent").

RECITALS:

WHEREAS, prior to the Tenth Amendment Effective Date and pursuant to the terms and conditions of this Agreement as in effect at the applicable time, PTI requested and the Lenders provided revolving credit, term loan and delayed draw term loan facilities for the purposes and on the terms and conditions set forth in this Agreement as in effect at the applicable time; and

WHEREAS, (a) as a result of the ACFP Acquisition, Parent acquired from Cardboard Box, LLC, a Delaware limited liability company ("Cardboard Box"), 100% of the Equity Interests of Hot Air Inc., a Delaware corporation ("Hot Air"), and its Subsidiaries, including PTI, and (b) contemporaneously with the ACFP Acquisition and pursuant to the Tenth Amendment (i) Parent and its Subsidiaries not party to the Credit Documents joined the Credit Documents as a co-borrower under this Agreement and as Guarantors, respectively, and (ii) this Agreement was amended in its entirety to read in the manner set forth herein.

NOW, THEREFORE, in consideration of these premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

Section 1 DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following terms used herein, including in the introductory paragraph, recitals, exhibits and schedules hereto, shall have the following meanings:

"ACFP Acquisition" means the transactions consummated on the Tenth Amendment Effective Date resulting in all of the Equity Interests of Hot Air being held by Parent in accordance with the terms of the ACFP Acquisition Documents.

"ACFP Acquisition Documents" means the ACFP Purchase Agreement and any other agreements, instruments and documents executed in connection therewith.

"ACFP Management" means ACFP Management, Inc., a Delaware corporation.

"ACFP Purchase Agreement" means the Amended and Restated Stock Purchase Agreement, dated November 3, 2021, by and among Parent, Hot Air and Cardboard Box providing for the ACFP Acquisition.

"Acquisition" means, with respect to any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of (a) all or any substantial portion of the property of another Person, or any division, line of business or other business unit of another Person or (b) at least a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise.

“Administrative Agent” means as defined in the introductory paragraph hereto, together with its successors and assigns.

“Administrative Questionnaire” means an administrative questionnaire provided by the Lenders in a form supplied 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 any Credit Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, whether pending, threatened in writing against any Credit Party or any of its Subsidiaries or any material property of any Credit Party or any of its Subsidiaries.

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

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agent” means each of the Administrative Agent and the Collateral Agent.

“Aggregate Revolving Commitments” means the Revolving Commitments of all the Lenders. The aggregate principal amount of the Aggregate Revolving Commitments in effect on the Tenth Amendment Effective Date is FOUR MILLION DOLLARS (\$4,000,000).

“Agreement” means as defined in the introductory paragraph hereto.

“ALTA” means American Land Title Association.

“Applicable Laws” means all applicable laws, including all applicable provisions of constitutions, statutes, rules, ordinances, regulations and orders of all Governmental Authorities and all orders, rulings, writs and decrees of all courts, tribunals and arbitrators.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Applicable Rate” means: (a) with respect to the Loans (other than the Delayed Draw Term Loans) and the Letter of Credit Fees, (i) from the Tenth Amendment Effective Date through June 15, 2023, 4.75% per annum and (ii) from and after June 16, 2023, 6.75% per annum; and (b) with respect to the Commitment Fee, 0.375% per annum.

“Asset Sale” means a sale, lease, sale and leaseback, assignment, conveyance, exclusive license (as licensor), transferor other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of any Credit Party or any of its Subsidiaries’ businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, created, leased or licensed, including the Equity Interests of any Subsidiary of any Borrower, other than (a) dispositions of surplus, obsolete or worn out property or property no longer used or useful in the business of any Borrower and its Subsidiaries, whether now owned or hereafter

acquired, in the ordinary course of business; (b) dispositions of inventory and goods sold, and Intellectual Property (or other general intangibles) licensed, in the ordinary course of business; (c) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (d) dispositions of Cash Equivalents in the ordinary course of business; (e) licenses, sublicenses, leases or subleases granted to any third parties in arm's-length commercial transactions in the ordinary course of business that do not interfere in any material respect with the business of any Borrower or any of its Subsidiaries; (f) dispositions of property to any Borrower or any other Credit Party; (g) the unwinding of any Swap Obligations; (h) the lapse or abandonment of Intellectual Property rights in the ordinary course of business; and (i) Asset Sales in the aggregate not exceeding \$100,000 during any Fiscal Year.

“Assignment Agreement” means an assignment agreement entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.5(b)) and accepted by the Administrative Agent, in substantially the form of Exhibit 11.5 or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent.

“Attributable Principal Amount” means (a) in the case of Capital Leases, the amount of Capital Lease obligations determined in accordance with GAAP, (b) in the case of Synthetic Leases, an amount determined by capitalization of the remaining lease payments thereunder as if it were a Capital Lease determined in accordance with GAAP, (c) in the case of Securitization Transactions, the outstanding principal amount of such financing, after taking into account reserve amounts and making appropriate adjustments, determined by the Administrative Agent in its reasonable judgment and (d) in the case of Sale and Leaseback Transactions, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

“Authorized Officer” means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), chief financial officer or treasurer and, solely for purposes of making the certifications required under Section 7.13(b)(ii)(A) and (B), any secretary or assistant secretary.

“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, rule, regulation 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).

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

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

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

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Internal Revenue Code or (c) any Person the underlying assets of which are deemed to constitute the “plan assets” of any such “employee benefit plan” or “plan” for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code.

“Borrower” and “Borrowers” means as defined in the introductory paragraph hereto.

“Borrowing” means a borrowing of Revolving Loans, Swingline Loans, the Term Loan or the Delayed Draw Term Loan, as appropriate.

“Business Day” means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

“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.

“Cardboard Box” means as defined in the recitals hereto.

“Cash Collateralize” means, to pledge and deposit with or deliver to the Administrative Agent, the Issuing Bank or the Swingline Lender, as applicable, as collateral for the Letter of Credit Obligations or Swingline Loans, as applicable, or obligations of Lenders to fund participations in respect thereof, cash or deposit account balances or, if the Administrative Agent, the Issuing Bank or Swingline Lender, as applicable, may agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent, the Issuing Bank and/or Swingline Lender, as applicable. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means, as at any date of determination, any of the following: (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date; (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (c) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody’s; (d) certificates of deposit or bankers’ acceptances maturing within one (1) year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than \$500,000,000, and (iii) has the highest rating obtainable from either S&P or Moody’s.

“CFC” means any Person that is a “controlled foreign corporation” as defined in Section 957 of the Code.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III and (iii) all requests, rules, guidelines or directives issued by a Governmental Authority in connection with a Lender’s submission or re-submission of a capital plan under 12 C.F.R. § 225.8 or a Governmental Authority’s assessment thereof shall in each case be deemed to be a “Change in Law” shall in each case be deemed to be a “Change in Law” regardless of the date enacted, adopted or issued.

“Change of Control” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than the Permitted Investors becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a “person” or “group” shall be deemed to have “beneficial ownership” of all Equity Interests that such “person” or “group” has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of more than thirty percent (30%) of the Equity Interests of Parent entitled to vote in the election of members of the board of directors (or equivalent governing body) of Parent; or

(b) (i) Parent shall cease to own and control, of record and beneficially, directly 100% of the outstanding Equity Interests of BurgerFi International, LLC, (ii) Parent shall cease to own and control of record and beneficially, directly 100% of the outstanding Equity Interests of Hot Air, (iii) BurgerFi International, LLC shall cease to own and control of record and beneficially, directly 100% of the outstanding Equity Interests of BF Restaurant Management, LLC, (iv) BurgerFi International, LLC shall cease to own and control of record and beneficially, directly 100% of the outstanding Equity Interests of BurgerFi IP, LLC or (v) Hot Air shall cease to own and control, of record and beneficially, directly 100% of the outstanding Equity Interests of PTI.

“Closing Date” means December 15, 2015.

“Collateral” means the collateral identified in, and at any time covered by, the Collateral Documents.

“Collateral Agent” means as defined in the introductory paragraph hereto, together with its successors and assigns.

“Collateral Documents” means the Pledge and Security Agreement, the Mortgages (if any), and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to the Collateral Agent, for the benefit of the holders of the Obligations, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

“Commitment Fee” means as defined in Section 2.10(a).

“Commitments” means the Revolving Commitments, the Term Loan Commitments and the Delayed Draw Term Loan Commitments.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

“Compliance Certificate” means a Compliance Certificate substantially in the form of Exhibit 7.1(c).

“Compliance Date” means the first date after March 31, 2022 on which a Compliance Certificate is delivered to the Administrative Agent pursuant to Section 7.1(c) demonstrating to the reasonable satisfaction of the Administrative Agent that as of the date such Compliance Certificate is delivered no Default or Event of Default has occurred.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Capital Expenditures” means, for any period, for Parent and its Subsidiaries on a consolidated basis, all capital expenditures, as determined in accordance with GAAP; provided, however, that Consolidated Capital Expenditures shall (a) be computed net of any tenant allowances that are either (i) directly paid for by the landlord or other applicable third party or (ii) paid for by a Credit Party to the extent that the applicable Credit Party has received in cash reimbursement of such expenditure(s), and (b) not include (i) expenditures made with proceeds of any Involuntary Disposition to the extent such expenditures are used to purchase property that is the same as or similar to the property subject to such Involuntary Disposition or (ii) Permitted Acquisitions.

“Consolidated EBITDA” means, for any period, for Parent and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period plus the following, without duplication, to the extent deducted in calculating such Consolidated Net Income: (a) Consolidated Interest Charges for such period; (b) the provision for federal, state, local and foreign income taxes payable by Parent and its Subsidiaries for such period; (c) depreciation and amortization expense for such period; (d) pre-opening costs related to new restaurant location openings for such period in aggregate amount not to exceed \$350,000 on average with respect to each new restaurant location for such period; (e) [reserved]; (f) non-cash deferred rent expense in such period; (g) non-cash stock-based compensation expense in such period; (h) extraordinary, non-recurring, unusual and exceptional losses, charges and expenses (or minus extraordinary, non-recurring, unusual and exceptional income items) reducing (or in the case of extraordinary non-recurring, unusual and exceptional income, increasing) such Consolidated Net Income in an aggregate amount not to exceed \$500,000 for any four (4) Fiscal Quarter period; (i) [reserved]; (j) losses, charges and expenses relating to personnel relocation, signing, retention and completion bonuses, restructuring, redundancy, severance, termination, settlement or judgment, in an aggregate amount not to exceed \$350,000 for any four (4) Fiscal Quarter period; (k) losses, charges and expenses (or minus gains or income) relating to consolidation or closing of restaurants or attributable to disposed or discontinued operations in an aggregate amount not to exceed (i) \$1,000,000 for any four (4) Fiscal Quarter period or (ii) \$600,000 for any restaurant individually; (l) [reserved]; (m) any other non-cash losses, charges and expenses, including any write offs or write downs, reducing Consolidated Net Income for such period, excluding any such loss, charge or expense that represents an accrual or reserve for a cash expenditure for a future period; (n) [reserved]; (o) [reserved]; (p) with respect to any restaurant that is closed for renovations during such period, an amount equal to the restaurant-level EBITDA that such restaurant would have earned during the closure calculated by multiplying (x) the average daily restaurant-level EBITDA that such restaurant earned in the twelve (12) month period preceding the closure by (y) the number of days of the

closure, in an aggregate amount not to exceed \$60,000 for any restaurant; (q) [reserved]; (r) [reserved]; (s) [reserved]; (t) [reserved]; (u) [reserved], (v) any cash payments made in such period related to rent expense or rent payments that were deferred from a prior period in an aggregate amount not to exceed \$900,000 for the most recently ended four (4) Fiscal Quarter period; (w) the reasonable and documented fees and out-of-pocket expenses paid in cash in connection with the consummation of the Tenth Amendment and the ACFP Acquisition in an aggregate amount not to exceed \$5,000,000; (x) the reasonable and documented non-recurring legal fees and expenses and other reasonable and documented fees and out-of-pocket expenses in connection with any consummated, anticipated, unsuccessful or attempted acquisition undertaken by Parent and its Subsidiaries (other than the ACFP Acquisition), in each case paid in cash during the Fiscal Year ending on or about December 31, 2021, and (y) commencing with the Fiscal Year ended on or about December 31, 2022, (i) reasonable and documented non-recurring legal fees and expenses paid in cash and (ii) reasonable and documented fees and out-of-pocket costs paid in cash in connection with any consummated, anticipated, unsuccessful or attempted Permitted Acquisition and any related transaction permitted under this Agreement, in an aggregate amount for this clause (y) not to exceed \$1,500,000 for each Fiscal Year, minus any non-cash gains increasing Consolidated Net Income for such period resulting from changes in their value of warrant liability.

“Consolidated EBITDAR” means, for any period, for Parent and its Subsidiaries on a consolidated basis, an amount equal to (a) Consolidated EBITDA for such period plus (b) Consolidated Rental Payments made in cash for such period.

“Consolidated Excess Cash Flow” means, for any period, for Parent and its Subsidiaries, an amount equal to the sum, without duplication, of (a) Consolidated EBITDA, minus (b) Consolidated Capital Expenditures paid in cash during such period, minus (c) the cash portion of Consolidated Interest Charges during such period, minus (d) Consolidated Taxes paid in cash during such period, minus (e) Consolidated Scheduled Funded Debt Payments paid in cash during such period, minus (f) to the extent added back to arrive at Consolidated EBITDA for such period, the amount of losses or expenses in clauses (h), (j), (k), (w), (x) and (y) of the definition of “Consolidated EBITDA”, minus (g) Restricted Payments made in cash to Persons other than a Credit Party pursuant to Section 8.4 (c) and (f) during such period, minus (h) the aggregate consideration paid in cash related to Permitted Acquisitions (in each case, other than to the extent financed with the proceeds of Indebtedness) during such period, minus (i) permanent repayments of Indebtedness permitted hereunder (other than (A) mandatory prepayments of Loans under Section 2.11(c) and (B) voluntary prepayments of the Loans under Section 2.11(a)) made in cash by a Borrower and its Subsidiaries during such period, but only to the extent that the Indebtedness so prepaid by its terms cannot be reborrowed or redrawn and such prepayments do not occur in connection with any refinancing of all or any portion of such Indebtedness, minus (j) pre-opening costs related to new restaurant location openings for such period in an aggregate amount not to exceed \$350,000 on average with respect to each new restaurant location for such period, in each case on a consolidated basis determined in accordance with GAAP.

“Consolidated Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) the sum of (i) Consolidated EBITDAR for the period of the four Fiscal Quarters most recently ended less (ii) Consolidated Maintenance Capital Expenditures paid in cash during such period less (iii) Consolidated Taxes paid in cash during such period less (iv) the amount of Restricted Payments made by the Borrowers during such period, all as determined in accordance with GAAP, to (b) Consolidated Fixed Charges for the period of the four Fiscal Quarters most recently ended; provided that the calculation of Consolidated Fixed Charge Coverage Ratio shall exclude any Consolidated Refurbishment Capital Expenditures paid in cash during such period in an aggregate amount not to exceed \$1,000,000 for any four (4) Fiscal Quarter period.

“Consolidated Fixed Charges” means, for any period, for Parent and its Subsidiaries on a consolidated basis, an amount equal to the sum of (a) the cash portion of Consolidated Interest Charges for such period plus (b) Consolidated Scheduled Funded Debt Payments for such period plus (c) Consolidated Rental Payments made in cash during such period, all as determined in accordance with GAAP.

“Consolidated Funded Debt” means Funded Debt of Parent and its Subsidiaries on a consolidated basis determined in accordance with GAAP.

“Consolidated Growth Capital Expenditures” means, for any period, any Consolidated Capital Expenditures for such period relating to the construction or opening after the Closing Date of new restaurants owned or operated by a Borrower or any of its Subsidiaries.

“Consolidated Interest Charges” means, for any period, for Parent and its Subsidiaries on a consolidated basis, an amount equal to the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, plus (b) the portion of rent expense with respect to such period under Capital Leases that is treated as interest in accordance with GAAP, plus (c) the implied interest component of Synthetic Leases with respect to such period.

“Consolidated Maintenance Capital Expenditures” means, for any period, any Consolidated Capital Expenditures for such period that are neither Consolidated Growth Capital Expenditures nor Consolidated Refurbishment Capital Expenditures.

“Consolidated Net Funded Debt” means, as of any date of determination, the sum of (a) the Consolidated Funded Debt of Parent and its Subsidiaries minus (b) the Outstanding Amount of the Delayed Draw Term Loan.

“Consolidated Net Income” means, for any period, for Parent and its Subsidiaries on a consolidated basis, the net income of Parent and its Subsidiaries (excluding extraordinary gains) for that period, as determined in accordance with GAAP.

“Consolidated Refurbishment Capital Expenditures” means, for any period, any Consolidated Capital Expenditures for such period incurred for the replacement of coal-fired ovens with newer model coal-and-gas fired ovens located at restaurants owned or operated by PTI or any of its Subsidiaries as of the Tenth Amendment Effective Date.

“Consolidated Rental Payments” means, for any period, for Parent and its Subsidiaries on a consolidated basis, the aggregate amount of third party rental payments paid in cash with respect to real property leases relating to any restaurant during such period net of (a) any cash payments received from subtenants and (b) any cash payments made in such period related to rent expense or rent payments that were deferred from a prior period in an aggregate amount not to exceed \$900,000 for the most recently ended four (4) Fiscal Quarter period.

“Consolidated Scheduled Funded Debt Payments” means for any period for Parent and its Subsidiaries on a consolidated basis, the sum of all scheduled payments of principal on Consolidated Funded Debt, as determined in accordance with GAAP. For purposes of this definition, “scheduled payments of principal” (a) shall be deemed to include the Attributable Principal Amount in respect of Capital Leases, Securitization Transactions and Synthetic Leases and (b) shall not include any voluntary prepayments or mandatory prepayments required pursuant to Section 2.11.

“Consolidated Senior Lease-Adjusted Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Net Funded Debt as of such date plus the product of Consolidated Rental Payments made in cash for the period of the four (4) consecutive Fiscal Quarters ending on such date multiplied by eight (8) to (b) Consolidated EBITDAR for the period of such four Fiscal Quarters.

“Consolidated Taxes” means, for any period, for Parent and its Subsidiaries on a consolidated basis, the aggregate of all taxes, as determined in accordance with GAAP.

“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.

“Credit Date” means the date of a Credit Extension.

“Credit Document” means any of this Agreement, each Note, each Issuer Document, the Collateral Documents, any Guarantor Joinder Agreement, the Fee Letter, any documents or certificates executed by any Credit Party in favor of the Issuing Bank relating to Letters of Credit, and, to the extent evidencing or securing the Obligations, all other documents, instruments or agreements executed and delivered by any Credit Party for the benefit of any Agent, the Issuing Bank or any Lender in connection herewith or therewith, and including for the avoidance of doubt, any Guarantor Joinder Agreement (but specifically excluding any Secured Swap Agreements and Secured Treasury Management Agreements).

“Credit Extension” means the making of a Loan or the issuing of a Letter of Credit.

“Credit Parties” means, collectively, each Borrower and each Guarantor.

“Debt Transaction” means, with respect to any Borrower or any of its Subsidiaries, any sale, issuance, placement, assumption or guaranty of Funded Debt, except for Funded Debt permitted to be incurred pursuant to Section 8.1.

“Debtor Relief Laws” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“Default Rate” means an interest rate equal to the Applicable Rate plus two percent (2%) per annum.

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such

writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Bank, any Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrowers, the Administrative Agent or the Issuing Bank or Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or any Borrower, to confirm in writing to the Administrative Agent and such Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) upon delivery of written notice of such determination to the Borrowers, the Issuing Bank, each Swingline Lender and each Lender.

"Delayed Draw Term Loan" means the delayed draw term loan made, or to be made, to the Borrowers by the Delayed Draw Term Loan Lenders pursuant to Section 2.1(d).

"Delayed Draw Term Loan Commitment" means, for each Delayed Draw Term Loan Lender, the commitment of such Lender to make a portion of the Delayed Draw Term Loan hereunder. The Delayed Draw Term Loan Commitment of each Lender as of the Fifth Amendment Effective Date is set forth on Appendix D. The aggregate principal amount of the Delayed Draw Term Loan Commitments of all of the Delayed Draw Term Loan Lenders as in effect on the Fifth Amendment Effective Date was TEN MILLION DOLLARS (\$10,000,000); provided that it is understood and agreed that the Delayed Draw Term Loan was fully advanced as of the Tenth Amendment Effective Date. The Outstanding Amount of the Delayed Draw Term Loan as of the Tenth Amendment Effective Date is \$10,000,000.00 as set forth on Appendix D.

"Delayed Draw Term Loan Commitment Percentage" means, with respect to any Delayed Draw Term Loan Lender at any time, the percentage of the total outstanding principal balance of the Delayed Draw Term Loan represented by the outstanding principal balance of such Lender's Delayed Draw Term Loan. The Delayed Draw Term Loan Commitment Percentage of each Delayed Draw Term Loan Lender as of the Fifth Amendment Effective Date is set forth opposite the name of such Lender on Appendix D.

"Delayed Draw Term Loan Lender" means a Person with a Delayed Draw Term Loan Commitment or that holds a Delayed Draw Term Loan, together with its successors and assigns.

“Delayed Draw Term Loan Note” means a promissory note made by the Borrowers in favor of a Delayed Draw Term Loan Lender evidencing the portion of the Delayed Draw Term Loan made by such Delayed Draw Term Loan Lender, substantially in the form attached as Exhibit 2.5-4, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Disqualified Equity Interests” means any Equity Interest that, 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, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the date that is 180 days after the Maturity Date, or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interest referred to in clause (a) above, in each case at any time prior to the date that is 180 days after the Maturity Date, except, in the case of clauses (a) and (b), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior payment in full of all Obligations (other than contingent indemnification or reimbursement Obligations to the extent no claim giving rise thereto has been asserted).

“Dollars” and the sign “\$” mean the lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary organized under the laws of the United States, any state thereof or the District of Columbia, other than (i) a Subsidiary of a Borrower all or substantially all of the assets of which consist of Equity Interests of one or more CFC’s or indebtedness of such CFC’s or (ii) a Subsidiary of a Foreign Subsidiary.

“Earn Out Obligations” means, with respect to an Acquisition, all obligations of any Borrower or any Subsidiary to make earn out or other contingency payments pursuant to the documentation relating to such Acquisition. The amount of any Earn Out Obligations at the time of determination shall be the aggregate amount, if any, of such Earn Out Obligations that are required at such time under GAAP to be recognized as liabilities on the consolidated balance sheet of the Borrowers.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.5(b), subject to any consents and representations, if any as may be required therein.

“Environmental Claim” means any known investigation, written notice, notice of violation, written claim, action, suit, proceeding, written demand, abatement order or other written order or directive (conditional or otherwise), by any 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 human health, safety, natural resources or the environment.

“Environmental Laws” means any and all current or future federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other written requirements of Governmental Authorities relating to (a) any Hazardous Materials Activity; (b) the generation, use, storage, transportation or disposal of Hazardous Materials; or (c) protection of human health and the environment from pollution, in any manner applicable to any Credit Party or any of its Subsidiaries or their respective Facilities.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of a Borrower, any other Credit Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) 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 any Borrower or any Subsidiary assumed liability with respect to any of the foregoing.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended to the date hereof and from time to time hereafter, any successor statute, and the regulations thereunder.

“ERISA Affiliate” means, as applied to any Person: (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (c) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member.

“ERISA Event” means: (a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which notice to the PBGC has been waived by regulation); (b) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code), the failure to make by its due date any minimum required contribution or any required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make by its due date any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d)

the withdrawal from any Pension Plan with two (2) or more contributing sponsors or the termination of any such Pension Plan, in either case resulting in material liability pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition reasonably likely to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA, each case reasonably likely to result in material liability; (g) the withdrawal of any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if such withdrawal is reasonably likely to result in material liability, or the receipt by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it is in "critical" or "endangered" status within the meaning of Section 305 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA, if such reorganization, insolvency or termination is reasonably likely to result in material liability; (h) the imposition of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Pension Plan if such fines, penalties, taxes or related charges are reasonably likely to result in material liability; (i) the assertion of a material claim (other than routine claims for benefits and funding obligations in the ordinary course) against any Pension Plan other than a Multiemployer Plan or the assets thereof, or against any Person in connection with any Pension Plan such Person sponsors or maintains reasonably likely to result in material liability; (j) receipt from the Internal Revenue Service of a final written determination of the failure of any Pension Plan intended to be qualified under Section 401(a) of the Internal Revenue Code to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (k) the imposition of a lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) or 4068 of ERISA.

"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" means each of the conditions or events set forth in Section 9.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"Excluded Property" means, with respect to each Credit Party (a) any disbursement deposit account the funds in which are used solely for the payment of salaries and wages, employee benefits and workers' compensation, (b) any personal property (including, without limitation, motor vehicles) in respect of which perfection of a Lien is not (i) governed by the UCC or (ii) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office, (c) the Equity Interests of any direct Foreign Subsidiary of any Borrower or any other Credit Party to the extent not required to be pledged to secure the Obligations pursuant to Section 7.11(a), (d) any property which, subject to the terms of Section 8.3, is subject to a Lien of the type described in Section 8.2(k) pursuant to documents which prohibit such Credit Party from granting any other Liens in such property, (e) any property to the extent that the grant of a security interest therein would violate Applicable Laws, require a consent not obtained of any Governmental Authority, or constitute a breach of or default under, or result in the termination of or require a consent not obtained under, any contract, lease, license or other agreement evidencing or giving rise to such property, or result in the invalidation thereof or provide any party thereto with a right of termination (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the applicable UCC or any other Applicable Law or principles of equity), (f) any certificates, licenses and other authorizations issued by any Governmental

Authority to the extent that Applicable Laws prohibit the granting of a security interest therein, (g) any deposit accounts established solely for the purposes of funding (i) tax accounts, including, without limitation, sales tax accounts, (ii) escrow accounts, (iii) fiduciary or trust accounts and any other deposit account with an average daily aggregate cash balance of less than \$75,000 maintained by any Credit Party, (h) any “intent to use” trademark application or intent-to-use service mark application, solely during the period in which the grant of a security interest therein would impair the validity or enforceability of, or render void or voidable or result in the cancellation of the applicable Credit Party’s right, title or interest in, such intent-to-use trademark application or intent-to-use service mark application or any trademark issued as a result of such use trademark application or intent-to-use service mark application under applicable federal law, after which period such application shall be automatically subject to the security interest granted herein and deemed to be included in the Collateral, (i) motor vehicles and other assets subject to certificates of title, (j) any asset or property to the extent a security interest therein would result in (i) material adverse tax consequences or (ii) material adverse regulatory consequences (including, without limitation, as a result of the operation of Section 956 of the Internal Revenue code), in each case as reasonably determined by the Borrowers and the Administrative Agent, (k) any specifically identified asset with respect to which the Administrative Agent has determined in its discretion that the burden or cost of providing a Lien in such asset is excessive in view of the benefits to be obtained by the Administrative Agent and the Lenders, (l) liquor licenses (to the extent that the grant of a security interest therein would violate Applicable Laws) and (m) proceeds and products of any and all of the foregoing excluded property described in clauses (a) through (l) above only to the extent such proceeds and products would constitute property or assets of the type described in clauses (a) through (l) above; provided, however, that the security interest granted to the Collateral Agent under the Pledge and Security Agreement or any other Credit Document shall attach immediately to any asset of any Obligor (as defined in the Pledge and Security Agreement) at such time as such asset ceases to meet any of the criteria for “Excluded Property” described in any of the foregoing clauses (a) through (l) above.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant under a Credit Document by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act (or the application or official interpretation thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 4.8 hereof and any and all guarantees (or any other “keepwell, support or other agreement” for the benefit of such Guarantor) of such Guarantor’s Swap Obligations by other Credit Parties) at the time the Guaranty of such Guarantor, or grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Agreement, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Agreements for which such Guaranty or security interest becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrowers under Section 2.17 or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.3, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office), (c) Taxes attributable to such Recipient’s failure to comply with Section 3.3(f) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Facility” means any real property including all buildings, fixtures or other improvements located on such real property now, hereafter or heretofore owned, leased, operated or used by any Borrower or any of its Subsidiaries or any of their respective predecessors.

“FATCA” means Sections 1471 through 1474 of the Internal Revenue 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 and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.

“Federal Funds Effective Rate” means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher one one-hundredth of one percent (1/100 of 1%)) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to Regions Bank or any other Lender selected by the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means that certain letter agreement dated as of the Closing Date between PTI and Regions Bank.

“Fifth Amendment” means that certain Forbearance Agreement and Fifth Amendment to Credit Agreement by and among the PTI, the Guarantors party thereto, the Lenders and the Agent dated as of the Fifth Amendment Effective Date.

“Fifth Amendment Effective Date” means March 25, 2020.

“Financial Officer Certification” means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Parent that such financial statements fairly present, in all material respects, the financial condition of Parent and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year.

“Fiscal Year” means the fiscal year of Parent and its Subsidiaries ending on or about December 31 of each calendar year.

“Flood Hazard Property” means any Real Estate Asset subject to a mortgage or deed of trust in favor of the Collateral Agent, for the benefit of the holders of the Obligations, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

“Foreign Lender” means (a) with respect to a Borrower that is a U.S. Person, a Lender that is not a U.S. Person, and (b) with respect to a Borrower that is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the Issuing Bank, such Defaulting Lender’s Revolving Commitment Percentage of the outstanding Letter of Credit Obligations with respect to Letters of Credit issued by the Issuing Bank other than Letter of Credit Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Commitment Percentage of outstanding Swingline Loans made by such Swingline Lender other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funded Debt” means, as to any Person at a particular time, without duplication, all of the following:

(a) all obligations for borrowed money, whether current or long-term (including the Obligations hereunder), and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business) and any Earn Out Obligations, in each case, to the extent recognized as a liability on the balance sheet of Parent and its Subsidiaries in accordance with GAAP;

(c) all obligations under letters of credit that have been drawn but not reimbursed (including standby and commercial), bankers’ acceptances and similar instruments (including bank guaranties);

(d) the Attributable Principal Amount of Capital Leases, Synthetic Leases and Securitization Transactions;

(e) all preferred stock and comparable equity interests providing for mandatory redemption, sinking fund or other like payments, in each case, prior to the date that is 91 days after the Maturity Date;

(f) all Funded Debt of others secured by (or for which the holder of such Funded Debt has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;

(g) all Guarantees in respect of Funded Debt of another Person; and

(h) Funded Debt of any partnership or joint venture or other similar entity in which such Person is a general partner or joint venturer, and, as such, has personal liability for such obligations, but only to the extent there is recourse to such Person for payment thereof.

For purposes hereof, the amount of Funded Debt shall be determined (x) based on the outstanding principal amount in the case of borrowed money indebtedness under clause (a) and purchase money indebtedness and the deferred purchase obligations under clause (b), and (y) based on the amount of Funded Debt that is the subject of the Guarantees in the case of Guarantees under clause (f).

“Funding Notice” means a notice substantially in the form of Exhibit 2.1.

“GAAP” means, subject to the limitations on the application thereof set forth in Section 1.2, accounting principles generally accepted in the United States in effect as of the date of determination thereof.

“Governmental Acts” means any act or omission, whether rightful or wrongful, of any present or future *de jure* or *de facto* government or Governmental Authority.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank and any group or body charged with setting financial accounting or regulatory capital rules or standards).

“Governmental Authorization” means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranteed Obligations” means as defined in Section 4.1.

“Guarantor Joinder Agreement” means a guarantor joinder agreement substantially in the form of Exhibit 7.13 delivered by a Domestic Subsidiary of any Credit Party pursuant to Section 7.13.

“Guarantors” means (a) each Person identified as either an “Existing Guarantor” or a “Joining Guarantor” on the signature pages to the Tenth Amendment, (c) each other Person that joins as a Guarantor pursuant to Section 7.13, (d) with respect to (i) Secured Swap Obligations, (ii) Secured Treasury Management Obligations, and (iii) Swap Obligations of a Specified Credit Party (determined before giving effect to Sections 4.1 and 4.8) under the Guaranty hereunder, each Borrower, and (e) their successors and permitted assigns.

“Guaranty” means the Guarantee made by the Guarantors in favor of the Administrative Agent, the Lenders and the other holders of the Obligations pursuant to Section 4.

“Hazardous Materials” means any hazardous substances defined by the Comprehensive Environmental Response Compensation and Liability Act, 42 USCA 9601, et. seq., as amended (“CERCLA”), including any hazardous waste as defined under 40 C.F.R. Parts 260-270, gasoline or petroleum (including crude oil or any fraction thereof), asbestos or polychlorinated biphenyls.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, 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 Materials, and any corrective action or response action with respect to any of the foregoing.

“Highest Lawful Rate” means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under Applicable Laws relating to any Lender which are currently in effect or, to the extent allowed under such Applicable Laws, which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than Applicable Laws now allow.

“Hot Air” means as defined in the recitals hereto.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following:

- (a) all Funded Debt;
- (b) net obligations under any Swap Agreement;
- (c) all Guarantees in respect of Indebtedness of another Person; and
- (d) all Indebtedness of the types referred to in clauses (a) through (c) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Person.

For purposes hereof, the amount of Indebtedness shall be determined based on Swap Termination Value in the case of net obligations under any Swap Agreement under clause (b).

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitee” means as defined in Section 11.2(b).

“Initial Delayed Draw Term Loan” means as defined in Section 2.1(d).

“Intellectual Property” means all trademarks, service marks, trade names, copyrights, patents, patent rights, franchises related to intellectual property, licenses related to intellectual property and other intellectual property rights.

“Interest Payment Date” means the last Business Day of each calendar quarter, commencing on the first such date to occur after the Tenth Amendment Effective Date and the Maturity Date of such Loan.

“Internal Revenue Code” means the United States Internal Revenue Code of 1986.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“Involuntary Disposition” means the receipt by any Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation awards payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of its Property exceeding \$100,000 in the aggregate during any Fiscal Year.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance of such Letter of Credit).

“Issuance Notice” means an Issuance Notice substantially in the form of Exhibit 2.3.

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the Issuing Bank and the applicable Borrower (or any Subsidiary) or in favor of the Issuing Bank and relating to such Letter of Credit.

“Issuing Bank” means Regions Bank, in its capacity as issuer of Letters of Credit hereunder, together with its permitted successors and assigns in such capacity.

“Lender” means (a) each financial institution with a Term Loan Commitment or a Revolving Commitment or that holds Revolving Obligations or a Term Loan and (b) each Delayed Draw Term Loan Lender, in each case together with its successors and permitted assigns. The initial Lenders are identified on the signature pages hereto and are set forth on Appendix A.

“Letter of Credit” means any letter of credit issued hereunder.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Issuing Bank.

“Letter of Credit Borrowing” means any Credit Extension resulting from a drawing under any Letter of Credit that has not been reimbursed or refinanced as a Borrowing of Revolving Loans.

“Letter of Credit Fees” means as defined in Section 2.10(b)(i).

“Letter of Credit Obligations” means, at any time, the sum of (a) the maximum amount available to be drawn under Letters of Credit then outstanding, assuming compliance with all requirements for drawings referenced therein, plus (b) the aggregate amount of all drawings under Letters of Credit that have not been reimbursed by the Borrowers, including Letter of Credit Borrowings. For all purposes of this Agreement, (i) amounts available to be drawn under Letters of Credit will be calculated as provided in Section 1.3(i), and (ii) if a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Letter of Credit Sublimit” means, as of any date of determination, the lesser of (a) ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) and (b) the aggregate unused amount of the Revolving Commitments then in effect.

“Lien” means (a) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (b) in the case of Equity Interests, any purchase option, call or similar right of a third party with respect to such Equity Interests.

“Liquidity” means cash and Cash Equivalents (but only those identified in clauses (a) and (b) of the definition thereof) of the Credit Parties (a) on deposit in a deposit account or securities account owned by a Credit Party and located within the United States of America, (b) not controlled by or subject to any Lien (other than Permitted Liens), any other preferential arrangement in favor of any creditor, or any other restriction on its use, (c) to which the Credit Parties have unfettered and immediate access for payment of any Obligations that may then be due hereunder and (d) in a deposit account or securities account maintained at a Lender; provided, however, the term “Liquidity” shall not include any cash or Cash Equivalents held by any Credit Party (in a deposit account or otherwise) on behalf of any other Person.

“Loan” means any Revolving Loan, Swingline Loan, Term Loan or Delayed Draw Term Loan (as the case may be).

“Margin Stock” means as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

“Master Agreement” means as defined in the definition of “Swap Agreement”.

“Material Adverse Effect” means any effect, event, condition, action, omission, change or state of facts that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a material adverse effect with respect to (a) the business operations, properties, assets, or financial condition of Parent and its Subsidiaries taken as a whole; (b) the ability of the Credit Parties, taken as a whole, to fully and timely perform the Obligations; (c) the legality, validity, binding effect, or enforceability against a Credit Party of any Credit Document to which it is a party; or (d) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender or any holder of Obligations under any Credit Document.

“Maturity Date” means (i) with respect to the Term Loan, June 15, 2024, (ii) with respect to the Delayed Draw Term Loan, June 15, 2024 and (iii) with respect to the Revolving Loans, the earliest to occur of (a) June 15, 2024, (b) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.11(b), and (c) the date of the termination of the Revolving Commitments pursuant to Section 9.2.

“Moody’s” means Moody’s Investor Services, Inc., together with its successors.

“Mortgages” means the mortgages, deeds of trust or deeds to secure debt that purport to grant to the Collateral Agent, for the benefit of the holders of the Obligations, a security interest in the real property interest (including with respect to any improvements and fixtures) of any Credit Party in real property.

“Multiemployer Plan” means any “multiemployer plan” as defined in Section 3(37) of ERISA which is sponsored, maintained or contributed to by, or required to be contributed to by, any Credit Party or any of its ERISA Affiliates or with respect to which any Credit Party or any of its ERISA Affiliates previously sponsored, maintained or contributed to or was required to contribute to, and still has liability.

“Net Cash Proceeds” means the aggregate proceeds paid in cash or Cash Equivalents received by any Credit Party or any of its Subsidiaries in connection with any Asset Sale, Debt Transaction, or Involuntary Disposition, net of: (a) direct costs incurred or estimated costs, in connection therewith (including legal, accounting and investment banking fees and expenses, sales commissions and underwriting discounts); (b) estimated taxes paid or payable (including sales, use or other transactional taxes and any net marginal increase in income taxes) as a result thereof; (c) the amount required to retire any related Indebtedness; and (d) the amount of any reasonable reserve established in accordance with GAAP against any liabilities (i) associated with the assets that are the subject of such Asset Sale or Involuntary Disposition and (ii) retained by any Credit Party. For purposes hereof, “Net Cash Proceeds” includes any cash or Cash Equivalents received upon the disposition of any non-cash consideration received by any Credit Party or any of its Subsidiaries in any Asset Sale, Debt Transaction, or Involuntary Disposition.

“Ninth Amendment Effective Date” means April 1, 2021.

“Non-Consenting Lender” means as defined in Section 2.17.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” means a Revolving Loan Note, a Swingline Note, a Term Loan Note or a Delayed Draw Term Loan Note.

“Notice” means a Funding Notice or an Issuance Notice.

“Obligations” means all obligations, indebtedness and other liabilities of every nature of each Credit Party from time to time owed to the Agents, the Issuing Bank, the Lenders (including former Lenders in their capacity as such) or any of them, the Qualifying Swap Banks and the Qualifying Treasury Management Banks, under any Credit Document, Secured Swap Agreement or Secured Treasury Management Agreement, together with all renewals, extensions, modifications or refinancings of any of the foregoing, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under Letters of Credit, payments for early termination of Swap Agreements, fees, expenses, indemnification or otherwise; provided, however, that the “Obligations” of a Credit Party shall exclude any Excluded Swap Obligations with respect to such Credit Party.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its articles of organization, certificate of formation or comparable documents, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit 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.

“Original ACFP Acquisition” means the transactions consummated on the Closing Date resulting in (i) all of the Equity Interests of ACFP Management being held by PTI and (ii) all of the Equity Interests of PTI being held by Hot Air, in each case in accordance with the terms of the Original ACFP Purchase Agreement.

“Original ACFP Purchase Agreement” means that certain Stock Purchase Agreement, dated November 10, 2015, by and among Cardboard Box, PTI, ACFP Management, ACFP Acquisition Holding Company, LLC and the other parties thereto and any other agreements, instruments and documents executed in connection therewith.

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.17).

“Outstanding Amount” means: (a) with respect to Revolving Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Revolving Loans and Swingline Loans, as the case may be, occurring on such date; (b) with respect to any Letter of Credit Obligations on any date, the aggregate outstanding amount of such Letter of Credit Obligations on such date after giving effect to any Credit Extension of a Letter of Credit occurring on such date and any other changes in the amount of the Letter of Credit Obligations as of such date, including as a result of any reimbursements by any Borrower of any drawing under any Letter of Credit; (c) with respect to the Term Loan on any date, the aggregate outstanding principal amount thereof after giving effect to any prepayments or repayments of such Term Loan on such date; and (d) with respect to the Delayed Draw Term Loan on any date, the aggregate outstanding principal amount thereof after giving effect to any prepayments or repayments of such Delayed Draw Term Loan on such date.

“Parent” has the meaning set forth in the introductory paragraph hereto.

“Participant” means as defined in Section 11.5(d).

“Participant Register” means as defined in Section 11.5(d).

“Patriot Act” means as defined in Section 6.15(f).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Plan” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA and which is sponsored, maintained or contributed to by, or required to be contributed to by, any Credit Party or any of its ERISA Affiliates or with respect to which any Credit Party or any of its ERISA Affiliates previously sponsored, maintained or contributed to, or was required to contribute to, and still has liability.

“Permitted Acquisition” means any Acquisition by any Credit Party that satisfies the following conditions:

(a) the Property acquired (or the Property of the Person acquired) in such Acquisition is a business or is used or useful in a business permitted under Section 8.13;

(b) in the case of an Acquisition of the Equity Interests or all or substantially all of the assets of another Person, the requisite shareholders (or other equity holders) and/or the board of directors (or other comparable governing body) of such other Person shall have approved such Acquisition

(c) in the case of an Acquisition of the Equity Interests of another Person, such Person shall be organized and existing under the laws of any state of the United States or the District of Columbia;

(d) the Credit Parties and any new Subsidiary shall have executed the agreements, instruments and other documents required by Section 7.13;

(e) immediately after giving effect to such Acquisition, there shall be at least \$1,500,000 of availability under the Aggregate Revolving Commitments;

(f) the aggregate consideration paid by the Credit Parties for all Permitted Acquisitions made in any Fiscal Year shall not exceed \$4,500,000;

(g) (i) no Default or Event of Default shall exist and be continuing immediately before or immediately after giving effect thereto, (ii) the representations and warranties made by each of the Credit Parties in each Credit Document shall be true and correct in all material respects as if made on the date of such Acquisition (after giving effect thereto) except to the extent such representations and warranties expressly relate to an earlier date, (iii) after giving effect thereto on a Pro Forma Basis, the Consolidated Senior Lease-Adjusted Leverage Ratio is less than 5.50 to 1.00; (iv) after giving effect thereto on a Pro Forma Basis, the Credit Parties shall be in compliance with the financial covenant set forth in Section 8.8(b) and (v) at least two (2) Business Days prior to the consummation of such Acquisition (or such later date as agreed to by the Administrative Agent in its sole discretion), an Authorized Officer of Parent shall provide a compliance certificate, in form and detail reasonably satisfactory to the Administrative Agent, affirming compliance with each of the items set forth in clauses (a) through (g) hereof; and

(h) if such Acquisition is on or after the Ninth Amendment Effective Date, then at the time of such Acquisition the Compliance Date has occurred.

“Permitted Investors” means (a) Cardboard Box (and its Permitted Assignees (as such term is defined in the Registration Rights Agreement (as such term is defined in the ACFP Purchase Agreement) as in effect as of the Tenth Amendment Effective Date)), (b) LionHeart Equities LLC and (c) The John Rosatti Revocable Family Trust, including the trust beneficiary and their heirs.

“Permitted Liens” means each of the Liens permitted pursuant to Section 8.2.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Platform” means as defined in Section 11.1(d).

“Pledge and Security Agreement” means the amended and restated pledge and security agreement dated as of the Tenth Amendment Effective Date given by the Credit Parties, as pledgors, to the Collateral Agent for the benefit of the holders of the Obligations (as defined therein), and any other pledge agreements or security agreements that may be given by any Person pursuant to the terms hereof, in each case as the same may be amended and modified from time to time.

“Principal Office” means, for the Administrative Agent, the Swingline Lender and the Issuing Bank, such Person’s “Principal Office” as set forth on Appendix B, or such other office as it may from time to time designate in writing to the Borrowers and each Lender.

“Pro Forma Basis” means, for purposes of calculating the financial covenants set forth in Section 8.8, that any Asset Sale, Involuntary Disposition, Acquisition or Restricted Payment shall be deemed to have occurred as of the first day of the most recent four Fiscal Quarter period preceding the date of such transaction for which the Borrowers were required to deliver financial statements pursuant to Section 7.1(a) or (b). In connection with the foregoing, (a)(i) with respect to any Asset Sale or Involuntary Disposition, income statement and cash flow statement items (whether positive or negative) attributable to the property disposed of shall be excluded to the extent relating to any period occurring prior to the date of such transaction and (ii) with respect to any Acquisition, income statement items attributable to the Person or property acquired shall be included to the extent relating to any period applicable in such calculations to the extent (A) such items are not otherwise included in such income statement items for Parent and its Subsidiaries in accordance with GAAP or in accordance with any defined terms set forth in Section 1.1 and (B) such items are supported by financial statements or other information reasonably satisfactory to the Administrative Agent and (b) any Indebtedness incurred or assumed by any Borrower or any Subsidiary (including the Person or property acquired) in connection with such transaction (x) shall be deemed to have been incurred as of the first day of the applicable period and (y) if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination.

“Property” means an interest of any kind in any property or asset, whether real, personal or mixed, and whether tangible or intangible.

“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.

“PTI” has the meaning set forth in the introductory paragraph hereto.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Credit Party that, at the time the Guaranty (or grant of 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 Credit Party as constitutes an “eligible contract participant” under the Commodity Exchange Act 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 under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualifying Swap Bank” means (a) any of Regions Bank and its Affiliates, and (b) any Person that (i) at the time it enters into a Swap Agreement, is a Lender or an Affiliate of a Lender, or (ii) in the case of a Swap Agreement in effect on or prior to the Closing Date, is, as of the Closing Date or within thirty (30) days thereafter, a Lender or an Affiliate of a Lender, and, in cases where the Swap Provider is no longer a Lender or an Affiliate of a Lender, each such Swap Provider shall have provided a Secured Party Designation Notice to the Administrative Agent within thirty (30) days of entering into the Swap Agreement or otherwise becoming eligible in respect thereof; provided that a Delayed Draw Term Loan Lender or Affiliate thereof shall in no event be a Qualifying Swap Bank. For purposes hereof, the term “Lender” shall be deemed to include the Administrative Agent.

“Qualifying Treasury Management Bank” means (a) any of Regions Bank and its Affiliates, and (b) any Person that (A) at the time it enters into a Treasury Management Agreement, is a Lender or an Affiliate of a Lender, or (B) in the case of a Treasury Management Agreement in effect on or prior to the Closing Date, is, as of the Closing Date or within thirty (30) days thereafter, a Lender or an Affiliate of a Lender, and, in cases where the Treasury Management Bank is no longer a Lender or an Affiliate of a Lender, each such Treasury Management Bank shall have provided a Secured Party Designation Notice to the Administrative Agent within thirty (30) days of entering into the Treasury Management Agreement or otherwise becoming eligible in respect thereof; provided that a Delayed Draw Term Loan Lender or Affiliate thereof shall in no event be a Qualifying Treasury Management Bank. For purposes hereof, the term “Lender” shall be deemed to include the Administrative Agent.

“Real Estate Asset” means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by Parent or any of its Subsidiaries in any real property.

“Recipient” means (a) the Administrative Agent, (b) any Lender and (c) the Issuing Bank, as applicable.

“Recipient Party” means as defined in Section 10.11.

“Refunded Swingline Loans” means as defined in Section 2.2(b)(iii).

“Register” means as defined in Section 11.5(c).

“Reimbursement Date” means as defined in Section 2.3(d).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of 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 indoor or outdoor 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.

“Removal Effective Date” means as defined in Section 10.6(b).

“Required Lenders” means, as of any date of determination, (a) if there are two (2) or fewer Lenders, Lenders having Total Credit Exposure representing one hundred percent (100%) of the Total Credit Exposures of all Lenders and (b) if, at any time, there are three (3) or more Lenders, at least two (2) Lenders having Total Credit Exposure representing more than fifty percent (50%) of the Total Credit Exposures of all Lenders; provided that, in the case of each of clauses (a) and (b) of the foregoing, the Total Credit Exposure of any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided further that Lenders who are Affiliates of one another shall be deemed to be a single Lender for purposes of determining the number of Lenders in this definition; provided further that, notwithstanding any other provisions of this Agreement, (i) all Delayed Draw Term Loan Lenders (and their respective Delayed Draw Term Loan Commitments and outstanding Delayed Draw Term Loans) shall be excluded from the determination of Required Lenders and (ii) no Delayed Draw Term Loan Lender shall have any voting rights with respect to any matters requiring the approval solely of Required Lenders.

“Rescindable Amount” means as defined in Section 2.4(b)(ii).

“Resignation Effective Date” means as defined in Section 10.6(a).

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

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests of any Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or on account of any return of capital to such Borrower’s stockholders, partners or members (or the equivalent Person thereof), or any setting apart of funds or property for any of the foregoing.

“Revolving Commitment” means the commitment of a Lender to make or otherwise fund any Revolving Loan and to acquire participations in Letters of Credit and Swingline Loans hereunder and “Revolving Commitments” means such commitments of all Lenders in the aggregate. The amount of each Lender’s Revolving Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof.

“Revolving Commitment Percentage” means, for each Lender, a fraction (expressed as a percentage carried to the ninth decimal place), the numerator of which is such Lender’s Revolving Commitment and the denominator of which is the Aggregate Revolving Commitments. The initial Revolving Commitment Percentages are set forth on Appendix A.

“Revolving Commitment Period” means the period from and including the Closing Date to the earlier of (a) (i) in the case of Revolving Loans and Swingline Loans, the Maturity Date or (ii) in the case of the Letters of Credit, the expiration date thereof, or (b) in each case, the date on which the Revolving Commitments shall have been terminated as provided herein.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender’s participation in Letter of Credit Obligations and Swingline Loans at such time.

“Revolving Loan” means a Loan made by a Lender to a Borrower pursuant to Section 2.1(a).

“Revolving Loan Note” means a promissory note in the form of Exhibit 2.5-1, as it may be amended, supplemented or otherwise modified from time to time.

“Revolving Obligations” means the Revolving Loans, the Letter of Credit Obligations and the Swingline Loans.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw Hill Corporation, together with its successors.

“Sale and Leaseback Transaction” means, with respect to any Borrower or any Subsidiary, any arrangement, directly or indirectly, with any Person (other than a Credit Party) whereby such Borrower or such Subsidiary shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government or (d) a person or entity resident in or determined to be resident in a country, in each case that is subject to a country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means a person named on the list of Specially Designated Nationals maintained by OFAC.

“SEC” means the United States Securities and Exchange Commission.

“Secured Party Designation Notice” means a notice in the form of Exhibit 1.1 (or other writing in form and substance satisfactory to the Administrative Agent) from a Qualifying Swap Bank or a Qualifying Treasury Management Bank to the Administrative Agent that it holds Obligations entitled to share in the guaranties and collateral interests provided herein in respect of a Secured Swap Agreement or Secured Treasury Management Agreement, as appropriate.

“Secured Swap Agreement” means any Swap Agreement between any Credit Party or any Subsidiary of a Credit Party, on the one hand, and a Qualifying Swap Bank, on the other hand. For the avoidance of doubt, a holder of Obligations in respect of a Secured Swap Agreement shall be subject to the provisions of Section 9.3 and 10.10.

“Secured Swap Obligations” means all obligations owing to a Qualifying Swap Bank in connection with any Secured Swap Agreement including any and all cancellations, buy backs, reversals, terminations or assignments of any Secured Swap Agreement, any and all renewals, extensions and modifications of any Secured Swap Agreement and any and all substitutions for any Secured Swap Agreement, including all fees, costs, expenses and indemnities, whether primary, secondary, direct, fixed or otherwise (including any monetary obligations incurred during the pendency of any bankruptcy or insolvency proceedings, regardless of whether allowed or allowable in such bankruptcy or insolvency proceedings), in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

“Secured Treasury Management Agreement” means any Treasury Management Agreement between any Credit Party or any Subsidiary of a Credit Party, on the one hand, and a Qualifying Treasury Management Bank, on the other hand. For the avoidance of doubt, a holder of Obligations in respect of a Secured Treasury Management Agreement shall be subject to the provisions of Section 9.3 and 10.10.

“Secured Treasury Management Obligations” means all obligations owing to a Qualifying Treasury Management Bank under a Secured Treasury Management Agreement, including all fees, costs, expenses and indemnities, whether primary, secondary, direct, fixed or otherwise (including any monetary

obligations incurred during the pendency of any bankruptcy or insolvency proceedings, regardless of whether allowed or allowable in such bankruptcy or insolvency proceedings), in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

“Securitization Transaction” means any financing or factoring or similar transaction (or series of such transactions) entered by any Borrower or any of its Subsidiaries pursuant to which such Borrower or such Subsidiary may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate or any other Person.

“Solvent” or “Solvency” means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (e) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Credit Party” means, any Credit Party that is, at the time on which the Guaranty (or grant of security interest, as applicable) becomes effective with respect to a Swap Obligation, a corporation, partnership, proprietorship, organization, trust or other entity that would not be an “eligible contract participant” under the Commodity Exchange Act at such time but for the effect of Section 4.8.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than fifty percent (50%) of the Voting Stock is at the time owned or controlled, directly or indirectly, by that Person, or the accounts of which would be consolidated with those of such Person in its consolidated financial statements in accordance with GAAP, if such statements were prepared as of such date, or one or more of the other Subsidiaries of that Person or a combination thereof; provided that, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding. Unless otherwise provided, “Subsidiary” shall refer to a Subsidiary of a Borrower.

“Swap Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options or warrants to enter into any of the foregoing), whether or not any such transaction is governed by, or otherwise subject to, any master agreement or any netting agreement, and (b) any and all transactions or arrangements of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master

agreement (or similar documentation) published from time to time by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such agreement or documentation, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means with respect to any 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.

“Swap Provider” means any Person that is a party to a Swap Agreement with any Credit Party or any Subsidiary of a Credit Party.

“Swap Termination Value” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

“Swingline Lender” means Regions Bank in its capacity as Swingline Lender hereunder, together with its permitted successors and assigns in such capacity.

“Swingline Loan” means a Loan made by the Swingline Lender to any Borrower pursuant to Section 2.2.

“Swingline Note” means a promissory note in the form of Exhibit 2.5-2, as it may be amended, supplemented or otherwise modified from time to time.

“Swingline Sublimit” means, at any time of determination, the lesser of (a) TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000) and (b) the aggregate unused amount of Revolving Commitments then in effect.

“Synthetic Lease” means a lease transaction under which the parties intend that (a) the lease will be treated as an “operating lease” by the lessee pursuant to Statement of Financial Accounting Standards No. 13, as amended and (b) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

“Taxes” means all present or 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.

“Tenth Amendment” means that certain Tenth Amendment to Credit Agreement and Joinder by and among the Borrowers, the Guarantors party thereto, the Lenders and the Agent dated as of the Tenth Amendment Effective Date.

“Tenth Amendment Effective Date” means November 3, 2021.

“Term Loan” means as defined in Section 2.1(b).

“Term Loan Commitment” means, for each Lender, the commitment of such Lender to make a portion of the Term Loan hereunder. The Term Loan Commitment of each Lender as of the Closing Date is set forth on Appendix A. The aggregate principal amount of the Term Loan Commitments of all of the Lenders as in effect on the Closing Date was SEVENTY MILLION DOLLARS (\$70,000,000); provided that, it is understood and agreed that the Term Loan was advanced on the Closing Date. The Outstanding Amount of the Term Loan as of the Tenth Amendment Effective Date (after giving effect to the transactions contemplated in the Tenth Amendment) is \$58,574,929.48 as set forth on Appendix C.

“Term Loan Commitment Percentage” means, for each Lender, a fraction (expressed as a percentage carried to the ninth decimal place), (a) the numerator of which is the outstanding principal amount of such Lender’s portion of the Term Loan, and (b) the denominator of which is the aggregate outstanding principal amount of the Term Loan. The initial Term Loan Commitment Percentage of each Lender as of the Closing Date is set forth on Appendix A.

“Term Loan Note” means a promissory note in the form of Exhibit 2.5-3, as it may be amended, supplemented or otherwise modified from time to time.

“Title Policy” means as defined in Section 7.10(b)(iii).

“Total Credit Exposure” means, as to any Lender at any time, the Outstanding Amount of the Term Loan of such Lender at such time and the unused Revolving Commitments and Revolving Credit Exposure of such Lender at such time.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Loans, all Swingline Loans and all Letter of Credit Obligations.

“Treasury Management Agreement” means any agreement governing the provision of treasury or cash management services, including deposit accounts, funds transfer, automated clearinghouse, commercial credit cards, purchasing cards, cardless e-payable services, debit cards, stored value cards, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services.

“Treasury Management Bank” means any Person that is a party to a Treasury Management Agreement with any of Parent or its Subsidiaries.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in the State of New York (or any other applicable jurisdiction, as the context may require).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“United States” or “U.S.” means the United States of America.

“Units” shall mean the 200,000,000 Series A Preferred Units of Cardboard Box with a deemed capital contribution equal to \$0.01 per Series A Preferred Unit issued to CP7 Warming Bag, LP, a Delaware limited partnership (“CP7”), pursuant to that certain Subscription Agreement, dated as of the Fifth Amendment Effective Date, by and between Cardboard Box and CP7.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“U.S. Tax Compliance Certificate” means as defined in Section 3.3(f).

“Voting Stock” means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

“Withholding Agent” means any Credit Party and the Administrative Agent.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.2 Accounting Terms.

(a) Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by the Borrowers to the Lenders pursuant to clauses (a), (b), (c) and (d) of Section 7.1 shall be prepared in accordance with GAAP as in effect at the time of such preparation. If at any time any change in GAAP or in the consistent application thereof would affect the computation of any financial covenant or requirement set forth in any Credit Document, and either the Borrowers or the Required Lenders shall object in writing to determining compliance based on such change, then the Lenders and the Borrowers shall negotiate in good faith to amend such financial covenant, requirement or applicable defined terms to preserve the original intent thereof in light of such change to GAAP; provided that until so amended such computations shall continue to be made on a basis consistent with the most recent financial statements delivered pursuant to clauses (a), (b), (c) and (d) of Section 7.1 as to which no such objection has been made. Notwithstanding the foregoing, any change in GAAP that would likely result in any lease that, under GAAP as in effect on the Tenth Amendment Effective Date would be classified and accounted for as an operating lease, instead being classified and accounted for as a Capital Lease, shall be disregarded for all purposes hereunder.

(b) Calculations. Notwithstanding the above, the parties hereto acknowledge and agree that all calculations of the financial covenants in Section 8.8 shall be made on a Pro Forma Basis.

(c) FASB ASC 825 and FASB ASC 470-20. Notwithstanding the above, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of Parent and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

Section 1.3 Rules of Interpretation.

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Credit Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto”, “herein,” “hereof” and “hereunder,” and words of similar import when used in any Credit Document, shall be construed to refer to such Credit Document in its entirety and not to any particular provision hereof or thereof, (iv) all references in a Credit Document to Sections, Exhibits, Appendices and Schedules shall be construed to refer to Sections of, and Exhibits, Appendices and Schedules to, the Credit Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any references to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” 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.

(b) The terms lease and license shall include sub-lease and sub-license.

(c) All terms not specifically defined herein or by GAAP, which terms are defined in the UCC, shall have the meanings assigned to them in the UCC of the relevant jurisdiction, with the term “instrument” being that defined under Article 9 of the UCC of such jurisdiction.

(d) Unless otherwise expressly indicated, in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”, the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including”.

(e) To the extent that any of the representations and warranties contained in Section 6 under this Agreement or in any of the other Credit Documents is qualified by “Material Adverse Effect”, the qualifier “in all material respects” contained in Section 5.2(c) and the qualifier “in any material respect” contained in Section 9.1(d) shall not apply.

(f) Whenever the phrase “to the knowledge of” or words of similar import relating to the knowledge of a Person are used herein or in any other Credit Document, such phrase shall mean and refer to the actual knowledge of the Authorized Officers of such Person.

(g) This Agreement and the other Credit Documents are the result of negotiation among, and have been reviewed by counsel to, among others, the Administrative Agent and the Credit Parties, and are the product of discussions and negotiations among all parties. Accordingly, this Agreement and the other Credit Documents are not intended to be construed against the Administrative Agent or any of the Lenders merely on account of the Administrative Agent’s or any Lender’s involvement in the preparation of such documents.

(h) Unless otherwise indicated, all references to a specific time shall be construed to Eastern Standard Time or Eastern Daylight Savings Time, as the case may be. Unless otherwise expressly provided herein, all references to dollar amounts and "\$" shall mean Dollars.

(i) Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time (after giving effect to any permanent reduction in the stated amount of such Letter of Credit pursuant to the terms of such Letter of Credit); provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

(j) Any reference herein or in any other Credit Document to a merger, transfer, consolidation, amalgamation, assignment, sale or disposition, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or disposition, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder and under each other Credit Document (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

Section 2 LOANS AND LETTERS OF CREDIT

Section 2.1 Revolving Loans, Term Loan and Delayed Draw Term Loan

(a) Revolving Loans. During the Revolving Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make revolving loans (each such loan, a "Revolving Loan") to the Borrowers in an aggregate amount up to but not exceeding such Lender's Revolving Commitment; provided that, after giving effect to the making of any Revolving Loan, (i) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, and (ii) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Revolving Commitment. Amounts borrowed pursuant to this Section 2.1(a) may be repaid and reborrowed without premium or penalty during the Revolving Commitment Period. Each Lender's Revolving Commitment shall expire on the Maturity Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be paid in full no later than such date.

(b) Term Loan. Subject to the terms and conditions set forth herein, the Lenders will make advances of their respective Term Loan Commitment Percentages of the term loan (the "Term Loan") in an amount not to exceed the Term Loan Commitment, which Term Loan was disbursed to PTI in Dollars in a single advance on the Closing Date. Amounts repaid on the Term Loan may not be reborrowed.

(c) Mechanics for Revolving Loans and Term Loan

(i) The Term Loan and, except pursuant to Section 2.2(b)(iii), all Revolving Loans shall be made in an aggregate minimum amount of \$250,000 and integral multiples of \$50,000 in excess of that amount.

(ii) Each time a Borrower desires that the Lenders make the Term Loan or a Revolving Loan, such Borrower shall deliver to the Administrative Agent a fully executed Funding Notice no later than 1:00 p.m. at least one (1) Business Day in advance of the proposed Credit Date.

(iii) Notice of receipt of each Funding Notice in respect of each Revolving Loan or Term Loan, together with the amount of each Lender's Revolving Commitment Percentage or Term Loan Commitment Percentage thereof, respectively, if any, together with the applicable interest rate, shall be provided by the Administrative Agent to each applicable Lender by telefacsimile with reasonable promptness, but (provided the Administrative Agent shall have received such notice by 1:00 p.m.) not later than 4:00 p.m. on the same day as the Administrative Agent's receipt of such notice from the applicable Borrower.

(iv) Each Lender shall make its Revolving Commitment Percentage of the requested Revolving Loan or its Term Loan Commitment Percentage of the Term Loan available to the Administrative Agent not later than 11:00 a.m. on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the applicable conditions precedent specified herein, the Administrative Agent shall make the proceeds of such Credit Extension available to the applicable Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all Loans received by the Administrative Agent in connection with the Credit Extension from the Lenders to be credited to the account of such Borrower at the Administrative Agent's Principal Office or such other account as may be designated in writing to the Administrative Agent by such Borrower.

(d) Delayed Draw Term Loan. Subject to the terms and conditions set forth herein, the Delayed Draw Term Loan Lenders will, severally and not jointly, make advances of their respective Delayed Draw Term Loan Commitment Percentages of the Delayed Draw Term Loan in an amount not to exceed the Delayed Draw Term Loan Commitment, which Delayed Draw Term Loan was disbursed to PTI in Dollars as follows: (i) \$5,000,000 on the Fifth Amendment Effective Date (the "Initial Delayed Draw Term Loan") and (ii) \$5,000,000 on August 17, 2020. Amounts repaid on the Delayed Draw Term Loan may not be reborrowed.

Section 2.2 Swingline Loans.

(a) Swingline Loans Commitments. During the Revolving Commitment Period, subject to the terms and conditions hereof, the Swingline Lender may, in its sole discretion, make Swingline Loans to any Borrower in the aggregate amount up to but not exceeding the Swingline Sublimit; provided that, after giving effect to the making of any Swingline Loan, in no event shall (i) the Total Revolving Outstandings exceed the Aggregate Revolving Commitments and (ii) the Revolving Credit Exposure of any Lender exceed such Lender's Revolving Commitment. Amounts borrowed pursuant to this Section 2.2 may be repaid and reborrowed during the Revolving Commitment Period. The Swingline Lender's Revolving Commitment shall expire on the Maturity Date and all Swingline Loans and all other amounts owed hereunder with respect to the Swingline Loans and the Revolving Commitments shall be paid in full no later than such date.

(b) Borrowing Mechanics for Swingline Loans

(i) Each time a Borrower desires that the Swingline Lender make a Swingline Loan, such Borrower shall deliver to the Administrative Agent a Funding Notice no later than 11:00 a.m. on the proposed Credit Date. All Swingline Loans shall be made in an aggregate minimum amount of \$100,000 and integral multiples of \$25,000 in excess of that amount.

(ii) The Swingline Lender shall make the amount of its Swingline Loan available to the Administrative Agent not later than 3:00 p.m. on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent shall make the proceeds of such Swingline Loans available to the applicable Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swingline Loans received by the Administrative Agent from the Swingline Lender to be credited to the account of such Borrower at the Administrative Agent's Principal Office, or to such other account as may be designated in writing to the Administrative Agent by such Borrower.

(iii) With respect to any Swingline Loans which have not been voluntarily prepaid by a Borrower pursuant to Section 2.11, the Swingline Lender may at any time in its sole and absolute discretion, deliver to the Administrative Agent (with a copy to the Borrowers), no later than 11:00 a.m. on the day of the proposed Credit Date, a notice (which shall be deemed to be a Funding Notice given by the Borrowers) requesting that each Lender holding a Revolving Commitment make Revolving Loans to the applicable Borrower(s) on such Credit Date in an amount equal to the amount of such Swingline Loans (the "Refunded Swingline Loans") outstanding on the date such notice is given which the Swingline Lender requests Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by the Lenders other than the Swingline Lender shall be immediately delivered by the Administrative Agent to the Swingline Lender (and not to any Borrower) and applied to repay a corresponding portion of the Refunded Swingline Loans and (2) on the day such Revolving Loans are made, the Swingline Lender's Revolving Commitment Percentage of the Refunded Swingline Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by the Swingline Lender to the Borrowers, and such portion of the Swingline Loans deemed to be so paid shall no longer be outstanding as Swingline Loans and shall no longer be due under the Swingline Note of the Swingline Lender but shall instead constitute part of the Swingline Lender's outstanding Revolving Loans to the Borrowers and shall be due under the Revolving Loan Note issued by the Borrowers to the Swingline Lender. If any portion of any such amount paid (or deemed to be paid) to the Swingline Lender should be recovered by or on behalf of any Borrower from the Swingline Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Lenders in the manner contemplated by Section 2.14.

(iv) If for any reason Revolving Loans are not made pursuant to Section 2.2(b)(iii) in an amount sufficient to repay any amounts owed to the Swingline Lender in respect of any outstanding Swingline Loans on or before the third Business Day after demand for payment thereof by the Swingline Lender, each Lender holding a Revolving Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swingline Loans, and in an amount equal to its Revolving Commitment Percentage of the applicable unpaid amount together with accrued interest thereon. On the Business Day that notice is provided by the Swingline Lender (or by the 11:00 a.m. on the following Business Day if such notice is provided after 2:00 p.m.), each Lender holding a Revolving Commitment shall deliver to the Swingline Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Principal Office of the Swingline Lender. In order to evidence such participation each Lender holding a Revolving Commitment agrees to enter into a participation agreement at the request of the Swingline Lender in form and substance reasonably satisfactory to the Swingline Lender. In the event any Lender holding a Revolving Commitment fails to make available to the Swingline Lender the amount of such Lender's participation as provided in this paragraph, the Swingline Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon for three (3) Business Days at the rate customarily used by the Swingline Lender for the correction of errors among banks.

(v) Notwithstanding anything contained herein to the contrary, (1) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swingline Loans pursuant to clause (iii) above and each Lender's obligation to purchase a participation in any unpaid Swingline Loans pursuant to the immediately preceding paragraph shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, any Credit Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default; (C) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Credit Party; (D) any breach of this Agreement or any other Credit Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Lender are subject to the condition that the Swingline Lender had not received prior notice from the Borrowers or the Required Lenders that any of the conditions under Section 5.2 to the making of the applicable Refunded Swingline Loans or other unpaid Swingline Loans were not satisfied at the time such Refunded Swingline Loans or other unpaid Swingline Loans were made; and (2) the Swingline Lender shall not be obligated to make any Swingline Loans (A) if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default, (B) it does not in good faith believe that all conditions under Section 5.2 to the making of such Swingline Loan have been satisfied or waived by the Required Lenders or (C) at a time when a Defaulting Lender exists, unless the Swingline Lender has entered into arrangements satisfactory to it and the Borrowers to eliminate the Swingline Lender's risk with respect to the Defaulting Lender's participation in such Swingline Loan, including by Cash Collateralizing such Defaulting Lender's Revolving Commitment Percentage of the outstanding Swingline Loans in a manner reasonably satisfactory to the Swingline Lender and the Administrative Agent.

Section 2.3 Issuances of Letters of Credit and Purchase of Participations Therein

(a) Letters of Credit. During the Revolving Commitment Period, subject to the terms and conditions hereof, the Issuing Bank agrees to issue Letters of Credit for the account of any Borrower or any of its Subsidiaries in the aggregate amount up to but not exceeding the Letter of Credit Sublimit; provided, (i) each Letter of Credit shall be denominated in Dollars; (ii) the stated

amount of each Letter of Credit shall not be less than \$50,000 or such lesser amount as is acceptable to the Issuing Bank; (iii) after giving effect to such issuance, in no event shall (x) the Total Revolving Outstandings exceed the Aggregate Revolving Commitments, (y) the Revolving Credit Exposure of any Lender exceed such Lender's Revolving Commitment and (z) the Outstanding Amount of Letter of Credit Obligations exceed the Letter of Credit Sublimit; and (iv) in no event shall any standby Letter of Credit have an expiration date later than the earlier of (1) seven (7) days prior to the Maturity Date, and (2) the date which is one (1) year from the date of issuance of such standby Letter of Credit. Subject to the foregoing (other than clause (iv)) the Issuing Bank may agree that a standby Letter of Credit will automatically be extended for one or more successive periods not to exceed one (1) year each, unless the Issuing Bank elects not to extend for any such additional period; provided, the Issuing Bank shall not extend any such Letter of Credit if it has received written notice that an Event of Default has occurred and is continuing at the time the Issuing Bank must elect to allow such extension; provided further that in the event that any Lender is at such time a Defaulting Lender, unless the Issuing Bank has entered into arrangements satisfactory to the Issuing Bank (in its sole discretion) with the Borrowers or such Defaulting Lender to eliminate the Issuing Bank's Fronting Exposure with respect to such Lender (after giving effect to Section 2.16(a)(iv)) and any Cash Collateral provided by the Defaulting Lender), including by Cash Collateralizing such Defaulting Lender's Revolving Commitment Percentage of the Outstanding Amount of the Letter of Credit Obligations in a manner reasonably satisfactory to Agents, the Issuing Bank shall not be obligated to issue or extend any Letter of Credit hereunder. The Issuing Bank may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(b) Notice of Issuance. Each time a Borrower desires the issuance of a Letter of Credit, such Borrower shall deliver to the Administrative Agent an Issuance Notice no later than 1:00 p.m. at least three (3) Business Days or such shorter period as may be agreed to by the Issuing Bank in any particular instance, in advance of the proposed date of issuance. Upon satisfaction or waiver of the conditions set forth in Section 5.2, the Issuing Bank shall issue the requested Letter of Credit only in accordance the Issuing Bank's standard operating procedures (including, without limitation, the delivery by the applicable Borrower of such executed documents and information pertaining to such requested Letter of Credit, including any Issuer Documents, as the Issuing Bank or the Administrative Agent may require). Upon the issuance of any Letter of Credit or amendment or modification to a Letter of Credit, the Issuing Bank shall promptly notify the Administrative Agent and each Lender of such issuance, which notice shall be accompanied by a copy of such Letter of Credit or amendment or modification to a Letter of Credit and the amount of such Lender's respective participation in such Letter of Credit pursuant to Section 2.3(e).

(c) Responsibility of Issuing Bank With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, the Issuing Bank shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to ascertain whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit. As between the Borrowers and the Issuing Bank, the Borrowers assume all risks of the acts and omissions of, or misuse of the Letters of Credit issued by the Issuing Bank, by the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Issuing Bank shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or

assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Bank, including any Governmental Acts; none of the above shall affect or impair, or prevent the vesting of, the Issuing Bank's rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by the Issuing Bank under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not give rise to any liability on the part of the Issuing Bank to any Credit Party. Notwithstanding anything to the contrary contained in this Section 2.3(c), each Borrower shall retain any and all rights it may have against the Issuing Bank for any liability arising solely out of the gross negligence, bad faith or willful misconduct of the Issuing Bank, as determined by a court of competent jurisdiction in a final, non-appealable order.

(d) Reimbursement by the Borrowers of Amounts Drawn or Paid Under Letters of Credit In the event the Issuing Bank has determined to honor a drawing under a Letter of Credit, it shall immediately notify the applicable Borrower and the Administrative Agent, and such Borrower shall reimburse the Issuing Bank on or before the Business Day immediately following the date on which such drawing is honored (the "Reimbursement Date") in an amount in Dollars and in same day funds equal to the amount of such honored drawing, provided, anything contained herein to the contrary notwithstanding, (i) unless the applicable Borrower shall have notified the Administrative Agent and the Issuing Bank prior to 11:00 a.m. on the date such drawing is honored that such Borrower intends to reimburse the Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, such Borrower shall be deemed to have given a timely Funding Notice to the Administrative Agent requesting the Lenders to make Revolving Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing, and (ii) subject to satisfaction or waiver of the conditions specified in Section 5.2, the Lenders shall, on the Reimbursement Date, make Revolving Loans in the amount of such honored drawing, the proceeds of which shall be applied directly by the Administrative Agent to reimburse the Issuing Bank for the amount of such honored drawing; and provided further, if for any reason proceeds of Revolving Loans are not received by the Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, the Borrowers shall reimburse the Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Section 2.3(d) shall be deemed to relieve any Lender from its obligation to make Revolving Loans on the terms and conditions set forth herein, and each Borrower shall retain any and all rights it may have against any Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.3(d).

(e) Lenders' Purchase of Participations in Letters of Credit Immediately upon the issuance of each Letter of Credit, each Lender having a Revolving Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from the Issuing Bank a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Revolving Commitment Percentage (with respect to the Revolving Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that the

Borrowers shall fail for any reason to reimburse the Issuing Bank as provided in Section 2.3(d), the Issuing Bank shall promptly notify each Lender of the unreimbursed amount of such honored drawing and of such Lender's respective participation therein based on such Lender's Revolving Commitment Percentage. Each Lender shall make available to the Issuing Bank an amount equal to its respective participation, in Dollars and in same day funds, at the office of the Issuing Bank specified in such notice, not later than 12:00 p.m. on the first Business Day (under the laws of the jurisdiction in which such office of the Issuing Bank is located) after the date notified by the Issuing Bank. In the event that any Lender fails to make available to the Issuing Bank on such Business Day the amount of such Lender's participation in such Letter of Credit as provided in this Section 2.3(e), the Issuing Bank shall be entitled to recover such amount on demand from such Lender together with interest thereon for three (3) Business Days at the rate customarily used by the Issuing Bank for the correction of errors among banks. Nothing in this Section 2.3(e) shall be deemed to prejudice the right of any Lender to recover from the Issuing Bank any amounts made available by such Lender to the Issuing Bank pursuant to this Section in the event that it is determined that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence or willful misconduct on the part of the Issuing Bank, as determined by a court of competent jurisdiction in a final, non-appealable order. In the event the Issuing Bank shall have been reimbursed by other Lenders pursuant to this Section 2.3(e) for all or any portion of any drawing honored by the Issuing Bank under a Letter of Credit, the Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under this Section 2.3(e) with respect to such honored drawing such Lender's Revolving Commitment Percentage of all payments subsequently received by the Issuing Bank from the Borrowers in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Lender at its primary address set forth below its name on Appendix B or at such other address as such Lender may request.

(f) Obligations Absolute. The obligation of the Borrowers to reimburse the Issuing Bank for drawings honored under the Letters of Credit issued by it and to repay any Revolving Loans made by the Lenders pursuant to Section 2.3(d) and the obligations of the Lenders under Section 2.3(e) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set-off, defense (other than that such drawing has been repaid) or other right which any Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the Issuing Bank, a Lender or any other Person or, in the case of a Lender, against any Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between any Borrower or any of its Subsidiaries and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by the Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, or financial condition of any Borrower or any of its Subsidiaries; (vi) any breach hereof or any other Credit Document by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or (viii) the fact that an Event of Default or a Default shall have occurred and be continuing; provided, in each case, that payment by the Issuing Bank under the applicable Letter of Credit shall not have constituted gross negligence, bad faith or willful misconduct of the Issuing Bank under the circumstances in question, as determined by a court of competent jurisdiction in a final, non-appealable order.

(g) Indemnification. Without duplication of any obligation of the Credit Parties under Section 11.2, in addition to amounts payable as provided herein, each of the Credit Parties hereby agrees, on a joint and several basis, to protect, indemnify, pay and save harmless the Issuing Bank from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable out-of-pocket fees, expenses and disbursements of counsel) which the Issuing Bank may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit by the Issuing Bank, other than as a result of (1) the gross negligence, bad faith or willful misconduct of the Issuing Bank, as determined by a court of competent jurisdiction in a final, non-appealable order, or (2) the wrongful dishonor by the Issuing Bank of a proper demand for payment made under any Letter of Credit issued by it, or (ii) the failure of the Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(h) Applicability of ISP. Unless otherwise expressly agreed by the Issuing Bank and the applicable Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(i) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary of a Borrower, the Borrowers shall be obligated to reimburse the Issuing Bank hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of the Subsidiaries inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

Section 2.4 Pro Rata Shares: Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made, and all participations purchased, by the Lenders simultaneously and proportionately to their respective pro rata shares of the Loans, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Revolving Commitment or any Term Loan Commitment, or the portion of the aggregate outstanding principal amount of the Revolving Loans or the Term Loan, of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds.

(i) Funding by Lenders; Presumption by Administrative Agent Unless the Administrative Agent shall have received notice from a Lender prior to 12:00 noon on the date of such Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available in accordance with and at the time required by Section 2.1(c) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available

to such Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by 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 and (B) in the case of a payment to be made by such Borrower, the Applicable Rate, plus, in either case, any administrative, processing or similar fees customarily charged by the Administrative Agent in connection therewith. If such Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by such Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by the Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that such Borrower will not make such payment, the Administrative Agent may assume that a Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders or the 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) a 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 Borrowers (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 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 the 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.

Notice of the Administrative Agent to any Lender or the Borrowers with respect to any amount owing under this clause (b) shall be conclusive, absent manifest error.

Section 2.5 Evidence of Debt; Register; Lenders' Books and Records; Notes

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of each Borrower and each other Credit Party to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on each Borrower, absent manifest error; provided that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitment or such Borrower's obligations in respect of any applicable Loans; and provided further that, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern in the absence of demonstrable error therein.

(b) Notes. The Borrowers shall execute and deliver to each (i) Lender on the Tenth Amendment Effective Date and (ii) Person who is a permitted assignee of such Lender pursuant to Section 11.5, in each case to the extent requested by such Person, a Note or Notes to evidence such Person's portion of the Revolving Loans, Swingline Loans, Term Loan or Delayed Draw Term Loan, as applicable.

Section 2.6 Scheduled Principal Payments.

(a) Revolving Loans. The principal amount of Revolving Loans is due and payable in full on the Maturity Date.

(b) Swingline Loans. The principal amount of the Swingline Loans is due and payable in full on the earlier to occur of (i) the date of demand by the Swingline Lender and (ii) the Maturity Date.

(c) Term Loan. The principal amount of the Term Loan shall be repaid in installments on the date and in the amounts set forth in the table below (as such installments may hereafter be adjusted as a result of prepayments made pursuant to Section 2.11), unless accelerated sooner pursuant to Section 9:

<u>Payment Dates</u>	<u>Principal Amortization Payment</u>
March 31, 2016	\$437,500
June 30, 2016	\$437,500
September 30, 2016	\$437,500
December 31, 2016	\$437,500
March 31, 2017	\$437,500
June 30, 2017	\$437,500
September 30, 2017	\$437,500
December 31, 2017	\$437,500
March 31, 2018	\$437,500
June 30, 2018	\$437,500
September 30, 2018	\$437,500
December 31, 2018	\$437,500
March 31, 2019	\$875,000
June 30, 2019	\$875,000
September 30, 2019	\$875,000
December 31, 2019	\$813,500
March 24, 2020	\$813,500
December 31, 2021	\$813,500
March 31, 2022	\$813,500
June 30, 2022	\$813,500
September 30, 2022	\$813,500
December 31, 2022	\$813,500
March 31, 2023	\$813,500
June 30, 2023	\$813,500
September 30, 2023	\$813,500
December 31, 2023	\$813,500
March 31, 2024	\$813,500
Maturity Date	Outstanding Principal Balance of Term Loan

(d) Delayed Draw Term Loan. The principal amount of the Delayed Draw Term Loan is due and payable in full on the Maturity Date.

Section 2.7 Interest on Loans.

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof at the Applicable Rate.

(b) [Reserved.]

(c) [Reserved.]

(d) Interest payable pursuant to this Section 2.7 shall be computed on the basis of a year of three hundred sixty (360) days, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan shall be included, and the date of payment of such Loan shall be excluded; provided that if a Loan is repaid on the same day on which it is made, then one (1) day's interest shall be paid on that Loan.

(e) [Reserved.]

(f) Except as otherwise set forth herein, interest on each Loan shall accrue on a daily basis and shall be payable in arrears on (i) each Interest Payment Date applicable to that Loan; (ii) upon any prepayment of that Loan (other than a voluntary prepayment of a Revolving Loan or Term Loan which interest shall be payable in accordance with clause (i) above), to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity.

(g) Each Borrower agrees to pay to the Issuing Bank, with respect to drawings honored under any Letter of Credit issued by the Issuing Bank, interest on the amount paid by the Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of such Borrower at a rate equal to (i) for the period from the date such drawing is honored to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans, and (ii) thereafter, a rate which is the lesser of (y) two percent (2%) per annum in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans, and (z) the Highest Lawful Rate.

(h) Interest payable pursuant to Section 2.7(g) shall be computed on the basis of a year of three hundred sixty (360) days, for the actual number of days elapsed in the period during which it accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by the Issuing Bank of any payment of interest pursuant to Section 2.7(g), the Issuing Bank shall distribute to each Lender, out of the interest received by the Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which the Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event the Issuing Bank shall have been reimbursed by the Lenders for all or any portion of such honored drawing, the Issuing Bank

shall distribute to each Lender which has paid all amounts payable by it under Section 2.3(e) with respect to such honored drawing such Lender's Revolving Commitment Percentage of any interest received by the Issuing Bank in respect of that portion of such honored drawing so reimbursed by the Lenders for the period from the date on which the Issuing Bank was so reimbursed by the Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by the applicable Borrower.

(i) Notwithstanding anything to the contrary contained herein, the Delayed Draw Term Loan shall not bear interest on the unpaid principal amount thereof at any time.

Section 2.8 [Reserved.]

Section 2.9 Default Rate of Interest.

(a) If any amount of principal of any Loan is not paid when due, whether at stated maturity, by acceleration or otherwise, the principal amount of all outstanding Obligations hereunder shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws until such defaulted amount shall have been paid in full.

(b) If any amount (other than principal of any Loan) payable by a Borrower under any Credit Document is not paid when due (after the expiration of any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws until such defaulted amount shall have been paid in full.

(c) Upon the occurrence and during the continuance of an Event of Default under Section 9.1(f) or Section 9.1(g), the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(d) Upon the occurrence and during the continuance of an Event of Default other than an Event of Default under Section 9.1(f) or Section 9.1(g), the Borrowers shall, at the request of the Required Lenders, pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws.

(e) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(f) [Reserved.]

(g) Notwithstanding anything to the contrary contained herein, Obligations in respect of the Delayed Draw Term Loan shall not bear interest at the Default Rate at any time.

Section 2.10 Fees.

(a) Commitment Fee. The Borrowers shall pay to the Administrative Agent for the account of each Lender in accordance with its Revolving Commitment Percentage, a commitment fee (the "Commitment Fee") equal to the Applicable Rate of the actual daily amount by which the Aggregate Revolving Commitments exceeds the Total Revolving Outstandings, subject to

adjustments as provided in Section 2.16. The Commitment Fee shall accrue at all times during the Revolving Commitment Period, including at any time during which one or more of the conditions in Section 5 is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Tenth Amendment Effective Date, and on the Maturity Date; provided that (1) no Commitment Fee shall accrue on any of the Revolving Commitment of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (2) any Commitment Fee accrued with respect to the Revolving Commitment of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrowers so long as such Lender shall be a Defaulting Lender. The Commitment Fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. For purposes hereof, Swingline Loans shall not be counted toward or be considered as usage of the Aggregate Revolving Commitments.

(b) Letter of Credit Fees.

(i) Letter of Credit Fees. The Borrowers shall pay to the Administrative Agent for the account of each Lender in accordance with its Revolving Commitment Percentage a Letter of Credit fee for each Letter of Credit equal to the Applicable Rate multiplied by the daily maximum amount available to be drawn under such Letter of Credit (collectively, the "Letter of Credit Fees"). For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.3(i). The Letter of Credit Fees shall be computed on a quarterly basis in arrears, and shall be due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the expiration date thereof and thereafter on demand; provided that (1) no Letter of Credit Fees shall accrue in favor of a Defaulting Lender so long as such Lender shall be a Defaulting Lender and (2) any Letter of Credit Fees accrued in favor of a Defaulting Lender during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrowers so long as such Lender shall be a Defaulting Lender. If there is any change in the Applicable Rate during any quarter, the daily maximum amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, during the continuance of an Event of Default under Sections 9.1(f) and (g), all Letter of Credit Fees shall accrue at the Default Rate, and during the continuance of an Event of Default other than an Event of Default under Sections 9.1(f) or (g), then upon the request of the Required Lenders, all Letter of Credit Fees shall accrue at the Default Rate.

(ii) Fronting Fee and Documentary and Processing Charges Payable to Issuing Bank. The Borrowers shall pay directly to the Issuing Bank for its own account a fronting fee, with respect to each Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the last Business Day of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on its expiration date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in

accordance with Section 1.3(i). In addition, the Borrowers shall pay directly to the Issuing Bank for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the Issuing Bank relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(c) Other Fees. The Borrowers shall pay to Regions Capital Markets, a division of Regions Bank, and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, except to the extent set forth in the Fee Letter.

(d) Fees, Original Issue Discount in Respect of the Delayed Draw Term Loan The Borrowers and the Delayed Draw Term Loan Lenders covenant and agree that at no time shall any fees be paid in respect of, or original issue discount occur in respect of, the Delayed Draw Term Loan, except prior to the Tenth Amendment Effective Date in respect of the Units issued to Catterton Management Company L.L.C. and its affiliated funds on or about the Fifth Amendment Effective Date.

Section 2.11 Prepayments/Commitment Reductions.

(a) Voluntary Prepayments.

(i) Any time and from time to time, the Loans may be repaid in whole or in part without premium or penalty:

(A) with respect to Loans other than Swingline Loans, each Borrower may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of \$250,000 and integral multiples of \$50,000 in excess of that amount; and

(B) with respect to Swingline Loans, each Borrower may prepay any such Loans on any Business Day in whole or in part in any amount;

(ii) All such prepayments shall be made upon written or telephonic notice on the date of prepayment;

in each case given to the Administrative Agent, or the Swingline Lender, as the case may be, by 11:00 a.m. on the date required and, if given by telephone, promptly confirmed in writing to the Administrative Agent (and the Administrative Agent will promptly transmit such telephonic or original notice for a Credit Extension by telefacsimile or telephone to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.12(a).

Notwithstanding anything to the contrary contained in this Agreement, (A) the Borrowers may rescind any notice of prepayment under this Section 2.11(a) if such prepayment would have resulted from a refinancing of all of the applicable Loans, which refinancing shall not be consummated or shall otherwise be delayed and (B) the Borrowers may not prepay the Delayed Draw Term Loan (except, for the avoidance of doubt, as a result of any mandatory prepayment required pursuant to Section 2.11(c)(iv)).

(b) Voluntary Revolving Commitment Reductions.

(i) The Borrowers may, from time to time upon not less than three (3) Business Days' prior written or telephonic notice confirmed in writing to the Administrative Agent (which original written or telephonic notice the Administrative Agent will promptly transmit by telefacsimile or telephone to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part (i) the Revolving Commitments (ratably among the Lenders in accordance with their respective commitment percentages thereof); provided that (A) any such partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of \$500,000 and integral multiples of \$250,000 in excess of that amount, (B) the Borrowers shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the aggregate Total Revolving Outstandings exceed the Aggregate Revolving Commitments and (C) if, after giving effect to any reduction of the Aggregate Revolving Commitments, the Letter of Credit Sublimit and/or the Swingline Sublimit exceed the amount of the Aggregate Revolving Commitments, the Letter of Credit Sublimit and/or the Swingline Sublimit, as applicable, shall be automatically reduced by the amount of such excess.

(ii) The Borrowers' notice to the Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in the Borrowers' notice and shall reduce the Revolving Commitments of each Lender proportionately to its Revolving Commitment Percentage thereof.

(iii) Notwithstanding the foregoing, the Borrowers may rescind or postpone any notice of termination of the Revolving Commitments if such termination would have resulted from a refinancing of all of the applicable Loans, which refinancing shall not be consummated or otherwise shall be delayed.

(c) Mandatory Prepayments.

(i) Revolving Commitments. If at any time (A) the Total Revolving Outstandings shall exceed the Aggregate Revolving Commitments, (B) the Outstanding Amount of Letter of Credit Obligations shall exceed the Letter of Credit Sublimit, or (C) the Outstanding Amount of Swingline Loans shall exceed the Swingline Sublimit, immediate prepayment will be made on or in respect of the Revolving Obligations in an amount equal to such excess; provided that, except with respect to clause (B), Letter of Credit Obligations will not be Cash Collateralized hereunder until the Revolving Loans and Swingline Loans have been paid in full.

(ii) Asset Sales and Involuntary Dispositions. Prepayment will be made on the Obligations within five (5) Business Days following receipt of Net Cash Proceeds required to be prepaid pursuant to the provisions hereof in an amount equal to one hundred percent (100%) of the Net Cash Proceeds received from any Asset Sale (other than Asset Sales permitted pursuant to Sections 8.10(a), (b) or (d)) or Involuntary Disposition by a Borrower or any of its Subsidiaries; provided that, so long as no Event of Default has occurred and is continuing and, if Net Cash Proceeds are received on or after the Ninth Amendment Effective Date, the Compliance Date has occurred, no prepayment shall be required under this Section 2.11(c)(ii) to the extent that (x) such excess Net Cash Proceeds

are reinvested in assets used or useful in the business of a Borrower and its Subsidiaries within 180 days after receipt of such excess Net Cash Proceeds or (y) such excess Net Cash Proceeds are committed to be reinvested pursuant to a legally binding agreement in assets used or useful in the business of a Borrower and its Subsidiaries within 180 days after the receipt of such excess Net Cash Proceeds and are thereafter actually reinvested by such Credit Party or such Subsidiary in assets used or useful in the business of a Borrower and its Subsidiaries within 365 days after the receipt of such excess Net Cash Proceeds.

(iii) Debt Transactions. Prepayment will be made on the Obligations in an amount equal to one hundred percent (100%) of the Net Cash Proceeds from any Debt Transactions on the Business Day following receipt thereof.

(iv) Excess Cash Flow. Prepayment will be made on the Obligations, on the Business Day following delivery of each annual Compliance Certificate delivered under Section 7.1(c), commencing with the delivery of the annual Compliance Certificate for the Fiscal Year ending December 31, 2020, in an amount equal to (A) fifty percent (50%) of Consolidated Excess Cash Flow less (B) the amount of any voluntary prepayments of the Revolving Obligations made during such Fiscal Year that are accompanied by permanent voluntary reductions in the Aggregate Revolving Commitments less (C) the amount of any voluntary prepayments of the Outstanding Amount of the Term Loan made during such Fiscal Year, including without limitation the amount of the prepayment of the Outstanding Amount of the Term Loan occurring on the Tenth Amendment Effective Date.

Section 2.12 Application of Prepayments.

(a) Voluntary Prepayments. Voluntary prepayments will be applied as specified by the applicable Borrower.

(b) Mandatory Prepayments. Mandatory prepayments will be applied as follows:

(i) Mandatory prepayments in respect of the Revolving Commitments under Section 2.11(c)(i) above shall be applied to the respective Revolving Obligations as appropriate but without a permanent reduction thereof.

(ii) Mandatory prepayments in respect of Asset Sales and Involuntary Dispositions under Section 2.11(c)(ii) and Debt Transactions under Section 2.11(c)(iii) shall be applied as follows: first, to the Term Loan until paid in full; second, to the Revolving Obligations without a permanent reduction thereof; and third, to the Delayed Draw Term Loan. Mandatory prepayments with respect to the Term Loan will not be applied to the remaining scheduled principal installments but shall instead be applied to reduce the amount of scheduled payment due at the Maturity Date.

(iii) Mandatory prepayments in respect of Consolidated Excess Cash Flow under Section 2.11(c)(iv) required in connection with the delivery of the annual Compliance Certificate for the Fiscal Years ending December 31, 2020 and December 31, 2021 shall be applied as follows: first, to the Term Loan until paid in full; second, to the Delayed Draw Term Loan until paid in full; and third, to the Revolving Obligations without a permanent reduction thereof. Mandatory prepayments with respect to the Term Loan will not be applied to the remaining scheduled principal installments but shall instead be applied to reduce the amount of scheduled payment due at the Maturity Date.

(iv) Mandatory prepayments in respect of Consolidated Excess Cash Flow under Section 2.11(e)(iv) required in connection with the delivery of the annual Compliance Certificate for each Fiscal Year ending on or after December 31, 2022 shall be applied as follows: first, to the Term Loan until paid in full; second, to the Revolving Obligations without a permanent reduction thereof; and third, to the Delayed Draw Term Loan until paid in full. Mandatory prepayments with respect to the Term Loan will not be applied to the remaining scheduled principal installments but shall instead be applied to reduce the amount of scheduled payment due at the Maturity Date.

(c) Prepayments on the Obligations will be paid by the Administrative Agent to the Lenders entitled to such prepayment ratably in accordance with their respective interests therein (except for Defaulting Lenders where their share will be applied as provided in Section 2.16(a)(ii) hereof).

Section 2.13 General Provisions Regarding Payments.

(a) All payments by the Borrowers of principal, interest, fees and other Obligations hereunder or under any other Credit Document shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition.

(b) In the event that the Administrative Agent is unable to debit a deposit account of a Borrower or any of its Subsidiaries held with the Administrative Agent or any of its Affiliates in order to cause timely payment to be made to the Administrative Agent of all principal, interest and fees due hereunder or any other Credit Document (including because insufficient funds are available in its accounts for that purpose), payments hereunder and under any other Credit Document shall be delivered to the Administrative Agent, for the account of the Lenders, not later than 2:00 p.m. on the date due at the Principal Office of the Administrative Agent or via wire transfer of immediately available funds to an account designated by the Administrative Agent (or at such other location as may be designated in writing by the Administrative Agent from time to time). For purposes of computing interest and fees, funds received by the Administrative Agent after that time on such due date shall be deemed to have been paid by such Borrower on the next Business Day.

(c) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(d) The Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable pro rata share of all payments and prepayments of principal and interest due to such Lender hereunder, together with all other amounts due with respect thereto, including all fees payable with respect thereto, to the extent received by the Administrative Agent.

(e) [Reserved.]

(f) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the Commitment Fee hereunder, but such payment shall be deemed to have been made on the date therefor for all other purposes hereunder.

(g) The Administrative Agent may, but shall not be obligated to, deem any payment by or on behalf of a Borrower hereunder that is not made in same day funds prior to 2:00 p.m. to be a non-conforming payment. Any such payment shall not be deemed to have been received by the Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. The Administrative Agent shall give prompt telephonic notice to the applicable Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 9.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the Default Rate (unless otherwise provided by the Required Lenders) from the date such amount was due and payable until the date such amount is paid in full.

Section 2.14 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by a Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) any amounts applied by the Swingline Lender to outstanding Swingline Loans, (C) any amounts applied to Letter of Credit Obligations by the Issuing Bank or Swingline Loans by the Swingline Lender, as appropriate, from Cash Collateral provided under Section 2.15 or Section 2.16, or (D) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Letter of Credit Obligations, Swingline Loans or other obligations hereunder to any assignee or participant, other than to a Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each of the Credit Parties consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

Section 2.15 Cash Collateral. At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or the Issuing Bank (with a copy to the Administrative Agent) the Borrowers shall Cash Collateralize the Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in an amount sufficient to cover the applicable Fronting Exposure (after giving effect to Section 2.16(a) (iv) and any Cash Collateral provided by the Defaulting Lender).

(a) Grant of Security Interest. Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Bank, and agrees to maintain, a perfected first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letter of Credit Obligations, to be applied pursuant to clause (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Bank as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure, the Borrowers will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.15 or Section 2.16 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letter of Credit Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.15 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and the Issuing Bank that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of a Credit Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 9.3) but shall be released upon the cure, termination or waiver of such Default or Event of Default in accordance with the terms of this Agreement, and (y) the Person providing Cash Collateral and the Issuing Bank or Swingline Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

Section 2.16 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 11.4(a)(iii).

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amount (whether voluntary or mandatory, at maturity, pursuant to Section 9 or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 11.3), shall be applied at such time or times as may be determined by the Administrative Agent as follows:first, to the payment of any amounts

owing by that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the Issuing Bank or the Swingline Lender hereunder; third, to Cash Collateralize the Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.15; fourth, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrowers, to be held in a non-interest bearing deposit account and released in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.15; sixth, to the payment of any amounts owing to the Lenders, the Issuing Bank or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank or the Swingline Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to any Borrower as a result of any judgment of a court of competent jurisdiction obtained by such Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or Letter of Credit Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or Letter of Credit Borrowings were made at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to the pay the Loans of, and Letter of Credit Borrowings owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or Letter of Credit Borrowings owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letter of Credit Obligations and Swingline Loans are held by the Lenders pro rata in accordance with their Revolving Commitments without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to (and the underlying obligations satisfied to the extent of such payment) and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) Such Defaulting Lender shall not be entitled to receive any Commitment Fee, any fees with respect to Letters of Credit (except as provided in clause (b) below) or any other fees hereunder for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.15.

(C) With respect to any fee not required to be paid to any Defaulting Lender pursuant to clauses (A) or (B) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Bank and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Bank's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letter of Credit Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Commitment Percentages (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that (x) the conditions set forth in Section 5.2 are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure at such time to exceed such Non-Defaulting Lender's Revolving Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, Cash Collateralize the Issuing Bank's Fronting Exposure in accordance with the procedures set forth in Section 2.15.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent and the Swingline Lender and the Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Revolving Commitments (without giving effect to Section 2.16(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Borrower while that Lender was a Defaulting Lender; and provided further that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan, and (ii) the Issuing Bank shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Section 2.17 Removal or Replacement of Lenders.

If (a) any Lender requests compensation under Section 3.2, (b) any Credit Party is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.3, (c) [reserved], (d) any Lender is a Defaulting Lender, or (e) any Lender (a “Non-Consenting Lender”) does not consent (including by way of a failure to respond in writing to a proposed amendment, consent or waiver by the date and time specified by the Administrative Agent) to a proposed amendment, consent, change, waiver, discharge or termination hereunder or with respect to any Credit Document that has been approved by the Required Lenders, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.5), all of its interests, rights (other than its rights under Section 3.2 and Section 3.3) and obligations under this Agreement and the related Credit Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (i) the Borrowers shall have paid to the Administrative Agent the assignment fee specified in Section 11.5(b)(iv) (unless waived by the Administrative Agent in its sole discretion);
- (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letter of Credit Borrowings, as applicable, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Credit Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);
- (iii) in the case of any such assignment resulting from a claim for compensation under Section 3.2 or payments required to be made pursuant to Section 3.3, such assignment is reasonably expected to result in a reduction in such compensation or payments thereafter;
- (iv) such assignment does not conflict with Applicable Law; and
- (v) in the case of any such assignment resulting from a Non-Consenting Lender’s failure to consent to a proposed amendment, consent, change, waiver, discharge or termination, the successor replacement Lender shall have consented to the proposed amendment, consent, change, waiver, discharge or termination.

Each Lender agrees that in the event it, or its interests in the Loans and obligations hereunder, shall become subject to the replacement and removal provisions of this Section, it will cooperate with the Borrowers and the Administrative Agent to give effect to the provisions hereof, including execution and delivery of an Assignment Agreement in connection therewith, but the replacement and removal provisions of this Section shall be effective regardless of whether an Assignment Agreement shall have been given.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

Section 2.18 Joint and Several Liability.

(a) The Obligations of the Borrowers hereunder shall be joint and several in nature regardless of which such Person actually receives or received (or receives or received the proceeds of) Loans, Letters of Credit and other extensions of credit hereunder or the amount of such Loans, Letters of Credit and other extensions of credit received or the manner in which the Administrative Agent or any Lender accounts for such Loans, Letters of Credit and other extensions of credit on its books and records. Each Borrower's obligations with respect to Loans, Letters of Credit and other extensions of credit made to it hereunder, and each such Borrower's obligations arising as a result of the joint and several liability of such Borrower hereunder, with respect to Loans, Letters of Credit and other extensions of credit made to and other Obligations owing by the other Borrowers hereunder shall be primary obligations of each such Borrower.

(b) The obligations of the Borrowers under clause (a) above are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents, any Secured Swap Agreement, any Secured Treasury Management Agreement, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by Applicable Law, irrespective of any law or regulation or other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section that the obligations of the Borrowers hereunder shall be absolute and unconditional under any and all circumstances. Each Borrower agrees that with respect to its obligations under the foregoing clause (a), such Borrower shall have no right of subrogation, indemnity, reimbursement or contribution against the any other Borrower for amounts paid under this Section until such time as the Obligations have been paid in full and the Revolving Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Borrower under the foregoing clause (a), which shall remain absolute and unconditional as described above:

(i) at any time or from time to time, without notice to any Borrower, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of any of the Credit Documents, any Secured Swap Agreement, any Secured Treasury Management Agreement, or any other agreement or instrument referred to in such Credit Documents, Secured Swap Agreements or Secured Treasury Management Agreements, shall be done or omitted;

(iii) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Credit Documents, any Secured Swap Agreement, any Secured Treasury Management Agreement, or any other agreement or instrument referred to in such Credit Documents, Secured Swap Agreements or Secured Treasury Management Agreements, shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien granted to, or in favor of, the Administrative Agent, the Collateral Agent or any Lender or Lenders as security for any of the Obligations shall fail to attach or be perfected; or

(v) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Borrower) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Borrower).

(c) With respect to its obligations under the foregoing clause (a), each Borrower hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any Lender exhaust any right, power or remedy or proceed against any Person under any of the Credit Documents, any Secured Swap Agreement, any Secured Treasury Management Agreement, or any other agreement or instrument referred to in such Credit Documents, Secured Swap Agreements, Secured Treasury Management Agreements, or against any other Person under any other guarantee of, or security for, any of the Obligations.

Section 3 YIELD PROTECTION

Section 3.1 [Reserved.]

Section 3.2 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender or the Issuing Bank;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, Issuing Bank or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Issuing Bank or other Recipient, the Borrowers will pay to such Lender, Issuing Bank or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Bank or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital and Liquidity Requirements. If any Lender, the Issuing Bank or the Swingline Lender (for purposes hereof, may be referred to collectively as “the Lenders” or a “Lender”) determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender’s holding company, if any, regarding capital or liquidity ratios or

requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the commitments of such Lender hereunder or the Loans made by, or participations in Letters of Credit and Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the applicable Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the Issuing Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and the circumstances giving rise thereto shall be delivered to the applicable Borrower and shall be conclusive absent manifest error. In the absence of any such manifest error, such Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation, provided that a Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or the Issuing Bank, as the case may be, delivers to such Borrower the certificate referenced in Section 3.2(c) and notifies such Borrower of such Lender's or the Issuing Bank's intention to claim compensation therefor (except 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).

(e) In the event any Lender or Issuing Bank seeks compensation pursuant to this Section 3.2 that it would not have otherwise been entitled to seek except pursuant to the operation of the proviso in the definition of "Change in Law", such Lender or Issuing Bank shall provide a certificate to the applicable Borrower that it is generally also seeking such compensation from similarly situated borrowers under syndicated loan facilities similar to the facilities set forth herein

(f) Notwithstanding anything to the contrary set forth herein, nothing in this Section 3.2 shall be applicable to a Delayed Draw Term Loan Lender.

Section 3.3 Taxes.

(a) Issuing Bank. For purposes of this Section 3.3, the term "Lender" shall include the Issuing Bank and the term "Applicable Law" shall include FATCA.

(b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Credit Party hereunder or under any other Credit 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 an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to

the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Credit Parties The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Tax Indemnification.

(i) The Credit Parties shall jointly and severally indemnify each Recipient and shall make payment in respect thereof within ten (10) Business Days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to a Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall severally indemnify the Administrative Agent within ten (10) Business Days after demand therefor, for (A) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (B) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.5(d) relating to the maintenance of a Participant Register and (C) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Credit 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 Credit 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 clause (ii).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section, such Credit Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of a return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders: Tax Documentation

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in clauses (ii)(A), (ii)(B) and (ii)(D) below) 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, in the event that a Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to such Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) 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 such Borrower or the Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(ii) executed originals of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit 3.3-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of such Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit 3.3-2 or Exhibit 3.3-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 3.3-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) 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 such Borrower or the Administrative Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit such Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to such Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by such Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by such Borrower or the Administrative Agent as may be necessary for such Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount 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.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify such Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any indemnified party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of the indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 3.3 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

Section 3.4 Mitigation Obligations: Designation of a Different Lending Office. If any Lender requests compensation under Section 3.2, or requires a Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.3, then such Lender shall (at the request of such Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.2 or Section 3.3, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 4 GUARANTY

Section 4.1 The Guaranty

(a) Each of the Guarantors hereby jointly and severally guarantees to the Administrative Agent, the Lenders, the Qualifying Swap Banks, the Qualifying Treasury Management Banks and the other holders of the Obligations as hereinafter provided, as primary

obligor and not as surety, the prompt payment of the Obligations (the “Guaranteed Obligations”) in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Obligations are not paid in full (other than contingent and indemnified obligations not then due and owing) when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) in accordance with the terms of such extension or renewal.

(b) Notwithstanding any provision to the contrary contained herein, in any other of the Credit Documents, Swap Agreements, Treasury Management Agreements or other documents relating to the Obligations, (a) the obligations of each Guarantor under this Agreement and the other Credit Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law and (b) the Guaranteed Obligations of a Guarantor shall exclude any Excluded Swap Obligations with respect to such Guarantor.

Section 4.2 Obligations Unconditional.

(a) The obligations of the Guarantors under Section 4.1 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents, Swap Agreements or Treasury Management Agreements, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by Applicable Law, irrespective of any law or regulation or other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.2 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against any Borrower or any other Guarantor for amounts paid under this Section 4 until such time as the Obligations have been paid in full (other than contingent and indemnified obligations not then due and owing) and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(i) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of any of the Credit Documents, any Swap Agreement between any Credit Party and any Swap Provider, or any Treasury Management Agreement between any Credit Party and any Treasury Management Bank, or any other agreement or instrument referred to in the Credit Documents, such Swap Agreements or such Treasury Management Agreements shall be done or omitted;

(iii) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Credit Documents, any Swap Agreement between any Credit Party and any Swap Provider or any Treasury Management Agreement between any Credit Party and any Treasury Management Bank, or any other agreement or instrument referred to in the Credit Documents, such Swap Agreements or such Treasury Management Agreements shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien granted to, or in favor of, the Administrative Agent or any Lender or Lenders as security for any of the Obligations shall fail to attach or be perfected; or

(v) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

(b) With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any Lender exhaust any right, power or remedy or proceed against any Person under any of the Credit Documents, any Swap Agreement between any Credit Party and any Swap Provider or any Treasury Management Agreement between any Credit Party and any Treasury Management Bank, or any other agreement or instrument referred to in the Credit Documents, such Swap Agreements or such Treasury Management Agreements, or against any other Person under any other guarantee of, or security for, any of the Obligations.

Section 4.3 Reinstatement. The obligations of the Guarantors under this Section 4 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each Lender on demand for all reasonable costs and expenses (including, without limitation, the fees, charges and disbursements of counsel) incurred by the Administrative Agent or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

Section 4.4 Certain Additional Waivers. Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 4.2 and through the exercise of rights of contribution pursuant to Section 4.6.

Section 4.5 Remedies. The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Administrative Agent and the Lenders, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in Section 9.2 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 9.2) for purposes of Section 4.1 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.1. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the Lenders may exercise their remedies thereunder in accordance with the terms thereof.

Section 4.6 Rights of Contribution. The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under Applicable Law. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Credit Documents and no Guarantor shall exercise such rights of contribution until all Obligations have been paid in full (other than contingent and indemnified obligations not then due and owing) and the Commitments have terminated.

Section 4.7 Guarantee of Payment; Continuing Guarantee. The guarantee in this Section 4 is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Obligations whenever arising.

Section 4.8 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 Specified Credit Party to honor all of such Specified Credit Party's obligations under the Guaranty and the Collateral Documents in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 4.8 for the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Section 4, voidable under applicable Debtor Relief Laws, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 4.8 shall remain in full force and effect until the Guaranteed Obligations have been indefeasibly paid in full (other than contingent and indemnified obligations not then due and owing) and the commitments relating thereto have expired or terminated, or, with respect to any Guarantor, if earlier, such Guarantor is released from its Guaranteed Obligations in accordance with Section 10.10(a). Each Qualified ECP Guarantor intends that this Section 4.8 constitute, and this Section 4.8 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each Specified Credit Party for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 5 CONDITIONS PRECEDENT

Section 5.1 [Reserved.]

Section 5.2 Conditions to Each Credit Extension (Revolving Loans; Term Loan). The obligation of each Lender to fund its Term Loan Commitment Percentage or Revolving Commitment Percentage of any Credit Extension on any Credit Date are subject to the satisfaction, or waiver in accordance with Section 11.4, of the following conditions precedent:

- (a) the Administrative Agent shall have received a fully executed and delivered Funding Notice, together with the documentation and certifications required therein with respect to each Credit Extension;
- (b) after making the Credit Extension requested on such Credit Date, (i) the aggregate outstanding principal amount of the Revolving Loans shall not exceed the aggregate Revolving Commitments then in effect and (ii) the aggregate outstanding principal amount of the Term Loan shall not exceed the respective Term Loan Commitments then in effect;

(c) as of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects (but without duplication of any existing materiality qualifiers) on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; and

(d) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default.

Section 6 REPRESENTATIONS AND WARRANTIES

Each Borrower and each other Credit Party represents and warrants to each Agent and Lender, that the following statements are true and correct:

Section 6.1 Organization; Requisite Power and Authority; Qualification. Each of the Credit Parties (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing, and could not be reasonably expected to have, a Material Adverse Effect.

Section 6.2 Equity Interests and Ownership. The Equity Interests of each Credit Party and its Subsidiaries have been duly authorized and validly issued and are fully paid and non-assessable.

Section 6.3 Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

Section 6.4 No Conflict. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate in any material respect any provision of any Applicable Laws relating to any Credit Party, any of the Organizational Documents of any Credit Party, or any order, judgment or decree of any court or other agency of government binding on any Credit Party; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligations of any Credit Party; or (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of any Credit Party (other than any Liens created under any of the Credit Documents in favor of the Collateral Agent for the benefit of the holders of the Obligations) whether now owned or hereafter acquired; except with respect to any breach, conflict or violation (but not creation of Liens) other than with respect to Organizational Documents referenced in clause (a), to the extent that such breach, conflict or violation would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

Section 6.5 Governmental Consents. The execution, delivery and performance by the Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require, as a condition to the effectiveness thereof, any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for (a) filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Collateral Agent for filing and/or recordation, as of the Closing Date or the Tenth Amendment Effective Date, as the case may be, (b) those consents, approvals, notices or other actions, the failure of which to obtain or make would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect and (c) other filings, recordings or consents which have been obtained or made, as applicable.

Section 6.6 Binding Obligation. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by Debtor Relief Laws or by equitable principles relating to enforceability.

Section 6.7 Financial Statements.

(a) The audited consolidated sheet of Parent and its Subsidiaries for the most recent Fiscal Year ended, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, including the notes thereto (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of Parent and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness; provided that such financial statements for the Fiscal Year ended December 31, 2020 may be separated into financial statements for Parent and its Subsidiaries (excluding PTI and its direct and indirect Subsidiaries), on the one hand, and for PTI and its Subsidiaries, on the other hand.

(b) The unaudited consolidated balance sheet of Parent and its Subsidiaries for the most recent Fiscal Quarter ended, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Quarter (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments; and (iii) show all material indebtedness and other liabilities, direct or contingent, of Parent and its Subsidiaries as of the date of such financial statements, including liabilities for taxes, material commitments and Indebtedness; provided that such financial statements for the Fiscal Quarters ended prior to December 31, 2021 may be separated into financial statements for Parent and its Subsidiaries (excluding PTI and its direct and indirect Subsidiaries), on the one hand, and for PTI and its Subsidiaries, on the other hand.

(c) The consolidated forecasted balance sheet and statements of income and cash flows of Parent and its Subsidiaries delivered pursuant to Section 7.1(d) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Borrowers' good faith estimate of their future financial condition and performance, it being understood that such projections as to future events are not to be viewed as facts, are subject to significant uncertainties and contingencies, and actual results may vary materially; provided that the financial statements that are the subject of this Section 6.7(c) provided for each Fiscal Year ended on or prior to December 31, 2021 shall relate exclusively to PTI and its Subsidiaries.

Section 6.8 No Material Adverse Effect; No Default.

(a) No Material Adverse Effect. Since the Closing Date with respect to the Credit Parties that were party to this Agreement prior to the Tenth Amendment Effective Date and since the Tenth Amendment Effective Date with respect to the Credit Parties that were not party to this Agreement prior to the Tenth Amendment Effective Date, no event, circumstance or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

(b) No Default. No Default has occurred and is continuing.

Section 6.9 Tax Matters. Each Credit Party and its subsidiaries have filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their respective properties, assets, income, businesses and franchises otherwise due and payable, except those being actively contested in good faith and by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Credit Party or any of its Subsidiaries that would, if made, have a Material Adverse Effect.

Section 6.10 Properties.

(a) Title. Each of the Credit Parties and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good title to (in the case of all other personal property), all of their respective tangible properties and assets reflected in their financial statements and other information referred to in Section 6.7 and in the most recent financial statements delivered pursuant to Section 7.1, in each case except for (A) assets disposed of since the date of such financial statements as permitted under Section 8.10 and (B) where the failure to have such title or other interest would not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens other than Permitted Liens.

(b) Real Estate. As of the Tenth Amendment Effective Date, Schedule 6.10(b) contains a true, accurate and complete list of all Real Estate Assets of the Credit Parties.

(c) Intellectual Property. Each Credit Party and its Subsidiaries owns or has the right to use all Intellectual Property that is necessary for the present conduct of its business, free and clear of Liens (other than Permitted Liens), without conflict with the rights of any other Person unless the failure to own or have the right to use or such conflict could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the knowledge of each Credit Party, no Credit Party nor any of its Subsidiaries is infringing or misappropriating the Intellectual Property rights of any other Person unless such infringement, misappropriation, dilution or violation could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.11 Environmental Matters. No Credit Party nor any of its Subsidiaries nor any of their respective current Facilities (solely during and with respect to such Person's ownership thereof) or operations, and to their knowledge, no former Facilities (solely during and with respect to any Credit Party's or its Subsidiary's ownership thereof), are subject to any outstanding order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; (b) no Credit Party nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and

Liability Act (42 U.S.C. § 9604) or any comparable state law; (c) there are and, to each Credit Party's and its Subsidiaries' knowledge, have been, no Hazardous Materials Activities which could reasonably be expected to form the basis of an Environmental Claim against such Credit Party or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; (d) no Credit Party nor any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility (solely during and with respect to such Credit Party's or its Subsidiary's ownership thereof), and neither any Borrower's nor any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any equivalent state rule defining hazardous waste. Compliance with all current requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 6.12 No Defaults. No Credit Party nor any of its Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, except in each case where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

Section 6.13 No Litigation or other Adverse Proceedings. There are no Adverse Proceedings that (a) purport to affect or pertain to this Agreement or any other Credit Document, or any of the transactions contemplated hereby or (b) could reasonably be expected to have a Material Adverse Effect. Neither any Borrower nor any of its Subsidiaries is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any Governmental Authority that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 6.14 Information Regarding Parent and its Subsidiaries. Set forth on Schedule 6.14, is the jurisdiction of organization, the exact legal name (and for the prior five (5) years or since the date of its formation has been) and the true and correct U.S. taxpayer identification number (or foreign equivalent, if any) of Parent and each of its Subsidiaries as of the Tenth Amendment Effective Date. Except as set forth on Schedule 6.14, as of the Tenth Amendment Effective Date, there is no existing option, warrant, call, right, commitment, buy-sell, voting trust or other shareholder agreement or other agreement to which any Subsidiary is a party requiring, and there is no membership interest or other Equity Interests of any Subsidiary outstanding which upon conversion or exchange would require, the issuance by any Subsidiary of any additional membership interests or other Equity Interests of any Subsidiary or other Equity Interests convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of any Subsidiary.

Section 6.15 Governmental Regulation.

(a) No Credit Party or any of its Subsidiaries is subject to regulation under the Investment Company Act of 1940. No Credit Party or any of its Subsidiaries is an "investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

(b) No Credit Party nor any of its Subsidiaries is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 *et seq.*), as amended. To its knowledge, no Credit Party or any of its Subsidiaries is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. No Credit Party or any of its Subsidiaries (i) is a blocked person described in Section 1 of the Anti-Terrorism Order or (ii) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

(c) None of the Credit Parties or their Subsidiaries or their respective Affiliates is in violation of and shall not violate any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at <http://www.ustreas.gov/offices/enforcement/ofac/> or as otherwise published from time to time.

(d) None of the Credit Parties or their Subsidiaries or their respective Affiliates (i) is a Sanctioned Person or a Sanctioned Entity, (ii) has more than ten percent (10%) of its assets located in Sanctioned Entities, or (iii) derives more than ten percent (10%) of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. The proceeds of any Loan will not be used and have not been used to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Entity.

(e) Each Credit Party and its Subsidiaries is in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§78dd-1, *et seq.*, and any foreign counterpart thereto. None of the Credit Parties or their respective Subsidiaries has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to such Credit Party or any of its Subsidiaries or to any other Person, in violation of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq.*

(f) To the extent applicable, each Credit Party and its Subsidiaries are in compliance with Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (as amended from time to time, the "Patriot Act").

(g) No Credit Party or any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of any Credit Extension made to such Credit Party will be used (i) to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System as in effect from time to time or (ii) to finance or refinance any (A) commercial paper issued by such Credit Party or (B) any other Indebtedness, except for Indebtedness that such Credit Party incurred for general corporate or working capital purposes or for capital expenditures.

(h) No Credit Party is an Affected Financial Institution.

Section 6.16 Employee Matters. No Credit Party or any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against any Credit Party or any of its Subsidiaries, or to the best knowledge of each Credit Party, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against any Credit Party or any of its Subsidiaries or to the best knowledge of each Credit Party, threatened against any of them, (b) no strike or work stoppage in existence or to the knowledge of each Credit Party, threatened that involves any Credit Party or any of its Subsidiaries, and (c) to the best knowledge of each Credit Party, no union representation question existing with respect to the employees of

any Credit Party or any of its Subsidiaries and, to the best knowledge of each Credit Party, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as could not reasonably be expected to have a Material Adverse Effect.

Section 6.17 Pension Plans. (a) Except as could not reasonably be expected to have a Material Adverse Effect, each of the Credit Parties and their Subsidiaries are in compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations thereunder with respect to its Pension Plan, and have performed all their obligations under each Pension Plan in all material respects, (b) each Pension Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter or is the subject of a favorable opinion letter from the Internal Revenue Service indicating that such Pension Plan is so qualified and, to the best knowledge of the Credit Parties, nothing has occurred subsequent to the issuance of such determination letter which would cause such Pension Plan to lose its qualified status except where such event could not reasonably be expected to result in a Material Adverse Effect, (c) except as could not reasonably be expected to have a Material Adverse Effect, no liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Pension Plan (other than for routine claims and required funding obligations in the ordinary course) or any trust established under Title IV of ERISA has been incurred by any Credit Party, any of its Subsidiaries or any of their ERISA Affiliates, (d) except as would not reasonably be expected to result in liability to the Credit Parties or any of their Subsidiaries in excess of \$1,000,000, no ERISA Event has occurred, and (e) except to the extent required under Section 4980B of the Internal Revenue Code and Section 601 et seq. of ERISA or similar state laws and except as could not reasonably be expected to have a Material Adverse Effect, no Pension Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of a Borrower or any of its Subsidiaries. As of the Tenth Amendment Effective Date, no Credit Party nor any of its Subsidiaries are, and will not be, a Benefit Plan.

Section 6.18 Solvency. Each Borrower, individually, and the Credit Parties and their Subsidiaries taken as a whole on a consolidated basis are and, upon the incurrence of any Credit Extension on any date on which this representation and warranty is made, will be, Solvent.

Section 6.19 Compliance with Laws. Each Credit Party and its Subsidiaries is in compliance with (a) the Patriot Act and OFAC rules and regulations as provided in Section 6.15 and (b) except such non-compliance with such other Applicable Laws that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, all other Applicable Laws. Each Credit Party and its Subsidiaries possesses all certificates, authorities or permits issued by appropriate Governmental Authorities necessary to conduct the business now operated by them and the failure of which to have could reasonably be expected to have a Material Adverse Effect and have not received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit the failure of which to have or retain could reasonably be expected to have a Material Adverse Effect.

Section 6.20 Disclosure. No representation or warranty of any Credit Party contained in any Credit Document or in any other documents, certificates or written statements furnished to the Lenders by or on behalf of the Credit Parties or any of their Subsidiaries for use in connection with the transactions contemplated hereby (other than projections and pro forma financial information contained in such materials) contains any untrue statement of a material fact or omits to state a material fact (known to any Credit Party, in the case of any document not furnished by any of them) necessary in order to make the statements contained herein or therein not misleading in any material manner in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by the Credit Parties to be reasonable at the time made, it being recognized by the Administrative Agent and the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results and that such differences may be material.

Section 6.21 Insurance. The properties of the Credit Parties and their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of such Persons, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Credit Party or the applicable Subsidiary operates. The insurance coverage of Parent and its Subsidiaries as in effect on the Tenth Amendment Effective Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 6.21.

Section 6.22 Pledge and Security Agreement. The Pledge and Security Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the holders of the Obligations, a legal, valid and enforceable security interest in the Collateral identified therein, except to the extent the enforceability thereof may be limited by applicable Debtor Relief Laws affecting creditors' rights generally and by equitable principles of law (regardless of whether enforcement is sought in equity or at law), and the Pledge and Security Agreement shall create a fully perfected Lien on, and security interest in, all right, title and interest of the obligors thereunder in such Collateral, in each case prior and superior in right to any other Lien (subject to Permitted Liens) (i) with respect to any such Collateral that is a "security" (as such term is defined in the UCC) and is evidenced by a certificate, when such Collateral is delivered to the Collateral Agent with duly executed stock powers with respect thereto, (ii) with respect to any such Collateral that is a "security" (as such term is defined in the UCC) but is not evidenced by a certificate, when UCC financing statements in appropriate form are filed in the appropriate filing offices in the jurisdiction of organization of the pledgor or when "control" (as such term is defined in the UCC) is established by the Collateral Agent over such interests in accordance with the provision of Section 8-106 of the UCC, or any successor provision, and (iii) with respect to any such Collateral that is not a "security" (as such term is defined in the UCC), when UCC financing statements in appropriate form are filed in the appropriate filing offices in the jurisdiction of organization of the pledgor (to the extent such security interest can be perfected by filing under the UCC).

Section 7 AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that until the Obligations shall have been paid in full (other than contingent and indemnified obligations not then due and owing) or otherwise satisfied, and the Commitments hereunder shall have expired or been terminated, such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 7.

Section 7.1 Financial Statements and Other Reports. The Borrowers will deliver, or will cause to be delivered, to the Administrative Agent:

(a) Quarterly Financial Statements for Parent and its Subsidiaries. Within (i) forty-five (45) days after the end of each of the first three (3) Fiscal Quarter of each Fiscal Year and (ii) ninety (90) days after the end of the fourth Fiscal Quarter of each Fiscal Year, the consolidated balance sheets of Parent and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Parent and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year (except for the absence of notes and normal recurring year-end adjustments), all in reasonable detail and consistent in all material respects with the manner of presentation as of the Tenth Amendment Effective Date, and a combined restaurant operating statement by brand, together with a Financial Officer Certification with respect thereto.

(b) Audited Annual Financial Statements for Parent and its Subsidiaries. Within one hundred and fifty (150) days after the end of each Fiscal Year of Parent, (i) the consolidated balance sheets of Parent and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Parent and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail and consistent in all material respects with the manner of presentation as of the Tenth Amendment Effective Date, and a combined restaurant operating statement by brand, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of independent certified public accountants of recognized national standing selected by Parent, which report shall be unqualified as to going concern (other than solely with respect to, or resulting solely from, an upcoming maturity date under the Revolving Loans occurring within one year from the time such opinion is delivered) and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Parent and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards.

(c) Compliance Certificate. Together with each delivery of the financial statements pursuant to clauses (a) and (b) of Section 7.1, commencing with the Fiscal Quarter ending March 31, 2016, a duly completed Compliance Certificate.

(d) Annual Budget. Within sixty (60) days following the end of each Fiscal Year of Parent, forecasts prepared by management of Parent, in form reasonably satisfactory to the Administrative Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations and cash flows of Parent and its Subsidiaries on a quarterly basis for the immediately following Fiscal Year (including the Fiscal Year(s) in which the Maturity Date occurs), and a combined restaurant operating statement by brand.

(e) Information Regarding Collateral. (a) Each Credit Party will furnish to the Collateral Agent prior written notice of any change (i) in such Credit Party's legal name, (ii) in such Credit Party's corporate structure, or (iii) in such Credit Party's Federal Taxpayer Identification Number.

(f) Securities and Exchange Commission Filings. Promptly after the same are filed, copies of all annual, regular, periodic and special reports and registration statements that any Credit Party may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, provided that any documents required to be delivered pursuant to this Section 7.1(f) shall be deemed to have been delivered on the date (i) on which Parent posts such documents, or provides a link thereto on Parent's website, or (ii) on which such documents are posted on Parent's behalf on EDGAR Online, DebtDomain or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided further that: (x) upon written request by the Administrative Agent, the Borrowers shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (y) the Borrowers shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents.

(g) Notice of Default and Material Adverse Effect. Promptly upon any Authorized Officer of any Credit Party obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to any Credit Party with respect thereto or (ii) the occurrence of any Material Adverse Effect, a certificate of its Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, event or condition or change, and what action the Credit Parties have taken, are taking and propose to take with respect thereto.

(h) ERISA. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action the any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) (1) promptly upon reasonable request of the Administrative Agent, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates with respect to each Pension Plan; and (2) promptly after their receipt, copies of all notices received by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event.

(i) Securities and Exchange Commission Investigations. Promptly, and in any event within five (5) Business Days after receipt thereof by any Credit Party or any Subsidiary thereof, copies of each notice or other correspondence received from the Securities and Exchange Commission (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Credit Party or any Subsidiary thereof.

(j) Other Information. (i) Promptly upon their becoming available, copies of all financial statements, reports, notices and proxy statements sent or made available generally by any Credit Party to its security holders acting in such capacity; provided that no Credit Party shall be required to deliver to the Administrative Agent or any Lender the minutes of any meeting of its Board of Directors, and (ii) such other information and data with respect to any Credit Party or any of its Subsidiaries as from time to time may be reasonably requested by the Administrative Agent (or by any Lender through the Administrative Agent).

(k) Monthly Restaurant Reports. Within thirty (30) days after the end of each calendar month (commencing with the calendar month ending as of March 31, 2018), a summary with respect to each restaurant owned or operated by any Borrower or any of its Subsidiaries, in form and detail reasonably satisfactory to the Administrative Agent, certified by an Authorized Officer of Parent as fairly presenting in all material respects the profits and/or losses of each restaurant.

(l) Monthly Cash Flow Projections. Within thirty (30) days after the end of each calendar month (commencing with the calendar month ending as of October 31, 2019), projections prepared by management of Parent, in form reasonably satisfactory to the Administrative Agent, of the cash flows of Parent and its Subsidiaries for the immediately following thirteen (13) week period.

(m) Monthly Financial Statements. As soon as available, but in any event within thirty (30) days after the end of each calendar month (commencing with the month ending February 28, 2021) until the Compliance Date, a consolidated balance sheet of Parent and its Subsidiaries as at the end of such calendar month and the related consolidated statements of income, stockholders' equity and cash flows of Parent and its Subsidiaries for such calendar month and for the period from the beginning of the then current Fiscal Year to the end of such calendar month, all in reasonable detail and consistent in all material respects with the manner of presentation as of the Tenth Amendment Effective Date, together with a Financial Officer Certification with respect thereto.

(n) Additional Reporting. On the 14th day of each calendar month (commencing on April 14, 2021), or if such day is not a Business Day, then on the next succeeding Business Day, in each case in form and detail reasonably satisfactory to the Administrative Agent: (i) a revenue flash report of Parent and its Subsidiaries on a consolidated basis and for each restaurant location; and (ii) a report (in e-mail form) to the Administrative Agent stating the amount of the Credit Parties' Liquidity as of the close of business on the last Business Day of the immediately preceding calendar month, together with reasonable detail supporting the calculation; provided that from and after the Compliance Date the reporting required pursuant to this clause (n) shall instead be delivered on a quarterly basis as soon as available but in any event within ten (10) Business Days after the end of each Fiscal Quarter of Parent and the references in this clause (n) to "month" shall be deemed to mean "Fiscal Quarter of Parent".

Each notice pursuant to clause (g) of this Section 7.1 shall be accompanied by a statement of an Authorized Officer of Parent setting forth details of the occurrence referred to therein and stating what action Parent and/or the other applicable Credit Party has taken and proposes to take with respect thereto.

As to any information contained in materials furnished pursuant to Section 7.1(f), the Borrowers shall not be separately required to furnish such information under Section 7.1(a) or Section 7.1(j) above, but the foregoing shall not be in derogation of the obligation of the Borrowers to furnish the information and materials described in Section 7.1(a) and Section 7.1(j) above at the times specified therein.

Section 7.2 Existence. Each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business other than as permitted under Section 8.10.

Section 7.3 Payment of Taxes and Claims. Each Credit Party will, and will cause each of its Subsidiaries to, pay (a) all federal, state and other taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon and (b) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided that no such tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor. Each Credit Party will not, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than any Borrower or any Subsidiary).

Section 7.4 Maintenance of Properties. Except if the failure to do so would not reasonable be expected to result in, individually or in the aggregate, a Material Adverse Effect, each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted and casualty and condemnation excepted, all material tangible properties used or useful in the business of any Credit Party and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

Section 7.5 Insurance. The Credit Parties will maintain, and will cause its Subsidiaries to maintain, with financially sound and reputable insurers, property insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the each Credit Party and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, each Credit Party and its Subsidiaries will maintain or cause to be maintained (a) with respect to any Flood Hazard Property, flood insurance with respect to each such Flood Hazard Property, if any, that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (b) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) in the case of each general liability insurance policy, name the Collateral Agent, on behalf of the holders of the Obligations, as an additional insured thereunder as its interests may appear, and (ii) in the case of each property insurance policy, contain a lender's loss payable clause or endorsement, reasonably satisfactory in form and substance to the Collateral Agent, that names the Collateral Agent, on behalf of the holders of the Obligations, as the lender's loss payee thereunder and provides for at least thirty (30) days' prior written notice (or such shorter prior written notice as may be agreed by the Collateral Agent in its reasonable discretion) to the Collateral Agent of any modification or cancellation of such policy.

Section 7.6 Inspections. Each Credit Party will, and will cause each of its Subsidiaries to, permit representatives and independent contractors of the Administrative Agent and the Collateral Agent to visit and inspect any of its properties, to conduct field audits, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrowers; provided, however, that such visits shall be limited to two (2) times per year (and one such visit shall be at the expense of the Borrowers) unless an Event of Default shall have occurred and be continuing and that when an Event of Default exists the Administrative Agent, the Collateral Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice.

Section 7.7 Compliance with Laws. Each Credit Party will comply, and shall cause each of its Subsidiaries and all other Persons, if any, on or occupying any Facilities to comply, with (a) the Patriot Act and OFAC rules and regulations, and (b) all other Applicable Laws, noncompliance with which, with respect to clause (b), could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 7.8 Use of Proceeds. The Credit Parties will use the proceeds of the Credit Extensions (other than in respect of the Delayed Draw Term Loan) (a) to pay a portion of the consideration for the Original ACFP Acquisition, (b) for working capital, capital expenditures and general corporate purposes (including Permitted Acquisitions), (c) to refinance substantially simultaneously with the closing of this Agreement certain existing Indebtedness of PTI and its Subsidiaries, (d) to pay transaction fees, costs and expenses related to the Original ACFP Acquisition, the entering into by certain of the Credit Parties of the Credit Documents on the Closing Date and the other transactions consummated contemporaneously therewith, in each case not in contravention of Applicable Laws or of any Credit Document, and/or (e) to

pay transaction fees, costs and expenses related to the ACFP Acquisition, the entering into by certain of the Credit Parties of the Credit Documents on the Tenth Amendment Effective Date and the other transactions consummated contemporaneously therewith, in each case not in contravention of Applicable Laws or of any Credit Document. No portion of the proceeds of any Credit Extension shall be used (i) to refinance any commercial paper, or (ii) in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System as in effect from time to time or any other regulation thereof or to violate the Exchange Act. The Credit Parties will use the proceeds of the Credit Extensions in respect of the Delayed Draw Term Loan (A) for working capital, capital expenditures and general corporate purposes (excluding Permitted Acquisitions), and/or (B) to pay transaction fees, costs and expenses related to the transactions contemplated by the Fifth Amendment, in each case not in contravention of Applicable Laws or of any Credit Document.

Section 7.9 Environmental Matters. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or its Subsidiaries that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) respond to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 7.10 Additional Real Estate Assets.

(a) In the event that any Credit Party acquires a fee interest in a Real Estate Asset with a fair market value in excess of \$1,000,000, then such Credit Party, no later than sixty (60) days (or such longer period as may be agreed in writing by the Collateral Agent) after acquiring such Real Estate Asset shall take all such actions and execute and deliver, or cause to be executed and delivered, all such Mortgages, documents, instruments, agreements, opinions and certificates (for the avoidance of doubt, not to include leasehold mortgages with respect to any leased properties) similar to those described in clause (b) immediately below that the Collateral Agent shall reasonably request to create in favor of the Collateral Agent, for the benefit of the holders of the Obligations, a valid and, subject to any filing and/or recording referred to herein, enforceable Lien on, and security interest in such Real Estate Asset. In addition to the foregoing, the applicable Credit Party shall, at the request of the Required Lenders, deliver, from time to time, to the Administrative Agent such appraisals as are required by law or regulation of Real Estate Assets with respect to which the Collateral Agent has been granted a Lien.

(b) In order to create in favor of the Collateral Agent, for the benefit of the holders of the Obligations, a valid and, subject to any filing and/or recording referred to herein, enforceable Lien on, and security interest in, any Real Estate Asset that is prior and superior in right to any other Lien (other than Permitted Liens), the Administrative Agent and the Collateral Agent (with copies sufficient for each Lender) shall have received from the applicable Credit Party with respect to such Real Estate Asset:

(i) a fully executed and notarized Mortgage, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering such Real Estate Asset;

(ii) an opinion of counsel (which counsel shall be reasonably satisfactory to the Collateral Agent) in each state in which such Real Estate Asset is located with respect to the enforceability of the form(s) of Mortgage to be recorded in such state and such other matters as the Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to the Collateral Agent;

(iii) (a) ALTA mortgagee title insurance policies or unconditional commitments therefor issued by one or more title companies reasonably satisfactory to the Collateral Agent (each, a "Title Policy") with respect to such Real Estate Asset, in amounts not less than the fair market value of such Real Estate Asset, together with a title report issued by a title company with respect thereto and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to the Collateral Agent and (b) evidence reasonably satisfactory to the Collateral Agent that such Credit Party has paid to the title company or to the appropriate Governmental Authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgage for such Real Estate Asset in the appropriate real estate records;

(iv) a recently issued flood zone determination certificate;

(v) evidence of flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, in form and substance reasonably satisfactory to the Collateral Agent;

(vi) if an exception to the Title Policy with respect to any Real Estate Asset subject to a Mortgage would arise without such ALTA surveys, ALTA surveys of such Real Estate Asset; and

(vii) reports and other reasonable information, in form, scope and substance reasonably satisfactory to the Administrative Agent, regarding environmental matters relating to such Real Estate Asset.

Section 7.11 Pledge of Personal Property Assets.

(a) Equity Interests. Each Borrower and each other Credit Party shall cause (i) one hundred percent (100%) of the issued and outstanding Equity Interests of each Domestic Subsidiary and (ii) sixty-five percent (65%) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and one hundred percent (100%) of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) in the case of each Foreign Subsidiary that is directly owned by any Credit Party to be subject at all times to a first priority lien (subject to any Permitted Lien) in favor of the Collateral Agent, for the benefit of the holders of the Obligations, pursuant to the terms and conditions of the Collateral Documents, together with any filings and deliveries or other items reasonably requested by the Collateral Agent necessary in connection therewith (to the extent not delivered on the Closing Date) to perfect the security interests therein, all in form and substance reasonably satisfactory to the Collateral Agent.

(b) Personal Property. Each Borrower and each other Credit Party shall (i) cause all of its owned and leased personal property (other than Excluded Property) to be subject at all times to first priority (subject to any Permitted Lien), perfected Liens in favor of the Collateral Agent, for the benefit of the holders of the Obligations, to secure the Obligations pursuant to the terms and conditions of the Collateral Documents or, with respect to any such property acquired subsequent to the Closing Date, such other additional security documents as the Collateral Agent shall reasonably request, subject in any case to Permitted Liens and (ii) deliver such other documentation as the Collateral Agent may reasonably request in connection with the foregoing, including, without limitation, appropriate UCC-1 financing statements, certified resolutions and other organizational and authorizing documents of such Person, and other items reasonably requested by the Collateral Agent necessary in connection therewith to perfect the security interests therein, all in form, content and scope reasonably satisfactory to the Collateral Agent.

Section 7.12 Books and Records. Each Credit Party will keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of the Borrowers in conformity with GAAP.

Section 7.13 Additional Subsidiaries. Within forty-five (45) days after the acquisition or formation of any Subsidiary (or such later date upon which such Subsidiary commences business):

(a) notify the Administrative Agent thereof in writing, together with the (i) jurisdiction of formation, (ii) number of shares of each class of Equity Interests outstanding, (iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by the applicable Credit Party or any Subsidiary and (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto; and

(b) if such Subsidiary is a Domestic Subsidiary, cause such Person to (i) become a Guarantor by executing and delivering to the Administrative Agent a Guarantor Joinder Agreement or such other documents as the Administrative Agent shall deem appropriate for such purpose, (ii) deliver to the Administrative Agent (A) copies of articles of incorporation, certificate of organization or formation, or other like document for such Subsidiary, which shall be certified to be true and complete by an Authorized Officer of such Subsidiary, (B) (I) copies of bylaws, operating agreement, partnership agreement or like document for such Subsidiary, (II) copies of resolutions approving the transactions contemplated in connection with the financing and authorizing execution and delivery of the Credit Documents to which such Subsidiary is joining as a Guarantor, and (III) incumbency certificates for such Subsidiary, in each case certified by an Authorized Officer in form and substance satisfactory to the Administrative Agent, (C) copies of certificates of good standing, existence or the like of a recent date for such Subsidiary from the appropriate Governmental Authority of its jurisdiction of formation or organization, and (iii) deliver or cause to be delivered to the Collateral Agent (A) such UCC financing statements necessary or appropriate to perfect the security interests in the personal property collateral of such Subsidiary that would constitute Collateral, as determined by the Collateral Agent, (B) such patent, trademark and copyright notices, filings and recordations necessary or appropriate to perfect the security interests in intellectual property and intellectual property rights that would constitute Collateral, as determined by the Collateral Agent, provided that nothing in this Agreement shall require any Subsidiary to make any filings or take any actions to record or perfect the Collateral Agent's Lien on and security interest in any intellectual property or intellectual property rights outside of the United States, (C) original certificates evidencing any certificated Equity Interests that when pledged would constitute Collateral, together with undated stock transfer powers executed in blank, and (D) certificates of insurance for casualty, liability and any other insurance with respect to such Subsidiary required by the Credit Documents, identifying the Collateral Agent as lender's loss payee with respect to the casualty insurance and additional insured with respect to the liability insurance, as appropriate, in each case in form, content and scope reasonably satisfactory to the Administrative Agent.

Section 7.14 Primary Treasury Management. The Credit Parties that were party to this Agreement prior to the Tenth Amendment Effective Date shall maintain at all times their primary deposit accounts and treasury management with Regions Bank; provided, however, to the extent that the foregoing is determined not to be practicable by PTI in its reasonable judgment, within one hundred and twenty (120) days following the Closing Date (or such later date as agreed to by the Administrative Agent) such Credit Parties shall execute and deliver deposit account control agreements, in form and substance reasonably satisfactory to the Administrative Agent, with respect to each deposit account of such Credit Parties (other than deposit accounts consisting of Excluded Property maintained by any such Credit Party). The Credit Parties that were not party to this Agreement prior to the Tenth Amendment Effective Date shall, within sixty (60) days following the Tenth Amendment Effective Date (or such later date as agreed to by the Administrative Agent), execute and deliver deposit account control agreements, in form and substance reasonably satisfactory to the Administrative Agent, with respect to each deposit account of such Credit Parties (other than deposit accounts consisting of Excluded Property maintained by any such Credit Party).

Section 8 NEGATIVE COVENANTS

Each Credit Party covenants and agrees that until the Obligations shall have been paid in full (other than contingent and indemnified obligations not then due and owing) or otherwise satisfied, and the Commitments hereunder shall have expired or been terminated, such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 8.

Section 8.1 Indebtedness. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, other than:

(a) the Obligations;

(b) Indebtedness of any Credit Party (other than Parent) to any other Credit Party;

(c) Indebtedness existing on the Tenth Amendment Effective Date and described in Schedule 8.1;

(d) Indebtedness with respect to (x) Capital Leases and (y) purchase money Indebtedness; provided, in the case of clause (x), that any such Indebtedness shall be secured only by the asset subject to such Capital Lease, and, in the case of clause (y), that any such Indebtedness shall be secured only by the asset acquired in connection with the incurrence of such Indebtedness; provided further that the sum of the aggregate principal amount of any Indebtedness under this clause (e) shall not exceed \$1,500,000 at any time;

(e) Indebtedness in respect of any Swap Agreement that is entered into in the ordinary course of business to hedge or mitigate risks to which any Credit Party or any of its Subsidiaries is exposed in the conduct of its business or the management of its liabilities (it being acknowledged by the Borrowers that a Swap Agreement entered into for speculative purposes or of a speculative nature is not a Swap Agreement entered into in the ordinary course of business to hedge or mitigate risks);

(f) (i) any guaranty of a Credit Party with respect to a lease held by any other Credit Party and (ii) any guarantee by any Credit Party of Indebtedness or other obligations of any other Credit Party so long as such Indebtedness or obligation could have been incurred directly by the Credit Party providing such guarantee in accordance with the terms hereof;

(g) Indebtedness incurred by any Credit Party constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including letters of credit in respect of workers' compensation claims, performance or surety bonds, health disability or other employee benefits (whether current or former) or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims, performance or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance;

(h) Indebtedness arising from agreements of any Credit Party providing for indemnification, adjustment of purchase price, unsecured Earn Out Obligations or similar obligations, in each case, incurred or assumed in connection with any Permitted Acquisition or disposition of any business or assets of such Credit Party permitted hereunder, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business or assets of a Credit Party for the purpose of financing such acquisition;

(i) obligations in respect of self-insurance, performance, bid, appeal and surety bonds and completion guarantees and similar obligations provided by any Credit Party or obligations in respect of letters of credit, bank guarantee or similar instruments related thereto, in each case, in the ordinary course of business;

(j) (i) Indebtedness occurred in ordinary course of business of the Credit Parties with banks or financial institutions that arises in connection with ordinary banking arrangements to manage cash balances and other cash management services and (ii) Indebtedness in respect of netting services, overdraft protection, credit card programs (to the extent such obligations are not due and owing past the due date specified in any statements with respect thereto), automatic clearinghouse arrangements and similar arrangements in each case in connection with deposit accounts in the ordinary course of business;

(k) [reserved];

(l) Indebtedness incurred by any Credit Party owing to any landlord of any restaurant owned or operated by such Credit Party in an aggregate principal amount not to exceed \$1,000,000 at any time in connection with any liquor license held by such landlord; and

(m) Indebtedness of any Credit Party or any Subsidiary thereof not otherwise permitted pursuant to this Section 8.1 in an aggregate principal amount not to exceed \$5,000,000 at any time outstanding.

Section 8.2 Liens. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind of any Credit Party or any of its Subsidiaries, whether now owned or hereafter acquired, except:

(a) Liens in favor of the Collateral Agent for the benefit of the holders of the Obligations granted pursuant to any Credit Document;

(b) Liens for Taxes not yet due or for Taxes if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted;

(c) (i) contractual or statutory Liens of landlords, to the extent relating to the property and assets relating to any lease agreements with such landlord (so long as the rent payable under any such lease agreement is not more than 30 days past due, unless being contested in good faith and for which reserves have been established in accordance with GAAP), (ii) contractual Liens of suppliers (including sellers of goods) or service providers to the extent limited to property or assets relating to such contract, (iii) contractual or statutory Liens of governmental or other customers to the extent limited to the property or assets relating to such contract, (iv) Liens in favor of governmental bodies to secure advance or progress payments pursuant to any contract or statute, and (v) statutory Liens of banks, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, in each case, incurred or granted in the ordinary course of business;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety 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 or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of any Credit Party or any of its Subsidiaries, including, without limitation, all encumbrances shown on any policy of title insurance in favor of the Collateral Agent with respect to any Real Estate Asset;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases or consignments of personal property entered into in the ordinary course of business;

(h) 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;

(i) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(j) Liens existing as of the Tenth Amendment Effective Date and described in Schedule 8.2;

(k) Liens securing purchase money Indebtedness and Capital Leases to the extent permitted pursuant to Section 8.1(d); provided, any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness or the assets subject to such Capital Lease, respectively;

(l) Liens in favor of the Issuing Bank or the Swingline Lender on cash collateral securing the obligations of a Defaulting Lender to fund risk participations hereunder;

(m) Liens consisting of judgment or judicial attachment liens relating to judgments which do not constitute an Event of Default hereunder;

(n) licenses (including licenses of Intellectual Property), sublicenses, leases or subleases granted to third parties in the ordinary course of business;

(o) Liens in favor of collecting banks under Section 4-210 of the UCC;

(p) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(q) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(r) any Lien existing on any property or asset acquired pursuant to a Permitted Acquisition or existing on any property or assets of any Person that becomes a Credit Party pursuant to a Permitted Acquisition after the date hereof prior to the time such Person becomes a Credit Party, as the case may be; provided that (i) such Lien is not created in contemplation of or in connection with such Permitted Acquisition, (ii) such Lien does not apply to any other property or assets of any Credit Party, and (iii) such Lien secures only those obligations which it secures on the date of such Permitted Acquisition and extensions, renewals and replacements thereof permitted by Section 8.1 so long as the principal amount of such extensions, renewals and replacements does not exceed the principal amount of the obligations being extended, renewed or replaced;

(s) Liens of a third-party insurance company arising in the ordinary course of business on premium cash held in trust for the benefit of such third-party insurance company;

(t) Liens with respect to earnest money deposits made in connection with any Permitted Acquisition or securing Indebtedness permitted by Section 8.1(h), in an aggregate amount not to exceed \$500,000 at any time outstanding;

(u) Liens on insurance policies and the proceeds thereof securing Indebtedness permitted pursuant to Section 8.1(g);

(v) Liens on (i) cash deposits maintained for regulatory capital requirement or held on behalf of clients in the ordinary course of business and (ii) receivables required to be directed for subsequent payment to clients in the ordinary course of business;

(w) Liens on liquor licenses in connection with Indebtedness permitted pursuant to Section 8.1(l); and

(x) Liens not otherwise permitted hereunder securing Indebtedness or other obligations not in excess of \$2,000,000 in the aggregate at any one time outstanding.

Section 8.3 No Further Negative Pledges. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any material Contractual Obligation (other than this Agreement and the other Credit Documents) that limits the ability of any Credit Party or any such Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this Section 8.3 shall not prohibit (i) any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 8.1(d), solely to the extent any such negative pledge relates to the property financed by or subject to Permitted Liens securing such Indebtedness, (ii) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (iii) customary restrictions and conditions contained in any agreement relating to the disposition of any property or assets permitted under Section 8.10 pending the consummation of such disposition, and (iv) customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business.

Section 8.4 Restricted Payments. No Credit Party shall, nor shall it permit any of its Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary of Parent may make Restricted Payments to any Credit Party;

(b) [reserved];

(c) any Credit Party may pay cash in lieu of fractional shares in connection with any dividend, split or combination of its Equity Interests or any Permitted Acquisition (or similar Investment);

(d) Parent and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(e) [reserved];

(f) any Credit Party may declare and make Restricted Payments the proceeds of which will be used to repurchase, retire or otherwise acquire the Equity Interests of Parent from directors, officers, employees or members of management consultants or independent contractors (or their estate, family trust, family members, spouse, civil partner and/or former spouse or civil partner) of Parent not to exceed (i) \$3,000,000 in the aggregate in any Fiscal Year and (ii) \$6,000,000 in the aggregate for the period from and after the Tenth Amendment Effective Date through the Maturity Date;

(g) [reserved]; and

(h) commencing with the Fiscal Year ending December 31, 2018, the Credit Parties may make Restricted Payments in the form of dividends, share repurchases and other distributions not otherwise permitted by this Section 8.4 if at the time such Restricted Payment is made and after giving effect to any such Restricted Payment on a Pro Forma Basis, the Consolidated Senior Lease-Adjusted Leverage Ratio is less than 5.50 to 1.00; provided that, that in each case, at the time of the making of any such Restricted Payment pursuant to this clause (h) and immediately after giving effect thereto (x) no Default or Event of Default shall have occurred and be continuing or would result therefrom, and (y) the Credit Parties are in compliance on a Pro Forma Basis with the financial covenant set forth in Section 8.8(b); provided further that in no event shall any Restricted Payment be made pursuant to this clause (h) in respect of any Equity Interest originally issued to Cardboard Box.

Notwithstanding anything to the contrary contained herein, no Credit Party shall, nor shall it permit any of its Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so from and after the Ninth Amendment Effective Date other than those described in clauses (a), (c) and (d) of this Section; provided that such prohibition shall expire on the Compliance Date.

Section 8.5 Burdensome Agreements. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into, or permit to exist, any Contractual Obligation that encumbers or restricts the ability of any such Person to (i) pay dividends or make any other distributions to any Borrower or other Credit Party on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Borrower or any other Credit Party, (iii) make loans or advances to any Borrower or any other Credit Party, (iv) sell, lease or transfer any of its property to any Borrower or any other Credit Party, (v) pledge its property pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (vi) act as a Borrower or a Credit Party pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (i)-(iv) above) for (1) this Agreement and the other Credit Documents, (2) any document or instrument governing Indebtedness incurred pursuant to Section 8.1(d); provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (3) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (4) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 8.10 pending the consummation of such sale, (5) Contractual Obligations that are customary restrictions on leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (6) Contractual Obligations that are customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Borrower or any Credit Party, or (7) Contractual Obligations that exist under or by reason of any Contractual Obligation of a Person acquired by a Borrower or any Credit Party in a Permitted Acquisition which was in existence at the time of such Permitted Acquisition (but not created in contemplation thereof or to provide all or any portion of the funds or credit support utilized to consummate such Permitted Acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, as acquired.

Section 8.6 Investments. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, except:

- (a) Investments in cash and Cash Equivalents and deposit accounts or securities accounts in connection therewith;
- (b) (i) equity Investments owned as of the Tenth Amendment Effective Date in any Subsidiary; (ii) any Investment in any Credit Party (other than Parent); (iii) Investments by any Credit Parties in Subsidiaries which are not Credit Parties (provided that the aggregate amount of all such Investments under this clause (iii) does not exceed \$250,000 at any time outstanding); and (iv) Investments by Subsidiaries which are not Credit Parties in other Subsidiaries which are not Credit Parties;
- (c) intercompany loans to the extent permitted under Section 8.1(b);
- (d) Investments existing on the Tenth Amendment Effective Date and described on Schedule 8.6;
- (e) Investments constituting Swap Agreements permitted by Section 8.1(e);
- (f) Permitted Acquisitions;
- (g) guarantees by any Credit Party of leases or other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(h) loans or advances to officers, directors, employees, consultants and independent contractors of any Credit Party for travel, entertainment, relocation and analogous ordinary business purposes in an amount not to exceed \$375,000 in any Fiscal Year;

(i) to the extent constituting Investments, transactions expressly permitted (other than by reference to Section 8.6) under Sections 8.1, 8.2, 8.4, and 8.10;

(j) promissory notes and other noncash consideration received in connection with Asset Sales permitted under Section 8.10(c);

(k) Investments in the ordinary course of business consisting of (i) endorsements for collection or deposit and (ii) customary trade arrangements with customers;

(l) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business and upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(m) the licensing, sublicensing or contribution of Intellectual Property pursuant to joint marketing arrangements with Persons other than the Credit Parties in the ordinary course of business;

(n) advances of payroll payments to employees, consultants or independent contractors or other advances of salaries or compensation to employees, consultants or independent contractors, in each case in the ordinary course of business;

(o) Investments of a Person that is acquired and becomes a Credit Party or of a Person merged or amalgamated or consolidated into any Credit Party, in each case after the Closing Date and in accordance with this Agreement, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(p) Investments constituting accounts receivable, trade debt and deposits for the purchase of goods, in each case made in the ordinary course of business; and

(q) other Investments not otherwise permitted pursuant to this Section 8.6 in an aggregate principal amount not to exceed \$500,000 at any time outstanding.

Section 8.7 Use of Proceeds. No Credit Party shall use the proceeds of any Credit Extension of the Loans except pursuant to Section 7.8.

Section 8.8 Financial Covenants. The Credit Parties shall not:

(a) Consolidated Senior Lease-Adjusted Leverage Ratio. Beginning with the Fiscal Quarter ending March 31, 2022, permit the Consolidated Senior Lease-Adjusted Leverage Ratio as of the end of each Fiscal Quarter of Parent to be greater than the correlative amount set forth in the table below:

Each Fiscal Quarter ending closest to the calendar quarters ending	Maximum Consolidated Senior Lease-Adjusted Leverage Ratio
March 31, 2022	6.50 to 1.00
June 30, 2022	6.25 to 1.00
September 30, 2022	6.00 to 1.00
December 31, 2022	5.75 to 1.00
March 31, 2023	5.50 to 1.00
June 30, 2023	5.25 to 1.00
September 30, 2023 and thereafter	5.00 to 1.00

(b) Consolidated Fixed Charge Coverage Ratio. Beginning with the Fiscal Quarter ending closest to the calendar quarter ending March 31, 2022, permit the Consolidated Fixed Charge Coverage Ratio as of the end of each Fiscal Quarter of Parent to be less than 1.30 to 1.00.

(c) Minimum Liquidity. Permit Liquidity (on a bank balance basis and available for withdrawal as of the close of such Business Day) as of the close of business on the last Business Day of each month occurring after the Tenth Amendment Effective Date to be less than \$12,500,000.

Section 8.9 [Reserved.]

Section 8.10 Fundamental Changes; Disposition of Assets; Acquisitions. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any Acquisition or transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or make any Asset Sale, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory and materials and the acquisition of equipment and capital expenditures in the ordinary course of business, subject to Section 8.9) the business, property or fixed assets of, or Equity Interests or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Parent may be merged with or into any Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to any other Subsidiary; provided that, in the case of such a merger, (i) if PTI is party to the merger, then PTI shall be the continuing or surviving Person, and (iii) if any Guarantor is a party to such merger (other than with PTI), then a Guarantor shall be the continuing or surviving Person;

(b) any Subsidiary of Parent (other than PTI) that owns one or more restaurants may be liquidated, wound up or dissolved upon any Asset Sale consisting of the sale of all such restaurants owned by such Subsidiary; provided that (i) such Asset Sale is permitted pursuant to the terms of this Agreement and (ii) after giving effect to such Asset Sale, such Subsidiary has no assets other than de minimis assets; and any Subsidiary of Parent (other than PTI) that at one time owned, but as of the Tenth Amendment Effective Date either no longer owns any restaurant or only owns restaurants that are permanently closed, and otherwise has no assets other than de minimis assets, may be liquidated, wound up or dissolved (and any such liquidation, winding up or dissolution occurring prior to the Tenth Amendment Effective Date shall be deemed to have been permitted for all purposes of the Credit Documents);

(c) Asset Sales, (i) the proceeds of which when aggregated with the proceeds of all other Asset Sales made within the same Fiscal Year, do not exceed \$2,000,000; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of the applicable Credit Party (or similar governing body)), and (2) no less than seventy-five percent (75%) of such proceeds shall be paid in cash;

(d) the Credit Parties may sell or discount without recourse accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof consistent with past practices;

(e) Restricted Payments made in accordance with Section 8.4; and

(f) Investments made in accordance with Section 8.6.

Section 8.11 Transactions with Affiliates and Insiders. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any officer, director or Affiliate Parent or any of its Subsidiaries on terms that are less favorable to Parent or such Subsidiary, as the case may be, than those that might be obtained in a comparable arm's length transaction at the time from a Person who is not an officer, director or Parent or any of its Subsidiaries; provided, the foregoing restriction shall not apply to (a) any transaction between or among the Credit Parties, (b) Investment made in accordance with Section 8.6(b), (c) normal and reasonable compensation and reimbursement of expenses of officers and directors in the ordinary course of business, (d) Restricted Payments made in accordance with Section 8.4, (e) the Original ACFP Acquisition or the ACFP Acquisition, (f) employment, indemnification and severance arrangements between the Credit Parties and their respective officers, directors, managers, employees or consultants (including management and employee benefit plans or agreements, stock option plans and other compensatory arrangements) in the ordinary course of business and payments pursuant thereto, (g) reasonable and customary payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to employees, officers, directors, managers or consultants of the Credit Parties and employment agreement, stock option plans and other similar arrangements with such employees, officers, directors, manager or consultants, (h) leases and Intellectual Property licenses entered into in the ordinary course of business, and (i) the Delayed Draw Term Loan.

Section 8.12 [Reserved.]

Section 8.13 Conduct of Business. No Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than the businesses engaged in by such Credit Party or such Subsidiary on the Tenth Amendment Effective Date and businesses that are substantially similar, related or incidental thereto.

Section 8.14 Fiscal Year. No Credit Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year-end from on or about December 31; provided that Parent shall be permitted to change the date of its Fiscal Year-end without consent of the Administrative Agent or the Lenders so long as (i) Parent promptly provides written notice of any such changes to the Fiscal Year-end dates to the Administrative Agent and (ii) each Fiscal Year-end date is no more than six (6) days prior to or following December 31.

Section 8.15 Amendments to Organizational Agreements. No Credit Party shall, nor shall it permit any of its Subsidiaries to, (a) amend or permit any amendments to its Organizational Documents if such amendment could reasonably be expected to be materially adverse to the Lenders or any Agent or (b) amend, modify or change the Equity Interests of Parent constituting Series A Convertible Preferred Stock issued to Cardboard Box in connection with the ACFP Acquisition in a manner adverse to the Lenders or any Agent.

Section 8.16 Management Fees. No Credit Party shall, nor shall it permit any of its Subsidiaries to, pay any management, consulting or similar fees or other payments to any Credit Party or any Affiliate thereof or any officer, director or employee of any Credit Party or any Affiliate thereof.

Section 9 EVENTS OF DEFAULT; REMEDIES; APPLICATION OF FUNDS.

Section 9.1 Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by any Credit Party to pay (i) the principal of any Loan when due, whether at stated maturity, by acceleration or otherwise; (ii) within one (1) Business Day of when due any amount payable to the Issuing Bank in reimbursement of any drawing under a Letter of Credit; or (iii) within three (3) Business Days of when due any interest on any Loan or any fee or any other amount due hereunder; or

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an aggregate principal amount of \$1,500,000 or more, in each case beyond the grace or cure period, if any, provided therefor; or (ii) breach or default by any Credit Party or any of its Subsidiaries with respect to any other term of (1) one or more items of Indebtedness in the aggregate principal amounts referred to in clause (i) above, or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace or cure period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Section 7.1, Section 7.2, Section 7.5, Section 7.6, Section 7.7, Section 7.8, Section 7.9, Section 7.10, Section 7.11, Section 7.13, or Section 8; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other Section of this Section 9.1, and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an Authorized Officer of such Credit Party becoming aware of such default, or (ii) receipt by any Borrower of notice from the Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy: Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Credit Party or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or Debtor Relief Laws now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against any Credit Party or any of its Subsidiaries under the Bankruptcy Code or other Debtor Relief Laws now or hereafter in effect, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or (iii) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Credit Party or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or (iv) there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Credit Party or any of its Subsidiaries for all or a substantial part of its property; or (v) a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of any Credit Party or any of its Subsidiaries; provided that, notwithstanding the foregoing, the events set forth in this clause (f) with respect to any Credit Party or any of its Subsidiaries (in each case, other than a Borrower, Hot Air, BurgerFi International, LLC, BF Restaurant Management, LLC, BurgerFi IP, LLC, ACFP Management or Anthony's Pizza Holding Company, LLC) shall not constitute an Event of Default unless any of the events described in clauses (i) through (v) above occur with respect to such Credit Parties and/or Subsidiaries owning and operating more than two restaurants in the aggregate over the term of this Agreement; or

(g) Voluntary Bankruptcy: Appointment of Receiver, etc. (i) Any Credit Party or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or other Debtor Relief Laws now or hereafter in effect, or shall consent 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 such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or any Credit Party or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) any Credit Party or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of any Credit Party or any of its Subsidiaries or any committee thereof shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 9.1(f); provided that, notwithstanding the foregoing, the events set forth in this clause (g) with respect to any Credit Party or any of its Subsidiaries (in each case, other than a Borrower, Hot Air, BurgerFi International, LLC, BF Restaurant Management, LLC, BurgerFi IP, LLC, ACFP Management or Anthony's Pizza Holding Company, LLC) shall not constitute an Event of Default unless any of the events described in clauses (i) or (ii) above occur with respect such Credit Parties and/or Subsidiaries owning and operating more than two restaurants in the aggregate over the term of this Agreement; or

(h) Judgments and Attachments. (i) Any one or more money judgments, writs or warrants of attachment or similar process involving an aggregate amount at any time in excess of \$1,500,000 (to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against any Credit Party or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days; or (ii) any non-monetary judgment or order shall be rendered against any Credit Party or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect, and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days; or

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party or any of its Subsidiaries decreeing the dissolution or split up of such Credit Party or such Subsidiary and such order shall remain undischarged or unstayed for a period in excess of thirty (30) days; or

(j) Pension Plans. There shall occur one or more ERISA Events which individually or in the aggregate results in liability of any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of \$1,000,000 during the term hereof and which is not paid by the applicable due date; or

(k) Change of Control. A Change of Control shall occur; or

(l) Invalidity of Credit Documents and Other Documents. At any time after the execution and delivery thereof, (i) this Agreement or any other Credit Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations (other than contingent and indemnified obligations not then due and owing) in accordance with the terms hereof) or shall be declared null and void, or the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents (other than as expressly permitted thereunder) with the priority required by the relevant Collateral Document, or (ii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by the Lenders, under any Credit Document to which it is a party.

Section 9.2 Remedies. (1) Upon the occurrence of any Event of Default described in Section 9.1(f) or Section 9.1(g), automatically, and (2) upon the occurrence and during the continuance of any other Event of Default, at the request of (or with the consent of) the Required Lenders, upon notice to the Borrowers by the Administrative Agent, (A) the Revolving Commitments, if any, of each Lender having such Revolving Commitments and the obligation of the Issuing Bank to issue any Letter of Credit shall immediately terminate; (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each of the Credit Parties: (I) the unpaid principal amount of and accrued interest on the Loans, (II) an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit), and (III) all other Obligations; provided, the foregoing shall not affect in any way the obligations of the Lenders under Section 2.2(b)(iii) or Section 2.3(e); (C) the Administrative Agent may cause the Collateral Agent to enforce any and all Liens and security interests created pursuant to Collateral Documents and (D) the Administrative Agent shall direct the Borrowers to pay (and the Borrowers hereby agree upon receipt of such notice, or upon the occurrence of any Event of Default specified in Section 9.1(f) and Section 9.1(g) to pay) to the Administrative Agent such additional amounts of cash, to be held as security for any Borrower's reimbursement Obligations in respect of Letters of Credit then outstanding under arrangements acceptable to the Administrative Agent, equal to the Outstanding Amount of the Letter of Credit Obligations at such time. Notwithstanding anything herein or otherwise to the contrary, any Event of Default occurring hereunder shall continue to exist (and shall be deemed to be continuing) until such time as such Event of Default has been cured to the satisfaction of the Required Lenders or waived in writing in accordance with the terms of Section 11.4.

Section 9.3 Application of Funds. After the exercise of remedies provided for in Section 9.2 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal, interest and Letter of Credit Fees but including without limitation all reasonable out-of-pocket fees, expenses and disbursements of any law firm or other counsel and amounts payable under Section 3.2 and Section 3.3) payable to the Administrative Agent and the Collateral Agent, in each case in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders including without limitation all reasonable out-of-pocket fees, expenses and disbursements of any law firm or other counsel and amounts payable under Section 3.2 and Section 3.3), ratably among the Lenders in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, Letter of Credit Borrowings and other Obligations ratably among such parties in proportion to the respective amounts described in this clause Third payable to them; and

Fourth, to (a) payment of that portion of the Obligations constituting unpaid principal of the Loans (other than the Delayed Draw Term Loan) and Letter of Credit Borrowings, (b) payment of breakage, termination or other amounts owing in respect of any Swap Agreement between any Credit Party or any of its Subsidiaries and any Qualifying Swap Bank, to the extent such Swap Agreement is permitted hereunder, (c) payments of amounts due under any Treasury Management Agreement between any Credit Party or any of its Subsidiaries and any Qualifying Treasury Management Bank, and (d) the Administrative Agent for the account of the Issuing Bank, to Cash Collateralize that portion of the Letter of Credit Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among such parties in proportion to the respective amounts described in this clause Fourth payable to them; and

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Delayed Draw Term Loan, ratably among such parties in proportion to the respective amounts described in this clause Fifth payable to them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full (other than contingent and indemnified obligations not then due and owing), to the Borrowers or as otherwise required by Applicable Laws.

Subject to Section 2.3, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or such Guarantor's assets, but appropriate adjustments shall be made with respect to payments from other Credit Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

Notwithstanding the foregoing, Secured Swap Obligations and Secured Treasury Management Obligations shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Qualifying Swap Bank or Qualifying Treasury Management Bank, as the case may be. Each Qualifying Swap Bank or Qualifying Treasury Management Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Section 10 for itself and its Affiliates as if a "Lender" party hereto.

Section 10 AGENCY

Section 10.1 Appointment and Authority.

(a) Each of the Lenders and the Issuing Bank hereby irrevocably appoints Regions Bank to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Section are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Bank, and no Credit Party nor any of its Subsidiaries shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Each of the Lenders hereby irrevocably appoints, designates and authorizes the Collateral Agent to take such action on its behalf under the provisions of this Agreement and each Collateral Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any Collateral Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any Collateral Document, the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein or therein, nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any Collateral Document or otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the Collateral Documents with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Collateral Agent shall act on behalf of the Lenders with respect to any Collateral and the Collateral Documents, and the Collateral Agent shall have all of the benefits and immunities (i) provided to the Administrative Agent under the Credit Documents with respect to any acts taken or omissions suffered by the Collateral Agent in connection with any Collateral or the Collateral Documents as fully as if the term "Administrative Agent" as used in such Credit Documents included the Collateral Agent with respect to such acts or omissions, and (ii) as additionally provided herein or in the Collateral Documents with respect to the Collateral Agent.

Section 10.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Borrower or any Subsidiary of any Borrower or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 10.3 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.4 and 9.2) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent in writing by a Borrower, a Lender or the Issuing Bank.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the

performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 5 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 10.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers and its Subsidiaries), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 10.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 10.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrowers so long as no Event of Default has occurred and is continuing (such consent not to be unreasonably withheld or delayed), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person servicing as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law by notice in writing to the Borrowers and such Person remove such Person as the Administrative Agent and, with the consent of the Borrowers so long as no Event of Default has occurred and is continuing (such consent not to be unreasonably withheld or delayed), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days or such earlier day as shall be agreed by the Required Lenders (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Bank under any of the Credit Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Bank directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Section 10 and Section 11.2 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Section 10.7 Non-Reliance on Administrative Agent and Other Lenders. Each of the Lenders and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each of the Lenders and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

Section 10.8 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Book Managers or Lead Arrangers listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Bank hereunder.

Section 10.9 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Bank and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Bank and the Administrative Agent under Section 2.10 and Section 11.2) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Bank 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 and the Issuing Bank, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 2.10 and Section 11.2).

Section 10.10 Collateral Matters.

(a) The Lenders (including the Issuing Bank and the Swingline Lender) irrevocably authorize the Administrative Agent and the Collateral Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held under any Credit Document securing the Obligations (x) upon termination of the commitments under this Agreement and payment in full of all Obligations (other than contingent and indemnified obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the Issuing Bank shall have been made), (y) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted under the Credit Documents or consented to in accordance with the terms of this Agreement, or (z) subject to Section 11.4, if approved, authorized or ratified in writing by the Required Lenders;

(ii) to subordinate any Lien on any property granted to or held under any Credit Document securing the Obligations to the holder of any Lien on such property that is permitted by Section 8.2(k); and

(iii) to release any Guarantor from its obligations under this Agreement and the other Credit Documents if such Person ceases to be a Guarantor as a result of a transaction permitted under the Credit Documents.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under this Agreement pursuant to this Section.

(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 Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(c) Anything contained in any of the Credit Documents to the contrary notwithstanding, each of the Credit Parties, the Administrative Agent, the Collateral Agent and each holder of the Obligations hereby agree that (i) no holder of the Obligations shall have any right individually to realize upon any of the Collateral or to enforce this Agreement, the Notes or any other Credit Agreement, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the holders of the Obligations in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent, and (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale or other disposition and the Collateral Agent (at the direction of the Required Lenders), as agent for and representative of the holders of the Obligations (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

(d) No Secured Swap Agreement or Secured Treasury Management Agreement will create (or be deemed to create) in favor of any Qualifying Swap Bank or any Qualifying Treasury Management Bank, respectively that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Borrower or any other Credit Party under the Credit Documents except as expressly provided herein or in the other Credit Documents. By accepting the benefits of the Collateral, each such Qualifying Swap Bank and Qualifying Treasury Management Bank shall be deemed to have appointed the Collateral Agent as its agent and agreed to be bound by the Credit Documents as a holder of the Obligations, subject to the limitations set forth in this clause (d). Furthermore, it is understood and agreed that the Qualifying Swap Bank and Qualifying Treasury Management Banks, in their capacity as such, shall not have any right to notice of any action or to consent to, direct or object to any action hereunder or under any of the other Credit Documents or otherwise in respect of the Collateral (including the release or impairment of any Collateral, or to any notice of or consent to any amendment, waiver or modification of the provisions hereof or of the other Credit Documents) other than in its capacity as a Lender and, in any case, only as expressly provided herein.

Section 10.11 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender or the Issuing Bank (the "Recipient Party"), whether or not in respect of an Obligation due and owing by a Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Recipient Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Recipient Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such

Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. Each Recipient Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Recipient Party promptly upon determining that any payment made to such Recipient Party comprised, in whole or in part, a Rescindable Amount.

Section 11 MISCELLANEOUS

Section 11.1 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (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 telecopier or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Administrative Agent, any Borrower or any other Credit Party, to the address, telecopier number, electronic mail address or telephone number specified in Appendix B;

(ii) if to any Lender, the Issuing Bank or Swingline Lender, to the address, telecopier number, electronic mail address or telephone number in its Administrative Questionnaire on file with the Administrative Agent.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Section 2 if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent and the Borrowers that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent or any Credit Party may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications

posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, provided that, with respect to clauses (i) and (ii) above, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient

(c) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform.

(i) Each Credit Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Bank and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "Platform").

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Borrower or the other Credit Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Borrower's, any other Credit Party's or the Administrative Agent's transmission of communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Credit Party pursuant to any Credit Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Bank by means of electronic communications pursuant to this Section, including through the Platform.

Section 11.2 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Credit Parties shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented out-of-pocket fees, charges and disbursements of a single counsel for the Administrative Agent) in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Bank (including the reasonable out-of-pocket fees, charges and disbursements of a single counsel for the Administrative Agent, the Lenders and the Issuing Bank, taken as a whole, and one counsel in each relevant local jurisdiction and one counsel in each relevant specialty area to the extent deemed

reasonably necessary by the Administrative Agent and, in the event of an actual or perceived conflict of interest among the Administrative Agent, the Lenders and the Issuing Bank, additional counsel to the affected parties) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Credit Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Credit Parties. The Credit Parties shall indemnify the Administrative Agent (and any sub-agent thereof), the Collateral Agent (and any sub-agent thereof), each Lender and the Issuing Bank, 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, liabilities and related expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of one main firm of counsel for all such Indemnitees, taken as a whole, one local counsel for all such Indemnitees, taken as a whole, in each relevant jurisdiction, on specialty counsel in each relevant specialty are to all such Indemnities, taken as a whole, and, in the event of an actual or perceived conflict of interest among Indemnitees, additional counsel to the affected Indemnitees), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including any Borrower or any other Credit Party) other than such Indemnitee or its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Borrower or any other Credit Party, or any Environmental Liability related in any way to any Credit Party or any of their Subsidiaries, 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, whether brought by a third party or by any Credit Party or any of their Subsidiaries, and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) result from a claim brought by any Borrower or any other Credit Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Credit Document, if any Borrower or such other Credit Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) result from a material breach of this Agreement by such Indemnitees as determined by a court of competent jurisdiction by final and nonappealable judgment. This Section 11.2(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Credit Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Collateral Agent (or any sub-agent thereof), the Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Collateral Agent (or any such sub-agent), the Issuing Bank or such Related Party, as the case may be, such Lender's pro rata share (in each case, determined as of the time that the applicable unreimbursed expense or

indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or the Issuing Bank in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of this Agreement that provide that their obligations are several in nature, and not joint and several.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, none of the Credit Parties shall assert, and each hereby waives, any claim against any Indemnitee, 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, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly, but in any event within ten (10) Business Days after written demand therefor (including delivery of copies of applicable invoices).

(f) Survival. The provisions of this Section shall survive resignation or replacement of the Administrative Agent, Collateral Agent, the Issuing Bank, the Swingline Lender or any Lender, termination of the commitments hereunder and repayment, satisfaction and discharge of the loans and obligations hereunder.

Section 11.3 Set-Off. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Bank, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Issuing Bank or any such Affiliate to or for the credit or the account of any Borrower or any other Credit Party against any and all of the obligations of such Borrower or such Credit Party now or hereafter existing under this Agreement or any other Credit Document to such Lender, the Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, the Issuing Bank or such Affiliate shall have made any demand under this Agreement or any other Credit Document and although such obligations of such Borrower or such Credit Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or the Issuing Bank different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank or their respective Affiliates may have. Each of the Lenders and the Issuing Bank agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 11.4 Amendments and Waivers.

(a) Required Lenders' Consent. Subject to Section 11.4(b) and Section 11.4(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of the Required Lenders; provided that (i) the Administrative Agent may, with the consent of the Borrowers only, amend, modify or supplement this Agreement to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender or the Issuing Bank, (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (iii) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitments, Loans and/or Letter of Credit Obligations of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender, (iv) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (v) the Required Lenders shall determine whether or not to allow any Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than (i) a Defaulting Lender except as provided in clause (a) (iii) above and as set forth at the end of this clause (b) and (ii) a Delayed Draw Term Loan Lender except as provided in clause (e) below) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (i) extend the Maturity Date;
- (ii) waive, reduce or postpone any scheduled repayment (but not prepayment) or alter the required application of any prepayment pursuant to Section 2.12 or the application of funds pursuant to Section 9.3, as applicable;
- (iii) extend the stated expiration date of any Letter of Credit, beyond the Maturity Date;
- (iv) reduce the principal of or the rate of interest on any Loan (other than any waiver of the imposition of the Default Rate pursuant to Section 2.9) or any fee or premium payable hereunder; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" or to waive any obligation of any Borrower to pay interest at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;
- (v) extend the time for payment of any such interest or fees;
- (vi) reduce the principal amount of any Loan or any reimbursement obligation in respect of any Letter of Credit;

(vii) amend, modify, terminate or waive any provision of this Section 11.4(b) or Section 11.4(c) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;

(viii) change the percentage of the outstanding principal amount of Loans that is required for the Lenders or any of them to take any action hereunder or amend the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly affected thereby;

(ix) release all or substantially all of the Collateral or all or substantially all of the Guarantors from their obligations hereunder, in each case, except as expressly provided in the Credit Documents; or

(x) consent to the assignment or transfer by any Borrower of any of its rights and obligations under any Credit Document (except pursuant to a transaction permitted hereunder).

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Borrower or any other Credit Party therefrom, shall:

(i) increase any Revolving Commitment of any Lender over the amount thereof then in effect without the consent of such Lender;

(ii) amend, modify, terminate or waive any provision hereof relating to the Swingline Sublimit or the Swingline Loans with the consent of the Swingline Lender;

(iii) amend, modify, terminate or waive any obligation of Lenders relating to the purchase of participations in Letters of Credit as provided in Section 2.3(e) without the written consent of the Administrative Agent and of the Issuing Bank; or

(iv) amend, modify, terminate or waive any provision of this Section 11 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent.

(d) Execution of Amendments, etc. The Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 11.4 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

(e) Voting Rights of Delayed Draw Term Loan Lenders. Notwithstanding anything to the contrary contained herein, without the written consent of each Delayed Draw Term Loan Lender that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) Amend, modify, terminate or waive the definition of “Consolidated Excess Cash Flow”, “Delayed Draw Term Loan”, “Delayed Draw Term Loan Commitment”, “Delayed Draw Term Loan Lender”, “Delayed Draw Term Loan Note” or “Delayed Draw Term Loan Commitment Percentage”;

(ii) amend, modify, terminate or waive any provision of Section 2.1(d), Section 2.6(d), Section 2.11(c)(iv), Section 2.12(b)(iii), Section 2.12(b)(iv), Section 9.3 or this Section 11.4(e); or

(iii) solely to the extent that the proposed amendment, modification, termination or consent is of the type set forth in Section 11.4(b), if such proposed amendment, modification, termination or consent would result in the Delayed Draw Term Loans being subject to adversely disproportionate treatment in comparison to the other Obligations, taken as a whole.

Section 11.5 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither a Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, Loans and Obligations hereunder at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender’s Commitments and the Loans at the time owing to it (in each case with respect to any credit facility) or contemporaneous assignments to Approved Funds that equal at least to the amounts specified in subsection (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans and Obligations in respect thereof outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment Agreement with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment Agreement, as of the Trade Date) shall not be less than \$1,000,000, unless each of the Administrative Agent and, so long as no Event of Default shall have occurred and is continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Commitments and Loans assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations on a non-pro rata basis as between its Revolving Commitments and/or Revolving Loans, on the one hand, and any Term Loan Commitment and/or Term Loan, on the other the hand.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrowers (such consent not to be unreasonably withheld or delayed) shall be required unless (x) the Compliance Date has not occurred, (y) an Event of Default shall have occurred and is continuing at the time of such assignment or (z) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrowers shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) Revolving Credit Commitments if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) a funded Term Loan to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the Issuing Bank (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of any Revolving Commitment; and

(D) the consent of the Swingline Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of any Revolving Commitment.

(iv) Assignment Agreement. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment Agreement, together with a processing and recordation fee in the amount of \$3,500, unless waived, in whole or in part by the Administrative Agent in its discretion. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment Certain Persons. No such assignment shall be made to (A) any Borrower or any Affiliate or Subsidiary of any Borrower or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B); provided that the Delayed Draw Term Loan may be assigned to any Borrower's Affiliates that are not Credit Parties.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrowers and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Bank, each Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by 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 entitled to the benefits of Sections 2.16, 2.17 and 11.2 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Each Borrower will execute and deliver on request, at its own expense, Notes to the assignee evidencing the interests taken by way of assignment hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of each Borrower, shall maintain at one of its offices in the United States, a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and

Obligations owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or any Borrower or any Affiliate or Subsidiary of any Borrower) (each, a “Participant”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, the Administrative Agent, the Issuing Bank and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.2(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and 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 Participant, agree to any amendment, modification or waiver described in clauses (b) or (c) of Section 11.4 that affects such Participant. The Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.1, 3.2 and 3.3 (subject to the requirements and limitations therein, including the requirements under Section 3.3(f) (it being understood that the documentation required under Section 3.3(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.17 and 3.4 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 3.2 or 3.3, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers’ request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.17 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.3 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.14 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of each Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Credit Documents (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement, or any Notes evidencing its interests hereunder, to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 11.6 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 11.7 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Section 3.2, Section 3.3, Section 11.2, Section 11.3, and Section 11.10 and the agreements of the Lenders and the Agents set forth in Section 2.14, Section 10.3 and Section 11.2(c) shall survive the payment of the Loans, the cancellation, expiration or cash collateralization of the Letters of Credit, and the termination hereof.

Section 11.8 No Waiver: Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents, any Swap Agreements or any Treasury Management Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

Section 11.9 Marshalling: Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to the Administrative Agent, the Issuing Bank, the Swingline Lender or the Lenders (or to the Administrative Agent, on behalf of Lenders), or the Administrative Agent, the Collateral Agent, the Issuing Bank or the Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

Section 11.10 Severability. In case any provision in or obligation hereunder or any Note or other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 11.11 Obligations Several; Independent Nature of Lenders' Rights. The obligations of the Lenders hereunder are several and no Lender shall be responsible for the obligations or Revolving Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and, subject to Section 10.9(d), each Lender shall be entitled to protect and enforce its rights arising under this Agreement and the other Credit Documents and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 11.12 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Section 11.13 Applicable Laws.

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Submission to Jurisdiction. The Borrowers and each other Credit Party irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the courts of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Credit Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Credit Document shall affect any right that the Administrative Agent, any Lender or the Issuing Bank may otherwise have to bring any action or proceeding relating to this Agreement or any other Credit Document against any Credit Party or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Credit Document in any court referred to in subsection (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 11.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

Section 11.14 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON

HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 11.15 Confidentiality. Each of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in (including, for purposes hereof, any new lenders invited to join hereunder on an increase in the Loans and Commitments hereunder, whether by exercise of an accordion, by way of amendment or otherwise), any of its rights or obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to any Borrower or its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating any Borrower or its Subsidiaries or the credit facilities provided for herein, or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided for herein, (h) with the consent of any Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, the Issuing Bank or any of their respective Affiliates on a nonconfidential basis from a source other than a Borrower.

For purposes of this Section, "Information" means all information received from any Borrower or any of its Subsidiaries relating to any Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Bank on a nonconfidential basis prior to disclosure by any Borrower or any of its Subsidiaries; provided that, in the case of information received from any Borrower or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders acknowledges that (i) the Information may include material non-public information concerning any Borrower or any Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with Applicable Law, including United States federal and state securities laws.

Section 11.16 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under Applicable Laws shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under

this Agreement at any time exceeds the Highest Lawful Rate, the aggregate outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrowers shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and each of the Credit Parties to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the aggregate outstanding amount of the Loans made hereunder or be refunded to each of the applicable Credit Parties. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by Applicable Laws, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

Section 11.17 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Credit Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract 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. Except as provided in Section 5, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means (e.g. "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.18 No Advisory of Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), each of the Credit Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a)(i) the arranging and other services regarding this Agreement provided by the Administrative Agent, are arm's-length commercial transactions between the Credit Parties, on the one hand, and the Administrative Agent, on the other hand, (ii) the Credit Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) each of the Credit Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (b)(i) the Administrative Agent is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary, for any Credit Party or any of their Affiliates or any other Person and (ii) the Administrative Agent does not have any obligation to any Credit Party or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (c) the Administrative Agent and its respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Credit Parties and their Affiliates, and the Administrative Agent does not have any obligation to disclose any of such interests to any Credit Party or its Affiliates. To the fullest extent permitted by law, each of the Credit Parties hereby waives and releases, any claims that it may have against the Administrative Agent with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 11.19 Electronic Execution of Assignments and Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any Assignment Agreement or in any amendment, waiver, modification or consent relating hereto shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Laws, 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 11.20 USA PATRIOT Act. Each Lender subject to the Patriot Act hereby notifies each of the Credit Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each of the Credit Parties, which information includes the name and address of each of the Credit Parties and other information that will allow such Lender to identify each of the Credit Parties in accordance with the Patriot Act. Each Borrower shall, reasonably promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation.

Section 11.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Credit 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 Lender 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 undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit 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 11.22 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE84-14 (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), PTE91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant 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 not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document, or any documents related hereto or thereto).

Section 11.23 Acknowledgement Regarding Any Supported QFCs

To the extent that the Credit Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of

such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.23, the following terms have the following meanings:

“BHC Act Affiliate” means, with respect to any Person, an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. § 1841(k)) of such Person.

“Covered Entity” means any of (i) a “covered entity” (as such term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b)); (ii) a “covered bank” (as such term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b)); or (iii) a “covered FSI” (as such term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b)).

“Default Right” means as defined in, and interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” means a “qualified financial contract” (as defined in, and interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D)).

[SIGNATURE PAGES OMITTED]

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") dated as of November 4, 2021 (the "Effective Date"), between ACFP Management, Inc. (the "ACFP"), BurgerFi International, Inc. ("BurgerFi" or the "Company"), and Ian Baines (the "Executive") (each a "Party" and collectively, the "Parties").

WITNESSETH

WHEREAS, the Company is party to that certain stock purchase agreement dated October 8, 2021, as amended and restated pursuant to that certain Amended and Restated Stock Purchase Agreement dated November 3, 2021 (the "Purchase Agreement") with Hot Air, Inc. ("Hot Air") and Cardboard Box, LLC ("Seller") whereby the Company will acquire from Seller all of the outstanding shares of common stock of Hot Air;

WHEREAS, in connection with the transactions contemplated by the Purchase Agreement, the Parties wish to amend and supersede that certain Employment Agreement, dated January 8, 2020, by and between ACFP Management, Inc. and Ian Baines, as amended (the "Prior Employment Agreement");

WHEREAS, the Parties wish to terminate that Prior Employment Agreement as of the Effective Date of this Amended and Restated Employment Agreement;

WHEREAS, the Company desires to employ the Executive as the Chief Executive Officer of the Company; and

WHEREAS, the Parties desire to enter into this Amended and Restated Employment Agreement as to the terms of the Executive's employment with the Company.

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

1. POSITION AND DUTIES.

(a) Beginning on November 8, 2021, Executive shall serve the Company as Chief Executive Officer and shall report exclusively and directly to the Board of Directors and its Executive Chairman. Executive shall perform the duties consistent with Executive's title and position and such other duties commensurate with such position and title as shall be specified or designated by Company from time to time. Subject to Executive's appointment thereto, and without additional compensation, Executive shall hold such other or additional titles and serve in such other or additional capacities to which Executive may be appointed from time to time in Company and its affiliated companies, provided such titles and additional capacities are consistent with Executive's above-stated position and duties. The principal place of performance by Executive of Executive's duties hereunder shall be Fort Lauderdale, Florida, although Executive may be required to reasonably travel outside of such area in connection with the performance of Executive's duties. Notwithstanding anything to the contrary in this Agreement, if the Purchase Agreement is terminated for any reason without the consummation of the transactions contemplated thereby, this Agreement will be null and void *ab initio*, and the Prior Employment Agreement shall remain in full force and effect.

(b) The Executive's employment hereunder shall commence on November 8, 2021 (the "Commencement Date"), subject to satisfaction of conditions set forth in Section 22. During the Executive's employment hereunder, the Executive shall devote all of the Executive's business time, energy and skill and the Executive's best efforts to the performance of the Executive's duties with the Company.

2. AT WILL EMPLOYMENT. Employment with the Company is "at-will." This means that employment with the Company is at will and either the Executive or the Company may terminate the employment relationship, for any reason, at any time, subject to Section 7 below.

3. BASE SALARY. The Company agrees to pay the Executive a base salary at an annual rate of not less than \$523,628, payable in accordance with the regular payroll practices of the Company or one of its affiliates (including, without limitation, ACFP), but not less frequently than monthly. The Executive's Base Salary shall be subject to annual review for increase by the Board in its discretion. The Base Salary, as increased from time to time, shall constitute "Base Salary" for purposes of this Agreement.

4. ANNUAL BONUS OPPORTUNITY. For each fiscal year of employment with the Company or one of its affiliates (including, without limitation, ACFP), commencing in fiscal year 2021, the Executive will be eligible to receive an annual cash performance bonus ("Annual Bonus"), of up to 60% of the Executive's Base Salary, based upon the achievement of individual and company performance objectives as mutually agreed by the Board and the Executive. Annual Bonuses are payable at the time such bonuses are otherwise payable to actively employed senior executives of the Company, subject to good standing and continuous employment with the Company through the payment date, except as otherwise provided herein.

5. MANAGEMENT INCENTIVE PLAN.

(a) **ELIGIBILITY.** During the term of employment, the Executive shall be eligible to participate in such other plans or programs as the Company may from time to time adopt, subject to all applicable terms and conditions of such plans or programs and all applicable rules and regulations of the Securities and Exchange Commission.

(b) **EQUITY AWARD.** The Executive was granted an incentive equity award of stock options under the Amended and Restated Hot Air, Inc. 2016 Stock Option Plan (as amended and/or restated from time to time, the "Plan") in respect of 13,250 shares of the common stock of Hot Air with an exercise price equal to \$500.00 per share, which shall be amended subject to the terms, conditions, and restrictions set forth in (i) the Amendment to the Non-Qualified Stock Option Agreement Pursuant to the Hot Air, Inc. Amended and Restated 2016 Stock Option Plan substantially in the same form attached as Exhibit A hereto to be entered into by and between the Company and the Executive (the "Amended Award Agreement") and (ii) the provisions of the Plan.

6. EMPLOYEE BENEFITS.

(a) **BENEFIT PLANS.** The Executive shall be entitled to continue to participate in the employee benefit plans, policies, and programs that ACFP has adopted or may adopt, maintain or contribute to for the benefit of its executive-level employees generally, subject to satisfying the applicable eligibility requirements, provided that, if the benefit plans of ACFP are integrated into the benefit plans of the Company, the Executive shall instead be entitled to participate in the employee benefit plans, policies, and programs that the Company has adopted or may adopt, maintain or contribute to for the benefit of its executive-level employees generally, subject to satisfying the applicable eligibility requirements. Notwithstanding the foregoing, the Company may modify, amend or terminate any employee benefit plan at any time in accordance with the terms of the applicable plans, policies and programs.

(b) **VACATION.** For each fiscal year (or portion thereof) of employment, the Executive will be eligible to earn up to fifteen (15) vacation days per year (pro-rated for partial years). Unused vacation time may not be carried over from one fiscal year to the next, and must be used in the fiscal year in which it is earned, and if not so taken, shall be, to the fullest extent of the law, forfeited.

(c) **BUSINESS EXPENSES.** Upon presentation of appropriate documentation, the Executive shall be reimbursed for all reasonable business expenses incurred by him in connection with the performance of the Executive's duties hereunder, including a car allowance in an amount of eight hundred dollars (\$800.00) per month, in accordance with the Company's expense reimbursement policy for executive-level employees of the Company.

7. TERMINATION.

(a) **BY THE COMPANY WITHOUT CAUSE OR BY THE EXECUTIVE FOR GOOD REASON.** The Company may terminate the Executive's employment upon thirty (30) days' written notice by the Company to the Executive of an involuntary termination without Cause (as defined below) (other than for death or Disability), and the Executive may resign from the Company for Good Reason (as defined below) upon thirty (30) days' written notice by the Executive to the Company of resignation for Good Reason, subject to the Company's obligation to pay:

(i) all accrued and unpaid Base Salary and accrued and unused vacation pay, payable within thirty (30) days of the date of termination, and all accrued and vested benefits through the date of termination, payable in accordance with the terms of the applicable benefit plan (the "Accrued Obligations");

(ii) any Annual Bonus for any prior completed fiscal year (beginning in the fiscal year starting on January 1, 2021) that has been determined but not paid as of the date of termination, payable within thirty (30) days of the date of termination (each, a "Prior Year Bonus");

(iii) a pro-rata portion (based on days worked through the date of termination) of the Annual Bonus for the fiscal year of termination that the Executive would have earned for such year had employment continued, based on actual performance results for the full annual performance period, payable at the time that annual bonuses are paid to active executives of the Company (but in no event later than the time such bonuses are otherwise payable to actively employed senior executives of the Company) (the "Pro-Rata Bonus"); and

(iv) continued payment (“Severance Pay”) of the Executive’s Base Salary, payable in equal installments in accordance with the Company’s payroll practices (not less frequently than monthly), for a period (the “Severance Period”) of twelve (12) months after the date of termination commencing on the first payroll period after the Release becomes effective in accordance with Section 8, below; provided, however, that in the event the Executive enters into a consulting, employment or other service relationship or arrangement with a third party during the Severance Period (such relationship or arrangement, “New Relationship”), the Executive’s entitlement to the Severance Pay, and the Company’s obligation to pay the Severance Pay, will immediately cease upon the effective date of the New Relationship.

(b) **CAUSE.** The Company may terminate the Executive’s employment for Cause (as defined below), at any time upon written notice, subject only to the Company’s obligation to pay the Executive the Accrued Obligations.

For purposes of this Agreement, “Cause” shall mean:

(i) The Executive’s engaging in dishonesty, fraud, misappropriation, or embezzlement with respect to the Company or in connection with the performance of his duties;

(ii) The Executive’s willful misconduct, recklessness or gross negligence that materially injures the Company, whether such harm is economic or non-economic, including, but not limited to, material injury to their respective businesses or reputations;

(iii) The Executive’s conviction or plea of guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude;

(iv) The Executive’s continued and willful refusal to follow the reasonable and lawful directives that are assigned to the Executive by the Board, which, if curable, has not been cured by the Executive within thirty (30) days after the Executive’s receipt of written notice from the Company; or

(v) The Executive’s material breach of this Agreement or any other agreement or policy applicable to the Executive, which, if curable, has not been cured by the Executive within thirty (30) days after receipt of written notice from the Company stating with reasonable specificity the nature of such breach;

(vi) The Executive’s breach of any fiduciary duty or duty of loyalty to the Company or any of its affiliates, or their respective shareholders; and

(vii) The Executive’s engaging in any misconduct, gross negligence, or illegal conduct that is injurious or detrimental to the Company or any of its affiliates, which conduct, to the extent curable, is not cured within ten (10) days after receipt of written notice from the Company that identifies and describes the alleged misconduct, gross negligence, or illegal conduct in reasonable details.

(c) **GOOD REASON.** The Executive may resign from his employment for Good Reason (as defined below), at any time upon not less than thirty (30) days' written notice.

For purposes of this Agreement, "Good Reason" shall mean, without the Executive's consent:

- (i) A material reduction in the Executive's Base Salary, other than in connection with salary reductions of not more than ten percent (10%) imposed on all executive-level employees as approved by the Board;
- (ii) A material diminution in the Executive's authority, duties, or responsibilities;
- (iii) The Company requires the Executive to have as the Executive's principal place of work any location which is more than fifty (50) miles outside of Fort Lauderdale, Florida and results in a material increase in the Executive's commute; or
- (iv) Any other action or inaction that constitutes a material breach by the Company of this Agreement.

For purposes of this Agreement, Good Reason shall not be deemed to exist unless following the initial existence of one of the conditions specified in clauses (i) through (iv) above, the Executive provides the Company with written notice of the existence of such condition within thirty (30) days after the initial existence of the condition, the Company fails to remedy the condition within thirty (30) days after its receipt of such notice, and the Executive's termination of employment for Good Reason occurs within thirty (30) days after the Company fails to so remedy the condition.

(d) **DEATH OR DISABILITY.** The Executive's employment shall be terminated immediately upon written notice by the Company to the Executive of termination due to Disability (as defined below) or automatically on the date of death of the Executive. In either event, the Company shall pay or provide the Executive or the Executive's estate, as the case may be, with the Accrued Obligations (including any life insurance and/or disability benefits that may be payable in accordance with their terms), any unpaid Prior Year Bonus and the Pro-Rata Bonus. For purposes of this Agreement, "Disability" shall be defined as a physical or mental illness, incapacity or disability which has rendered, or is likely to render, the Executive unable to perform the Executive's material duties on a full-time basis for a period of ninety (90) consecutive days or one hundred fifty (150) days within any twelve-month period, as determined by the Board in its sole discretion.

(e) **VOLUNTARY RESIGNATION BY THE EXECUTIVE WITHOUT GOOD REASON.** Upon thirty (30) days' prior written notice by the Executive to the Company of the Executive's voluntary termination of employment without Good Reason (subject to the Company's right in its sole discretion to accelerate the date of termination to a date prior to the end of such notice period), the Company's sole obligation will be to pay the Executive the Accrued Obligations and, subject to the Executive's providing prior written notice as set forth above, any unpaid Prior Year Bonus.

(f) **OTHER OBLIGATIONS.** Upon any termination of the Executive's employment with the Company, the Executive shall promptly resign from the Board and any other position as an officer, director or fiduciary of any Company-related entity and shall execute any resignation letters or other documentation reasonably requested by the Company to effect and memorialize such resignations.

8. RELEASE. Any and all payments and benefits under Section 7 (other than the Accrued Obligations) after termination will be subject to the Executive's timely execution and delivery (without revocation) of a general release of claims in a form provided to the Executive by the Company within seven (7) business days after termination, it being understood that nothing herein or in the Release shall limit the Executive's right to seek enforcement of this Agreement or the Release. Any rights to payments hereunder that are subject to execution of the Release shall be made on the first payroll period after the Release becomes effective, provided that if the period during which the Executive may execute and deliver the Release spans two calendar years, then to the extent required by Code Section 409A (as defined below), such payments will commence in the second year and include any amounts otherwise payable in the first year.

9. KEY-PERSON INSURANCE. The Company shall have the right to insure the life of the Executive for the sole benefit of the Company, in such amounts, and with such terms, as it may determine. All premiums payable thereon shall be the obligation of the Company, and the Executive shall have no interest in any such policy. The Executive agrees to reasonably cooperate with the Company in procuring such insurance by submitting to physical examinations, supplying all information required by the insurance company, and executing all reasonably necessary documents, provided that no financial obligation is imposed on the Executive by any such document.

10. RESTRICTIVE COVENANTS.

(a) **CONFIDENTIALITY AND RESTRICTIVE COVENANT AGREEMENT.** The Executive will be subject to standard ongoing confidentiality obligations and restrictive covenants, as set forth in BurgerFi International, Inc. Agreement Regarding Confidential Information and Prohibiting Competition in substantially the form attached hereto as Exhibit B (the "Confidentiality and Restrictive Covenant Agreement"), to be executed by the Executive on or prior to the Commencement Date as a pre-condition to his employment with the Company.

(b) **RETURN OF COMPANY PROPERTY.** On the date of the Executive's termination of employment with the Company for any reason (or at any time prior thereto at the Company's request), the Executive shall return all property belonging to the Company or its affiliates (including, but not limited to, any Company-provided laptops, computers, cell phones, wireless electronic mail devices or other equipment, or documents and property belonging to the Company).

(c) **SURVIVAL OF PROVISIONS.** The obligations contained in Sections 10, 11, 17 and 18 hereof shall survive termination of the Executive's employment with the Company and shall be fully enforceable thereafter.

11. COOPERATION. Upon the receipt of reasonable notice from the Company (including outside counsel), the Executive agrees that while employed by the Company and thereafter, the Executive will respond and provide information with regard to matters in which the Executive has knowledge as a result of the Executive's employment with the Company, and will provide reasonable cooperation and assistance to the Company, its subsidiaries or affiliates and their respective representatives in connection with any claims, actions, investigations, proceedings, litigations or otherwise ("Claims") with regard to matters which the Executive has knowledge as a result of the Executive's employment with the Company, its subsidiaries or its affiliates, and will assist the Company, its subsidiaries or its affiliates in the prosecution or defense of any Claims that may be made by or against the Company, its subsidiaries or its affiliates, to the extent that such Claims may relate to the period of the Executive's employment with the Company. The Executive agrees to promptly inform the Company if the Executive becomes aware of any lawsuits involving such Claims that may be filed or threatened against the Company or its affiliates. The Executive also agrees to promptly inform the Company (to the extent that the Executive is legally permitted to do so) if the Executive is asked to assist in any investigation of the Company, its subsidiaries or its affiliates (or their actions), regardless of whether a lawsuit or other proceeding has then been filed against the Company, its subsidiaries or its affiliates with respect to such investigation, and shall not do so unless legally required. Upon presentation of appropriate documentation, the Company shall pay or reimburse the Executive for all reasonable out-of-pocket expenses incurred by the Executive in complying with this Section 11 in accordance with its expense reimbursement policies. Nothing in this Agreement shall be construed to prohibit the Executive from reporting possible violations of federal or state law or regulations to any governmental agency or entity or self-regulatory institution, including but not limited to the Department of Justice, the Securities and Exchange Commission, Congress, and any Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal or state law or regulation. Prior authorization of the Company shall not be required to make any such reports or disclosures and the Executive is not required to notify the Company that he has made such reports or disclosures.

12. ASSIGNMENT AND CHANGE IN OWNERSHIP PROTECTION. The Company shall require any successor to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform its obligations to the Executive under this Agreement in the same manner and to the same extent that the Company would be required to perform such obligations if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company and any successor to its business and/or assets, which assumes and agrees to perform the duties and obligations of the Company under this Agreement by operation of law or otherwise.

13. NOTICE. For purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered by hand, (b) on the date of transmission, if delivered by confirmed facsimile or electronic mail, (c) on the first business day following the date of deposit, if delivered by guaranteed overnight delivery service, or (d) on the fourth business day following the date delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

At the address (or to the facsimile number) shown
on the records of the Company

If to ACFP:

ACFP Management, Inc.
200 W. Cypress Creek Road
Fort Lauderdale, Florida 33309
Attention: Patrick Renna
E-mail: patrick@acfp.com

If to the Company:

BurgerFi International, Inc.
105 U.S. Highway 1
North Palm Beach, FL 33408
Attention: Ian Baines; Mike Rabinovitch
E-mail: ian@burgerfi.com; mike@burgerfi.com

With a copy to (which shall not constitute notice):

Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Attention: Enrique A. Conde, Esq.
E-mail: enrique.conde@hkklaw.com

or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

14. SECTION HEADINGS; INCONSISTENCY. The section headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement. In the event of any inconsistency between the terms of this Agreement and any form, award, plan or policy of the Company, the terms of this Agreement shall govern and control.

15. SEVERABILITY. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.

16. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

17. GOVERNING LAW; DISPUTE RESOLUTION.

- (a) **GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State of Florida and any proceeding arising between the parties in any manner pertaining or related to this Agreement shall, to the extent permitted by law, be held in Palm Beach County, Florida.
- (b) **MEDIATION.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a mediation administered by a mutually agreed upon mediator and, except as set forth below, the cost of any such mediation shall be shared equally by all parties thereto. Any judgment on the award rendered by the mediator(s) may be entered in any court having jurisdiction thereof. During any mediation related to the Agreement, the parties shall continue to perform their respective obligations under this Agreement.

18. EQUITABLE RELIEF AND OTHER REMEDIES. The Executive acknowledges and agrees that the Company's remedies at law for a breach or threatened breach of any of the provisions of the Confidentiality and Restrictive Covenant Agreement or of Section 10 or Section 11 hereof would be inadequate and, in recognition of this fact, the Executive agrees that, in the event of such a breach or threatened breach, in addition to any remedies at law, the Company, without posting any bond, shall be entitled to equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may then be available. In the event of a violation by the Executive of the Confidentiality and Restrictive Covenant Agreement or of Section 10 or Section 11 hereof, any severance being paid to the Executive pursuant to this Agreement or otherwise shall immediately cease, and any severance previously paid to the Executive (other than \$1,000) shall be immediately repaid to the Company.

19. INDEMNIFICATION AND LIABILITY INSURANCE. The Company hereby agrees to indemnify the Executive and hold the Executive harmless to the extent provided under the charter documents of the Company against and in respect of any and all actions, suits, proceedings, claims, demands, judgments, costs, expenses (including reasonable attorney's fees), losses, and damages resulting from the Executive's good faith performance of the Executive's duties and obligations with the Company. The Company shall cover the Executive under its directors' and officers' liability insurance policies as in effect from time to time to the same extent as the Company covers its officers and directors.

20. MISCELLANEOUS. No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Executive and such officer or director as may be designated by the Board. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. This Agreement together with the Confidentiality and Restrictive Covenant Agreement and all exhibits hereto and thereto sets forth the entire agreement of the parties hereto in respect of the subject matter contained herein and supersedes any and all prior agreements or understandings between the Executive and the Company with respect to the subject matter hereof, including, without limitation, the "Employment Agreement Term Sheet" entered into between the Company and the Executive. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement.

21. REPRESENTATIONS; NO RESTRICTIONS.

(a) The Executive represents and warrants that the Executive has disclosed to the Company and provided copies of any agreement Executive may have with any third party (e.g., a former employer) which may limit the Executive's ability to work for the Company, or which otherwise could create a conflict of interest with the Company.

(b) The Executive further represents and warrants that the Executive is not bound by any non-competition, non-disclosure, non-solicitation, or similar obligations, except for those contained in the written agreements the Executive has provided to the Company.

(c) The Executive understands that the Executive is prohibited from using or disclosing any confidential information or materials, including trade secrets, of any former employer or other third party to whom the Executive has an obligation of confidentiality and from violating any lawful agreement that the Executive may have with any third party.

(d) By accepting employment with the Company, the Executive represents that the Executive has and will comply with these requirements and that the Executive is not in the possession of any confidential documents or other property of any former employer or other third party.

22. CONDITIONS PRECEDENT. Employment with the Company is subject to the Executive's execution of this Agreement, the Confidentiality and Restrictive Covenant Agreement and any other documents reasonably requested and/or customarily required by the Company.

23. TAX WITHHOLDING. The Company may withhold from any amounts payable to the Executive hereunder or otherwise all federal, state, city or other taxes that the Company reasonably determines are required to be withheld pursuant to any applicable law or regulation.

24. CODE SECTION 409A COMPLIANCE.

(a) The intent of the parties is that payments and benefits under this Agreement comply with, or be exempt from, 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 the Company be liable for any additional tax, interest or penalty that may be imposed on the Executive by Code Section 409A or any damages for failing to comply with Code Section 409A.

(b) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment that are considered "non-qualified deferred compensation" under Code Section 409A unless such termination is also a "separation from service" within the meaning of Code Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment" or like terms shall mean "separation

from service.” If the 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 non-qualified deferred compensation under Code Section 409A payable on account of a “separation from service,” such payment or benefit shall be made or provided at the date which is the earlier of (A) the expiration of the six (6)-month period measured from the date of such “separation from service” of the Executive, and (B) the date of the Executive’s death (the “Delay Period”). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Executive in a lump sum and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

(c) With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Code Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, and (iii) such payments shall be made on or before the last day of the Executive’s taxable year following the taxable year in which the expense occurred.

(d) For purposes of Code Section 409A, the Executive’s right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (e.g., “payment shall be made within thirty (30) days following the date of termination”), the actual date of payment within the specified period shall be within the sole discretion of the Company.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

BURGERFI INTERNATIONAL, INC.

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Executive Chairman

ACFP MANAGEMENT, INC.

By: /s/ Matt Leeds
Name: Matt Leeds
Title: Authorized Representative

EXECUTIVE

By: /s/ Ian Baines
Name: Ian Baines

[Signature Page to CEO Employment Agreement]

EXHIBIT A

(See Attached)

EXHIBIT B

(See Attached)

EXHIBIT B

**BURGERFI INTERNATIONAL, INC.
AGREEMENT REGARDING CONFIDENTIAL INFORMATION
AND
PROHIBITING COMPETITION**

I, the undersigned employee of BurgerFi International, Inc., a Delaware corporation (the “**Company**”), am entering into this Agreement in consideration of my employment by the Company. The Company is in the business of operating restaurant brands, currently consisting of (i) a fast-casual “better burger” concept under the name “BurgerFi,” and (ii) upscale casual dining restaurants in the specialty pizza segment under the name “Anthony’s Coal Fired Pizza”, but may include additional brands acquired by the Company from time to time (the “**Company’s Business**”). I hereby acknowledge that, in conjunction with the performance of my duties as an employee of the Company, I will be exposed to, making use of, acquiring and adding to confidential information of a special and unique nature and value affecting and relating to the Company and its financial operations, including, but not limited to: the Company’s Business, the identity of the Company’s clients, the prices being charged by the Company to such clients, the Company’s contracts, business records and other records, the Company’s trade secrets, customer lists, vendors and vendor lists, recipes, billing forms, methods, and procedures, trade names, manuals, photographs, samples, literature, sales aids of every kind, software, advertising methods and strategies, information regarding advertising locations, style and wording of all advertising, plans for expansion or marketing strategies, and other similar information relating to the Company and the Company’s Business (all the foregoing being hereinafter referred to collectively as “**Confidential Information**”). I agree that the Confidential Information is a trade secret of, and is owned solely by, the Company.

I acknowledge that the disclosure of Confidential Information to competitors of the Company would cause the Company irreparable injury. Because I have been and will be exposed to Confidential Information, the Company requires, as a condition to my employment with the Company, that I, the undersigned, execute and deliver to the Company this legally binding agreement (“**Agreement**”), which is intended to protect the Company from my unauthorized use of the Confidential Information and to prohibit the Company’s competitors from receiving the benefits of my knowledge of the Company’s Business or the specialized training that the Company has provided or will provide to me. This Agreement does not obligate the Company to employ or retain me for any specific length of time. Although the Company seeks to retain valued employees and independent contractors, employment with the Company remains terminable by the Company “at will.”

I agree that all Confidential Information is owned exclusively by the Company, that I may use the Confidential Information only when permitted by the Company and only for the benefit of the Company, that at all times during and subsequent to my employment with the Company, I will not disclose any Confidential Information to any other person or entity for any reason whatsoever, and that I will at all times take such actions as shall be necessary to maintain the confidentiality of the Confidential Information and to prevent its unauthorized disclosure.

I agree that, upon the Company's demand, whether verbal or written, I will promptly deliver as directed, without retaining copies, all materials and media in my possession that contain Confidential Information or that relate to the Company's Business. I agree that the fact that I had knowledge, or that others may have had knowledge, of Confidential Information prior to the execution of this Agreement shall not in any way limit or affect my obligations under this Agreement.

I agree that all copyrightable, patentable or unpatentable business information, and other proprietary information, inventions, techniques, know-how, materials and Confidential Information created by me during my employment with the Company, together with all rights relating to said property, are the exclusive property of the Company and its assigns. I further agree that this Agreement constitutes a "Work for Hire" with respect to any copyrightable works created by me during my employment with the Company. I agree to execute all documents, including, but not limited to, assignments of rights, that the Company may request to assist in establishing its ownership of such property.

During the term of my employment with the Company and for the period of twelve (12) months after the date my employment with the Company is terminated, (the "**Restricted Period**") I will not directly or indirectly, in any location during the term of my employment, and, during the remainder of the Restricted Period following the term of my employment, in the States located in the Southeast or the Mid-Atlantic of the United States, operate, organize, maintain, establish, manage, own, participate in, or in any manner whatsoever, individually or through any corporation, firm or organization of which I shall be affiliated in any manner whatsoever, have any interest in, whether as owner, investor, operator, partner, stockholder, director, trustee, officer, mortgagee, employee, independent contractor, principal, agent, consultant or otherwise, any other business or venture which engages in the Company's Business, or is otherwise in competition with Company or any assigns of the Company, unless such activity shall have been previously agreed to in writing by Company and its successors and assigns (I acknowledge that the Company's Business is advertised and conducted throughout the United States, and accordingly that this covenant against competition shall extend to the entire United States). Further, during the Restricted Period, I will not: (i) directly or indirectly, divert from the Company or its successors or assigns any proprietary product or service of Company, or cause any client or account of Company to cease using or acquiring Company's products or services; or (ii) directly or indirectly, solicit for employment, employ or otherwise engage the services of, any employees, independent contractors, vendors (solely with respect to the proprietary products or services of the Company), agents, or consultants of the Company or its successors or assigns. I understand that the obligations set forth in this paragraph shall apply regardless of the reason for my termination of employment, whether such termination was voluntary or involuntary, and regardless of the reason for such termination.

I acknowledge that I may be performing services at one or more locations that are shared facilities with other entities that may be affiliates of the Company ("**Affiliated Entities**"). The Affiliated Entities each have their own respective confidential information like that described as the Company's Confidential Information, and that the Affiliated Entities intend that such confidential information remain confidential under agreements like this agreement. If I should be exposed to or learn of any such confidential information, I agree that it is protected information that shall be owned by the Affiliated Entities in the same manner as the Confidential Information

is owned and protected by the Company. Further, I agree that in no event shall any such confidential information be used by me for the purpose of competing with, or to solicit customers, employees, agents or independent contractors of, the Company or any Affiliated Entity. The Affiliated Entities are intended third party beneficiaries for the purpose of enforcing the foregoing.

I agree that if I breach or threaten to breach this Agreement, the Company will be entitled to receive, in addition to all other remedies to which it may be entitled at law or in equity, temporary and permanent injunctions prohibiting any breach of this Agreement by me, or by my partners, agents, representatives, servants, employers, employees, independent contractors and all persons directly or indirectly acting for or with me. In the event the Company obtains a temporary or permanent injunction, I agree that any such injunction shall compute the twelve (12) month restriction from the date the injunction is entered. This Agreement shall be interpreted under the laws of the State of Florida, and the venue for any proceedings under this Agreement shall be Palm Beach County, Florida. I hereby submit to the jurisdiction of any state or federal courts in Palm Beach County, Florida for purposes of the foregoing. The terms of this Agreement shall survive the termination of my employment by the Company.

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a mediation administered by a mutually agreed upon mediator and, except as set forth below, the cost of any such mediation shall be shared equally by all parties thereto. Any judgment on the award rendered by the mediator(s) may be entered in any court having jurisdiction thereof. During any mediation related to the Agreement, the parties shall continue to perform their respective obligations under this Agreement.

I agree that the restrictions contained in this Agreement are fair and reasonably necessary to protect the legitimate business interests of the Company, and will not unfairly restrict my ability to find gainful work in my field. I also agree that if a court determines that any of the restrictions in this Agreement are unenforceable, the court, in so establishing a substitute restriction, shall recognize that I agree that the restrictions described above be imposed and maintained to the maximum lawful extent. I hereby certify that no representative or agent of the Company has represented, expressly or otherwise, that the Company would not seek to enforce this Agreement. The provisions contained herein shall be binding upon me as an independent obligation and shall be enforceable even if there is or is claimed to be a breach of this Agreement or any other agreement, understanding, commitment or promise by the Company. The Company's failure or refusal to enforce any of the terms contained in this Agreement against any other employee or independent contractor or former employee or independent contractor for any reason, shall not constitute a defense to the enforcement of this Agreement against me.

I agree that I will not at any time (during or after my employment with the Company) disparage the reputation of the Company, or its customers, vendors, merchants, officers, members, manager, directors, agents, employees or independent contractors.

[SIGNATURE PAGE FOLLOWS]

By executing this Agreement in the space provided below I confirm that I have read, understand and agree to all the provisions of this Agreement and that I agree to be legally bound by the terms of this Agreement. This Agreement is for the benefit of and may be enforced by the Company, its successors and assigns.

Agreed to this 4th day of November, 2021

BURGERFI INTERNATIONAL, INC.

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Executive Chairman

EXECUTIVE

By: /s/ Ian Baines
Name: Ian Baines

HOT AIR, INC.

AMENDMENT TO THE
NON-QUALIFIED STOCK OPTION AGREEMENT
PURSUANT TO THE
HOT AIR, INC.
AMENDED AND RESTATED 2016 STOCK OPTION PLAN

This AMENDMENT TO THE STOCK OPTION AGREEMENT (this "Amendment") between Hot Air, Inc., a Delaware corporation (the "Company"), BurgerFi International, Inc. ("BurgerFi") and Ian Baines (the "Participant"), is dated as of November 3, 2021.

Terms and Conditions

The Company sponsors the Hot Air, Inc. Amended and Restated 2016 Stock Option Plan (the "Plan"), under which the Participant received an option grant pursuant to a Non-Qualified Stock Option Agreement dated September 30, 2020 (the "Award Agreement") in recognition of the Participant's service to the Company.

The Company is a party to that certain stock purchase agreement dated October 8, 2021 (the "Purchase Agreement") with BurgerFi and Cardboard Box, LLC ("Seller") whereby BurgerFi will acquire all of the Company's outstanding stock from Seller (the "Transaction").

The Purchase Agreement provides that effective as of the Closing (as defined in the Purchase Agreement), the Company and BurgerFi will cause the applicable award agreements issued to each holder of outstanding options to purchase shares of the common stock of the Company under the Plan ("Company Options") to be amended such that each Company Option (other than Out-of-Money Options) that is outstanding and unexercised immediately prior to the Closing will be substituted with the right to receive a certain number of shares of the common stock of BurgerFi, with the number of shares issuable being determined pursuant to a formula set forth in the Purchase Agreement.

Section 4.2(b) of the Plan provides that if there shall be any merger or other corporate transaction constituting a Section 4.2 Event (as defined in the Plan), then (i) the number and/or kind of shares to be issued upon exercise of an outstanding stock option granted under the Plan; and/or (ii) the exercise price thereof, shall be appropriately adjusted, and any adjustment determined by the Committee (as defined in the Plan) shall be final, binding and conclusive on the Company and the Participant.

Section 7.1 of the Plan provides that, in the event of a Change in Control of the Company (as defined in the Plan), the Committee in its sole discretion shall have new rights substituted for the Company Options.

Section 11.1 of the Plan provides that the Committee may require that certificates for Issued Shares (as defined in the Plan) received pursuant to the Award Agreement may include any legend which the Committee deems appropriate to reflect any restrictions on the Transfer (as defined in the Plan) of such Issued Shares.

Section 10 of the Award Agreement states that, subject to certain exceptions, the Participant may not Transfer all or any fraction of any Issued Shares except with the prior written consent of the Board, which consent may be given or withheld in the sole discretion of the Board.

Section 15 of the Award Agreement provides that the Award Agreement is subject to the amendment provisions of the Plan, which provides that the Committee may amend the terms of the Award Agreement provided that no such amendment reduces the rights of the Participant without his or her consent.

Section 9.1 of the Plan and Section 9 of the Award Agreement each provide the Company with certain call rights that the Company wishes to waive in connection with the Transaction.

Effective as of the Closing of the Transaction (which will constitute a Section 4.2 Event), the Committee wishes to (i) amend the Award Agreement to appropriately adjust the number and kind of shares to be issued upon exercise of an outstanding stock option granted under the Plan; and (ii) amend the exercise price thereof, in each case, in accordance with the Purchase Agreement and Section 4.2(b) of the Plan (the "**Adjustment**").

Effective as of the Closing of the Transaction, the Committee also wishes to amend the Award Agreement to provide that each Company Option (other than Out-of-Money Options) that is outstanding and unexercised immediately prior to the Closing will be substituted with the right to receive a certain number of shares of the common stock of BurgerFi, with the number of shares issuable being determined pursuant to a formula set forth in the Purchase Agreement (the "**Stock Right**").

Effective as of the Closing of the Transaction, the Committee also wishes to amend the Award Agreement to (i) provide that the Participant may Transfer Issued Shares in certain situations without prior written consent of the Board (the "**Transfer Availability**") and (ii) waive the Company's call rights under Section 9.1 of the Plan and Section 9 of the Award Agreement (the "**Call Right Waiver**").

Since none of the Adjustment, the Stock Right, the Transfer Availability or the Call Right Waiver reduce the rights of the Participant, the Committee may amend the Award Agreement to incorporate the terms of the Adjustment, the Stock Right, the Transfer Availability and the Call Right Waiver, without the Participant's consent.

Accordingly, the Committee hereby amends the Award Agreement, effective as of the Closing of the Transaction, as follows:

1. Section 2 of the Award Agreement is hereby amended to add the following:

"Notwithstanding anything in the Plan or herein to the contrary, in recognition of the Participant's service to the Company, the Option shall be converted into 211,662 shares of Common Stock immediately following the Closing (as defined in the Purchase Agreement) of the transaction contemplated by that certain stock purchase agreement dated October 8, 2021, as amended and restated on November 3, 2021 (the "**Purchase Agreement**") with BurgerFi International, Inc. ("**BurgerFi**") and Cardboard Box, LLC ("**Seller**") whereby BurgerFi will acquire all of the Company's outstanding stock from Seller (the "**Option Conversion**"). The term "**Issued Shares**" as used in this Agreement shall mean the shares of Common Stock received as a result of the Option Conversion." The term "**Common Stock**" as used in this Agreement shall mean common stock of BurgerFi International, Inc., par value \$0.0001 per share.

2. The Company hereby waives its call rights under Section 9.1 of the Plan and Section 9 of the Award Agreement and such provisions have no further force or effect with respect to the Option (as defined in the Award Agreement).

3. Section 10 of the Award Agreement is hereby amended and restated in its entirety to read as follows:

“10. Transfer Restrictions.

(a) Except as specifically provided for in Section 10(b) below, the Participant may not Transfer all or any fraction of any Issued Shares, except with the prior written consent of the Board, which consent may be given or withheld in the sole discretion of the Board; provided, that the following Transfers shall not require the consent of the Board: (a) Transfers by operation of law to the estate or personal representative of a deceased or incompetent individual (which estate or representative will then be subject to the same restrictions on Transfer as all other Participants); (b) Transfers by the Participant to an Affiliate of the Participant; or (c) Transfers of up to forty percent (40%) of the Issued Shares by the Participant necessary to cover his or her federal and state income tax obligations arising from the Option Conversion; provided, that the Participant making such Transfer to an Affiliate shall thereafter remain liable (jointly and severally with the transferee) for the transferee’s obligations under this Plan and the Participant’s individual award agreement. The Participant shall pay all reasonable expenses, including attorneys’ fees and accounting fees, incurred by the Company in connection with a Transfer of Issued Shares by the Participant.

(b) The Participant may not, without the express written consent of the Board, (i) for the period beginning on the date hereof and ending on June 20, 2022, Transfer any Issued Shares then held by the Participant; or (ii) during the period beginning on June 20, 2022 and ending on December 31, 2022, Transfer more than fifty percent (50%) of any Issued Shares then held by the Participant. Except as otherwise determined by the Committee or the Board, all restrictions on the Transfer of Issued Shares shall cease as of December 31, 2022.”

4. In all other respects, the provisions of the Award Agreement are hereby ratified and confirmed, and they shall continue in full force and effect.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Company has executed this Amendment on behalf of itself and the Committee and BurgerFi has executed this Amendment, each on the date and year first written above.

HOT AIR, INC.

By: /s/ Matthew Leeds
Name: Matthew Leeds
Title: Vice President

BURGERFI INTERNATIONAL, INC.

By: /s/ Ophir Sternberg
Name: Ophir Sternberg
Title: Executive Chairman of the Board

Consent of Independent Auditor

Hot Air, Inc.
Fort Lauderdale, Florida

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-260727) of BurgerFi International, Inc. of our report dated May 4, 2021, relating to the financial statements of Hot Air, Inc. and Subsidiaries, which appears in this Current Report on Form 8-K dated November 5, 2021.

/s/ BDO USA, LLP
Fort Lauderdale, Florida

November 5, 2021



BurgerFi Completes \$156.6 Million Acquisition of Anthony's Coal Fired Pizza & Wings
Establishes Multi-Brand Platform of Premium Restaurant Concepts

PALM BEACH, FL and Fort Lauderdale, FL (November 4, 2021)—BurgerFi International Inc. (Nasdaq: BFI, BFIIW) (“BurgerFi”), the owner of one of the nation’s fastest-growing premium fast-casual concepts through the BurgerFi brand, is announcing the successful completion of its pending acquisition of Anthony’s Coal Fired Pizza & Wings (“Anthony’s”) from L Catterton for \$156.6 million. Ophir Sternberg, Executive Chairman of BurgerFi commented, “This acquisition marks a significant step forward in BurgerFi’s ongoing growth strategy and transition into a premium multibrand platform.”

Anthony’s, founded in 2002 and headquartered in Fort Lauderdale, FL, is a leading operator of casual dining pizza restaurants with a very loyal fan base and, like BurgerFi, a high concentration of restaurants in the state of Florida. As previously announced, Ian Baines, Chief Executive Officer of Anthony’s, will become the Chief Executive Officer of BurgerFi, while Julio Ramirez will remain Chief Executive Officer and President of the BurgerFi brand and Patrick Renna will become President of the Anthony’s brand. With the successful acquisition, BurgerFi has 177 systemwide restaurant locations mostly across the Eastern seaboard as of September 30, 2021. L Catterton will also become one of BurgerFi’s largest shareholders. The transaction is expected to be accretive to EPS to common shareholders and EBITDA in 2022.

“We are very excited to officially welcome Anthony’s into the BurgerFi family,” continued Ophir Sternberg. “Anthony’s is our first acquisition in our long term inorganic growth strategy to build a premium multibrand platform. It represents a fantastic complement to the BurgerFi brand, and we are well positioned to strategically grow Anthony’s as it fits in our focus on high quality fast-casual dining restaurants. L Catterton was an excellent partner in finalizing this transaction, and we look forward to the strategic benefits of adding Andrew Taub, Managing Partner at L Catterton to our board.”

Ian Baines, incoming Chief Executive Officer of BurgerFi, commented, “The acquisition of Anthony’s marks the beginning of a new chapter for BurgerFi as we establish a restaurant platform well-positioned for growth and success. The BurgerFi and Anthony’s brands are strategically aligned, bringing premium ingredients and loyal fanbases to fast-casual and casual dining restaurants. We are committed to our growth strategy here at BurgerFi, and will continue to scan the market for potential M&A opportunities that we can leverage and unlock value from.”

About BurgerFi International (Nasdaq: BFI, BFIIW)

Established in 2011, BurgerFi is among the nation’s fastest-growing better burger concepts with 116 BurgerFi restaurants domestically and internationally as of September 30, 2021. The concept is chef-founded and is committed to serving fresh food of transparent quality. BurgerFi uses 100% American Angus Beef with no steroids, antibiotics, growth hormones, chemicals, or additives. BurgerFi’s menu also includes high quality wagyu beef, antibiotic and cage-free chicken offerings, fresh, hand-cut sides and custard shakes and concretes. In October 2021, BurgerFi announced the acquisition of Anthony’s Coal Fired Pizza & Wings with 61 company-owned locations in eight states. BurgerFi was named QSR Magazine’s Breakout Brand of 2020, Fast Casual’s 2021 #1 Brand of the Year, a “Top Restaurant Brand

to Watch” by Nation’s Restaurant News in 2019 and is included in Inc. Magazine’s Fastest Growing Private Companies List. In 2021, in Consumer Report’s Chain Reaction Report, BurgerFi was praised for serving “no antibiotic beef” across all of its restaurants and Consumer Reports awarded BurgerFi an “A-Grade Angus Beef” rating for the third consecutive year. To learn more about BurgerFi or to find a full list of locations, please visit www.burgerfi.com. Download the BurgerFi App on iOS or Android devices for rewards and ‘Like’ BurgerFi on Facebook or follow @BurgerFi on Instagram and Twitter.

BurgerFi® is a Registered Trademark of BurgerFi IP, LLC, a wholly-owned subsidiary of BurgerFi.

About Anthony’s Coal Fired Pizza & Wings

Anthony’s is a casual dining pizza and wing brand that, as of September 30, 2021, operated 61 company-owned restaurant locations along the east coast, with a strong presence in Florida (28 units), Pennsylvania (12 units), and New Jersey (8 units). Anthony’s prides itself on serving fresh, never frozen, high-quality ingredients. Their menu offers “well-done” pizza, coal fired chicken wings, homemade meatballs, and a variety of handcrafted sandwiches and salads. The pizzas are prepared using a unique coal fired oven to quickly seal in natural flavors while creating a lightly-charred crust. The restaurants feature a deep wine and craft beer selection to round out the menu. To learn more about Anthony’s, please visit www.acfp.com.

Forward-Looking Statements

This press release may contain “forward-looking statements” as defined in the Private Securities Litigation Reform Act of 1995, including statements relating to BurgerFi expectations or estimates of its future business outlook, prospects or financial results, its acquisition of Anthony’s and the impact of the acquisition on BurgerFi’s growth, EPS and EBITDA. Forward-looking statements generally can be identified by words such as “anticipates,” “believes,” “estimates,” “expects,” “intends,” “plans,” “predicts,” “projects,” “will be,” “will continue,” “will likely result,” and similar expressions. These forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties, which could cause our actual results to differ materially from those reflected in the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in our Annual Report on Form 10-K for the year ended December 31, 2020 and those discussed in other documents we file with the Securities and Exchange Commission, including our ability to successfully realize the expected benefits of the acquisition of Anthony’s as a result of the impact of COVID-19 or any other factors. Forward-looking statements are neither historical facts nor assurances of future performance. Any forward-looking statement made by us in this press release is based only on information currently available to us and speaks only as of the date on which it is made. We undertake no obligation to revise or publicly release the results of any revision to these forward-looking statements, except as required by law. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.

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HOT AIR, INC. FINANCIAL STATEMENTS**Independent Auditor's Report**

Board of Directors
Hot Air, Inc. and Subsidiaries
Ft. Lauderdale, Florida

Opinion

We have audited the accompanying consolidated balance sheets of Hot Air, Inc. and Subsidiaries (the "Company") as of January 4, 2021 and December 30, 2019, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for the fiscal years then ended, and the related notes to the consolidated financial statements.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of the Company as of January 4, 2021 and December 30, 2019, and the results of its operations and its cash flows for the fiscal years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Emphasis of Matter

As described in Note 13 to the consolidated financial statements, the Company was materially impacted by the outbreak of a novel coronavirus (COVID-19), which was declared a global pandemic by the World Health Organization in March 2020. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the consolidated financial statements are issued or available to be issued.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the consolidated financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the consolidated financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

/s/ BDO USA LLP

Fort Lauderdale, Florida

May 4, 2021

Hot Air, Inc. and Subsidiaries

Consolidated Balance Sheets

	January 4, 2021	December 30, 2019
Current assets		
Cash and cash equivalents	\$ 7,893,530	\$ 2,097,001
Inventories	918,672	1,261,779
Prepaid and other current assets	2,496,976	3,098,718
Total current assets	11,309,178	6,457,498
Property and equipment, net (Note 3)	17,863,680	23,940,654
Other assets		
Deposits	467,478	531,316
Intangible assets, net (Note 5)	69,855,587	76,911,304
Goodwill (Note 4)	48,399,240	48,399,240
Total other assets	118,722,305	125,841,860
Total assets	\$ 147,895,163	\$ 156,240,012
Current liabilities		
Accounts payable and accrued expenses (Note 6)	\$ 10,337,722	\$ 15,633,841
Long term debt, current portion (Note 7)	—	3,254,000
Total current liabilities	10,337,722	18,887,841
Long term liabilities		
Deferred rent	2,810,999	2,195,715
Accrued expenses	3,786,980	148,806
Deferred tax liability (Note 8)	6,485,689	6,997,202
Revolving line of credit (Note 7)	2,500,000	2,000,000
Related party note (Note 7)	10,000,000	—
Long term debt, less current portion (Note 7)	66,217,949	61,234,969
Total liabilities	102,139,339	91,464,533
Commitments and contingencies (Note 11)		
Stockholders' Equity		
Common stock (\$0.001, par value) 130,000 shares authorized; 116,596 shares issued and outstanding	117	117
Additional paid-in capital	125,434,892	123,800,337
Accumulated deficit	(79,679,185)	(59,024,975)
Total stockholders' equity	45,755,824	64,775,479
Total liabilities and stockholders' equity	\$ 147,895,163	\$ 156,240,012

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

Hot Air, Inc. and Subsidiaries

Consolidated Statements of Operations

	Year ended January 4, 2021	Year ended December 30, 2019
Restaurant sales, net	\$ 107,159,709	\$ 141,548,413
Cost of restaurant sales (exclusive of items shown separately below)		
Food and beverage costs	26,395,626	34,620,837
Labor	31,861,272	46,653,981
Direct occupancy costs	11,183,818	11,991,684
Direct operating costs	25,023,965	24,990,546
Cost of restaurant sales (exclusive of items shown separately below)	94,464,681	118,257,048
General and administrative	10,181,438	13,008,162
Depreciation and amortization (Note 3 and 5)	13,392,550	13,474,354
Non-cash stock option expense (Note 9)	1,004,555	418,280
Pre-opening expenses	495,715	457,687
Store closure costs (Note 12)	3,436,057	4,646,941
Acquisition related costs	—	16,135
Goodwill impairment (Note 4)	—	35,081,176
Loss from operations	(15,815,287)	(43,811,370)
Other expenses		
Other expenses	1,678,260	1,383,055
Interest expense	3,684,842	5,258,318
Loss before income taxes	(21,178,389)	(50,452,743)
Income tax benefit (Note 8)	524,179	4,787,407
Net loss	\$ (20,654,210)	\$ (45,665,336)

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

Hot Air, Inc. and Subsidiaries

Consolidated Statements of Changes in Stockholders' Equity

	Common Stock			Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Additional Paid-in Capital		
Balance at December 31, 2018	108,006	\$ 108	\$114,678,536	\$(13,359,639)	\$101,319,005
Capital contribution	5,042	5	5,081,444	—	5,081,449
Debt conversion to equity	3,662	4	3,622,077	—	3,622,081
Stock correction	(114)	—	—	—	—
Stock based compensation	—	—	418,280	—	418,280
Net loss	—	—	—	(45,665,336)	(45,665,336)
Balance at December 30, 2019	116,596	\$ 117	\$123,800,337	\$(59,024,975)	\$ 64,775,479
Capital contribution	—	—	630,000	—	630,000
Stock based compensation	—	—	1,004,555	—	1,004,555
Net loss	—	—	—	(20,654,210)	(20,654,210)
Balance at January 4, 2021	116,596	\$ 117	\$125,434,892	\$(79,679,185)	\$ 45,755,824

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

Hot Air, Inc. and Subsidiaries

Consolidated Statements of Cash Flows

	For the year ended January 4, 2021	For the year ended December 30, 2019
Cash flows from operating activities		
Net loss	\$ (20,654,210)	\$ (45,665,336)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Deferred tax benefit	(511,513)	(4,854,083)
Depreciation and amortization	13,392,550	13,474,354
Goodwill impairment	—	35,081,176
Amortization of deferred loan costs	245,857	277,449
Stock based compensation	1,004,555	418,280
Loss on disposal of property & equipment	2,225,495	3,136,798
(Increase) decrease in assets:		
Inventories	343,107	198,628
Prepaid and other current assets	601,742	(939,843)
Deposits	63,838	(25,365)
Tenant/Lease Incentives (Landlord Contributions)	(158,687)	184,100
Increase (decrease) in liabilities:		
Accounts payable and accrued expenses	(1,657,945)	194,801
Deferred rent liability	773,971	(449,489)
Net cash (used in) provided by operating activities	(4,331,240)	1,031,470
Cash flows from investing activities		
Purchases of property and equipment	(2,277,965)	(5,419,789)
Purchases of licenses	(207,389)	—
Net cash used in investing activities	(2,485,354)	(5,419,789)
Cash flows from financing activities		
Proceeds from revolving line of credit	500,000	6,000,000
Proceeds from promissory note	215,000	4,000,000
Proceeds from loan	12,323,337	265,692
Proceeds from PPP loan	10,000,000	—
Payments of loan	—	(2,109,139)
Payments of PPP loan	(10,000,000)	—
Payments of revolving line of credit	(813,500)	(9,054,565)
Equity contribution	630,000	5,081,448
Debt issuance costs	(241,714)	(279,761)
Net cash provided by financing activities	12,613,123	3,903,675
Net increase (decrease) in cash and cash equivalents	5,796,529	(484,644)
Cash and cash equivalents at the beginning of period	2,097,001	2,581,645
Cash and cash equivalents at the end of period	\$ 7,893,530	\$ 2,097,001
Non-cash investing and financing activities:		
Debt conversion to equity	\$ —	\$ 3,622,081
Supplement disclosure of cash flow information:		
Cash paid during the year for interest	\$ 2,075,680	\$ 4,207,170
Cash paid for income taxes	30,913	88,697

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

Notes to the Consolidated Financial Statements

1. Description of Business and Basis of Presentation

Nature of Business

Hot Air, Inc. (the “Company”), through its subsidiaries, owns and operates casual dining pizza restaurants under the trade name Anthony’s Coal Fired Pizza. As of January 4, 2021, the Company had 60 restaurants open and operational in Florida, Delaware, Pennsylvania, New Jersey, New York, Massachusetts, Maryland, and Rhode Island. The Company has one additional restaurant where the lease has been executed and not yet opened.

The Company’s fiscal year ends on the Monday closest to December 31. The fiscal years ended January 4, 2021 (“Fiscal 2020”) and December 30, 2019 (“Fiscal 2019”), consisted of 53 and 52 weeks, respectively.

2. Summary of Significant Accounting Policies

Principles of Consolidation

The wholly owned subsidiaries are accounted for under the consolidation method of accounting and have been prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”). Under this method, the subsidiaries’ balance sheets and results of operations are reflected within the Company’s consolidated financial statements. All intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of these consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amount of revenues and expenses during the reported period. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original term of three months or less to be cash equivalents. Amounts receivable from credit card companies are also considered cash equivalents because they are both short term and highly liquid in nature and are typically converted to cash within three days of the sales transaction.

Inventories

Inventories primarily consist of food and beverage. Inventories are accounted for at lower of cost or net realizable value using the first-in, first-out (“FIFO”) method. Spoilage is expensed as incurred.

Property and Equipment

Property and equipment are recorded at cost and is depreciated over the assets’ estimated useful life using the straight-line method. Leasehold improvements are amortized using the straight-line method over the lesser of the estimated useful life of the asset (generally up to ten years) or the term of the related lease. The estimated lives for kitchen equipment, furniture and fixtures, and vehicles range from five to seven years. The costs of repairs and maintenance are expensed when incurred, while expenditures for major betterments and additions are capitalized. Gains and or losses are recognized on disposals or sales.

Goodwill and Intangible Assets

The Company’s intangible assets consist of goodwill, indefinite-lived transferable alcoholic beverage licenses and definite-lived trade name/trademarks, above/below market leases, non-competition agreements and proprietary processes. Definite-lived intangible assets are amortized on a straight-line basis over their estimated useful lives and reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset

Notes to the Consolidated Financial Statements

or asset group may not be recoverable based on estimated undiscounted future cash flows. If impaired, the asset or asset group is written down to fair value based on discounted future cash flows. During 2020 and 2019, the Company had not identified any impairments attributed to definite- or indefinite-lived intangible assets. Amortization on definite-lived intangibles is recorded in amortization expenses in our consolidated statements of operations.

Goodwill and other indefinite-lived intangible assets are not amortized but are instead tested for impairment annually as of the first day of our fiscal fourth quarter or on an interim basis if events or changes in circumstances between annual tests indicate a potential impairment. First, we determine if, based on qualitative factors, it is more likely than not that an impairment exists. Factors considered include, but are not limited to historical financial performance, a significant decline in expected future cash flows, unanticipated competition, changes in management or key personnel, macroeconomic and industry conditions and the legal and regulatory environment. If the qualitative assessment indicates that it is more likely than not that an impairment exists, then a quantitative assessment is performed. The quantitative assessment requires an analysis of several best estimates and assumptions, including future sales and operating results and other factors that could affect fair value or otherwise indicate potential impairment.

In January 2017, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2017-04, *Simplifying the Test for Goodwill Impairment* (ASU 2017-04), which removes the second step of the goodwill impairment test that requires a hypothetical purchase price allocation. A goodwill impairment will now be the amount by which a reporting unit's carrying value exceeds its fair value, not to exceed the carrying amount of goodwill. During 2019, the Company early adopted ASU 2017-04. During 2020 and 2019, the Company performed a quantitative assessment and determined that goodwill was partially impaired in 2019. Refer to Note 4 for further discussion.

Long-Lived Assets

The Company assesses the potential impairment of our long-lived assets on an annual basis or whenever events or changes in circumstances indicate the carrying value of the assets or asset group may not be recoverable. Factors considered include, but are not limited to, negative cash flow, significant underperformance relative to historical or projected future operating results, significant changes in the manner in which an asset is being used, an expectation that an asset will be disposed of significantly before the end of its previously estimated useful life and significant negative industry or economic trends. At any given time, we may be monitoring a small number of locations, and future impairment charges could be required if individual restaurant performance does not improve or we make the decision to close or relocate a restaurant. If such assets are considered to be impaired, the impairment to be recognized is measured at the amount by which the carrying amount of the assets exceeds the fair value. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell. During the years ended January 4, 2021 and December 30, 2019, the Company decided to close restaurants in Illinois, New York, New Jersey and Massachusetts. Refer to Note 13 for additional discussion.

Revenue Recognition

The Company adopted FASB ASU 2014-09, *Revenue from Contracts with Customers* (ASC606) effective January 1, 2019 using the modified retrospective transition approach. This update provides a comprehensive new revenue recognition model that requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. This guidance did not provide a material impact on the recognition of revenue from our restaurants, which also includes gift card revenue.

Revenue from restaurant sales is recognized at the point of sale when the Company's performance obligation has been completed and is presented net of discounts, coupons, employee meals and complimentary meals. Sales taxes that are collected and remitted to the appropriate taxing authority are excluded from revenue. We sell gift cards to our customers; these gift cards do not expire and do not incur a service fee on unused balances. Sales of gift cards to our customers are recorded as a contract liability in the accounts payable and accrued expenses on the consolidated balance sheets. Discounts on gift cards sold to customers are recorded as a reduction to contract liability and are recognized as a reduction to revenue over a period that approximates redemption patterns. The portion of gift cards sold to

Notes to the Consolidated Financial Statements

customers that are never redeemed is commonly referred to as gift card breakage. Under ASC 606, we recognize gift card breakage revenue in proportion to the pattern of gift card redemptions exercised by customers, using an estimated breakage rate based on historical experience. The Company recognized approximately \$245,000 and \$744,000 in breakage revenue for the fiscal years ended January 4, 2021 and December 30, 2019, respectively.

Presentation of Sales Tax

The Company collects sales tax from guests and remits the entire amount to the respective states. The Company's accounting policy is to exclude the tax collected and remitted from revenues and cost of sales. Sales tax payable amounted to approximately \$704,000 and \$903,000 as of January 4, 2021 and December 30, 2019, respectively, and is presented in accrued expenses in the consolidated balance sheets.

Advertising Costs

Advertising costs are expensed as incurred. Advertising costs for the periods ended January 4, 2021 and December 30, 2019 were approximately \$1,494,000 and \$647,000, respectively, and are included in general and administrative costs.

Pre-opening Costs

The Company follows Accounting Standards Codification (ASC) Topic 720-15, *Start-up Costs*, ("ASC 720-15") which provides guidance on the financial reporting of start-up costs and organization costs. In accordance with ASC 720-15, costs of pre-opening activities and organization costs are expensed as incurred. Such expenses include rent incurred prior to restaurant opening, training costs, public relations, opening supplies, and other miscellaneous expenses.

Operating Leases

The Company accounts for rent expense for its operating leases on the straight-line basis in accordance with ASC Topic 840 *Leases*, ("ASC 840"). The Company leases restaurant locations that have terms expiring between April 2021 and July 2031. The initial obligation period is generally between 5 and 15 years. The term of the lease does not include unexercised option periods. The restaurant facilities primarily have renewal clauses of 5 or 10 years, exercisable at the option of the Company. The Company does not have enough history to include renewal options in its deferred rent calculation.

Most lease agreements contain one or more of the following: tenant improvement allowances, rent holidays, rent escalation clauses and/or contingent rent provisions. The Company includes scheduled rent escalation clauses for the purpose of recognizing straight-line rent. Certain of these leases also require the payment of contingent rentals based on a percentage of gross revenues, which are accounted for when the contingency is resolved or becomes probable.

Rent is recognized on the straight-line basis from the initial obligation, including the impact of rent escalation clauses. The Company expenses rental costs incurred during the build-out period in accordance with ASC 840. Rent expense incurred from the initial date of obligation through the date the restaurant opens is included in pre-opening expenses. Certain restaurant leases required the Company to buy-out the prior tenants and or contained tenant improvement allowances. The buy-out expenses and tenant allowances are amortized over the term of the leases, excluding options for renewal. At January 4, 2021 and December 30, 2019, there were no un-amortized prepaid lease buyouts. Total un-amortized deferred tenant allowances were approximately \$697,000 and \$856,000 at January 4, 2021 and December 30, 2019, respectively. Total un-amortized deferred rent related to escalation clauses and rent holidays was approximately \$2,114,000 and \$1,340,000 as of January 4, 2021 and December 30, 2019, respectively. The unamortized deferred tenant allowances and deferred rent are presented in deferred rent on the consolidated balance sheets.

Notes to the Consolidated Financial Statements

In April 2020, the staff of the FASB issued a question-and-answer document that stated that entities may elect to account for lease concessions related to the effects of the COVID-19 pandemic as though the rights and obligations for those concessions existed as of the commencement of the contract rather than as a lease modification. Lessees may make the election for any lessor-provided lease concession related to the impact of the COVID-19 pandemic as long as the concession does not result in a substantial increase in the rights of the lessor or in the obligations of the lessee. The Company has made such election and has not accounted for the concessions as lease modifications.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash. The Company maintains cash balances that are at times in excess of the FDIC insurance limits, which amount to \$250,000 per depositor at each financial institution. The Company's deposit in excess of federally insured limits at January 4, 2021 and December 30, 2019 amounted to \$7,643,530 and \$1,847,001, respectively.

Income Tax

The Company is a corporation subject to tax. The Company records income taxes using the asset and liability method of accounting for deferred income taxes. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequence of temporary differences between the financial statement and income tax basis of the Company's assets and liabilities. Income taxes are estimated in each of the jurisdictions in which the Company operates. This process involves estimating the tax exposure together with assessing temporary differences resulting from differing treatment of items, for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the consolidated balance sheets. The recording of a net deferred tax asset assumes the realization of such asset in the future. Otherwise, a valuation allowance must be recorded to reduce this asset to its net realizable value. Management considers future pretax income and ongoing prudent and feasible tax planning strategies in assessing the net realizable value of tax assets and the need for such a valuation allowance. In the event that management determines that the Company may not be able to realize all or part of a net deferred tax asset in the future, a valuation allowance for the deferred tax asset is charged against income in the period such determination is made.

ASC Topic 740, *Income Taxes*, clarifies the accounting for uncertainty in income taxes recognized in an entity's financial statements and prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The guidance requires that the Company determine the existence of any significant uncertain tax positions requiring recognition in the Company's tax return. The Company's federal and state income tax returns are generally subject to examination by taxing authorities for three years after the returns are filed, and the Company's federal and state income tax returns for 2017, 2018 and 2019 remain open to examination.

Fair Value of Financial Instruments

The Company's financial instruments consist primarily of cash and cash equivalents, credit card receivables included in prepaid and other current assets, accounts payable and accrued expenses, revolving line of credit, and notes payable. The carrying amounts of such financial instruments approximate their respective estimated fair value due to short-term maturities or recent agreement date and approximate market interest rates of these instruments. The estimated fair value is not necessarily indicative of the amounts the Company would realize in a current market exchange or from future earnings or cash flows.

The Company complies with ASC Topic 820-10, *Fair Value Measurement and Disclosures*, ("ASC 820-10") for financial assets and liabilities, which defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. FASB ASC 820-10 establishes a fair value hierarchy that prioritizes the inputs used to measure fair value. The hierarchy gives highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurement). This hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. If a financial instrument uses inputs that fall in different levels of the hierarchy, the instrument will be categorized based upon the lowest level of inputs that is significant to the fair value calculation.

Notes to the Consolidated Financial Statements

The three-level hierarchy for fair value measurements is defined as follows:

- Level 1 – Quoted prices for identical assets or liabilities in active markets;
- Level 2 – Observable inputs other than quoted markets classified as Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data;
- Level 3 – Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. This includes certain pricing models, discounted cash flow methodologies, and similar techniques that use significant unobservable inputs.

The Company had no level 1, 2, or 3 financial instruments for the years ended January 4, 2021 and December 31, 2019.

Recent Accounting Pronouncements Not Yet Adopted

Leases

In February 2016, the FASB issued ASU2016-02, *Leases* (Topic 842). This ASU requires a lessee to record, for all leases with a lease term of more than 12 months, an asset representing its right to use the underlying asset for the lease term and a liability to make lease payments. For leases with a lease term of 12 months or less, a practical expedient is available whereby a lessee may elect, by class of underlying asset, not to recognize a right-of-use asset or lease liability. A lessee making this accounting policy election would recognize lease expense over the term of the lease, generally in a straight-line pattern. On April 8, 2020, the FASB voted to defer the effective date for ASC 842 for one year. For private companies, the leasing standard will be effective for fiscal years beginning after December 15, 2021. Early adoption is permitted. In transition, a lessee and a lessor will recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. The modified retrospective approach includes a number of optional practical expedients. These practical expedients relate to identifying and classifying leases that commenced before the effective date, initial direct costs for leases that commenced before the effective date, and the ability to use hindsight in evaluating lessee options to extend or terminate a lease or to purchase the underlying asset. ASU 2018-11 was issued in June 2018 that also permits entities to choose to initially apply ASU2016-02 at the adoption date and recognize a cumulative-effect adjustment to the opening balance of net assets in the period of adoption. Management is currently evaluating the impact of this ASU on its consolidated financial statements.

Credit Losses

In June 2016, the FASB issued ASU2016-13, *Financial Instruments – Credit Losses* (Topic 326). The ASU changes the impairment model for most financial assets that are measured at amortized cost and certain other instruments from an incurred loss model to an expected loss model. Entities will be required to estimate credit losses over the entire contractual term of an instrument. The ASU includes financial assets recorded at amortized cost basis such as loan receivables, trade and certain other receivables as well as certain off-balance sheet credit exposures such as loan commitments and financial guarantees. The ASU does not apply to financial assets measured at fair value, and loans and receivables between entities under common control. The ASU is effective for fiscal years beginning after December 15, 2022. Early adoption may be selected for fiscal years beginning after December 15, 2018. An entity must apply the amendments in the ASU through a cumulative-effect adjustment to net assets as of the beginning of the first reporting period in which the guidance is effective except for certain exclusions. Management is currently evaluating the impact of this ASU on its financial statements.

Income Taxes

In December 2019, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU)No. 2019-12, *Simplifying the Accounting for Income Taxes* (Topic 740). Among other things, the amendment removes the year-to-date loss limitation in interim-period tax accounting and requires entities to reflect the effect of an enacted change in tax laws in the interim period that includes the enactment date of the new legislation. It also

Notes to the Consolidated Financial Statements

reduces complexity in certain areas, including the accounting for transactions that result in a step-up in the tax basis of goodwill and allocating taxes to members of a consolidated group. The standard is effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years, with early adoption permitted. The Company is currently evaluating the impact of the adoption of this update on its consolidated financial position, results of operations, and cash flows.

3. Property and Equipment

Property and equipment consisted of the following:

	January 4, 2021	December 30, 2019	Estimated useful lives
			The lesser of the term or
Leasehold improvements	\$ 28,079,613	\$ 30,370,357	5-10 years
Furniture, fixtures and equipment	10,041,985	9,891,659	5-7 years
Kitchen equipment	9,449,959	9,377,550	7 years
Vehicles	49,406	49,406	5 years
Construction in progress	421,102	1,013,379	
Total property and equipment before depreciation and amortization	48,042,065	50,702,351	
Less: accumulated depreciation and amortization	<u>(30,178,385)</u>	<u>(26,761,697)</u>	
Property and equipment, net	<u>\$ 17,863,680</u>	<u>\$ 23,940,654</u>	

Depreciation and amortization expense on property and equipment was \$6,397,379 and \$6,611,167 for the periods ended January 4, 2021 and December 30, 2019, respectively.

4. Goodwill

The Company is required to review goodwill for impairment annually or more frequently when events and circumstances indicate that the carrying amount may be impaired. If the determined fair value of goodwill is less than the related carrying amount, an impairment loss is recognized. The Company performs its annual impairment assessment annually as of the first day of its fiscal fourth quarter or on an interim basis if events or changes in circumstances between annual tests indicate a potential impairment.

The Company's annual goodwill impairment assessment at September 30, 2020 was performed using a quantitative assessment. Step one of the impairment test was based upon a comparison of the carrying value of net assets, including goodwill balances, to the fair value of net assets. Fair value was measured using a discounted cash flow model approach and a market approach. The Company evaluated all methods to ensure reasonably consistent results. Additionally, the Company evaluated the key input factors in the models used to determine whether a moderate change in any input factor or combination of factors would significantly change the results of the tests. In the fourth quarter of 2019, the Company recorded an impairment charge of \$35.1 million, which represented the excess of the Company's carrying value at September 30, 2019. No impairment was recorded in 2020.

<i>Year Ended</i>	January 4, 2021	December 30, 2019
Goodwill, beginning of period	\$ 48,399,240	\$ 83,480,416
Impairment charge	—	(35,081,176)
Goodwill, end of period	<u>\$ 48,399,240</u>	<u>\$ 48,399,240</u>

Notes to the Consolidated Financial Statements

5. Intangible Assets

The Company has identified several intangible assets, including a trade name, proprietary processes, liquor licenses, agreements not to compete and above/below market leases in place. The trade name is being amortized over a period of 15 years; the liquor licenses, to the extent they do not expire, are considered indefinite lived and are not amortized; the proprietary processes are being amortized between 7 and 10 years; the non-competition agreements are being amortized over 5 years; and the above/below market leases are being amortized over the remaining lease terms, not to exceed 10 years. Included in intangible assets are liquor licenses, which primarily consist of costs associated with obtaining liquor licenses.

The carrying value and accumulated amortization of identifiable intangible assets are as follows:

	January 4, 2021	December 30, 2019
Identifiable intangible assets:		
Trade name	\$ 91,075,000	\$ 91,075,000
Liquor licenses	6,618,992	6,679,539
Proprietary processes	3,980,000	3,980,000
Lease valuations	1,435,194	1,435,194
Non-competition agreements	1,250,000	1,250,000
Identifiable intangible assets	104,359,186	104,419,733
Less: Accumulated amortization	(34,503,599)	(27,508,429)
Intangible assets, net	\$ 69,855,587	\$ 76,911,304

The table below summarizes the expected annual amortization expense for the identifiable intangible assets, excluding the liquor licenses, which have an indefinite life for each of the next five fiscal years and thereafter:

January 3, 2022	\$ 6,608,379
January 2, 2023	6,613,186
January 1, 2024	6,613,186
December 30, 2024	6,613,186
December 29, 2025	6,613,186
Thereafter	30,175,472
Total	\$63,236,595

6. Accounts Payable and Accrued Expenses

The significant components of accounts payable and accrued expenses are as follows:

	January 4, 2021	December 30, 2019
General accounts payable and accrued expenses	\$ 6,928,174	\$10,430,723
Accrued payroll	1,799,154	3,456,611
Accrued gift certificates	1,610,394	1,746,507
Total accounts payable and accrued expenses, current	\$10,337,722	\$15,633,841

Notes to the Consolidated Financial Statements

7. Long-Term Debt

On December 15, 2015, Plastic Tripod Inc., a subsidiary of the Company, entered into a loan agreement (“Credit Agreement”) with a syndicate of commercial banks to provide the Company with up to \$80 million in financing, \$70 Million was structured as a term loan and \$10 million was in the form of a revolver (line of credit). The outstanding debt is as follows:

On March 29, 2019 the Company entered into the Third Amended and Restated Loan Agreement which amends and restates the Second Amended and Restated Loan Agreement entered on March 9, 2018. In September 2019, the Company failed to comply with certain covenants and on October 30, 2019, the Company entered into a Fourth Amended and Restated Loan Agreement, which amends and restates the Third Amended and Restated Loan Agreement. The Fourth Amended and Restated Loan Agreement, which terminates on June 15, 2022, provides the Company with up to \$75 million in financing structured as \$70 million term loan and \$5 million in the form a revolving loan commitment. The Company determined that the amendment represents a debt modification in accordance with ASC 470-50, *Debt: Modifications and Extinguishments*, as the changes to the provisions were not considered substantial.

	January 4, 2021	December 30, 2019
Term Loan	<u>\$66,592,767</u>	<u>\$65,082,929</u>
Non-interest bearing Related Party Note	<u>10,000,000</u>	—
Revolving line of credit	<u>2,500,000</u>	2,000,000
Promissory note	<u>215,000</u>	—
Total debt before deferred loan costs	79,307,767	67,082,929
Less: deferred loan costs, net of amortization	<u>(589,818)</u>	<u>(593,961)</u>
Total debt, net	78,717,949	66,488,969
Less: current portion	—	3,254,000
Long term debt, non-current portion	<u>\$78,717,949</u>	<u>\$63,234,969</u>

In March 2020, the Company failed to comply with certain covenants related to the Company’s financial difficulties, and on March 25, 2020, the Company entered into a Forbearance Agreement and Fifth Amended and Restated Loan Agreement (the “New Credit Agreement”), which amends and restates the Fourth Amended and Restated Loan Agreement. The New Credit Agreement, which terminates on June 15, 2023, provides the Company with Lender financing structured as a \$70 million term loan and a \$5 million revolving loan, and establishes a \$10,000,000 delayed draw term loan facility (the “Delayed Draw Term Loan Facility”) provided by CP7 Warming Bag, L.P., a related party and a stockholder, of which \$5,000,000 of such facility was funded to the Borrower on March 25, 2020, and the remaining \$5,000,000 was funded to the Borrower on August 17, 2020. The Delayed Draw Term Loan is a non-interest bearing loan which matures on June 15, 2023. The Forbearance Period is the earlier of March 31, 2021, the lender’s failure to fund the Delayed Draw Term Loan, or a breach of the agreement.

The terms of the New Credit Agreement extended the maturity date of the term loan to June 15, 2023 and requires the Company to repay the principal of the term loan in five quarterly installments commencing on March 31, 2022 with the balance due at the maturity date. The principal amount of revolving loans is due and payable in full on the maturity date. The loan and revolving line of credit are secured by substantially all of the Company’s assets. The loan incurs interest on outstanding amounts from the date thereof through the date of repayment as follows: (i) (A) if a base rate loan (including a base rate loan referencing the LIBOR Index Rate), the base rate plus the Applicable Margin or (B)

Notes to the Consolidated Financial Statements

if an adjusted LIBOR Rate Loan, the adjusted LIBOR Rate plus the Applicable Margin; and (ii) in case of swingline loans, at the swingline rates. Interest rates for the revolver and term loan outstanding as of January 4, 2021 and December 30, 2019 were 4.50% and 5.94%, respectively. The Company may elect Paid In Kind Interest (PIK interest) to the term loan principal from March 31, 2020 to September 30, 2020; thereafter, interest may be paid as cash, or 50% cash/50% PIK interest until maturity of the loan. The Company elected PIK interest on March 31, 2020 and continued until October 31, 2020 when they began paying 50% cash interest/50% PIK interest. At January 4, 2021, PIK interest amounted to \$2,335,522 and is included in the Term Loan balance in the table above.

The Company is subject to certain financial covenants under the Forbearance Agreement which requires the Company to maintain (i) Minimum liquidity of \$1 million, (ii) Gross Sales in excess of \$15.3M for the third quarter 2020 and \$41.7 million for the third and fourth quarter 2020, (iii) Operating no fewer than 43 locations. After the Forbearance Period ends, the New Credit Agreement requires the Company to maintain a (i) "Senior Lease-Adjusted Leverage Ratio" and (ii) "Fixed Charge Coverage Ratio" as well as customary events of default that, if triggered, could result in acceleration of the maturity of the New Credit Agreement.

On March 30, 2020, the Company entered into the Sixth Amended and Restated Loan Agreement which amends and restates the Fifth Amended and Restated Loan Agreement. This Amendment is a "technical amendment" correcting the agreement to state that PIK Interest is to be added to the principal of the term loan.

On April 21, 2020 and on May 19, 2020, the Company entered into the Seventh Amended and Restated Loan Agreement and the Eighth Amended and Restated Loan Agreement, which permitted the Company to incur Indebtedness pursuant to the federal Paycheck Protection Program ("PPP"). The Company applied for and received \$10 million PPP loan. The Company returned full amount of \$10 million PPP loan before the year ended January 4, 2021.

In December 2020, the Company acknowledged failure to comply with certain requirements of the Forbearance Agreement. On December 17, 2020, the Lenders agreed to waive noncompliance under the Forbearance Agreement upon receipt of an equity contribution of \$630,000 and reimbursement to the Lender for invoiced fees and expenses incurred. The \$630,000 equity contribution was funded by a related party to the Company on December 21, 2020, and all invoiced fees and expenses incurred in connection with the Agreement were paid on this date.

The following table represents the future annual obligations under the term loan and revolving line of credit at January 4, 2021, for each fiscal year ended:

January 3, 2022	\$	—
January 2, 2023		3,254,000
January 1, 2024		<u>75,838,767</u>
Total		<u>\$79,092,767</u>

The deferred loan cost amortization was approximately \$246,000 and \$277,000 for the periods ended January 4, 2021 and December 30, 2019 and is included in interest expense in the accompanying consolidated statements of operations.

In March 2021, the Company entered into the 9th Amended and Restated Loan Agreement which amends and restates the Eighth Amended and Restated Loan Agreement and terminates the forbearance period. Under this Amendment, the Company is required to initiate payments of principal in 2022.

Notes to the Consolidated Financial Statements

8. Income Taxes

Income tax expense (benefit) consists of the following:

	January 4, 2021	December 30, 2019
Current		
Federal	\$ (31,277)	\$ —
State	18,612	141,418
Total Current	<u>(12,665)</u>	<u>141,418</u>
Deferred		
Federal	(309,513)	(4,525,824)
State	(202,001)	(403,001)
Total Deferred	<u>(511,514)</u>	<u>(4,928,825)</u>
Total Benefit from Income Taxes	<u><u>\$(524,179)</u></u>	<u><u>\$ (4,787,407)</u></u>

Significant components of the Company's deferred tax assets and liabilities relate to accruals, net operating loss carryforwards, FICA tip credit carryforwards, depreciation and amortization, disallowed interest expense, and nondeductible reserves. The difference between the statutory and effective tax rates is primarily a result of valuation allowance, FICA tip credit, and deferred basis adjustments.

A summary of the Company's net deferred tax (liabilities) assets is as follows:

	January 4, 2021	December 30, 2019
Tradename	\$(14,596,950)	\$ (16,169,575)
Depreciation and amortization	—	(1,508,948)
Other miscellaneous tax liabilities	(6,336,974)	(5,397,075)
Deferred tax liabilities	<u>(20,933,924)</u>	<u>(23,075,598)</u>
Net operating loss carryforwards	6,895,374	5,622,117
FICA tip credit carryforwards	7,991,121	7,296,549
Interest Expense	2,627,567	1,300,166
Depreciation and amortization	1,000,794	—
Other miscellaneous tax assets	2,721,224	1,859,564
Deferred tax assets	<u>21,236,080</u>	<u>16,078,396</u>
Valuation allowance	(6,787,845)	—
Deferred tax liabilities, net	<u><u>\$ (6,485,689)</u></u>	<u><u>\$ (6,997,202)</u></u>

The Company files a U.S. federal and various state income tax returns. As of January 4, 2021, the Company has recorded a net operating loss deferred tax asset of \$6,895,374, reflecting the benefit of federal and state loss carryforwards of \$5,852,346 and \$1,043,028, respectively. Federal net operating losses from years prior to January 1, 2018 will begin to expire in 2032 through 2038 while net operating losses created after January 1, 2018 do not expire. In addition, the Company has recorded a deferred tax asset of \$7,991,121 at January 4, 2021 reflecting the benefit of FICA tip credit carryforwards.

ASC 740 requires a valuation allowance to reduce deferred tax assets if, based on the weight of both positive and negative evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. The Company has established a valuation allowance due to uncertainties regarding the realization of deferred tax assets based on a lack of earnings history. The total valuation allowance recognized as of January 4, 2021 is \$6,787,845.

The Company evaluates any uncertain tax positions and recognizes the tax benefit from an uncertain tax position if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefits recognized in the financial statements from such positions are measured based on the largest benefit that has a greater than 50 percent likelihood of being realized upon settlement.

Notes to the Consolidated Financial Statements

Any change in judgment related to the expected resolution of uncertain tax positions is recognized in earnings in the period in which such change occurs. As of January 4, 2021, the Company reserved \$341,250 for an uncertain tax position related to a correction of net operating loss carryforward from the 2016 federal tax return. This reserve is included in the deferred tax liability on the consolidated balance sheets as of January 4, 2021. Interest and penalties incurred during 2020 and 2019 were immaterial.

On March 27, 2020, President Trump signed into law the CARES Act. The legislation enacts various measures to assist companies affected by the COVID-19 pandemic. Key income tax-related provisions of the bill include temporary modifications to net operating loss utilization and carryback limitations, allowance of refundable alternative minimum tax credits, reduced limitation of charitable contributions, reduced limitation of business interest expense, and technical corrections to depreciation of qualified improvement property.

The Company continues to evaluate the impact from the passage of the CARES Act in the financial statements as of January 4, 2021. The Company utilized deferred payments of payroll tax which amounted to accrual of \$1.6 million as of January 4, 2021. Other new tax regulations under the CARES Act do not have a material impact on the financial statements. The Company has also reviewed the effects of the Act in determining the realizability of its deferred tax assets and did not change its conclusion that a valuation allowance is needed.

On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, an omnibus spending bill that includes an array of COVID-related tax relief for individuals and businesses. The tax-related measures contained in the Act revise and expand provisions enacted earlier in the year by the Families First Coronavirus Response Act and the CARES Act. The Act also extends a number of expiring tax provisions. Additionally, the Act provides for a 100% deduction for certain business meals incurred in calendar years 2021 and 2022, which are currently deductible at 50% for years ending December 31, 2020. The Company determined that income tax effects related to the passage of the Consolidated Appropriations Act were not material to the financial statements for the year ended January 4, 2021.

9. Stock Based Compensation

On December 15, 2015, the Company formed the Hot Air, Inc. 2016 Stock Option Plan (the "Option Plan"). The Option Plan provides for the issuance of incentive or non-qualified stock options, subject to the terms and conditions of the Option Plan, to directors, consultants and employees of the Company. The exercise price of the options will not be less than (in the case of incentive stock options not less than 110%) of the fair value of the common stock at the date of grant, with a term not to exceed 10 years. Upon the occurrence of an event of change in control, the Board may, in its sole discretion, terminate all outstanding and unexercised stock options.

During the year ended January 4, 2021, the Company granted a total of 24,196 stock options, which were subject to vesting based on the passage of time ("time-based option"). During the year ended December 30, 2019, the Company granted a total of 3,736 stock options. One-half of the options is subject to vesting based on passage of time, and one-half of the options is subject to vesting based on the achievement of performance objectives ("performance-based option"). Time-based options vest over 4 years. In the event of change in control, all unvested time-based options immediately vest and become vested options as of immediately prior to change in control and all performance-based options vest and become exercisable upon a Realization Event, such as a change in control, subject to the achievement of internal rate of return specified by the Option Plan.

The following is a summary of activity in the Company's stock option plan for the year ended January 4, 2021:

	Number of options	Weighted average exercise price	Weighted average remaining contractual life (in years)	Average intrinsic value
Options outstanding, beginning of the year	16,664	\$ 1,000	7.85	—
Options granted in 2020	24,196	\$ 500	3.16	
Options exercised	—	\$ —	—	
Options forfeited	(10,366)	\$ —	—	
Change in Weighted average remaining contractual life due to more options issued			(6.3)	
Options outstanding, end of year	30,494	\$ 571	4.71	
Exercisable, end of year	5,579	\$ 708		

Hot Air, Inc. and Subsidiaries

Notes to the Consolidated Financial Statements

The fair value of 2020 grants was estimated on the date of the grant and amounted to approximately \$159 per share. The Company applied the Black-Scholes method using the following assumptions:

Expected dividend yield	—
Expected stock price volatility	83.2%
Risk-free interest rate	0.19%
Time until expiration (in years)	2.25

The following is a summary of activity in the Company's stock option plan for the year ended December 30, 2019:

	Number of options	Weighted average exercise price	Weighted average remaining contractual life (in years)	Average intrinsic value
Options outstanding, beginning of the year	14,850	\$ 1,000	8.34	—
Options granted in 2019	3,736	\$ 1,000	2.03	
Options exercised	—	\$ —	—	
Options forfeited	(1,922)	\$ —	—	
Change in Weighted average remaining contractual life due to more options issued			(2.52)	
Options outstanding, end of year	16,664	\$ 1,000	7.85	
Exercisable, end of year	3,689	\$ 1,000		

The fair value of these grants was estimated on the date of the grant and amounted to approximately \$495 per share. The Company applied the Black-Scholes method using the following assumptions:

Expected dividend yield	—
Expected stock price volatility	41.00%
Risk-free interest rate	2.28%
Time until expiration (in years)	10.00

The Company recorded \$1,004,555 and \$418,280, net of forfeitures amounting to \$115,263 and \$224,891, in compensation expense in relation to options granted during the periods ended January 4, 2021 and December 30, 2019, respectively. The following table represents the future stock-based compensation expense for each of the following years:

January 3, 2022	\$1,518,616
January 2, 2023	1,046,424
January 1, 2024	912,466
December 30, 2024	791,009
Total	<u>\$4,268,515</u>

Notes to the Consolidated Financial Statements

10. Related Party Transactions

On December 15, 2015, ACFP Management, Inc., a subsidiary, Catterton Management Company, LLC, related party and an affiliate, Quilvest USA, Inc., and ACFP Investors Inc., management companies, entered into a Monitoring Agreement. The services include, but are not limited to, management, finance, marketing, operational and strategic planning, relationship access and corporate development for the Company and its subsidiaries. The annual management fee pursuant to this agreement amounts to \$750,000, plus expenses and is included in other expenses in the accompanying consolidated statements of operations. On March 31, 2020 the agreement with Quilvest USA, Inc. was terminated, lowering the annual management fee to \$660,000, plus expenses per year. Total of \$682,500 and \$750,000 of management fees was recorded for the years ended January 4, 2021 and December 30, 2019, respectively. At January 4, 2021 and December 30, 2019, the Company accrued approx. \$2.9 million and \$2.3 million, respectively, in management fees to related parties which are included on the balance sheets in long-term accrued expenses in 2020 and current liabilities in 2019.

On December 21, 2017 and March 9, 2018, the Company received an advance from CP7 Warming Bag, L.P., a related party, in the amount of \$320,583 and \$2,545,111, respectively. The unpaid principal amount including unpaid interest of the advance bear annual interest per the applicable base rate in the agreements. On October 30, 2019, the related party agreed to exchange the principal and accrued interest of \$3,622,081 into 8,704 shares of common stock.

The Company leases a South Fort Lauderdale restaurant from the Founder and Director pursuant to a lease agreement dated February 2, 2002, and Amendment to lease agreement dated June 22, 2012. Payments under this lease totaled approximately \$166,358 during the year ended January 4, 2021 and \$156,416 during the year ended December 30, 2019.

11. Commitments and Contingencies**Operating Leases**

The Company leases restaurants under operating leases that have terms expiring between December 2019 and June 2031. The initial obligation period is generally between 5 and 15 years. The term of the lease is considered its initial obligation period, which does not include unexercised option periods. The restaurant facilities primarily have renewal clauses of 5 or 10 years, exercisable at the option of the Company. Certain leases require the payment of contingent rentals based on percentage of gross revenue. Certain leases may also include rent escalation clauses based on a fixed rate or adjustable terms such as the Consumer Price Index.

Future minimum lease payments on operating lease obligations for each of the following five fiscal years and thereafter are as follows:

January 3, 2022	\$ 8,952,594
January 2, 2023	8,049,701
January 1, 2024	7,109,855
December 30, 2024	5,466,218
December 29, 2025	3,924,123
Thereafter	7,267,179
Total	<u>\$40,769,670</u>

Manager Incentive Plan

The Company established a Manager Incentive Plan (the "Incentive Plan") in order to reward certain restaurant managers. A committee, comprised of three officers of the Company, has the responsibility and authority for administering the Incentive Plan and determines the managers eligible to participate in the Incentive Plan (the "Participants") based on certain criteria indicated in the Incentive Plan. The manager incentive award is equal to the average of the annual bonuses earned by a Participant during the period specified in the Incentive Plan, multiplied by two. The manager incentive award is subject to forfeiture, upon the Participant's termination of employment prior to the end of the performance period and commencement of pay-out. The award is payable over a three-year period after a participant's award vests. For the periods ended January 4, 2021 and December 30, 2019, the compensation expense recorded was approximately \$84,000 and \$76,000, respectively. This plan has been officially amended to provide that no new participants can become eligible to the plan as of February 2018.

Notes to the Consolidated Financial Statements

Major Concentrations

For the periods ended January 4, 2021 and December 30, 2019, three suppliers represented approximately 37.9% and 36.7% of the Company's purchases.

General

In the ordinary course of conducting its business, the Company may become involved in various legal actions and other claims. Litigation is subject to many uncertainties and management may be unable to accurately predict the outcome of individual litigated matters. Some of these matters may possibly be decided unfavorably towards the Company. The Company intends to vigorously defend all matters and does not believe any reserves for these matters need to be established for any of the periods presented.

12. Store Closure Costs

The Company evaluates the performance of restaurants on an ongoing basis including an assessment of the current and future operating results of the restaurant in relation to its cash flow and future occupancy costs. Based upon these evaluations, management may choose not to open a location or close a restaurant.

During the periods ended January 4, 2021 and December 30, 2019, the Company closed under-performing restaurant in 4 locations in NY, 1 location in Massachusetts and 1 location in New Jersey in 2020 and 3 locations in Illinois and 1 locations in Massachusetts in 2019. Costs associated with store closures consists of asset disposals, severance for employees, costs to vacate and lease termination costs. These costs were recorded in store closure costs on the consolidated statement of operations as follows:

	Year ended	
	January 4, 2021	December 30, 2019
Restaurant Closure	\$3,332,640	\$ 3,361,740
Terminated leases	103,417	1,285,201
	<u>\$3,436,057</u>	<u>\$ 4,646,941</u>

13. Impact of COVID-19 and Liquidity

In March 2020, the World Health Organization declared the novel coronavirus 2019 (COVID-19) a pandemic and the United States declared it a National Public Health Emergency, which has resulted in a significant reduction in revenue at the Company's restaurants due to mandatory restaurant closures, capacity limitations, social distancing guidelines or other restrictions mandated by governments across the world, including federal, state and local governments in the United States. As a result of these developments, the Company experienced a negative impact on its revenues, results of operations and cash flows.

In response to the business disruption caused by the COVID-19 outbreak, the Company has taken the following actions, which management expects will enable it to meet its obligations over the next twelve months from the date of this report.

Operating Initiatives - Due to the government mandates regarding limiting or prohibiting in-restaurant dining due to COVID-19, the Company is leveraging a reduction in menu offerings and an enhanced contactless business model to sustain revenue in restaurants that have open dining rooms or in markets where take-out and delivery sales are sufficient to cover the costs of management staffing those locations. As of January 4, 2021, 60 of the 60 owned and operated restaurants were open for dine-in service. There were no government mandated restrictions on capacity for the Company's 28 restaurant locations in Florida but the Company chose to space its tables approximately six feet apart which impact capacity at these locations. For each of the 32 restaurant locations outside of Florida, the Company

Notes to the Consolidated Financial Statements

continued to adhere to state mandated level capacity restrictions. During 2020, the Company permanently closed six locations in New York and New Jersey that had previously been temporarily closed and terminated lease arrangements with each of these locations. The Company also expanded its 3rd party partnerships to grow off-premises revenue, which also allows website delivery.

Capital Management and Expense Reductions - The Company suspended all non-essential capital and overhead expenditures. The Company has also made significant reductions in ongoing operating expenses, including using salaried managers to help perform functions that had previously been administered by hourly employees. Lastly, the company negotiated various rent abatements and deferrals that equated to approximately \$1.5M in cash savings in fiscal year 2020.

To further preserve financial flexibility, as discussed in Note 7, the Company received funding of \$10 million through a Delayed Draw Loan and completed a forbearance agreement with its lender allowing the Company to waive principal payments until 2022 and convert interest expense to Paid-in-Kind. As further described in Note 7, the Company entered into the 9th Amended and Restated Loan Agreement which terminated the forbearance period and required the Company to initiate payments of principal in 2022.

14. Subsequent Events

The financial statement and related disclosures reflect Management's evaluation of the impact of post-balance sheet events and transactions through May 4, 2021, the date the financial statements were available to be issued. In March 2021, the Company entered into the 9th Amended and Restated Loan Agreement, as further discussed in Note 7, which terminated the forbearance period under earlier agreement. Under this Amendment, the Company is required to initiate payments of principal in 2022.

Hot Air, Inc. and Subsidiaries

Consolidated Balance Sheets (unaudited)

	July 5, 2021	January 4, 2021
Current assets		
Cash and cash equivalents	\$ 6,379,350	\$ 7,893,530
Inventories	993,772	918,672
Prepaid and other current assets	2,227,120	2,496,976
Total current assets	9,600,242	11,309,178
Property and equipment, net (Note 3)	16,287,702	17,863,680
Other assets		
Deposits	467,720	467,478
Intangible assets, net (Note 5)	66,665,243	69,855,587
Goodwill (Note 4)	48,399,240	48,399,240
Total other assets	115,532,203	118,722,305
Total assets	\$ 141,420,147	\$ 147,895,163
Current liabilities		
Accounts payable and accrued expenses (Note 6)	\$ 9,689,650	\$ 10,337,722
Long term debt, current portion (Note 7)	1,627,000	—
Total current liabilities	11,316,650	10,337,722
Long term liabilities		
Deferred rent	2,448,914	2,810,999
Accrued expenses (Note 10)	4,088,972	3,786,980
Deferred tax liability (Note 8)	8,143,311	6,485,689
Revolving line of credit	2,500,000	2,500,000
Related party note (Note 7)	10,000,000	10,000,000
Long term debt, less current portion (Note 7)	64,828,203	66,217,949
Total liabilities	103,326,050	102,139,339
Commitments and contingencies (Note 11)		
Stockholders' Equity		
Common stock (\$0.001, par value) 130,000 shares authorized; 116,596 shares issued and outstanding	117	117
Additional paid-in capital	126,337,408	125,434,892
Accumulated deficit	(88,243,428)	(79,679,185)
Total stockholders' equity	38,094,097	45,755,824
Total liabilities and stockholders' equity	\$ 141,420,147	\$ 147,895,163

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

Hot Air, Inc. and Subsidiaries

Consolidated Statements of Operations (unaudited)

	Six months ended July 5, 2021	Six months ended June 29, 2020
Restaurant sales, net	\$ 59,962,077	\$ 55,204,076
Cost of restaurant sales (exclusive of items shown separately below):		
Food and beverage costs	15,954,258	13,522,504
Labor	18,145,248	18,017,792
Direct occupancy costs	5,651,177	5,921,062
Direct operating costs	13,952,510	11,581,061
Cost of restaurant sales (exclusive of items shown separately below)	53,703,193	49,042,419
General and administrative	3,769,476	4,691,193
Depreciation and amortization (Note 3 and 5)	6,033,511	6,862,894
Non-cash stock option expense (Note 9)	902,516	614,560
Pre-opening expenses	107,095	487,470
Store closure costs (Note 12)	134,821	325,358
Loss from operations	(4,688,535)	(6,819,818)
Other expenses		
Other expenses	450,977	488,983
Interest expense	1,741,379	1,898,492
Loss before income taxes	(6,880,891)	(9,207,293)
Income tax (expense) benefit (Note 8)	(1,683,352)	27,161
Net loss	\$ (8,564,243)	\$ (9,180,132)

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

Hot Air, Inc. and Subsidiaries

Consolidated Statements of Changes in Stockholders' Equity (unaudited)

	Common Stock			Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Additional Paid- in Capital		
Balance at December 30, 2019	116,596	\$ 117	\$ 123,800,337	\$(59,024,975)	\$64,775,479
Stock based compensation			614,560		614,560
Net loss	—	—	—	(9,180,132)	(9,180,132)
Balance at June 29, 2020	116,596	\$ 117	\$ 124,414,897	\$(68,205,107)	\$56,209,907
Balance at January 5, 2021	116,596	\$ 117	\$ 125,434,892	\$(79,679,185)	\$45,755,824
Stock based compensation			902,516		902,516
Net loss	—	—	—	(8,564,243)	(8,564,243)
Balance at July 5, 2021	116,596	\$ 117	\$ 126,337,408	\$(88,243,428)	\$38,094,097

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

Hot Air, Inc. and Subsidiaries

Consolidated Statements of Cash Flows (unaudited)

	For the six months ended July 5, 2021	For the six months ended June 29, 2020
Cash flows from operating activities		
Net loss	\$ (8,564,243)	\$ (9,180,132)
Adjustments to reconcile net loss to net cash used in operating activities:		
Deferred tax expense (benefit)	1,657,622	(27,110)
Depreciation and amortization	6,033,511	6,862,894
Non-cash interest expense	258,590	1,106,040
Amortization of deferred loan costs	139,446	116,421
Stock based compensation	902,516	614,560
Loss on disposal of property & equipment	18,515	—
(Increase) decrease in assets:		
Inventories	(75,100)	325,669
Prepaid and other current assets	269,857	820,638
Deposits	(242)	(2,829)
Tenant/lease incentives (Landlord contributions)	—	(47,058)
Increase (decrease) in liabilities:		
Accounts payable and accrued expenses	(346,080)	(1,722,760)
Deferred rent liability	(362,085)	130,372
Net cash used in operating activities	<u>(67,693)</u>	<u>(1,003,295)</u>
Cash flows from investing activities		
Purchases of property and equipment	(1,250,439)	(1,065,323)
Purchases of licenses	(35,266)	(5,405)
Net cash used in investing activities	<u>(1,285,705)</u>	<u>(1,070,728)</u>
Cash flows from financing activities		
Proceeds from revolving line of credit	—	500,000
Proceeds from loan	—	5,000,000
Proceeds from PPP loan	—	10,000,000
Payments of loan	—	(813,500)
Payments of PPP loan	—	(10,000,000)
Debt issuance costs	(160,782)	(226,145)
Net cash provided by (used in) financing activities	<u>(160,782)</u>	<u>4,460,355</u>
Net increase (decrease) in cash and cash equivalents	(1,514,180)	2,386,332
Cash and cash equivalents at the beginning of period	7,893,530	2,097,001
Cash and cash equivalents at the end of period	<u>\$ 6,379,350</u>	<u>\$ 4,483,333</u>
Supplement disclosure of cash flow information:		
Cash paid during the period for interest	\$ 1,334,545	\$ 1,670,610
Cash paid for income taxes	\$ 29,988	\$ 249

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

Notes to the Consolidated Financial Statements (unaudited)

1. Description of Business and Basis of Presentation

Nature of Business

Hot Air, Inc. (the “Company”), through its subsidiaries, owns and operates casual dining pizza restaurants under the trade name Anthony’s Coal Fired Pizza. As of July 5, 2021, the Company had 61 restaurants open and operational in Florida, Delaware, Pennsylvania, New Jersey, New York, Massachusetts, Maryland, and Rhode Island. The Company has one additional restaurant where the lease has been executed and not yet opened.

The Company’s fiscal year ends on the Monday closest to December 31. These six-month periods ended July 5, 2021 and June 29, 2020 that are presented herein consisted of 26 weeks.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited consolidated interim financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (“U.S. GAAP”) for interim financial information and are unaudited. Accordingly, they do not include all information and disclosures required to be included in annual financial statements. The information contained in the accompanying consolidated interim financial statements and the notes thereto should be read in conjunction with the consolidated financial statements and the notes thereto for the period ended January 4, 2021 (the “Annual Financial Statements”).

These consolidated interim financial statements do not repeat disclosures that would substantially duplicate disclosures included in the Annual Financial Statements or details of accounts that have not been changed significantly in amounts or composition. The interim unaudited consolidated interim financial statements have been prepared on the same basis as the Company’s Annual Financial Statements. In the opinion of management, the accompanying consolidated interim financial statements reflect all adjustments, which include normal recurring adjustments, necessary for the fair presentation of these consolidated interim financial statements. The results for the six months ended July 5, 2021 are not necessarily indicative of the results that could be expected for Fiscal 2021.

Principles of Consolidation

Under the consolidation method of accounting, the subsidiaries’ balance sheets and results of operations are reflected within the Company’s consolidated financial statements. All intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of these consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amount of revenues and expenses during the reported period. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original term of three months or less to be cash equivalents. Amounts receivable from credit card companies are also considered cash equivalents because they are both short term and highly liquid in nature and are typically converted to cash within three days of the sales transaction.

Inventories

Inventories primarily consist of food and beverage. Inventories are accounted for at lower of cost or net realizable value using the first-in, first-out (“FIFO”) method. Spoilage is expensed as incurred.

Notes to the Consolidated Financial Statements (unaudited)

Property and Equipment

Property and equipment are recorded at cost and is depreciated over the assets' estimated useful life using the straight-line method. Leasehold improvements are amortized using the straight-line method over the lesser of the estimated useful life of the asset (generally up to ten years) or the term of the related lease. The estimated lives for kitchen equipment, furniture and fixtures, and vehicles range from five to seven years. The costs of repairs and maintenance are expensed when incurred, while expenditures for major betterments and additions are capitalized. Gains and or losses are recognized on disposals or sales.

Goodwill and Intangible Assets

The Company's intangible assets consist of goodwill, indefinite-lived transferable alcoholic beverage licenses and definite-lived software, trade name/trademarks, above/below market leases, non-competition agreements and proprietary processes. Definite-lived intangible assets are amortized on a straight-line basis over their estimated useful lives and reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recoverable based on estimated undiscounted future cash flows. If impaired, the asset or asset group is written down to fair value based on discounted future cash flows. During the first six months of 2021 and 2020, the Company had not identified any impairments attributed to definite- or indefinite-lived intangible assets. Amortization on definite-lived intangibles is recorded in depreciation and amortization expense in our consolidated statements of operations.

Goodwill and other indefinite-lived intangible assets are not amortized but are instead tested for impairment annually as of the first day of our fiscal fourth quarter or on an interim basis if events or changes in circumstances between annual tests indicate a potential impairment. First, we determine if, based on qualitative factors, it is more likely than not that an impairment exists. Factors considered include, but are not limited to historical financial performance, a significant decline in expected future cash flows, unanticipated competition, changes in management or key personnel, macroeconomic and industry conditions and the legal and regulatory environment. If the qualitative assessment indicates that it is more likely than not that an impairment exists, then a quantitative assessment is performed. The quantitative assessment requires an analysis of several best estimates and assumptions, including future sales and operating results and other factors that could affect fair value or otherwise indicate potential impairment. During the first six months of 2021 and 2020, the Company had not identified any impairments attributed to goodwill.

In January 2017, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2017-04, *Simplifying the Test for Goodwill Impairment* (ASU 2017-04), which removes the second step of the goodwill impairment test that requires a hypothetical purchase price allocation. A goodwill impairment will now be the amount by which a reporting unit's carrying value exceeds its fair value, not to exceed the carrying amount of goodwill. During 2019, the Company early adopted ASU 2017-04. There was no impairment for the six months ended July 5, 2021 and June 29, 2020. Refer to Note 4 for further discussion.

Long-Lived Assets

The Company assesses the potential impairment of our long-lived assets on an annual basis or whenever events or changes in circumstances indicate the carrying value of the assets or asset group may not be recoverable. Factors considered include, but are not limited to, negative cash flow, significant underperformance relative to historical or projected future operating results, significant changes in the manner in which an asset is being used, an expectation that an asset will be disposed of significantly before the end of its previously estimated useful life and significant negative industry or economic trends. At any given time, we may be monitoring a small number of locations, and future impairment charges could be required if individual restaurant performance does not improve or we make the decision to close or relocate a restaurant. If such assets are considered to be impaired, the impairment to be recognized is measured at the amount by which the carrying amount of the assets exceeds the fair value. During the first six months of 2021 and 2020, the Company had not identified any impairments attributed to long-lived intangible assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell. During the periods ended July 5, 2021 and June 29, 2020, the Company decided to close restaurants in New York, New Jersey and Massachusetts. Refer to Note 12 for additional discussion.

Notes to the Consolidated Financial Statements (unaudited)

Revenue Recognition

Revenue from restaurant sales is recognized at the point of sale when the Company's performance obligation has been completed and is presented net of discounts, coupons, employee meals and complimentary meals. Sales taxes that are collected and remitted to the appropriate taxing authority are excluded from revenue. We sell gift cards to our customers; these gift cards do not expire and do not incur a service fee on unused balances. Sales of gift cards to our customers are recorded as a contract liability in accounts payable and accrued expenses on the consolidated balance sheets. Discounts on gift cards sold to customers are recorded as a reduction to contract liability and are recognized as a reduction to revenue over a period that approximates redemption patterns. The portion of gift cards sold to customers that are never redeemed is commonly referred to as gift card breakage. Under ASC 606, we recognize gift card breakage revenue in proportion to the pattern of gift card redemptions exercised by customers, using an estimated breakage rate based on historical experience. The Company recognized approximately \$177,000 and \$122,000 in breakage revenue for the six months ended July 5, 2021 and June 29, 2020, respectively, which is included in restaurant sales, net on the consolidated statement of operations.

Presentation of Sales Tax

The Company collects sales tax from guests and remits the entire amount to the respective states. The Company's accounting policy is to exclude the tax collected and remitted from revenues and cost of sales. Sales tax payable amounted to approximately \$828,000 and \$704,000 as of July 5, 2021 and January 4, 2021, respectively, and are presented in accounts payable and accrued expenses in the consolidated balance sheets.

Advertising Costs

Advertising costs are expensed as incurred. Advertising costs for the six months ended July 5, 2021 and June 29, 2020 were approximately \$1,696,000 and 568,000, respectively, and are included in general and administrative costs.

Pre-opening Costs

The Company follows Accounting Standards Codification (ASC) Topic 720-15, *Start-up Costs*, ("ASC 720-15") which provides guidance on the financial reporting of start-up costs and organization costs. In accordance with ASC 720-15, costs of pre-opening activities and organization costs are expensed as incurred. Such expenses include rent incurred prior to restaurant opening, training costs, public relations, opening supplies, and other miscellaneous expenses.

Operating Leases

The Company accounts for rent expense for its operating leases on the straight-line basis in accordance with ASC Topic 840 *Leases*, ("ASC 840"). The Company leases restaurant locations that have terms expiring between September 2021 and March 2023. The initial obligation period is generally between 5 and 15 years. The term of the lease does not include unexercised option periods. The restaurant facilities primarily have renewal clauses of 5 or 10 years, exercisable at the option of the Company. The Company does not have enough history to include renewal options in its deferred rent calculation.

Most lease agreements contain one or more of the following: tenant improvement allowances, rent holidays, rent escalation clauses and/or contingent rent provisions. The Company includes scheduled rent escalation clauses for the purpose of recognizing straight-line rent. Certain of these leases also require the payment of contingent rentals based on a percentage of gross revenues, which are accounted for when the contingency is resolved or becomes probable.

Rent is recognized on the straight-line basis from the initial obligation, including the impact of rent escalation clauses. The Company expenses rental costs incurred during the build-out period in accordance with ASC 840. Rent expense incurred from the initial date of obligation through the date the restaurant opens is included in pre-opening expenses. Certain restaurant leases required the Company to buy-out the prior tenants and or contained tenant improvement allowances. The buy-out expenses and tenant allowances are amortized over the term of the leases, excluding options

Notes to the Consolidated Financial Statements (unaudited)

for renewal. At July 5, 2021 and June 29, 2020, there were no un-amortized prepaid lease buyouts. Total un-amortized deferred tenant allowances were approximately \$777,000 and \$697,000 at July 5, 2021 and January 4, 2021, respectively. Total un-amortized deferred rent related to escalation clauses and rent holidays was approximately \$1,672,000 and \$2,114,000 as of July 5, 2021 and January 4, 2021, respectively. The unamortized deferred tenant allowances and deferred rent are presented in deferred rent on the consolidated balance sheets.

In April 2020, the staff of the FASB issued a question-and-answer document that stated that entities may elect to account for lease concessions related to the effects of the COVID-19 pandemic as though the rights and obligations for those concessions existed as of the commencement of the contract rather than as a lease modification. Lessees may make the election for any lessor-provided lease concession related to the impact of the COVID-19 pandemic as long as the concession does not result in a substantial increase in the rights of the lessor or in the obligations of the lessee. The Company has made such election and has not accounted for the concessions as lease modifications.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash. The Company maintains cash balances that are at times in excess of the FDIC insurance limits, which amount to \$250,000 per depositor at each financial institution. The Company's deposit in excess of federally insured limits at July 5, 2021 and January 4, 2021 amounted to \$6,129,350 and \$7,643,530, respectively.

Income Tax

The Company is a corporation subject to tax. The Company records income taxes using the asset and liability method of accounting for deferred income taxes. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequence of temporary differences between the financial statement and income tax basis of the Company's assets and liabilities. Income taxes are estimated in each of the jurisdictions in which the Company operates. This process involves estimating the tax exposure together with assessing temporary differences resulting from differing treatment of items, for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the consolidated balance sheets. The recording of a net deferred tax asset assumes the realization of such asset in the future. Otherwise, a valuation allowance must be recorded to reduce this asset to its net realizable value. Management considers future pretax income and ongoing prudent and feasible tax planning strategies in assessing the net realizable value of tax assets and the need for such a valuation allowance. In the event that management determines that the Company may not be able to realize all or part of a net deferred tax asset in the future, a valuation allowance for the deferred tax asset is charged against income in the period such determination is made.

ASC Topic 740, *Income Taxes*, clarifies the accounting for uncertainty in income taxes recognized in an entity's financial statements and prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The guidance requires that the Company determine the existence of any significant uncertain tax positions requiring recognition in the Company's tax return. The Company's federal and state income tax returns are generally subject to examination by taxing authorities for three years after the returns are filed, and the Company's federal and state income tax returns for 2017, 2018 and 2019 remain open to examination.

The Company did not have any significant uncertain tax positions requiring recognition in the consolidated financial statements as of July 5, 2021. As of January 4, 2021, the Company reserved \$341,250 for an uncertain tax position related to a correction of net operating loss carryforward from the 2016 federal tax return. This reserve is included in the deferred tax liability on the consolidated balance sheets as of January 4, 2021.

Fair Value of Financial Instruments

The Company's financial instruments consist primarily of cash and cash equivalents, credit card receivables included in prepaid and other current assets, accounts payable and accrued expenses, revolving line of credit, and notes payable. The carrying amounts of such financial instruments approximate their respective estimated fair value due to short-term maturities or recent agreement date and approximate market interest rates of these instruments. The estimated fair value is not necessarily indicative of the amounts the Company would realize in a current market exchange or from future earnings or cash flows.

Notes to the Consolidated Financial Statements (unaudited)

The Company complies with ASC Topic 820-10, *Fair Value Measurement and Disclosures*, (“ASC 820-10”) for financial assets and liabilities, which defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. FASB ASC 820-10 establishes a fair value hierarchy that prioritizes the inputs used to measure fair value. The hierarchy gives highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurement). This hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. If a financial instrument uses inputs that fall in different levels of the hierarchy, the instrument will be categorized based upon the lowest level of inputs that is significant to the fair value calculation.

The three-level hierarchy for fair value measurements is defined as follows:

- Level 1 – Quoted prices for identical assets or liabilities in active markets;
- Level 2 – Observable inputs other than quoted markets classified as Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data;
- Level 3 – Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. This includes certain pricing models, discounted cash flow methodologies, and similar techniques that use significant unobservable inputs.

The Company had no level 1, 2, or 3 financial instruments for the six months ended July 5, 2021.

Recent Accounting Pronouncements Not Yet Adopted

Leases

In February 2016, the FASB issued ASU2016-02, *Leases* (Topic 842). This ASU requires a lessee to record, for all leases with a lease term of more than 12 months, an asset representing its right to use the underlying asset for the lease term and a liability to make lease payments. For leases with a lease term of 12 months or less, a practical expedient is available whereby a lessee may elect, by class of underlying asset, not to recognize a right-of-use asset or lease liability. A lessee making this accounting policy election would recognize lease expense over the term of the lease, generally in a straight-line pattern. The ASU is effective for fiscal years beginning after December 15, 2021. In transition, a lessee and a lessor will recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. The modified retrospective approach includes a number of optional practical expedients. These practical expedients relate to identifying and classifying leases that commenced before the effective date, initial direct costs for leases that commenced before the effective date, and the ability to use hindsight in evaluating lessee options to extend or terminate a lease or to purchase the underlying asset. ASU 2018-11 was issued in June 2018 that also permits entities to choose to initially apply ASU2016-02 at the adoption date and recognize a cumulative-effect adjustment to the opening balance of net assets in the period of adoption. Management is currently evaluating the impact of this ASU on its consolidated financial statements.

Credit Losses

In June 2016, the FASB issued ASU2016-13, *Financial Instruments – Credit Losses* (Topic 326). The ASU changes the impairment model for most financial assets that are measured at amortized cost and certain other instruments from an incurred loss model to an expected loss model. Entities will be required to estimate credit losses over the entire contractual term of an instrument. The ASU includes financial assets recorded at amortized cost basis such as loan receivables, trade and certain other receivables as well as certain off-balance sheet credit exposures such as loan commitments and financial guarantees. The ASU does not apply to financial assets measured at fair value, and loans and receivables between entities under common control. The ASU is effective for fiscal years beginning after December 15, 2022. An entity must apply the amendments in the ASU through a cumulative-effect adjustment to net assets as of the beginning of the first reporting period in which the guidance is effective except for certain exclusions. Management is currently evaluating the impact of this ASU on its financial statements.

Notes to the Consolidated Financial Statements (unaudited)

3. Property and Equipment

Property and equipment consisted of the following:

	July 5, 2021	January 4, 2021	Estimated useful lives
Leasehold improvements			The lesser of the term or
	\$ 28,797,778	\$ 28,079,613	5-10 years
Furniture, fixtures and equipment	10,208,624	10,041,985	5-7 years
Kitchen equipment	9,903,917	9,449,959	7 years
Vehicles	51,419	49,406	5 years
Construction in progress	110,151	421,102	
Total property and equipment before depreciation and amortization	49,071,889	48,042,065	
Less: accumulated depreciation and amortization	(32,784,187)	(30,178,385)	
Property and equipment, net	\$ 16,287,702	\$ 17,863,680	

Depreciation and amortization expense on property and equipment was approximately \$2,732,000 and \$3,431,000 for the six months ended July 5, 2021 and June 29, 2019, respectively.

4. Goodwill

The Company is required to review goodwill for impairment annually or more frequently when events and circumstances indicate that the carrying amount may be impaired. If the determined fair value of goodwill is less than the related carrying amount, an impairment loss is recognized. The Company performs its annual impairment assessment annually as of the first day of its fiscal fourth quarter or on an interim basis if events or changes in circumstances between annual tests indicate a potential impairment.

5. Intangible Assets

The Company has identified several intangible assets, including a trade name, proprietary processes, liquor licenses, agreements not to compete and above/below market leases in place. The trade name is being amortized over a period of 15 years; the liquor licenses, to the extent they do not expire, are considered indefinite lived and are not amortized; the proprietary processes are being amortized between 7 and 10 years; the non-competition agreements are being amortized over 5 years; and the above/below market leases are being amortized over the remaining lease terms, not to exceed 10 years. Included in intangible assets are liquor licenses, which primarily consist of costs associated with obtaining liquor licenses. The intangible amortization was approximately \$3,302,000 and \$3,432,000 for the six months ended July 5, 2021 and June 29, 2020 and is included in depreciation and amortization expense in the accompanying consolidated statement of operations.

The carrying value and accumulated amortization of identifiable intangible assets are as follows:

	July 5, 2021	January 4, 2021
Identifiable intangible assets:		
Trade name	\$91,075,000	\$ 91,075,000
Liquor licenses	6,654,258	6,618,992
Software	76,177	—
Proprietary processes	3,980,000	3,980,000
Lease valuations	1,435,194	1,435,194

Hot Air, Inc. and Subsidiaries

Notes to the Consolidated Financial Statements (unaudited)

Non-competition agreements	1,250,000	1,250,000
Identifiable intangible assets	104,470,629	104,359,186
Less: Accumulated amortization	(37,805,386)	(34,503,599)
Intangible assets, net	<u>\$ 66,665,243</u>	<u>\$ 69,855,587</u>

The table below summarizes the expected annual amortization expense for the identifiable intangible assets, excluding the liquor licenses, which have an indefinite life for each of the next five fiscal years and thereafter:

Remaining fiscal 2021	\$ 3,319,289
January 2, 2023	6,638,578
January 1, 2024	6,638,578
December 30, 2024	6,625,883
December 29, 2025	6,594,491
Thereafter	<u>30,194,166</u>
Total	<u>\$60,010,985</u>

6. Accounts Payable and Accrued Expenses

The significant components of accounts payable and accrued expenses are as follows:

	July 5, 2021	January 4, 2021
General accounts payable and accrued expenses	\$ 6,764,860	\$ 6,928,174
Accrued payroll	2,450,396	1,799,154
Accrued gift certificates	474,394	1,610,394
Total accounts payable and accrued expenses	<u>\$ 9,689,650</u>	<u>\$ 10,337,722</u>

7. Long-Term Debt

On December 15, 2015, Plastic Tripod Inc., a subsidiary of the Company, entered into a loan agreement (“Credit Agreement”) with a syndicate of commercial banks to provide the Company with up to \$80 million in financing, \$70 Million was structured as a term loan and \$10 million was in the form of a revolver (line of credit).

In March 2020, the Company failed to comply with certain covenants, and on March 25, 2020, the Company entered into a Forbearance Agreement and Fifth Amended and Restated Loan Agreement (the “New Credit Agreement”), which amends and restates the Fourth Amended and Restated Loan Agreement. The New Credit Agreement, which terminates on June 15, 2023, provides the Company with Lender financing structured as a \$70 million term loan and a \$5 million revolving loan, and establishes a \$10,000,000 delayed draw term loan facility (the “Delayed Draw Term Loan Facility”) provided by CP7 Warming Bag, L.P., a related party, of which \$5,000,000 of such facility was funded to the Borrower on March 25, 2020, and the remaining \$5,000,000 was funded to the Borrower on August 17, 2020. The Forbearance Period is the earlier of March 31, 2021, the lender’s failure to fund the Delayed Draw Term Loan, or a breach of the agreement.

Notes to the Consolidated Financial Statements (unaudited)

The outstanding debt is as follows:

	July 5, 2021	January 4, 2021
Term Loan	\$66,851,357	\$ 66,592,767
Related party note	10,000,000	10,000,000
Revolving line of credit	2,500,000	2,500,000
Promissory note	215,000	215,000
Total debt before deferred loan costs	79,566,357	79,307,767
Less: deferred loan costs, net of amortization	(611,154)	(589,818)
Total debt, net	78,955,203	78,717,949
Less: current portion	1,627,000	—
Long term debt, non-current portion	<u>\$77,328,203</u>	<u>\$ 78,717,949</u>

The terms of the New Credit Agreement extended the maturity date of the term loan to June 15, 2023 and requires the Company to repay the principal of the term loan in five quarterly installments commencing on March 31, 2022 with the balance due at the maturity date. The principal amount of revolving loans is due and payable in full on the maturity date. The loan and revolving line of credit are secured by substantially all of the Company's assets. The loan incurs interest on outstanding amounts from the date thereof through the date of repayment as follows: (i) (A) if a base rate loan (including a base rate loan referencing the LIBOR Index Rate), the base rate plus the Applicable Margin or (B) if an adjusted LIBOR Rate Loan, the adjusted LIBOR Rate plus the Applicable Margin; and (ii) in case of swingline loans, at the swingline rates. The Interest rate for the revolver and term loan outstanding as of July 5, 2021 was 4.50%. The Company may elect Paid In Kind Interest (PIK interest) to the term loan principal from March 31, 2020 to September 30, 2020; thereafter, interest may be paid as cash, or 50% cash/50% PIK interest until maturity of the loan. The Company elected PIK interest on March 31, 2020 and continued until October 31, 2020 when they began paying 50% cash interest/50% PIK interest. The Company determined that the New Credit Agreement represents a debt modification in accordance with ASC 470-50, as the changes to the provisions were not considered substantial.

The Company is subject to certain financial covenants under the Forbearance Agreement which requires the Company to maintain (i) Minimum liquidity of \$1 million, (ii) Gross Sales in excess of \$15.3M for the third quarter 2020 and \$41.7 million for the third and fourth quarter 2020, (iii) Operating no fewer than 43 locations. After the Forbearance Period ends, the New Credit Agreement requires the Company to maintain a (i) "Senior Lease-Adjusted Leverage Ratio" and (ii) "Fixed Charge Coverage Ratio" as well as customary events of default that, if triggered, could result in acceleration of the maturity of the New Credit Agreement.

On March 30, 2020, the Company entered into the Sixth Amended and Restated Loan Agreement which amends and restates the Fifth Amended and Restated Loan Agreement. This Amendment is a "technical amendment" correcting the agreement to state that PIK Interest is to be added to the principal of the term loan.

On April 21, 2020 and on May 19, 2020, the Company entered into the Seventh Amended and Restated Loan Agreement and the Eighth Amended and Restated Loan Agreement, respectively, which permitted the Company to incur Indebtedness pursuant to the federal Paycheck Protection Program ("PPP"). The Company applied for and received a \$10 million PPP loan. The Company returned the full amount of \$10 million PPP loan during the six months ended July 5, 2021.

In March 2021, the Company entered into the Ninth Amended and Restated Loan Agreement which amends and restates the Eighth Amended and Restated Loan Agreement and terminates the forbearance period. Under this Amendment, the Company is required to initiate quarterly payments of \$813,500 of principal beginning in March 2022. The interest rate percentage is currently 4.25% plus applicable margin of .25% for a total rate of 4.50%.

Per the Ninth Amendment, the covenants were changed as follows: the Senior Lease-Adjusted Leverage Ratio is no longer applicable. The Fixed Charge Coverage Ratio is not applicable through December 31, 2021. The Ninth Amendment adds a Minimum EBITDA requirement by quarter for 2021. There is a minimum liquidity requirement requiring the bank balance on the last Business Day of each Fiscal Quarter of the Borrower ending closest to the calendar quarters ending March 31, 2021 through and including December 31, 2021 to be less than \$2,500,000. There is a Capital Expenditure limiting Consolidated growth Capex in years 2021 – 2023. The Company is in compliance with all covenants as of and for the quarter ending July 5, 2021.

Notes to the Consolidated Financial Statements (unaudited)

The following table represents the future annual obligations under the term loan and revolving line of credit at July 5, 2021, for each fiscal year ended:

Remaining fiscal 2021	\$ —
January 2, 2023	3,254,000
June 30, 2023	<u>76,097,357</u>
Total	<u>\$79,351,357</u>

The deferred loan cost amortization was approximately \$139,000 and \$116,000 for the six months ended July 5, 2021 and June 29, 2020 and is included in interest expense in the accompanying consolidated statements of operations.

8. Income Taxes

The Company records income taxes using the asset and liability method of accounting for deferred income taxes. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequence of temporary differences between the financial statement and income tax basis of the Company's assets and liabilities. Income taxes are estimated in each of the jurisdictions in which the Company operates. This process involves estimating the tax exposure together with assessing temporary differences resulting from differing treatment of items, for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within the Company's balance sheets. In the event that management determines that the Company may not be able to realize all or part of a deferred tax asset in the future, a valuation allowance is charged against the deferred tax asset and deferred tax expense is recognized in the period such determination is made.

For the six months ended July 5, 2021 and June 29, 2020, the Company's effective tax rate was (24.46%) and 0.29%, respectively, which is lower than the Federal statutory rate primarily due to FICA tip tax credits and deferred tax expense resulting from an increase in valuation allowance established against deferred tax assets.

9. Stock Based Compensation

During the six months ended July 5, 2021, no options were granted. During the six months ended June 29, 2020, the Company granted a total of 13,250 stock options. One-half of the options are subject to vesting based on passage of time, and one-half of the options are subject to vesting based on the achievement of performance objectives ("performance-based option"). Time-based options vest over 5 years. In the event of change in control, all unvested time-based options immediately vest and become vested options as of immediately prior to change in control and all performance-based options vest and become exercisable upon a Realization Event, such as a change in control, subject to the achievement of internal rate of return specified by the Option Plan.

The Company recorded approximately \$903,000 and \$615,000, in compensation expense in relation to options granted during the six-month periods ended July 5, 2021 and June 29, 2020, respectively.

10. Related Party Transactions

On December 15, 2015, ACFP Management, Inc., Catterton Management Company, LLC, Quilvest USA, Inc., and ACFP Investors Inc., entered into a Monitoring Agreement. The services include, but are not limited to, management, finance, marketing, operational and strategic planning, relationship access and corporate development for the Company and its subsidiaries. The annual management fee pursuant to this agreement amounts to \$750,000, plus expenses and is included in other expenses in the accompanying consolidated statements of operations. On March 31, 2020 the agreement with Quilvest USA, Inc. was terminated, lowering the annual management fee to \$660,000, plus expenses per year. Management fees of \$330,000 were recorded for the six months ended July 5, 2021 and June 29, 2020. Accrued management fees of approximately \$3,263,000 and \$2,900,000 are included in long-term accrued expense as of July 5, 2021 and January 4, 2021, respectively.

The Company leases a South Fort Lauderdale restaurant from the Founder and Director pursuant to a lease agreement dated February 2, 2002, and Amendment to lease agreement dated June 22, 2012. Payments under this lease totaled approximately \$148,000 during the six months ended July 5, 2021 and \$186,000 during the six months ended June 29, 2020.

Notes to the Consolidated Financial Statements (unaudited)

11. Commitments and Contingencies**Operating Leases**

The Company leases restaurants under operating leases that have terms expiring between September 2021 and March 2033. The initial obligation period is generally between 5 and 15 years. The term of the lease is considered its initial obligation period, which does not include unexercised option periods. The restaurant facilities primarily have renewal clauses of 5 or 10 years, exercisable at the option of the Company. Certain leases require the payment of contingent rentals based on percentage of gross revenue. Certain leases may also include rent escalation clauses based on a fixed rate or adjustable terms such as the Consumer Price Index.

Future minimum lease payments on operating lease obligations for each of the following five fiscal years and thereafter are as follows:

Remaining fiscal 2021	\$ 4,601,973
January 2, 2023	8,696,409
January 1, 2024	7,947,266
December 30, 2024	6,533,468
December 29, 2025	4,999,772
Thereafter	<u>11,071,080</u>
Total	<u>\$43,849,968</u>

Manager Incentive Plan

The Company established a Manager Incentive Plan (the "Incentive Plan") in order to reward certain restaurant managers. A committee, comprised of three officers of the Company, has the responsibility and authority for administering the Incentive Plan and determines the managers eligible to participate in the Incentive Plan (the "Participants") based on certain criteria indicated in the Incentive Plan. The manager incentive award is equal to the average of the annual bonuses earned by a Participant during the period specified in the Incentive Plan, multiplied by two. The manager incentive award is subject to forfeiture, upon the Participant's termination of employment prior to the end of the performance period and commencement of pay-out. The award is payable over a three-year period after a participant's award vests and an accrual has been made. The balance of the accrual was approximately \$44,000 and \$149,000, respectively at the end of the six months ended July 5, 2021 and June 29, 2020, respectively. This plan has been officially amended to provide that no new participants can become eligible to the plan as of February 2018.

Major Concentrations

For the six months ended July 5, 2021 and June 29, 2020, three suppliers represented approximately 36.9% and 42.6% of the Company's purchases.

General

In the ordinary course of conducting its business, the Company may become involved in various legal actions and other claims. Litigation is subject to many uncertainties and management may be unable to accurately predict the outcome of individual litigated matters. Some of these matters may possibly be decided unfavorably towards the Company. The Company intends to vigorously defend all matters and does not believe any reserves for these matters need to be established for any of the periods presented.

Notes to the Consolidated Financial Statements (unaudited)

12. Store Closure Costs

The Company evaluates the performance of restaurants on an ongoing basis including an assessment of the current and future operating results of the restaurant in relation to its cash flow and future occupancy costs. Based upon these evaluations, management may choose not to open a location or close a restaurant.

During the six-month periods ended July 5, 2021 and June 29, 2020, the Company closed under-performing restaurants in 4 locations in NY, 1 location in Massachusetts 1 location in New Jersey and terminated the lease for 1 unopened restaurant in VA. Costs associated with store closures consists of asset disposals, severance for employees, costs to vacate and lease termination costs. These costs were recorded in store closure costs on the consolidated statement of operations as follows:

	Six Months Ended	
	July 5, 2021	June 29, 2020
Restaurant Closure	\$ 57,170	\$ 325,358
Terminated leases	77,651	—
	<u>\$ 134,821</u>	<u>\$ 325,358</u>

13. Impact of COVID-19 and Liquidity

In March 2020, the World Health Organization declared the novel coronavirus 2019 (COVID-19) a pandemic and the United States declared it a National Public Health Emergency, which has resulted in a significant reduction in revenue at the Company's restaurants due to mandatory restaurant closures, capacity limitations, social distancing guidelines or other restrictions mandated by governments across the world, including federal, state and local governments in the United States. As a result of these developments, the Company experienced a negative impact on its revenues, results of operations and cash flows.

In response to the business disruption caused by the COVID-19 outbreak, the Company has taken the following actions, which management expects will enable it to meet its obligations over the next twelve months from the date that these financial statements were issued.

Operating Initiatives - Due to the government mandates regarding limiting or prohibiting in-restaurant dining due to COVID-19, the Company is leveraging a reduction in menu offerings and an enhanced contactless business model to sustain revenue in restaurants that have open dining rooms or in markets where take-out and delivery sales are sufficient to cover the costs of management staffing those locations. As of July 5, 2021, 61 of the 61 owned and operated restaurants were open for dine-in service. There were no government mandated restrictions on capacity for the Company's 28 restaurant locations in Florida but the Company chose to space its tables approximately six feet apart which impact capacity at these locations. For each of the 33 restaurant locations outside of Florida, the Company continued to adhere to state mandated level capacity restrictions. During 2020, the Company permanently closed six locations in New York, New Jersey and Massachusetts that had previously been temporarily closed and terminated lease arrangements with each of these locations. The Company also expanded its 3rd party partnerships to grow off-premises revenue, which also allows website delivery.

Capital Management and Expense Reductions - The Company suspended all non-essential capital and overhead expenditures. The Company has also made significant reductions in ongoing operating expenses, including using salaried managers to help perform functions that had previously been administered by hourly employees. Lastly, the company negotiated various rent abatements and deferrals that equated to approximately \$1.5 million in cash savings in fiscal year 2020.

To further preserve financial flexibility, as discussed in Note 7, the Company received funding of \$10 million through a Delayed Draw Loan and completed a forbearance agreement with its lender allowing the Company to waive principal payments until 2022 and convert interest expense to Paid-in-Kind. As further described in Note 7, the Company entered into the 9th Amended and Restated Loan Agreement which terminated the forbearance period and required the Company to initiate payments of principal in 2022.

Notes to the Consolidated Financial Statements (unaudited)

14. Subsequent Events

The financial statement and related disclosures reflect Management's evaluation of the impact of post-balance sheet events and transactions through September 3, 2021, the date the financial statements were available to be issued.

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

The following sets forth the unaudited pro forma condensed combined financial statements (the “Pro Forma Financial Statements”) of BurgerFi International, Inc. (“BurgerFi” or the “Company”) after giving effect to the acquisition of Hot Air, Inc. and subsidiaries (“Hot Air”). On November 3, 2021, BurgerFi closed on its Stock Purchase Agreement to acquire 100% of the equity interests in Hot Air (the “Transaction”). Hot Air through its subsidiaries, owns and operates casual dining pizza restaurants under the trade name Anthony’s Coal Fired Pizza (“AFCP”). As of June 30, 2021, Hot Air had 61 company owned restaurants in Florida, Delaware, Pennsylvania, New Jersey, New York, Massachusetts, Maryland and Rhode Island.

Under the Stock Purchase Agreement, BurgerFi acquired Hot Air in exchange for the issuance of common stock and redeemable preferred stock having an estimated value of \$80.9 million. The number of newly issued shares of common stock was based on the 30-day volume-weighted average price per share on the day before closing, subject to a daily cap of \$14.25 per share and floor of \$10.25 per share. The number of newly issued shares of redeemable preferred stock were based on a price per share of \$25.00.

The unaudited pro forma condensed combined statements of operations for the six months ended June 30, 2021 and combined statement of operations for the year ended December 31, 2020 (the “Pro Forma Statements of Operations”) give effect to the Transaction as if it was consummated on January 1, 2020, and the unaudited pro forma condensed combined balance sheet as of June 30, 2021 (the “Pro Forma Balance Sheet”) gives effect to the Transaction as if it was consummated on June 30, 2021. The historical consolidated financial information has been adjusted in the Pro Forma Financial Statements to reflect the pro forma impact of the Transaction. These Pro Forma Financial Statements do not include the effects of any transactions that took place subsequent to June 30, 2021 or any potential debt or equity offerings.

The Pro Forma Statement of Operations for the year ended December 31, 2020 also gives effect to the business combination between OPES Acquisition Corp. (“OPES”) and BurgerFi (the “OPES Merger”) on December 16, 2020, as if it was consummated on January 1, 2020.

The Pro Forma Financial Statements do not reflect any cost savings or associated costs to achieve such savings from operating efficiencies, synergies, debt refinancing or other restructuring that may result from the Transaction. The Pro Forma Financial Statements are preliminary and are not necessarily indicative of the operating results or financial position that would have occurred if the Transaction had been completed on the date assumed, nor are they necessarily indicative of the future operating results or financial position of the combined company. There were no transactions or balances between BurgerFi and Hot Air during the periods presented in the Pro Forma Financial Statements that required elimination as if BurgerFi and Hot Air were consolidated during the periods presented. The assumptions and estimates underlying the unaudited adjustments to the Pro Forma Financial Statements are described in the accompanying notes, which should be read together with the Pro Forma Financial Statements.

The Pro Forma Financial Statements have been derived from and should be read in conjunction with the consolidated financial statements and the related notes of BurgerFi included in its respective Annual Report on Form 10-K and Quarterly Reports on Form 10-Q.

BurgerFi International, Inc.
Unaudited Pro Forma Condensed Combined Balance Sheet as of June 30, 2021

<i>(in thousands, except for per share data)</i>	Historical		Pro Forma	Notes	Pro Forma
	BurgerFi	Hot Air, Inc.	Adjustments		Combined
ASSETS					
CURRENT ASSETS					
Cash	\$ 34,757	\$ 6,379	(8,800)	4(e), 4(g)	\$ 32,336
Accounts receivable, net	536	679			1,215
Inventory	263	994			1,257
Prepaid Expenses	—	1,548			1,548
Asset held for sale	732	—			732
Other current assets	1,627	—			1,627
TOTAL CURRENT ASSETS	37,915	9,600	(8,800)		38,715
PROPERTY & EQUIPMENT, net	11,141	16,288			27,429
DUE FROM RELATED COMPANIES	94	—			94
GOODWILL	123,367	48,399	37,426	4(a)	209,192
INTANGIBLE ASSETS	113,242	66,665	1,450	4(b)	181,357
OTHER ASSETS	259	468			727
TOTAL ASSETS	\$ 286,018	\$ 141,420	\$ 30,076		\$ 457,514
LIABILITIES AND STOCKHOLDERS' EQUITY					
CURRENT LIABILITIES					
Accounts payable—trade and other	2,650	4,652			7,302
Accrued expense	2,102	5,038	2,700	4(g)	9,840
Other current liabilities	5,625	—			5,625
Current portion of long-term debt	73	1,627			1,700
TOTAL CURRENT LIABILITIES	10,450	11,317	2,700		24,467
NON-CURRENT LIABILITIES					
Warrant liability	8,843	—			8,843
Deferred revenue, net of current portion	2,864	—			2,864
Long term debt—net of current portion	621	64,828	(8,300)	4(e)	57,149
Related party note payable	—	10,000	(709)	4(e)	9,291
Deferred tax liability	—	8,143			8,143
Deferred rent	267	2,449			2,716
Revolving line of credit	—	2,500			2,500
Other long term liabilities	—	4,089	(3,263)	4(f)	826
Redeemable preferred stock	—	—	53,000	4(c)	53,000
TOTAL LIABILITIES	23,045	103,326	43,428		169,799
STOCKHOLDERS' EQUITY					
Common stock	2	—	—		2
Additional paid-in capital	264,415	126,337	(98,395)	4(c)	292,357
Accumulated deficit	(1,444)	(88,243)	85,043	4(c), 4(g)	(4,644)
TOTAL STOCKHOLDERS' EQUITY	262,973	38,094	(13,352)		287,715
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 286,018	\$ 141,420	\$ 30,076		\$ 457,514

See accompanying notes to the Unaudited Pro Forma Condensed Combined Financial Information

BurgerFi International, Inc.
Unaudited Pro Forma Condensed Combined Statement of Operations
For the six-month period ended June 30, 2021

<i>(in thousands, except for per share data)</i>	Historical	Historical	Pro Forma	Notes	Pro Forma
	BurgerFi	Hot Air, Inc.	Adjustments		Combined
REVENUE					
Restaurant sales	\$ 17,379	\$ 59,962			\$ 77,341
Royalty and other fees	4,079	—			4,079
Royalty - brand development and co-op	1,056	—			1,056
Initial franchise fees	198	—			198
TOTAL REVENUE	22,712	59,962	—		82,674
Restaurant level operating expenses:					
Food, beverage and paper costs	5,115	15,954			21,069
Labor and related expenses	4,484	18,145			22,629
Other operating expenses	3,969	11,912			15,881
Occupancy and related expenses	1,561	5,651			7,212
General and administrative expenses	6,539	3,905			10,444
Pre-opening costs	628	107			735
Share-based compensation expense	3,117	903			4,020
Depreciation and amortization expense	4,279	6,034	36	4(b)	10,349
Brand development and co-op advertising expense	1,373	2,040			3,413
TOTAL OPERATING EXPENSES	31,065	64,651	36		95,752
OPERATING LOSS	(8,353)	(4,689)	(36)		(13,078)
Other income (expense)	2,242	(451)	330	4(f)	2,121
Gain on change in value of warrant liability	7,673	—			7,673
Change in fair value of redeemable preferred stock	—	—	(2,474)	4(c)	(2,474)
Interest expense	(41)	(1,741)	(26)	4(e)	(1,808)
Income (loss) before income taxes	1,521	(6,881)	(2,206)		(7,566)
Income tax expense	740	1,683	67	4(h)	2,490
Net Income (loss)	\$ 781	\$ (8,564)	\$ (2,273)		\$ (10,056)
Weighted average common shares outstanding					
Basic	17,852,493	—	3,362,424	4(d)	21,214,917
Diluted	20,145,284	—	—		21,214,917
Net income (loss) per common share					
Basic	\$ 0.04	—	—		\$ (0.47)
Diluted	\$ (0.34)	—	—		\$ (0.47)

BurgerFi International, Inc., and Subsidiaries
Pro Forma Condensed Combined Statement of Operations
For the year ended December 31, 2020

<i>(in thousands, except for per share data)</i>	Combined* BurgerFi	Historical Hot Air, Inc.	Hot Air Pro Forma Adjustments	Notes	OPES Pro Forma Adjustments	Notes	Pro Forma Combined
REVENUE							
Restaurant sales	\$ 25,316	\$ 107,160					\$ 132,476
Royalty and other fees	6,371	—					6,371
Terminated franchise fees	693	—					693
Royalty - brand development and co-op	1,515	—					1,515
Initial franchise fees	387	—					387
TOTAL REVENUE	34,282	107,160	—		—		141,442
Restaurant level operating expenses:							
Food, beverage and paper costs	6,937	26,396					33,333
Labor and related expenses	6,590	31,861					38,451
Other operating expenses	6,330	23,316					29,646
Occupancy and related expenses	2,740	11,184					13,924
General and administrative expenses	7,782	10,181	3,200	4(g)			21,163
Store closure costs	—	3,436					3,436
Share-based compensation expense	818	1,005					1,823
Depreciation and amortization expense	1,410	13,393	(319)	4(b)	7,218	4(i)	21,702
Brand development and co-op advertising expense	2,317	2,203					4,520
Gain on disposal of property and equipment	(2)	—					(2)
TOTAL OPERATING EXPENSES	34,922	122,975	2,881		7,218		167,996
OPERATING LOSS	(640)	(15,815)	(2,881)		(7,218)		(26,554)
Gain on extinguishment of debt	791	—					791
Gain on change in value of warrant liability	5,597	—					5,597
Change in fair value of redeemable preferred stock	—	—	(4,102)	4(c)			(4,102)
Interest expense	(131)	(3,685)	(51)	4(e)			(3,867)
Other expenses	—	(1,678)	742	4(f)			(936)
Income (loss) before income taxes	5,617	(21,178)	(6,292)		(7,218)		(29,071)
Income benefit (expense)	366	524	548	4(h)	1,877	4(j)	3,315
Net Income (loss)	5,983	(20,654)	(5,744)		(5,341)		(25,756)
Net Income Attributable to Non-Controlling Interests	\$ 20	—					\$ 20
Net Income (loss) Attributable to common shareholders and Controlling Interests	\$ 5,963 (1)	\$ (20,654)	\$ (5,744)		\$ (5,341)		\$ (25,776)
Weighted average common shares outstanding							
Basic	17,541,838	—	3,362,424	4(d)			20,904,262
Diluted	21,426,115	—	—				20,904,262
Net (loss) income per common share							
Basic	\$ 0.30 (1)						\$ (1.01)
Diluted	\$ (0.01)(1)						\$ (1.01)

* See Note 1.

(1) Basic and diluted earnings per share for BurgerFi computed only for the successor period as defined in Note 1, where net income available to common shareholders was approximately \$5,348,000.

See accompanying notes to the Unaudited Pro Forma Condensed Combined Financial Information

Note 1. Basis of presentation

The Pro Forma Financial Statements are derived from the historical financial statements of BurgerFi and Hot Air to give effect to the Transaction with Hot Air. The Pro Forma Statements of Operations for the year ended December 31, 2020 and the six months ended June 30, 2021 give effect to the Transaction as if it had occurred on January 1, 2020. The Pro Forma Statement of Operations for the year ended December 31, 2020 also gives effect to the OPES Merger as if it had occurred on January 1, 2020. The Pro Forma Balance Sheet as of June 30, 2021 gives effect to the Transaction as if it had occurred on June 30, 2021.

Hot Air's fiscal year ends on the Monday closest to December 31. The Hot Air consolidated balance sheet presented herein is as of July 5, 2021. The Hot Air consolidated statements of operations presented herein are for the interim period from January 5, 2021 to July 5, 2021 and for the fiscal year from December 31, 2019 to January 4, 2021 (a 53-week period). The revenue and income for these fiscal periods are not materially different from what would be reported for the fiscal periods used by BurgerFi.

The Pro Forma Financial Statements have been prepared using the acquisition method of accounting for business combinations under accounting principles generally accepted in the United States ("U.S. GAAP"). The acquisition method of accounting is dependent upon certain valuations and other studies that are pending. The final determination of fair value of assets acquired and liabilities assumed could result in material changes to the Pro Forma Financial Statements.

In order to prepare the Pro Forma Financial Statements, BurgerFi performed a preliminary review of Hot Air accounting policies to identify significant differences from BurgerFi's accounting policies used to prepare BurgerFi's historical financial statements and no significant differences were noted. BurgerFi will conduct an additional review of Hot Air's accounting policies to determine if differences in accounting policies require further adjustment or reclassification of Hot Air's results of operations, assets or liabilities to conform to BurgerFi's accounting policies and classifications. As a result of that review, BurgerFi may identify additional differences between the accounting policies of the two companies that, when conformed, could have a material impact on its future consolidated financial statements.

The Pro Forma Financial Statements are preliminary, provided for illustrative purposes only and do not purport to represent what the combined Company's actual consolidated results of operations or consolidated financial position would have been had the Transaction occurred on the date assumed, nor are they indicative of the combined Company's future consolidated results of operations or financial position. The actual results reported in periods following the Transaction may differ significantly from those reflected in these Pro Forma Financial Statements for a number of reasons, including, but not limited to, differences between the assumptions used to prepare these Pro Forma Financial Statements and actual amounts, cost savings or associated costs to achieve such savings from operating efficiencies, synergies, debt refinancing, or other restructuring that may result from the Transaction.

As a result of the OPES Merger, BurgerFi's historical financial statement presentation for the fiscal year ended December 31, 2020 distinguished BurgerFi's financial performance into two distinct periods, the period up to the closing date of the OPES Merger (labeled "Predecessor" in BurgerFi's historical financial reporting for the year ended December 31, 2020, which included the period from January 1, 2020 through December 15, 2020) and the period including and after that date (labeled "Successor" in BurgerFi's historical financial reporting for the year ended December 31, 2020, which included the period from December 16, 2020 through December 31, 2020). For purposes of reporting on the Pro Forma Statement of Operations for the year ended December 31, 2020, the financial performance of both respective periods has been combined and presented cumulatively herein as the combined BurgerFi Statement of Operations for the year ended December 31, 2020. The historical LLC equity structure of BurgerFi for the Predecessor period did not include outstanding member units and as such, earnings per share information for the year ended December 31, 2020 only includes the Successor period.

Notes to Unaudited Pro Forma Condensed Combined Financial Information

The following table reflects BurgerFi's combined Consolidated Statement of Operations for the year ended December 31, 2020, which included the predecessor period from January 1, 2020 through December 15, 2020, and the successor period from December 16, 2020 through December 31, 2020:

<i>(in thousands, except for per share data)</i>	Successor Period (December 16, 2020 through December 31, 2020)	Predecessor Period (January 1, 2020 through December 15, 2020)	Combined
REVENUE			
Restaurant sales	\$ 1,350	\$ 23,966	\$ 25,316
Royalty and other fees	255	6,116	6,371
Terminated franchise fees	—	693	693
Royalty - brand development and co-op	74	1,441	1,515
Initial franchise fees	25	362	387
TOTAL REVENUE	1,704	32,578	34,282
Restaurant level operating expenses:			
Food, beverage and paper costs	370	6,567	6,937
Labor and related expenses	321	6,269	6,590
Other operating expenses	323	6,007	6,330
Occupancy and related expenses	33	2,707	2,740
General and administrative expenses	857	6,925	7,782
Share-based compensation expense	818	—	818
Depreciation and amortization expense	348	1,062	1,410
Brand development and co-op advertising expense	34	2,283	2,317
Gain on disposal of property and equipment	—	(2)	(2)
TOTAL OPERATING EXPENSES	3,104	31,818	34,922
OPERATING LOSS	(1,400)	760	(640)
Gain on extinguishment of debt	791	—	791
Gain on change in value of warrant liability	5,597	—	5,597
Interest expense	(6)	(125)	(131)
Other expenses	—	—	—
Income before income taxes	4,982	635	5,617
Income benefit	366	—	366
Net Income	5,348	635	5,983
Net Income Attributable to Non-Controlling Interests	—	20	20
Net Income Attributable to common shareholders and Controlling Interests	\$ 5,348	\$ 615	\$ 5,963
Weighted average common shares outstanding			
Basic	17,541,838	—	17,541,838
Diluted	21,426,115	—	21,426,115
Net (loss) income per common share			
Basic	\$ 0.30	—	\$ 0.30
Diluted	\$ (0.01)	—	\$ (0.01)

Notes to Unaudited Pro Forma Condensed Combined Financial Information

Note 2. Calculation of preliminary estimated purchase price

The calculation of the preliminary estimated purchase price presented below is based on the terms of the acquisition. The Pro Forma Financial Statements include various assumptions, including those related to the Company's shares to be issued in connection with the acquisition and the fair value of BurgerFi's stock. The actual purchase price may be materially different from the estimated purchase price. The calculation of the estimated purchase price is as follows (in thousands, except for share and per share amounts):

Total BurgerFi common shares issued*	2,952,900
BurgerFi share price**	\$ 8.31
Estimated fair value of common stock issued	\$ 24,539
Estimated fair value of preferred stock issued	\$ 53,000
Estimated fair value of assumed stock options***	\$ 3,403
Total estimated fair value of stock issued	\$ 80,942

* Common shares are calculated based on the 30-day volume-weighted average price per share (with a per day cap of \$14.25 per share and a minimum per day of \$10.25) the 30-day period prior to the closing date .

** BurgerFi's closing stock price as of November 2, 2021

*** Represents the estimated fair value of Hot Air's in-the-money outstanding stock options that were converted to common stock of BurgerFi ("Option Consideration Shares") attributable to pre-combination service recorded as part of the purchase consideration.

The actual purchase price was subject to adjustment at closing based on the difference between the actual net indebtedness, as defined in the Stock Purchase Agreement, of Hot Air at the closing date and \$75.6 million (subject to further adjustment based on net indebtedness 30 days after close). It was also subject to adjustment at closing based on the amount of Leakage, defined in the Stock Purchase Agreement as transaction costs paid by Hot Air. The Leakage at closing was \$3.8 million, which effectively reduced the assumed number of shares of common stock issued, as noted in the table above.

The \$53.0 million is an estimate of the fair value of the preferred stock. The terms of the preferred stock include the future accrual of dividends beginning upon the earlier of (1) June 15, 2024 and (2) the date on which Hot Air's lenders are refinanced or repaid in full. From and after this date, dividends will accrue on paid-in-kind (PIK) and cumulative basis at 7% per annum, compounded quarterly, increasing at 0.35% per quarter with no maximum interest rate. In the event Hot Air's bank debt is refinanced or repaid in full prior to June 15, 2024 and the preferred stock is not redeemed in full, the dividend rate will be 5% per annum, compounded quarterly, until June 15, 2024, at which time the dividend rate will resume to 7%. In the event BurgerFi fails to timely redeem the preferred stock as required by the following paragraph, the dividend rate will increase to the lesser of (a) 10% (increasing by an additional 0.35% each quarter thereafter) or (b) the maximum rate allowed under applicable law, unless waived by a majority of the holders of the preferred stock.

At any time upon BurgerFi's election or upon a Deemed Liquidation Event (including a change of control) or Qualified

Financing, as defined in the Certificate of Designation, the preferred stock will be redeemable at a per share amount equal to the Series A original issue price (\$25.00 per share, adjusted for any stock dividend, split or similar event) plus any accrued and unpaid dividends for each share held. In addition, the preferred stock will be mandatorily redeemable upon the sixth anniversary of the closing date (November 3, 2021).

Notes to Unaudited Pro Forma Condensed Combined Financial Information

Note 3. Preliminary Purchase Price Allocation

A preliminary purchase price allocation has been used to prepare the pro forma adjustments described in Note 4. The final purchase price allocation will be determined when the Transaction has been completed and BurgerFi has finished the detail valuations and necessary calculations, which will require engaging a third party valuation firm. For purposes of the Pro Forma Financial Statements, for tangible assets and liabilities, BurgerFi used the carrying values as reported in the audited historical financial statements of Hot Air, as they are expected to approximate fair value, with the exception of the related party note payable (see Note 4). For intangible assets, management developed a preliminary estimate of fair value, however, the final allocation could differ materially from the preliminary allocation used in the pro forma adjustments. The final allocation may include (1) changes in fair values of inventories and property and equipment, (2) changes in allocations to intangible assets, such as trade names, liquor licenses, and proprietary processes as well as goodwill and (3) other changes to assets and liabilities. Additional intangible asset classes may be identified during the valuation process. In addition, the number of shares of common and preferred stock to be issued will depend on the final net indebtedness balance, which will be determined within 30 days following the closing date.

The following table summarizes the preliminary allocation of the purchase price based on the estimated fair value of the acquired assets and assumed liabilities as of June 30, 2021 (in thousands except share and per share amounts):

Common stock (2,952,900 shares x \$8.31 per share)	\$ 24,539
Preferred stock (2,120,000 shares x \$25.00 per share)	53,000
Option consideration shares	<u>3,403</u>
Total purchase price consideration	<u>\$ 80,942</u>
Estimated fair value of assets:	
Cash	\$ 6,379
Accounts receivable	679
Inventories	994
Prepaid expenses	1,548
Deposits	468
Property and equipment	<u>16,288</u>
	26,356
Estimated fair value of liabilities assumed:	
Accounts payable, accrued expenses and other current liabilities	9,690
Bank debt	68,955
Related party note payable	9,291
Other long-term liabilities	<u>11,418</u>
	99,354
Net tangible assets	(72,998)
Intangible assets	68,115
Goodwill	<u>85,825</u>
Total consideration	<u>\$ 80,942</u>

Notes to Unaudited Pro Forma Condensed Combined Financial Information

Note 4. Pro forma adjustments

The pro forma adjustments are based on preliminary estimates and assumptions that are subject to change. The following adjustments have been reflected in the unaudited pro forma condensed combined financial information:

Hot Air Pro Forma Adjustments

- (a) Reflects the elimination of Hot Air's historical goodwill and the preliminary estimate of goodwill recognized as a result of the Transaction, which represents the amount by which the estimated consideration transferred exceeds the fair value of Hot Air's assets acquired and liabilities assumed, based on the preliminary purchase price allocation.
- (b) Reflects the adjustment of historical intangible assets acquired by BurgerFi to their estimated fair values. As part of a preliminary analysis, BurgerFi identified intangible assets, including tradename, liquor licenses, proprietary process and below-market leases. Since all information required to perform a detailed valuation analysis of Hot Air's intangible assets could not be obtained as of the date of this filing, for purposes of these unaudited pro forma financial statements, management used readily available assumptions in arriving at the preliminary estimates of fair value, which will be subject to material change upon the completion of the preliminary purchase price allocation.

The following table summarizes the estimated fair values of Hot Air's identifiable intangible assets and their estimated useful lives (in thousands):

	Estimated Fair Value	Estimated Useful Life In Years	Year Ended December 31, 2020 Amortization Expense	Six Months Ended June 30, 2021 Amortization Expense
Trade name	\$ 58,160	10	\$ 5,816	\$ 2,908
Liquor licenses	5,656	Indefinite	—	—
Proprietary processes	3,383	5	677	338
Lease valuations	916	5	183	92
	\$ 68,115			
Historical amortization expense			(6,995)	(3,302)
Pro forma adjustments to amortization expense			\$ (319)	\$ 36

These preliminary estimates of fair value and estimated useful lives will likely differ from final amounts BurgerFi will calculate after completing a detailed valuation analysis, and the difference could have a material impact on the accompanying unaudited pro forma financial statements. A 10% change in the valuation of intangible assets would cause a corresponding increase or decrease in the balance of goodwill and annual amortization expense of approximately \$0.8 million, assuming an overall weighted average life of 9 years.

- (c) Represents the elimination of the historical equity of Hot Air and the issuance of common and preferred shares of BurgerFi to finance the acquisition. The adjustment to additional paid-in capital is summarized as follows:

	(\$ in millions)
Net equity proceeds from the issuance of 2,952,900 common shares	\$ 24.5
Estimated fair value of option consideration shares	3.4
Less: historical Hot Air, Inc. additional paid-in capital as of June 30, 2021	(126.3)
Pro forma adjustment to additional paid-in capital	\$ (98.4)

The Hot Air accumulated deficit of \$88.2 million was eliminated.

Notes to Unaudited Pro Forma Condensed Combined Financial Information

Since the terms of the preferred stock call for mandatory redemption six years after closing, the \$53 million of preferred stock has been classified as a liability. The changes in fair value of \$2.5 million and \$4.1 million are recorded in the pro forma statements of operations for the six months ended June 30, 2021 and the year ended December 31, 2020, respectively.

BurgerFi will assume Hot Air's stock options for continuing employees under the Stock Purchase Agreement. Hot Air stock options were exchanged for Option Consideration Shares of BurgerFi. The estimated fair value at close was \$3.4 million. Since the stock options essentially became 100% vested at close, and relate to pre-combination service, no adjustment to share-based compensation expense has been included in the pro forma statements of operations.

- (d) Represents the increase in the weighted average shares in connection with the issuance of 2,952,900 shares of common stock to finance the acquisition and 409,524 Option Consideration Shares.
- (e) BurgerFi paid down approximately \$8.3 million of Hot Air's outstanding debt at closing pursuant to the terms of the Transaction. Interest expense of \$0.2 million and \$0.4 million has been adjusted to reflect the debt principal reduction in the pro forma statements of operations for the six months ended June 30, 2021 and the year ended December 31, 2020, respectively.

The related party note payable has no stated interest rate. The estimated fair value is approximately \$9.3 million based on the net present value using a discount rate of 4.5%. Therefore, the pro forma balance sheet includes an adjustment of \$0.7 million to reduce the related party note payable balance to its estimated fair value. The Pro Forma Statements of Operations include adjustments to increase interest expense by \$0.2 million and \$0.4 million for the six months ended June 30, 2021 and the year ended December 31, 2020, respectively, relating to imputed interest.

- (f) Other long-term liabilities within the Pro Forma Balance Sheet includes an adjustment of \$3.3 million, which represents accrued management fees. The accrued management fees will be forgiven by the stockholders of Hot Air and therefore not assumed by BurgerFi as part of the transaction. In addition, the Pro Forma Statements of Operations include adjustments to other expense of \$0.3 million and \$0.7 million for the six months ended June 30, 2021 and the year ended December 31, 2021, respectively, which represent the management fee expense recorded by Hot Air during those periods.

The pro forma adjustments do not include any adjustment to deferred income tax liabilities related to any potential fair value adjustments to non-deductible intangible assets. The estimate of deferred income tax balances will be subject to material change based on the final determination of the fair value of assets acquired and liabilities assumed by jurisdiction.

- (g) BurgerFi has incurred acquisition costs related to the transaction of approximately \$3.2 million for the period from July 1, 2021 through November 3, 2021. Because these costs are required to be expensed as incurred, they are charged to retained earnings as of June 30, 2021. The pro forma statement of operations for the year ended December 31, 2020 includes an adjustment to general and administrative expenses. Approximately \$0.5 million has been paid through the closing date and reflected as a reduction of cash in the Pro Forma Balance Sheet and \$2.7 million has been accrued and reflected as such in the Pro Forma Balance Sheet.
- (h) Reflects the income tax effect of pro forma adjustments based on the estimated blended federal and state statutory tax rate of 25%, excluding the change in fair value of preferred stock, which represents a permanent difference for tax purposes.

OPES Pro Forma Adjustments

- (i) Represents the amortization of intangible assets of \$7.2 million related to the OPES acquisition of BurgerFi. The estimated useful lives were determined based on a review of the time period over which economic benefit is estimated to be generated as well as other factors. Factors considered include contractual life, the period

Notes to Unaudited Pro Forma Condensed Combined Financial Information

of which a majority of cash flow is expected and/or management's view based on historical experience with similar assets.

(\$ in thousands)

Franchise agreements	\$ 24,839	7
Trade names / trademarks	83,033	30
Liquor license	235	Indefinite
Reef Kitchens license agreement	8,882	10
VegeFi product	135	10
	<u>\$117,124</u>	

- (j) Represents the related effect on deferred income taxes for the amortization expense noted in (i) above (assuming a blended federal and state tax rate of 26%) of \$1.9 million for the year ended December 31, 2020.

Note 5. Reclassifications

BurgerFi has made certain reclassifications to the Hot Air historical balance sheet as of June 30, 2021 and statements of operations for the six months ended June 30, 2021 and the year ended December 31, 2020 to conform to BurgerFi's presentation, as detailed below:

- (a) Accounts receivable of approximately \$679,000 included within prepaid and other current assets in Hot Air's historical balance sheet is presented as a separate line on the Pro Forma Balance Sheet.
- (b) Short-term accrued expenses of approximately \$5,038,000 included in accounts payable and accrued expenses within Hot Air's historical balance sheet is presented as a separate line on the Pro Forma Balance Sheet.
- (c) Brand development and co-op advertising expense of approximately \$2,040,000 and \$2,203,000 for the six months ended June 30, 2021 and the year ended December 31, 2020, respectively, included in other operating expenses in Hot Air's historical statements of operations is presented as a separate line on the Pro Forma Statements of Operations.
- (d) Pre-opening expenses of approximately \$496,000 for the year ended December 31, 2020, included as a separate line in Hot Air's historical statement of operations is presented within other operating expenses on the Pro Forma Statement of Operations.
- (e) Store closure costs of approximately \$135,000 for the six months ended June 30, 2021, included as a separate line in Hot Air's historical statement of operations is presented within general and administrative expenses on the Pro Forma Statement of Operations.