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

FORM 10-K

(Mark One)

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

For the fiscal year ended January 2, 2023

OR

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

Commission File Number 001-38417

BurgerFi International, Inc.

(Exact name of Registrant as specified in its Charter)

Delaware	**82-2418815**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
200 West Cypress Creek Rd., Suite 220, Fort Lauderdale, FL	**33309**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (954) 618-2000

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

Title of each class	Trading Symbol(s)	Name of each 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	BFIIW	The Nasdaq Stock Market LLC

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

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

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

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

Indicate by check mark whether the Registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). Yes ☒ No ☐

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

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

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

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

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

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

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant, based on the closing price of the shares of common stock on The NASDAQ Stock Market on June 30, 2022, was $53,815,985.

The number of shares of Registrant's common stock outstanding as of March 27, 2023 was 23,823,105.

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[1] Per SEC guidance, this blank checkbox is included on this cover page but no disclosure with respect thereto shall be made until the adoption and effectiveness of related stock exchange listing standards.

PART I

Forward-Looking and Cautionary Statements

This Annual Report on Form 10-K contains forward-looking statementsas defined in the Private Securities Litigation Reform Act of 1995. Forward-looking statements may appear throughout this Annual Report on Form 10-K, including without limitation, the following sections: Item 1 *"Business,"* Item 1A *"Risk Factors,"* and Item 7 . *"Management's Discussion and Analysis of Financial Condition and Results of Operations."* 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 this Annual Report on Form 10-K, and in particular, the risks discussed under the caption *"Risk Factors"* in Item 1A and those discussed in other documents we file with the Securities and Exchange Commission (the *"SEC"*). 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.

Item 1. Business.

BUSINESS OF THE COMPANY

Opes Acquisition Corp. ("*OPES*") was formed as a blank check company incorporated in Delaware on July 24, 2017 for the purpose of entering into a merger, share exchange, asset acquisition, stock purchase, recapitalization, reorganization or other similar business transaction with one or more operating businesses or entities (a "*Business Combination Transaction*"). BurgerFi International, LLC was formed in Delaware on January 27, 2011. On December 16, 2020, to effectuate a Business Combination Transaction, OPES purchased 100% of the membership interests of BurgerFi International, LLC from the members of BurgerFi International, LLC ("*Members*"), resulting in BurgerFi International, LLC becoming a wholly owned subsidiary of OPES. Subsequently, in connection with this Business Combination Transaction (the *"BurgerFi acquisition"*), OPES changed its name to "BurgerFi International, Inc."

On November 3, 2021, BurgerFi International, Inc. acquired 100% of the outstanding shares (the"*Anthony's Acquisition*") of Hot Air, Inc., a Delaware corporation (*"Hot Air"*) from Cardboard Box LLC, a Delaware limited liability company (*"Cardboard"*). Hot Air, through its subsidiaries, owns the business of operating upscale casual dining restaurants in the specialty pizza and wings segment under the name "Anthony's Coal Fired Pizza & Wings" (*"Anthony's"*).

Unless the context otherwise requires, all references to "*we*," "*us*," "*our*," and the "*Company*" and other similar references refer to BurgerFi International, Inc. after consummation of the BurgerFi acquisition and, unless otherwise stated, all its subsidiaries. The term "*BurgerFi*" refers to the system-wide fast casual "better burger" concept with 114 franchise and corporate-owned locations in the United States and internationally as of January 2, 2023. The term "*Anthony's*" refers to the upscale casual, "well-done" premium pizza and wing concept with 60 corporate-owned locations in the United States as of January 2, 2023.

Overview

The Company is a leading multi-brand restaurant company that develops, markets and acquires fast-casual and premium-casual dining restaurant concepts around the world, including corporate-owned stores and franchises. As of January 2, 2023, we were the owner, operator and franchisor of the two following brands:

BurgerFi. BurgerFi is a fast-casual "better burger" concept, renowned for delivering an exceptional, all-natural premium "better burger" experience in a refined, contemporary environment. BurgerFi's chef-driven menu offerings and eco-friendly restaurant design drive our brand communication. It offers a classic American menu of premium burgers, hot dogs, crispy chicken, frozen custard, hand-cut fries, shakes, beer, wine and more. Originally founded in 2011 in Lauderdale-by-the-Sea, Florida, the purpose was simple – "RedeFining" the way the world eats burgers by providing an upscale burger offering, at a fast-casual price point. BurgerFi is committed to an uncompromising and rewarding dining experience that promises fresh food of transparent quality. Since its inception, BurgerFi has grown to 114 BurgerFi locations, and as of January 2, 2023, is comprised of 25 corporate-owned restaurants and 89 franchised restaurants in 2 countries and 23 states, as well as Puerto Rico.

BurgerFi was named "The Very Best Burger" at the 2023 edition of the nationally acclaimed SOBE Wine and Food Festival, "Best Fast Casual Restaurant" in USA Today's 10Best 2022 Readers' Choice Awards for the second consecutive year, QSR Magazine's Breakout Brand of 2020 and Fast Casual's 2021 #1 Brand of the Year. In 2021, Consumer Report praised BurgerFi for serving "no antibiotic beef" across all its restaurants, and Consumer Reports awarded BurgerFi an "A-Grade Angus Beef" rating for the third consecutive year.

Anthony's. Anthony's is a premium pizza and wing brand, operating 60 corporate-owned casual restaurant locations, as of January 2, 2023. Anthony's prides itself on serving fresh, never frozen, high-quality ingredients. The concept is centered around a 900-degree coal fired oven, and its menu offers "well-done" pizza, coal fired chicken wings, homemade meatballs, and a variety of handcrafted sandwiches and salads. The restaurants also feature a deep wine and craft beer selection to round out the menu. The pizzas are prepared using a unique coal fired oven to quickly seal in natural flavors while creating a lightly charred crust. Anthony's provides a differentiated offering among its casual dining peers driven by its coal fired oven, which enables the use of fresh, high-quality ingredients with quicker ticket times.

Since its inception in 2002 in Ft. Lauderdale, Florida, the Anthony's brand has grown to 60 corporate-owned locations, as of January 2, 2023, primarily located along the East coast and has restaurants in eight states, including Florida (28), Pennsylvania (11), New Jersey (8), New York (5), Massachusetts (4), Delaware (2), Maryland (1), and Rhode Island (1).

Anthony's was named "The Best Pizza Chain in America" by USA Today's Great American Bites and "Top 3 Best Major Pizza Chain" by Mashed in 2021.

Beyond our current brand portfolio, we intend to acquire other restaurant concepts that will allow us to grow and also offer additional food categories. In evaluating potential acquisitions, we specifically seek concepts with, among others, the following characteristics:

- established, recognized brands;
- long-term, sustainable operating performance;
- consistent cash flows; and
- growth potential, both geographically and through co-branding initiatives across our portfolio.

We intend to leverage our developing management platform and as a result, expect to achieve cost synergies post-acquisition by reducing the corporate overhead of the acquired company. We also plan to grow the top line revenues of newly acquired brands through support from our management and systems platform, franchising, marketing and advertising, supply chain assistance, site selection analysis, staff training and operational oversight and support.

Corporate-owned restaurants

For the years ended January 2, 2023 and December 31, 2021, average sales for our matured corporate-owned restaurants (stores open for greater than 2 years) were approximately $1.7 million and $1.9 million, respectively, at BurgerFi, and $2.1 million and $2.1 million, respectively, at Anthony's. At BurgerFi, we typically operate in a 2,200 to 2,400 square foot leased endcap and, to a lesser extent, free-standing or in-line space. For Anthony's, we operate in an approximately 3,200 square foot leased endcap and, to a lesser extent, free-standing or in-line space. The Company does not own any real estate; we lease all our corporate-owned restaurant locations. Our lease term is generally ten plus two to four five-year options. Our build-out costs for BurgerFi have historically ranged from $0.6 million to $1.1 million but typically cost approximately $0.8 million. Our build-out costs consist of leasehold improvements, kitchen equipment, furniture, point of sale and computer equipment, security equipment and signage.

Franchised restaurants

With respect to the BurgerFi brand, we currently use a franchising strategy to drive new restaurant growth in new and established markets, allowing for brand expansion without significant capital investment. The Company continues to evaluate its BurgerFi portfolio to determine the proper balance between corporate-owned restaurants and franchises and from time to time may sell and transfer corporate-owned restaurants to franchisees. Moreover, the Company launched Anthony's franchising in 2022 with plans to have its first franchise restaurant operations open in 2023. As of January 2, 2023, there were a total of 89 BurgerFi franchised restaurants. Franchisees range in size from single restaurant operators to multi-unit operators. For the years ended January 2, 2023 and December 31, 2021, average sales for our matured franchised restaurants (stores open for greater than 2 years) were approximately $1.4 million and $1.5 million respectively, for BurgerFi franchises. As of January 2, 2023, franchisees owned an average of 2 locations, although several own between 5 and 7.

We believe that franchise revenue provides stable and recurring cash flows to us and, as such, we plan to continue growing our brands primarily through expanding our base of franchised restaurants and are not planning to build any new corporate owned restaurants in the near future. In established markets, we encourage continued growth from current franchisees and assist them in identifying and securing new locations. In emerging and new markets, we intend to source qualified and experienced new franchisees for multi-unit development opportunities. We generally seek franchisees from successful, non-competitive brands operating within the expansion markets.

The BurgerFi Brands Difference – Purpose & Beliefs

The overall success of the Company and its brands is tied to consistent delivery by our corporate-owned restaurants and franchise operators of freshly prepared, better-for-you, high-quality menu items that our customers desire. With the input of our customers and franchisees, we continually strive to keep an updated perspective on our brands, including by strengthening our existing menu offerings and introducing new items. When updating our menu items and other offerings, we strive to ensure that changes are consistent with the core identity and attributes of our brands. In conjunction with our franchised restaurant operators, we are committed to delivering authentic, consistent experiences that have strong brand identity with customers.

In addition, the Company is committed to creating an inclusive and equitable environment that supports the growth and success of our team members from diverse socioeconomic backgrounds, genders, races, experiences, and more. These beliefs are an integral part of sharing and promoting a culture of inclusion within the organization and beyond.

In pursuing acquisitions and entering new restaurant brands, we intend to ensure consistent values with new restaurant concepts. As our restaurant portfolio continues to grow, we believe that both our franchisees and customers will recognize and support this ongoing commitment as they enjoy differing brand offerings.

In particular, a summary of the purpose and belief of each of the BurgerFi and Anthony's brands is as follows:

BurgerFi Brand. At BurgerFi, our purpose is simple: BurgerFication [Bur-ger-Fi-ca-tion], which means that we are *"RedeFining the way the world eats burgers."* Our team members are trained to understand and live the BurgerFi Beliefs: Be All Natural, Be Courageous, Be Excellent, Be Family, Be Thoughtful, and Be You. We believe that our Purpose and Beliefs are the foundational components of our culture and that is key to the way we run our business – these beliefs guide our behaviors in how we act and interact with one another, our vendors, and our communities.

One of our core beliefs at BurgerFi is *"Be Natural,"* because all-natural simply tastes better. BurgerFi uses only the best ingredients: our domestically served freshly-ground beef comes from farms where cattle are humanely raised, vegetarian fed, and never exposed to steroids, antibiotics, or growth hormones – ever. In addition, we have developed our proprietary VegeFi burger and specialty made sauces. This all-natural experience is also present in our belief in the sustainability of the environment. For instance, there are many fixtures and furnishings inside that tell a story of sustainability like upcycled furniture items, such as our 111 Navy Coca-Cola chairs, or our energy efficient Macro Air fans and our LED lighting that reduce our overall carbon footprint.

At BurgerFi, we believe that people and families are at the heart of everything we do. To be family also extends beyond the four walls of our restaurants to include our loyal guests, vendors, and the communities within which we are embedded. We instill our family philosophy with all our team members from the moment they begin the recruitment process at BurgerFi all the way through their employee life cycle.

Anthony's Brand. At Anthony's, the beliefs are very similar to those of BurgerFi, which is one of the reasons why we acquired it in 2021. At Anthony's, we are committed to quality by using fresh ingredients – never frozen - and preparing many items by hand. Anthony's prides itself on the responsible sourcing to obtain the freshest foods so it can deliver high-quality products, including premium pizzas and roasted jumbo wings – from the most flavorful canned Italian tomatoes for our handmade sauce to mozzarella cheese from Wisconsin. In serving the freshest ingredients, as well as helping support the local communities in which we serve, we source our fresh tomatoes locally. Our natural ingredients also include a gluten-free pizza crust option.

We live by the mottos "*made with love*" and "*made with care*." As with BurgerFi, the Anthony's brand believes that people and family are also a top priority – from the guests to the employees, as well as the communities in which they operate. This is one of the reasons why Anthony's has the "first-slice" mentality – always serving the customer the first slice of pizza as if they are home with their family.

Competitive Strengths

We believe the Company's competitive strengths, among others, include the following:

- ***Two Leading, Differentiated Brands Serving High-Quality, Freshly Prepared Foods with Broad Customer Appeal.***Our BurgerFi and Anthony's brands are differentiated from other dining options and offer distinct concepts and fresh, natural menu choices that we believe have broad consumer appeal, which attract a diverse customer base and drive guest loyalty. BurgerFi and Anthony's are committed to our brand voice: serving freshly prepared, all-natural food using quality ingredients, including BurgerFi's American Wagyu beef and 100% natural, cage-free chicken from all-natural farms. At Anthony's, our 900-degree coal fired oven sets us apart from other premium pizza brands. At BurgerFi, we believe our premium wine and craft beer selection also differentiates us from the other fast-casual burger concepts. As such, we believe we are uniquely positioned to offer premium products at a premium price, including with chef-driven menu offerings, as well as eco-friendly restaurant design at the BurgerFi brand.

- ***"Conscious Consumer" Market***. We believe that many consumers and investors want to associate with brands that have a heightened commitment to environmental and social practices. As the younger generations continue to grow and exercise their spending powers towards higher quality, authentic brands, we believe the Company will become a destination for those consumers and investors whose beliefs align with ours continuing the cult-like status we believe we have obtained. BurgerFi believes in clean, transparent, and sustainable restaurant ecosystems, which includes a full commitment to the humane treatment of animals. Moreover, environmental sustainability guides our decision-making when it comes to BurgerFi restaurant construction and design. From using number two southern pine lumber, some of the most renewable wood on the planet, to our energy efficient appliances, BurgerFi constantly looks at the ways in which we can minimize our environmental footprint.

- ***Management Platform for Growth.*** We have developed a management and systems platform designed to support the expansion of our existing brands while enabling the efficient acquisition and integration of additional restaurant concepts. We dedicate our resources and industry knowledge to promote the success of our franchisees, offering them various support services such as marketing and advertising, supply chain assistance, site selection analysis, staff training and operational oversight and support. Furthermore, our platform is scalable and adaptable, allowing us to incorporate new concepts into the Company with minimal incremental corporate costs. We intend to grow our existing brands through franchising as well as make strategic and opportunistic acquisitions that complement our existing portfolio of concepts providing an entrance into targeted restaurant segments.

- ***Seasoned Management Team.*** Our expanding management team and employees are critical to our success. Our senior leadership team is highly experienced in the restaurant industry. In addition, through their holdings, our senior executives, as well as our Executive Chairman, own significant equity interests in the Company, ensuring longer-term commitment and alignment with our public shareholders. Our management team is complemented by an accomplished Board of Directors that is highly involved in overseeing our strategic initiatives and implementation.

Growth Strategies

Our long-term strategy is focused on profitably building our base brands and growing new distribution channels, including franchised locations and acquiring new concepts. We believe the Company's growth strategies primarily include the following:

- ***Opportunistically Acquire New Brands.*** We are developing a management platform to cost-effectively scale new restaurant concept acquisitions. Our acquisition of Anthony's is the first example of this growth strategy. We seek concepts with established, widely recognized brands; steady cash flows; stable relationships with franchisees; sustainable operating performance; and growth potential, both geographically and through co-branding initiatives across our portfolio.

- ***Enhance Existing Markets.*** We anticipate that our new and existing franchisees will continue to expand further as we focus our efforts on the franchise business, including the launch of the Anthony's franchise brand in 2022. We plan to leverage our position as a leading "better burger" and "premium pizza and wings" concept in Florida, as well as along the Eastern seaboard and other important markets in the Southeast, Mid-Atlantic, and Northeast. Many of our franchisees have grown their businesses over time, increasing the number of stores operated in their organizations. To capitalize on these relationships, we also hope to be able to cross-sell concepts across the Company's brands.

- ***Increasing Same-Store Sales.*** In addition to opening new corporate-owned and franchise locations, we continue to focus on driving increases in same-store sales performance by providing exciting guest experiences that include new seasonal and other specific offerings, including loyalty rewards and our growing customer databases; continued service of freshly prepared, better-for-you, high-quality menu items; and technological upgrades like the BurgerFi-owned app and web, as well as third-party ordering and delivery services.

- ***Non-Traditional Partnerships and International Expansion.*** In recent years BurgerFi has had success targeting non-traditional venues for restaurant locations, such as airports, transportation hubs, toll roads, higher education, military bases, and sporting venues and plans to continue to grow in these areas. The Company also intends to continue modestly growing its international market with established franchisees, including in Saudi Arabia.

- ***Drive Store Growth Through Cloud Kitchens and Virtual Restaurants.*** In addition to testing concepts and driving growth through virtual restaurants at both brands, we are leveraging the current industry trend of "cloud" or "ghost" kitchens. In a cloud kitchen, the restaurants open without a customer-facing store-front solely for the purpose of servicing delivery. Virtual restaurants and cloud kitchens allow us to introduce our brands in geographic areas where previously unknown to grow our brand more efficiently.

Franchise Program

Overview

While the Company launched the Anthony's franchise program in 2022 and expects to leverage the BurgerFi brand franchise program, systems, and knowledge, it currently only has operating franchises at the BurgerFi brand. As a result, the following is an overview of the BurgerFi franchise program.

BurgerFi uses a franchising strategy to augment new restaurant growth in new and established markets, allowing for brand expansion without significant internal capital investment. BurgerFi's first franchise location opened in 2012. As of January 2, 2023, there were a total of 89 franchised restaurants in the United States and Saudi Arabia. Franchisees range in size from single restaurant operators to multi-unit operators, the largest of which owns 7 locations. For a BurgerFi location, the current franchise agreement reflects a 10 year term and provides for an initial franchise fee per store of $45,000 and a royalty fee of 5.5% of net sales and an advertising fee of 2.0% of net sales.

We believe that franchise revenue provides stable and recurring cash flows to us and, as such, we plan to continue expanding the base of franchise operated restaurants. In established markets, we will encourage continued growth from current franchisees and assist them in identifying and securing new locations. In emerging and new markets, we will source qualified and experienced new franchisees for multi-unit development opportunities. Although historically we've had a significant blend of one to two store franchise operators in our system, in expansion markets we will strive to seek franchisees from successful, non-competitive brands operating within those markets. We market franchise opportunities through strategic networking, participation in select industry conferences, high profile sales campaigns, our existing website, printed materials, and geo-targeted digital ads.

We have several forums to enhance participation and engagement with our franchise community, including a Franchise Advisory Council ("*FAC*") to enhance participation and engagement with the franchise community. The FAC provides input and feedback on operating and marketing strategy and initiatives. FAC works with its group of franchise constituents to communicate and collaborate with the Company, providing input, feedback, and marketing strategy and system wide initiatives. Cross-functional teams comprised of company operators, franchise operators and executive team members collaborate to enhance vendor relationships and negotiate favorable scenarios for both the BurgerFi system and our vendors.

Franchise Owner Support

We have structured our corporate staff, training programs, operational systems, and communication systems to ensure we are delivering strong, effective support to our franchisees. We assist franchisees with the site selection process, and every new franchise location is scrutinized by our corporate real estate team. We provide template plans franchisees may use for new restaurant construction and work with franchisees and their design and construction vendors to ensure compliance with brand specifications. A training program is required for all franchisees, operating partners, and management staff. Training materials introduce new franchisees to our operational performance standards and the metrics that help maintain these high standards.

For the first two restaurant openings for a new franchisee, we typically provide significant on-site support, with more modest support for subsequent openings for that franchisee. On an ongoing basis, we collect and disseminate customer experience feedback on a real time basis through a third-party vendor. We also conduct regular on-site audits at each franchise location. Our regional operations leaders are dedicated to ongoing franchise support and oversight, regularly visiting each franchise territory. Our marketing department assists franchisees with local marketing programs and guidance with our national marketing campaigns. We typically communicate with franchisees through our company newsletter, which is published monthly and hold weekly inter-active webinar meetings to update our franchisee teams and conduct additional training. Periodically, we also hold a summit for franchisees, vendors, and company operations leaders to review overall performance, celebrate shared success, communicate best practices, and plan for the year ahead.

Site Selection

Our strategy regarding site selection is to cluster multiple locations in a demographic market area. We believe this clustering allows efficiencies in labor, including knowledge base, "pro-teams," cross-training and developing and training new managers. Additionally, we believe this clustering allows better leverage in media buying, brand awareness, and culture. We target demographics with high concentrations of well-educated consumers, with above average income levels, who care about what they eat. Beyond our great food, BurgerFi offers our target consumers a contemporary restaurant design with eco-friendly fixtures and upcycled furniture. Our wholesome atmosphere is thoughtfully designed to enhance the guest experience and to complement shopping centers and communities as well.

Construction & Design

Once a site is successfully permitted, a BurgerFi restaurant can be built generally in approximately a 90-working day period. During these approximately 90 working days, all construction is completed, and the space is then turned over to the operational team. We team up with several general contractors regionally throughout the country and strive to effectively manage the bidding process of each project to ensure quality standards are kept up to par.

BurgerFi restaurants feature an inviting, next-gen look and feel, appealing to consumers of all ages seeking an engaging, high-quality dining experience. There are many fixtures and furnishings inside that tell a story of sustainability like upcycled furniture items, such as our 111 Navy Coca-Cola chairs, or our energy efficient Macro Air fans and LED lighting that reduce our overall carbon footprint. These products and materials are sourced through our preferred vendors to meet the needs of the restaurants.

The main design goal at BurgerFi is to provide an updated, sleek look that is practical for our customers and provides them with a warm inviting feel. Over the years we have gone through small design evolutions within the restaurant walls to not only better suit the needs of our guests but also the needs of our team members. We strive to please our guests and in doing so need to create an open space with great quality materials that can be easily cleaned and will withstand the wear and tear of time.

Supply Chain

Sourcing. The Company's philosophy is to work with best-in-class suppliers across our supply chain so that we can always provide top quality, better-for-you food for our guests.

For BurgerFi's meat, we source currently from some of best ranches in the United States who share in our commitment to all-natural food, with no hormones or antibiotics, that is humanely raised and source verified. In 2021, in Consumer Report's Chain Reaction Report, BurgerFi was praised for serving "no antibiotic beef" across all its restaurants, and Consumer Reports awarded BurgerFi an "A-Grade Angus Beef" rating for the third consecutive year. In addition, our bread is free of synthetic chemicals, our ketchup is free of corn syrup, and we use cage-free eggs. At BurgerFi we ensure that our beef is always freshly ground at all domestic locations.

At Anthony's, we are also committed to using fresh ingredients and take pride in our sourcing. We use only the highest quality ingredients, including hand-picked Italian tomatoes for our sauce, vine-ripened plum tomatoes for our salads, Pecorino Romano grated in house, fresh vegetables and herbs and homemade dough. We do not use freezers for any of our products to ensure the best quality food for the customer. In addition, by sourcing locally where available, such as our fresh tomatoes and our sausage, we strive to bring the freshest ingredients so we can deliver high-quality products.

Distribution. Currently the Company contracts with several national distributors to provide its food distribution services in the United States for both of the Anthony's and BurgerFi brands. As the Company continues to integrate the acquisition of Anthony's, it has been leveraging, and intends to continue to leverage, the increased scale of the Company to consolidate distributors and obtain more favorable optimization and costs.

For BurgerFi, we utilize 26 affiliated distribution centers to supply our domestic corporate-owned and franchised restaurants. For Anthony's, we utilize 11 affiliated distribution centers to supply our corporate-owned restaurants. We regularly assess our broadline distributor to ensure our strict safety and quality standards are met and that the prices they offer are competitive.

Food Safety. Food safety is of the utmost importance. Within our restaurants we have stringent food safety and quality protocols that help our teams ensure they are providing a safe place to eat for our guests and team members alike. Utilizing in-house temperature and quality audits throughout the day, we strive to verify that all products are safe and of highest quality. Additionally, we use third-party auditing systems, designed to ensure we meet or exceed local health standards. These audits are completed periodically and without notice with the goal of ensuring that our restaurants maintain our high standards at all hours of the day.

Management Information Systems. Our traditional corporate-owned and franchised restaurants use computerized point-of-sale and back-office systems that are designed specifically for the restaurant industry. In addition, as discussed further below, some BurgerFi locations also offer guest facing self-ordering kiosk technology. Both point-of-sales systems provide touch screen interfaces, order confirmation displays, kitchen displays and integrated, high-speed credit card, gift card and loyalty program processing. The information collected from the point-of-sale system includes daily transaction data, which generates information about sales, average transaction size as well as product mix information. This system allows our management teams to run various reports and access vital information to assist them in controlling food and labor costs daily.

Technology-Enhanced Brand

Integral to our purpose, the Company harnesses innovation and technology to offer our guests opportunities to enjoy our food when and where they want. In addition to ordering in-restaurant at the counter, guests can enjoy BurgerFi or Anthony's currently by ordering through six different digital platforms:

- *Pick-Up*: Customers can order for pick-up through the BurgerFi app, ACFP.com, BurgerFi.com or through marketplace pick-up platforms, such as, DoorDash, Uber Eats and GrubHub. Additionally, at Anthony's, we have implemented phone AI at all locations;

- *First Party Delivery*: Customers can order through the BurgerFi app, ACFP.com, or BurgerFi.com for delivery through our delivery affiliations, which generally offers lower pricing than through marketplace delivery;

- *Marketplace*: Our third-party delivery affiliations include Uber Eats, DoorDash, and Grubhub, with several smaller regional associations;

- *Ghost Kitchen Delivery*: Licensees operate kitchens to BurgerFi food specifications and delivery through marketplaces. This allows for a broader BurgerFi footprint and delivery further away from traditional stores;

- *Virtual Brands*: We have launched and continue to explore virtual brands that offer select food options through marketplace offerings. This broadens our horizontal reach within the marketplace; and

- *In-Store*: We allow digital purchases at the register using a QR code. We also have select stores with next-generation kiosks, which have indicated higher check average versus the traditional person-to-person interaction.

We believe these different platforms allow us to connect with guests in intuitive, customizable, and meaningful ways, including through a custom loyalty program tailored to reward users with offers based on their preferences, frequency, and order history.

Other technology and innovation ideas that the Company are testing include an in-car voice-activated ordering system available in certain 5G enabled vehicles, as well as new gas-assisted pizza ovens at Anthony's.

Competition

The restaurant industry is highly competitive with respect to price, service, location, and food quality. It is often affected by changes in consumer trends, economic conditions, demographics, traffic patterns, and concern about the nutritional content of fast-casual and casual foods. Furthermore, there are many well-established competitors with substantially greater financial resources, including several national, regional, and local fast casual and casual dining restaurants. The restaurant industry also has few barriers to entry and new competitors may emerge at any time.

We believe that, among others, product quality and taste, convenience of location, and brand differentiation and recognition are among the most important competitive factors in the fast-casual and casual restaurant segment and that our two brands compete effectively. Our brand voice, derived from our commitment to fresh, better-for-you food, emphasizes the Company Purpose and Beliefs to team members, guests and stakeholders alike. The Company remains committed to these values, and we believe our guests understand our dedication to the values and causes that are important to them.

Seasonality

Outside of our Florida locations where we experience some higher seasonality based on increased tourism from approximately November through April, our corporate-owned stores and franchisees have not historically experienced significant seasonal variability in their financial performance.

Intellectual Property

We own, domestically and internationally, valuable intellectual property including trademarks, service marks, trade secrets and other proprietary information related to our restaurant and corporate brands. This intellectual property includes logos and trademarks which are of material importance to our business. Depending on the jurisdiction, trademarks and service marks generally are valid as long as they are used and/or registered. We seek to actively protect and defend our intellectual property from infringement and misuse.

Employees

As of January 2, 2023, our team members consisted of 2,579 employees, including 808 full-time employees. We believe that we have good relations with our employees.

Government Regulation

The Company and its franchisees are subject to extensive government regulation at the federal, state, and local government levels. These include, but are not limited to, regulations relating to the preparation and sale of food, zoning and building codes, franchising, land use and employee, health, sanitation, and safety matters. The Company and its franchisees are required to obtain and maintain a wide variety of governmental licenses, permits and approvals. Difficulty or failure in obtaining them in the future could result in delaying or canceling the opening of new restaurants. Local authorities may suspend or deny renewal of our governmental licenses if they determine that the Company's operations do not meet the standards for initial grant or renewal. Our restaurants outside the U.S. are subject to national and local laws and regulations which are similar to those affecting U.S. restaurants. The restaurants outside the U.S. are also subject to tariffs and regulations on imported commodities and equipment and laws regulating foreign investment, as well as anti-bribery and anti-corruption laws.

The Company is also subject to regulation by the Federal Trade Commission and subject to state laws that govern the offer, sale, renewal and termination of franchises and its relationship with its franchisees. The failure to comply with these laws and regulations in any jurisdiction or to obtain required approvals could result in a ban or temporary suspension on franchise sales, fines or the requirement that the Company make a rescission offer to franchisees, any of which could affect our ability to open new restaurants in the future and thus could materially adversely affect its business and operating results. Any such failure could also subject the Company to liability to its franchisees.

See *"Risk Factors"* for a discussion of risks relating to federal, state, local and international regulation of our business.

Our Corporate Information

Our corporate headquarters are located at 200 West Cypress Creek Drive, Suite 220, Fort Lauderdale, Florida 33309. Our main telephone number is (954) 618-2000. Our principal Internet website address is *www.burgerfi.com*. The information on our website is not incorporated by reference into, or a part of, this Annual Report on Form 10-K.

Available Information

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act"*), are filed with the Securities and Exchange Commission (the *"SEC"*). We are subject to the informational requirements of the Exchange Act and file or furnish reports, proxy statements and other information with the SEC. The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at *www.sec.gov*. The contents of these websites are not incorporated into this Annual Report. Further, our references to the URLs for these websites are intended to be inactive textual references only. We also make the documents listed above available without charge through the Investor Relations Section of our website at *www.burgerfi.com*.

Item 1A. Risk Factors.

SUMMARY RISK FACTORS

Our business is subject to numerous risks. In addition to the summary below, carefully review the *"Risk Factors"* section of this Annual Report. We may be subject to additional risks and uncertainties not presently known to us or that we currently deem immaterial. These risks should be read in conjunction with the other information in our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, and in our other public disclosures. Some of the principal risks relating to our business include:

- We incurred significant indebtedness as a result of the Anthony's acquisition, which could have a material adverse effect on our financial condition;
- We used a significant portion of the Company's cash for paydown of debt and transaction costs as a result of the Anthony's acquisition, which could have a material adverse effect on our financial condition;

- The Anthony's acquisition is expected to continue to significantly change the business and operations of BurgerFi. We may face challenges integrating the businesses;
- The combination of the BurgerFi and Anthony's businesses may not lead to the growth and success of the combined business that we believe will occur;
- Integrating the businesses of BurgerFi and Anthony's may disrupt or have a negative impact on the combined business;
- The market price of our Common Stock after the Anthony's acquisition has been and may continue to be affected by factors different from those that affected the shares of BurgerFi prior to the Anthony's acquisition;
- Our growth strategy for opening new restaurants is highly dependent on the availability of suitable locations and our ability to develop and open new restaurants on a timely basis, on attractive terms;
- Our failure to effectively manage our growth could harm our business and operating results;
- New restaurants, once opened, may not be profitable and may negatively affect restaurant sales at our existing restaurants;
- We have a limited number of suppliers for our major products and rely on a limited number of suppliers for the majority of our domestic distribution needs;
- Our marketing strategies and channels will evolve and may not be successful;
- Our franchise business model presents a number of risks, including launching of the recent Anthony's franchise brand. We rely on a limited number of franchisees for the operation of our franchised restaurants, and we have limited control with respect to the operations of our franchised restaurants, which could have a negative impact on our reputation and business;
- Incidents involving food safety and food-borne illnesses could adversely affect guests' perception of our brand, result in lower sales and increase operating costs;
- Increased food commodity and energy costs could decrease our restaurant-level operating profit margins or cause us to limit or otherwise modify our menu, which could adversely affect our business;
- The digital and delivery business, and expansion thereof, is uncertain and subject to risk;
- We face significant competition for guests, and if we are unable to compete effectively, our business could be adversely affected;
- Security breaches of either confidential guest information in connection with, among other things, our electronic processing of credit and debit card transactions or mobile ordering app, or confidential employee information may adversely affect our business;
- If we experience a material failure or interruption in our systems, our business could be adversely impacted;
- We depend on key members of our executive management team;
- We may not be able to adequately protect our intellectual property, which, in turn, could harm the value of our brands and adversely affect our business;
- Our insurance coverage may not provide adequate levels of coverage against claims;
- Failure to comply with privacy and cybersecurity laws and regulations could cause us to face litigation and penalties that could adversely affect our business, financial conditions and results of operations;
- If we fail to maintain effective internal controls over financial reporting, our ability to produce timely and accurate financial information or comply with Section 404 of the Sarbanes-Oxley Act could be impaired, which could have a material adverse effect on our business and stock price;
- We identified material weaknesses in our internal control over financial reporting in 2021. If we identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect our business, investor confidence and our stock price;
- We have significant stockholders whose interests may differ from those of our public stockholders;
- Our anti-takeover provisions could prevent or delay a change in control of the Company, even if such change in control would be beneficial to our stockholders;
- We may be unable to maintain the listing of our securities in the future;
- If securities or industry analysts do not publish research or publish unfavorable research about our business, our stock price and trading volume could decline;
- A significant number of shares of our common stock are subject to issuance upon exercise of the outstanding warrants, which upon such exercise may result in dilution to our security holders;
- Sales of a substantial number of shares of our common stock in the public market by our existing stockholders could cause our stock price to decline; and
- Trading volatility and the price of our common stock may be adversely affected by many factors, including its designation as a "penny stock."

RISK FACTORS

Stockholders should carefully consider the following risk factors, together with all of the other information included in this Annual Report on Form 10-K and in our other public disclosures. The risks described below highlight potential events, trends or other circumstances that could adversely affect our business, financial condition, results of operations, cash flows, liquidity or access to sources of financing and could adversely affect the trading price of our securities. These risks could cause our future results to differ materially from historical results and from guidance we may provide regarding our expectations of future financial performance.

RISKS RELATED TO OUR ACQUISITIONS, GROWTH STRATEGIES AND OPERATIONS

The Anthony's acquisition is expected to continue to significantly change the business and operations of BurgerFi. We may face challenges integrating the businesses.

As a result of the Anthony's acquisition, both the size and geographic scope of BurgerFi's business has significantly increased. We have faced, and may continue to face, challenges integrating such geographically diverse businesses and implementing a smooth transition of business focus and governance in a timely or efficient manner. In particular, if the effort we devote to the integration of our businesses with that of Anthony's diverts more management time or other resources from carrying out our operations than we originally planned, our ability to maintain and increase revenues as well as manage our costs could be impaired. Furthermore, our capacity to expand other parts of our existing businesses may be impaired. We also cannot assure that the combination of the BurgerFi and Anthony's businesses will function as we anticipate, or that significant synergies will result. Any of the above could have a material adverse effect on our business.

The combination of the BurgerFi and Anthony's businesses may not lead to the growth and success of the combined business that we believe will occur.

We may not realize all of the synergies that we anticipated from the combination of the BurgerFi and Anthony's businesses and may not be successful in implementing our commercialization strategy. Our combined business is subject to all of the risks and uncertainties inherent in the pursuit of growth in our industry, and we may not be able to successfully sell our products or realize the anticipated benefits from our distribution, collaboration and other commercial partners. If we are not able to grow the combined business of BurgerFi and Anthony's as a commercial enterprise, our financial condition will be negatively impacted.

Integrating the businesses of BurgerFi and Anthony's may disrupt or have a negative impact on the combined business.

We could have difficulty integrating the assets, personnel, operations and business of BurgerFi and Anthony's. Risks that could impact us negatively include:

- the difficulty of integrating Anthony's and its concepts and operations;
- the difficulty in combining our financial operations and reporting;
- the potential disruption of the ongoing business and distraction of our management, including impairment of relationships with employees and partners as a result of any integration of new management personnel;
- changes in our business focus and/or management;
- risks related to international operations;
- the potential that our investment may significantly decrease in value, which may lead to an impairment of the goodwill carrying value of the acquired business; and
- the potential inability to manage an increased number of locations and employees.

Our growth strategy includes pursuing opportunistic acquisitions of additional brands, and we may not find suitable acquisition candidates or successfully operate or integrate any brands that we may acquire.

As part of our growth strategy, we may opportunistically acquire new brands and restaurant concepts. Competition for acquisition candidates may exist or increase in the future. Consequently, there may be fewer acquisition opportunities available to us as well as higher acquisition prices. There can be no assurance that we will be able to identify, acquire, manage or successfully integrate additional brands or restaurant concepts without substantial costs, delays or operational or financial problems.

Our successful positioning of our brands depends in large part on the success of our advertising and promotional efforts and our ability to continue to provide products that are desirable by our customers. Accordingly, we intend to continue to pursue a brand enhancement strategy, which includes multimedia advertising, promotional programs and public relations activities. These initiatives may require significant expenditures. If our multi-brand strategy is unsuccessful, these expenses may never be recovered. Any failure of our other marketing efforts could also have an adverse impact on us.

The difficulties of integration include coordinating and consolidating geographically separated systems and facilities, integrating the management and personnel of the acquired brands, maintaining employee morale and retaining key employees, implementing our management information systems and financial accounting and reporting systems, establishing and maintaining effective internal control over financial reporting, and implementing operational procedures and disciplines to control costs and increase profitability.

In the event we are able to acquire additional brands or restaurant concepts, the integration and operation of such acquisitions may place significant demands on our management, which could adversely affect our ability to manage our existing restaurants. In addition, we may be required to obtain additional financing to fund future acquisitions, but there can be no assurance that we will be able to obtain additional financing on acceptable terms or at all.

An increase in food and labor costs could adversely affect our operating results.

Our profitability and operating margins are dependent in part on our ability to anticipate and react to changes in food and labor costs, which have increased, and may continue to increase, significantly, which may have a negative effect on the operations and profitability of the Company. Changes in the cost or availability of certain food products could affect our ability to offer a broad menu and maintain competitive prices and could materially adversely affect our profitability and reputation. The type, variety, quality and cost of produce, beef, poultry, cheese and other commodities can be subject to change and to factors beyond our control, including weather, climate change, governmental regulation, availability and seasonality, each of which may affect our food costs or cause a disruption in our supply. Although we attempt to mitigate the impact of these cost increases as they occur through increases in selling prices, there is no assurance that we will be able to do so without causing decreases in demand for our products from our customers.

We have significant outstanding indebtedness, which requires that we generate sufficient cash flow to satisfy the payment and other obligations under the terms of our debt and exposes us to the risk of default and lender remedies.

As of February 24, 2023, the principal balance of the indebtedness under our secured credit agreement, dated as of December 15, 2021 (as amended, the "*Credit Agreement*") was $58.5 million and expires on September 30, 2025. In addition, on February 24, 2023, the Company and its subsidiaries entered into a Secured Promissory Note (the "*Note*") with CP7 Warming Bag , L.P.("*CP7*"), an affiliate of L Catterton Fund L.P. ("*L Catterton*"), as lender (the "*Junior Lender*"), pursuant to which the Junior Lender continued, amended and restated that certain delayed draw term loan of $10,000,000 under the Credit Agreement, which is junior subordinated secured indebtedness, and also provided $5,100,000 of new junior subordinated secured indebtedness, to the Company and its subsidiaries (collectively, the "*Junior Indebtedness*"), for a total of $15,100,000, which Junior Indebtedness was incurred outside of the Credit Agreement. We may incur additional indebtedness for various purposes, including to fund future acquisitions and operational needs. The terms of our outstanding indebtedness provide for significant principal and interest payments, and subjects us to certain financial and non-financial covenants, including debt service leverage, coverage, and liquidity ratios, each as defined in the Credit Agreement. If certain covenants are not met, the indebtedness may become partially or fully due and payable on an accelerated schedule.

The obligations of the Credit Agreement and the Junior Indebtedness are secured by substantially all the assets of the Company and its subsidiary guarantors. The Credit Agreement contains customary covenants that limit the Company's and such subsidiaries' 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.

Our ability to meet the payment obligations under our debt depends on our ability to generate significant cash flow in the future. We cannot assure that our business will generate cash flow from operations or that other capital will be available to us, in amounts sufficient to enable us to meet our payment obligations under our Credit Agreement and Junior Indebtedness and to fund our other liquidity needs. If we are not able to generate sufficient cash flow to service these obligations, we may need to refinance or restructure our debt, sell unencumbered assets (if any) or seek to raise additional capital. If we are unable to implement one or more of these options, we may not be able to meet these payment obligations, and the imposition of lender remedies could materially and adversely affect our business, financial condition and liquidity.

At this time, our long-term liquidity requirements and the adequacy of our capital resources are difficult to predict. It is possible that we will be in breach of our covenants under our Credit Agreement within the next 12 months, which could in turn raise substantial doubt about our ability to continue as a going concern.

We face uncertainty regarding the adequacy of our liquidity and capital resources and have extremely limited, if any, access to additional financing beyond our Credit Agreement and Junior Indebtedness. In addition, we also have the Junior Indebtedness outstanding. The terms of our outstanding Credit Agreement provide for significant principal and interest payments, and subject us to certain financial and non-financial covenants, including debt service leverage, coverage, and liquidity ratios, each as defined in the Credit Agreement. We cannot assure that cash on hand, cash flow from operations and any financing we are able to obtain through the Credit Agreement or Junior Indebtedness will be sufficient to continue to fund our operations and allow us to satisfy our obligations.

At January 2, 2023, we were compliant with our financial covenants.

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

Our existing personnel, management systems, financial and management controls and information systems may not be adequate to support our planned expansion. Our ability to manage our growth effectively will require us to continue to enhance these systems, procedures, and controls and to locate, hire, train and retain management and operating personnel, particularly in new markets. We may not be able to respond on a timely basis to all of the changing demands that our planned expansion will impose on management and on our existing infrastructure or be able to hire or retain the necessary management and operating personnel, which could harm our business, financial condition or results of operations. These demands could cause us to operate our existing business less effectively, which in turn could cause a deterioration in the financial performance of our existing restaurants, which could lead to, among other negative financial and operational effects, an impairment of our assets. If we experience a decline in financial performance, we may decrease the number of or discontinue restaurant openings, or we may decide to close restaurants that we are unable to operate in a profitable manner.

New restaurants, once opened, may not be profitable and may negatively affect restaurant sales at our existing restaurants.

Our results have been, and in the future may continue to be, significantly impacted by the timing of new restaurant openings (often dictated by factors outside of our control). Our experience has been that labor and operating costs associated with a newly opened restaurant for the first several months of operation are materially greater than what can be expected after that time, both in aggregate dollars and as a percentage of restaurant sales. Our new restaurants take a period of time to reach target operating levels due to inefficiencies typically associated with new restaurants, including the training of new personnel, new market learning curves, inability to hire sufficient qualified staff, lack of brand awareness in new markets, and other factors. We may incur additional costs in new markets, particularly for transportation and distribution, which may impact the profitability of those restaurants. New restaurants may not meet our targets for operating and financial metrics or may take longer than anticipated to do so. Any new restaurants we open may not be profitable or achieve operating results similar to those of our existing restaurants, which could adversely affect our business, financial condition or results of operations.

If we are unable to grow restaurant sales at existing restaurants, our financial performance could be adversely affected.

The level of same-store sales, which has experienced declines in the BurgerFi brand and represents the change in year-over-year revenue for domestic corporate-owned restaurants open for 14 full months or longer, could affect our restaurant sales. Our ability to increase same-store sales depends, in part, on our ability to successfully implement our initiatives to re-build restaurant sales. It is possible such initiatives will not be successful, that we will not achieve our target same-store sales growth or that same-store sales growth could be negative, which may cause a decrease in restaurant sales and profit growth that would adversely affect our business, financial condition or results of operations, including an impairment of our assets.

Our mission of being natural may subject us to risks.

Our mission is a significant part of our business strategy and what we are as a company. We face, however, many challenges in carrying out our mission. We incur higher costs and other risks associated with purchasing high quality ingredients grown or raised with an emphasis on quality and responsible practices. As a result, our food and labor costs may be significantly higher than other companies who do not source high quality ingredients or pay above minimum wage. Additionally, the supply for high quality ingredients may be limited and it may take us longer to identify and secure relationships with suppliers that are able to meet our quality standards and have sufficient quantities to support our growing business. If we are unable to obtain a sufficient and consistent supply for our ingredients on a cost-effective basis, our food costs could increase or we may experience supply interruptions which could have an adverse effect on our operating margins. Additionally, some of our competitors also offer better quality ingredients, such as antibiotic-free meat. If this trend continues, it could further limit our supply for certain ingredients and we may lose our competitive advantage because it will be more difficult for our business to differentiate itself.

We have a limited number of suppliers for our major products and rely on a limited number of suppliers for the majority of our domestic distribution needs.

We have a limited number of suppliers for our major ingredients, including a sole supplier with respect to the BurgerFi brand buns. Due to this concentration of suppliers, the cancellation of our supply arrangements with any one of these suppliers or the disruption, delay, or inability of these suppliers to deliver these major products to our restaurants may materially and adversely affect our results of operations while we establish alternate distribution channels. In addition, if our suppliers fail to comply with food safety or other laws and regulations, or face allegations of non-compliance, their operations may be disrupted. We cannot assure that we would be able to find replacement suppliers on commercially reasonable terms or a timely basis, if at all.

There can be no assurance that we will continue to be able to identify or negotiate with alternative supply and distribution sources on terms that are commercially reasonable to us. If our suppliers or distributors are unable to fulfill their obligations under their contracts or we are unable to identify alternative sources, we could encounter supply shortages and incur higher costs, each of which could have a material adverse effect on our results of operations.

Our marketing strategies and channels will evolve and may not be successful.

We incur costs and expend other resources in our marketing efforts to attract and retain guests. Our strategy includes public relations, digital and social media, promotions and in-store messaging, which require less marketing spend as compared to traditional marketing programs. As the number of restaurants increases, and as we expand into new markets, we expect to increase our investment in advertising and consider additional promotional activities. Accordingly, in the future, we expect to incur greater marketing expenditures, resulting in greater financial risk and a greater impact on our financial results.

We rely heavily on social media for many of our marketing efforts. If consumer sentiment towards social media changes or a new medium of communication becomes more mainstream, we may be required to fundamentally change our current marketing strategies, which could require us to incur significantly more costs. Some of our marketing initiatives have not been and may continue to not be successful, resulting in expenses incurred without the benefit of higher revenue. Additionally, some of our competitors have greater financial resources, which enable them to spend significantly more on marketing and advertising than we can at this time. Should our competitors increase spending on marketing and advertising or our marketing funds decrease for any reason, or should our advertising and promotions be less effective than those of our competitors, there could be a material adverse effect on our business, financial condition and results of operations.

We rely on a limited number of franchisees for the operation of our franchised restaurants, and we have limited control with respect to the operations of our franchised restaurants, which could have a negative impact on our reputation and business.

We rely, in part, on our franchisees and the manner in which they operate their restaurants to develop and promote our business. As of January 2, 2023, 47 franchisees operated all of our domestic BurgerFi franchised restaurants, and 1 franchisee operated our international BurgerFi franchised restaurant. In 2022, we launched the Anthony's franchise brand and have signed one multi-unit development agreement. Our franchisees are required to operate their restaurants according to the specific guidelines we set forth, which are essential to maintaining brand integrity and reputation, all laws and regulations applicable to us and our subsidiaries and all laws and regulations applicable in the jurisdictions in which we operate. We provide training to these franchisees to integrate them into our operating strategy and culture. Because we do not, however, have day-to-day control over all of these restaurants, we cannot give assurance that there will not be differences in product and service quality, operations, labor law enforcement or marketing or that there will be adherence to all of our guidelines and applicable laws at these restaurants. In addition, if our franchisees fail to make investments necessary to maintain or improve their restaurants, guest preference for the brand could suffer. Failure of these restaurants to operate effectively, including temporary or permanent closures of the restaurant or terminations of the franchisee from our system, has adversely affected and could continue to adversely affect our cash flows from those operations or have a negative impact on our reputation or our business.

The success of our franchised operations depends on our ability to establish and maintain good relationships with our franchisees. The value of our brands and the rapport that we maintain with our franchisees are important factors for potential franchisees considering doing business with us. If we are unable to maintain good relationships with franchisees, we may be unable to renew franchise agreements and opportunities for developing new relationships with additional franchisees may be adversely affected. This, in turn, could have an adverse effect on our business, financial condition and results of operations. We cannot be certain that the developers and franchisees we select will have the business acumen necessary to open and operate successful franchised restaurants in their franchising areas.

Franchisees may not have access to the financial or management resources that they need to open and successfully operate the restaurants contemplated by their agreements with us or to be able to find suitable sites on which to develop them, or they may elect to cease development or operation for other reasons. Franchisees may not be able to negotiate acceptable lease or purchase terms for the sites, obtain the necessary permits and governmental approvals, or meet construction schedules. Additionally, financing from banks and other financial institutions may not always be available to franchisees to construct and open new restaurants. Any of these factors could slow our growth from franchised operations and reduce our franchising revenue.

Our franchise business model presents a number of risks, including the recent launch of the Anthony's franchise brand.

Our success as a franchised business relies, in part, on the financial success and cooperation of our franchisees. Moreover, as we focus more of our business on growing the franchises, including the recent launch of the Anthony's franchise, we may not be successful in growing the brands. We receive royalties based on a percentage of sales from our franchisees. Our franchisees manage their businesses independently, and, therefore, are responsible for the day-to-day operation of their restaurants. The revenue we realize from franchised restaurants is largely dependent on the ability of our franchisees to grow their sales.

Business risks affecting our operations also affect our franchisees. In particular, our franchisees have also been significantly impacted by labor shortages and inflation. If franchisee sales trends continue to decline or worsen, our financial results will continue to be negatively affected, which may be material. Additionally, a rise in minimum wages could adversely impact our and our franchisees' financial performance. The impact of events such as boycotts or protests, labor strikes, and supply chain interruptions (including due to lack of supply or price increases) could also adversely affect both us and our franchisees.

Our success also relies on the willingness and ability of our independent franchisees to implement our initiatives, which may include financial investment, and to remain aligned with us on operating, value/promotional and capital-intensive reinvestment plans. The ability of franchisees to contribute to the achievement of our plans is dependent in large part on the availability to them of funding at reasonable interest rates and may be negatively impacted by the financial markets in general, by the creditworthiness of our franchisees or the Company or by banks' lending practices. If our franchisees are unwilling or unable to invest in major initiatives or are unable to obtain financing at commercially-reasonable rates, or at all, our future growth and results of operations could be adversely affected.

Our operating performance could also be negatively affected if our franchisees experience food safety or other operational problems or project an image inconsistent with our brands and values, particularly if our contractual and other rights and remedies are limited, costly to exercise or subjected to litigation and potential delays. If franchisees do not successfully operate restaurants in a manner consistent with our required standards, our brands' image and reputation could be harmed, and we may elect to terminate the franchisee from our system, which in turn could hurt our business and operating results.

Our ownership mix, which we continually evaluate for potential changes to determine our preferred allocation of franchise to corporate-owned stores, also affects our results and financial condition. The decision to own restaurants or to operate under franchise agreements is driven by many factors whose interrelationship is complex. The benefits of our more heavily franchised structure depend on various factors, including whether we have effectively selected franchisees that meet our rigorous standards, whether we are able to successfully integrate them into our structure and whether their performance and the resulting ownership mix supports our brand and financial objectives.

An impairment in the carrying value of our goodwill or other intangible or long-lived assets could adversely affect our financial condition and results of operations.

We evaluate intangible assets and goodwill for impairment annually and whenever events or changes in circumstances indicate that its carrying value may not be recoverable. We also evaluate long-lived assets on a quarterly basis or whenever events or changes in circumstances indicate that the carrying value may not be recoverable. As part of the Company's interim and annual goodwill assessments during the fiscal year 2022, the Company recorded goodwill impairment charges of approximately $66.6 million for the year ended January 2, 2023, of which $49.1 million related to the Anthony's reporting unit and $17.5 million related to the BurgerFi reporting unit primarily driven by the impact on the Company's market capitalization caused by the decrease in stock price. The Company also recorded an asset impairment charge of $6.9 million related to property & equipment and right-of-use assets for certain underperforming stores for the year ended January 2, 2023 of which $6.7 million related to BurgerFi and $0.2 million related to Anthony's.

We cannot predict the amount and timing of any further impairment of assets, if any. A significant amount of judgment is involved in determining if an indication of impairment exists. Should the value of goodwill or other intangible or long-lived assets become further impaired, there could be an adverse effect on our financial condition and consolidated results of operations.

RISKS RELATED TO OPERATING IN THE RESTAURANT INDUSTRY

Incidents involving food safety and food-borne illnesses could adversely affect guests' perception of our brands, resulting in lower sales and increase operating costs.

We face food safety risks, including the risk of food-borne illness and food contamination, which are common both in the restaurant industry and the food supply chain and cannot be completely eliminated. We rely on third-party food suppliers and distributors to properly handle, store and transport ingredients to our restaurants. Any failure by our suppliers, or their suppliers, could cause ingredients to be contaminated, which may be difficult to detect before the food is served. Additionally, the risk of food-borne illness may also increase whenever our food is served outside of our control, such as by third-party delivery services.

Regardless of the source or cause, any report of food-borne illnesses or food safety issues, whether or not accurate, at one or more of our restaurants, including restaurants operated by our franchisees, could adversely affect our brands and reputation, which in turn could result in reduced guest traffic and lower sales. If any of our guests become ill from food-borne illnesses, we could be liable for certain damages or forced to temporarily close one or more restaurants or choose to close as a preventative measure if we suspect there was a pathogen in our restaurants. Furthermore, any instances of food contamination, whether or not at our restaurants, could subject us or our suppliers to voluntary or involuntary food recalls and the costs to conduct such recalls could be significant and could interrupt supply to unaffected restaurants or increase the cost of ingredients. Any such material events or disruptions could adversely affect our business.

Increased food commodity and energy costs, as well as shortages or interruptions, could decrease our restaurant-level operating profit margins or cause us to limit or otherwise modify our menu, which could adversely affect our business.

Our profitability depends, in part, on our ability to anticipate and react to changes in the price and availability of food commodities, including, among other things: beef, poultry, grains, dairy, and produce. Prices have been, and may continue to be, affected due to market changes, increased competition, the general risk of inflation, shortages or interruptions in supply due to weather, climate change, international military conflicts, trade sanctions, economic embargoes or boycotts, disease or other conditions beyond our control, or other reasons. Our business and margins have been negatively affected by, and we expect it to be continued to be negatively affected by, among other items, inflation, supply chain difficulties, labor shortages and other price increases.

This and other events could increase commodity prices, cause shortages that could affect the cost and quality of the items we buy or require us to further raise prices or limit our menu options. These events, combined with other more general economic and demographic conditions, could impact our pricing and negatively affect our restaurant sales and restaurant-level operating profit margins. There can be no assurance that we will be able to continue to partially offset inflation and other changes in the costs of core operating resources as a result of gradually increased menu prices, more efficient purchasing practices, productivity improvements and greater economies of scale in the future.

From time to time, competitive conditions could limit our menu pricing flexibility. There can be no assurance that future cost increases can be offset by increased menu prices or that increased menu prices will be fully absorbed by our guests without any resulting change to their visit frequencies or purchasing patterns. In addition, there can be no assurance that we will generate same-store sales growth in an amount sufficient to offset inflationary or other cost pressures.

Shortages or interruptions in the supply of food products caused by problems in production or distribution, inclement weather, unanticipated demand or other conditions could adversely affect the availability, quality and cost of ingredients, which could adversely affect our operating results. For instance, our burgers depend on the availability of our proprietary ground beef blend. If there is an interruption of operation at our national grinder's facility, we face an immediate risk because each restaurant typically has less than three days of beef patty inventory on hand. Any such material disruption would adversely affect our business.

Labor shortages or difficulty finding qualified employees could slow our growth, harm our business and reduce our profitability.

Restaurant operations are highly service oriented, and our success depends in part upon the Company's and our franchisees' ability to attract, retain and motivate a sufficient number of qualified employees, including restaurant managers and other crew members. The market for qualified employees in our industry is very competitive and labor shortages are prevalent. An inability to recruit and retain qualified individuals has delayed and in the future may delay the planned openings of new restaurants and has adversely impacted and could in the future adversely impact our existing restaurants, both corporate-owned and franchised. Any such delays, material increases in employee turnover rate in existing restaurants or widespread employee dissatisfaction could have a material adverse effect on our and our franchisees' business and results of operations. In addition, strikes, work slowdowns or other job actions may become more common in the United States. Although none of the employees employed by us or our franchisees are represented by a labor union or are covered by a collective bargaining agreement, in the event of a strike, work slowdown or other labor unrest, the ability to adequately staff our restaurants could be impaired, which could result in reduced revenue and customer claims, and may distract our management from focusing on our business and strategic priorities.

The digital and delivery business, and expansion thereof, is uncertain and subject to risk.

Digital innovation and growth remain a focus for us. Our continuous investment in a sophisticated technology infrastructure, we believe, has enabled us to strategically anticipate and execute against significant industry-wide changes. We utilize advanced technology to analyze, communicate and tactically execute in virtually all aspects of the business. We have executed upon our digital strategy over the past few years, including the development and launch of our BurgerFi app, licensing agreements regarding ghost or cloud kitchens, and using various third-party delivery partners, including agreements with Uber Eats, DoorDash, Postmates, and Grubhub. As the digital space around us continues to evolve, our technology needs to evolve concurrently to stay competitive with the industry. If we do not maintain digital systems that are competitive with the industry, our digital business may be adversely affected and could damage our sales. We rely on third parties for our ordering and payment platforms, including relating to our BurgerFi mobile app and ghost kitchens. Such services performed by these third parties could be damaged or interrupted by technological issues, which could then result in a loss of sales for a period of time. Information processed by these third parties could also be impacted by cyber-attacks, which could not only negatively impact our sales, but also harm our brand image.

Recognizing the rise in delivery services offered throughout the restaurant industry, we understand the importance of providing such services to guests wherever and whenever they want. We have invested in marketing to promote our delivery partnerships, which could negatively impact profitability if the business does not continue to expand. We rely on third parties, including Uber Eats, DoorDash, Postmates, and Grubhub to fulfill delivery orders timely and in a fashion that will satisfy guests. Errors in providing adequate delivery services may result in guest dissatisfaction, which could also result in loss of guest retention, loss in sales and damage to our brand image. Additionally, as with any third-party handling food, such delivery services increase the risk of food tampering while in transit. We are also subject to risk if there is a shortage of delivery drivers, which could result in a failure to meet guests' expectations. Third-party delivery services within the restaurant industry are a competitive environment and include a number of players competing for market share. If our third-party delivery providers fail to effectively compete with other third-party delivery providers in the sector, delivery business may suffer, resulting in a loss of sales. If any third-party delivery provider we associate with experiences damage to their brand image, we may also see ramifications due to our association with them.

Additionally, some of our competitors have greater financial resources to spend on marketing and advertising around their digital and delivery campaigns than we have. Should our competitors increase their spend in these areas, or if our advertising and promotions are less effective than our competitors, there could be an adverse impact on our business in this space.

We face significant competition for guests, and if we are unable to compete effectively, our business could be adversely affected.

The restaurant industry is intensely competitive with many well-established companies that compete directly and indirectly with us with respect to taste, price, food quality, service, value, design and location. We compete in the restaurant industry with multi-unit national, regional and locally owned and/or operated limited-service restaurants and full-service restaurants. We compete with (1) restaurants, (2) other fast casual restaurants, (3) quick service restaurants, and (4) casual dining restaurants. We may also compete with companies outside of the traditional restaurant industry, such as grocery store chains, meal subscription services, and delicatessens, especially those that target customers who seek high-quality food, as well as convenience food stores, cafeterias, and other dining outlets.

Many of our competitors have existed longer than we have and may have a more established market presence, better locations and greater name recognition nationally or in some of the local markets in which we operate or plan to open restaurants. Some of our competitors may also have significantly greater financial, marketing, personnel, and other resources than we do. They may also operate more restaurants than we do and may be able to take advantage of greater economies of scale than we can given our current size.

Our competition continues to intensify as new competitors enter the burger and premium pizza, fast-casual, quick service, and casual dining segments. Many of our competitors emphasize low cost "value meal" menu options or other programs that provide price discounts on their menu offerings, a strategy we do not currently pursue. We also face increasing competitive pressures from some of our competitors, who also offer better quality ingredients, such as antibiotic-free meat. Our continued success depends, in part, on the continued popularity of our menus and the experience we offer guests at our restaurants. If we are unable to continue to compete effectively, customer traffic, restaurant sales, and restaurant-level operating profit margins could decline, and our business, financial condition, and results of operations would be adversely affected.

We are subject to risks associated with leasing property subject to long-term non-cancelable leases.

We do not own any real property, and all of our corporate-owned restaurants are located on leased premises. The leases for our restaurants generally have initial terms averaging ten years and typically provide for two to four five-year renewal options as well as rent escalations. Generally, our leases are net leases that require us to pay our share of the costs of real estate taxes, utilities, building operating expenses, insurance and other charges in addition to rent. We generally cannot cancel these leases. Additional sites that we lease are likely to be subject to similar long-term non-cancelable leases.

If we close a restaurant, which we have done and anticipate that we may need to do so again in the normal course of business, we may still be obligated to perform our monetary obligations under the applicable lease, including, among other things, payment of the base rent for the remaining lease term. In addition, as each of our leases expire, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to close restaurants in desirable locations. We depend on cash flows from operations to pay our lease expenses and to fulfill other cash needs. If our business does not generate sufficient cash flow from operating activities, and sufficient funds are not otherwise available to us from borrowings or other sources, we may not be able to service our lease obligations or fund our other liquidity and capital needs, which would materially affect our business.

Restaurant companies have been the target of class action lawsuits and other proceedings that are costly, divert management attention and, if successful, could result in our payment of substantial damages or settlement costs.

Our business is subject to the risk of, and we are party to, including a shareholder class action lawsuit, litigation by employees, guests, suppliers, franchisees, stockholders, or others through private actions, class actions, administrative proceedings, regulatory actions, or other litigation. The outcome of litigation, particularly class action and regulatory actions, is difficult to assess or quantify.

In recent years, restaurant companies have been subject to lawsuits, including class action lawsuits, alleging violations of federal and state laws regarding workplace and employment matters, discrimination, and similar matters. A number of these lawsuits have resulted in the payment of substantial damages by the defendants. Similar lawsuits have been instituted from time to time alleging violations of various federal and state wage and hour laws regarding, among other things, employee meal deductions, overtime eligibility of assistant managers, and failure to pay for all hours worked.

Additionally, our guests could file complaints or lawsuits against us alleging that we are responsible for some illness or injury they suffered at or after a visit to one of our restaurants, including actions seeking damages resulting from food-borne illnesses or accidents in our restaurants. We are also subject to a variety of other claims from third parties arising in the ordinary course of our business, including contract claims.

The restaurant industry has also been subject to a growing number of claims that the menus and actions of restaurant chains have led to the obesity of certain of their customers. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and money away from our operations. In addition, they may generate negative publicity, which could reduce guest traffic and restaurant sales. Insurance may not be available at all or in sufficient amounts with respect to these or other matters.

A judgment or other liability in excess of our insurance coverage for any claims or any adverse publicity resulting from claims could adversely affect our business and results of operations.

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

We serve beer and wine at most of our restaurants. Alcoholic beverage control regulations generally require our restaurants to apply to a state authority and, in certain locations, county or municipal authorities for a license that must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of daily operations of our restaurants, including minimum age of patrons and employees, hours of operation, advertising, trade practices, wholesale purchasing, other relationships with alcohol manufacturers, wholesalers and distributors, inventory control and handling, and the storage and dispensing of alcoholic beverages.

Any future failure to comply with these regulations and obtain or retain licenses could adversely affect our business, financial condition, and results of operations. We are also subject in certain states to "dram shop" statutes, which generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person.

We carry liquor liability coverage as part of our existing comprehensive general liability insurance. Litigation against restaurant chains has resulted in significant judgments and settlements under dram shop statutes. Because these cases often seek punitive damages, which may not be covered by insurance, such litigation could have an adverse impact on our business, results of operations, or financial condition. Regardless of whether any claims against us are valid or whether we are liable, claims may be expensive to defend and may divert time and resources away from operations and hurt our financial performance. A judgment significantly in excess of our insurance coverage or not covered by insurance could have a material adverse effect on our business, results of operations, or financial condition.

OTHER RISK FACTORS AFFECTING OUR BUSINESS

Security breaches of either confidential guest information in connection with, among other things, our electronic processing of credit and debit card transactions or mobile ordering app, or confidential employee information may adversely affect our business.

Our business requires the collection, transmission, and retention of large volumes of guest and employee data, including credit and debit card numbers and other personally identifiable information, in various information technology systems that we maintain and in those maintained by third parties with whom we contract to provide services. The integrity and protection of that guest and employee data is critical to us. The techniques and sophistication used to conduct cyber-attacks and breaches of information technology systems, as well as the sources and targets of these attacks, change frequently and are often not recognized until such attacks are launched or have been in place for a period of time. Our information technology networks and infrastructure or those of our third-party vendors and other service providers could be vulnerable to damage, disruptions, shutdowns or breaches of confidential information due to criminal conduct, employee error or malfeasance, utility failures, natural disasters, or other catastrophic events. Due to these scenarios, we cannot provide assurance that we will be successful in preventing such breaches or data loss.

Additionally, the information, security, and privacy requirements imposed by governmental regulation are increasingly demanding. Our systems may not be able to satisfy these changing requirements or may require significant additional investments or time to do so. Efforts to hack or breach security measures, failures of systems or software to operate as designed or intended, viruses, operator error, or inadvertent releases of data all threaten our and our service providers' information systems and records. A breach in the security of our information technology systems or those of our service providers could lead to an interruption in the operation of our systems, resulting in operational inefficiencies and a loss of profits. Additionally, a significant theft, loss or misappropriation of, or access to, guests' or other proprietary data or other breach of our information technology systems could result in fines, legal claims, or proceedings, including regulatory investigations and actions, or liability for failure to comply with privacy and information security laws, which could disrupt our operations, damage our reputation, and expose us to claims from guests and employees, any of which could have a material adverse effect on our financial condition and results of operations.

If we experience a material failure or interruption in our systems, our business could be adversely impacted.

Our ability to efficiently and effectively manage our business depends significantly on the reliability and capacity of our information technology systems. Our operations depend upon our ability to protect our computer equipment and systems against damage from physical theft, fire, power loss, telecommunications failure, or other catastrophic events, as well as from internal and external security breaches, viruses and other disruptive problems. The failure of these systems to operate effectively, maintenance problems, upgrading or transitioning to new platforms, expanding our systems as we grow or a breach in security of these systems could result in interruptions to or delays in our business and guest service and reduce efficiency in our operations. If our information technology systems fail and our redundant systems or disaster recovery plans are not adequate to address such failures, our revenue and profits could be reduced, and the reputation of our brands and our business could be materially adversely affected. In addition, remediation of such problems could result in significant, unplanned capital investments. Additionally, as we continue to evolve our digital platforms and enhance our internal systems, we place increasing reliance on third parties to provide infrastructure and other support services. We may be adversely affected if any of our third-party service providers experience any interruptions in their systems, which then could potentially impact the services we receive from them and cause a material failure or interruption in our own systems.

We depend on key members of our executive management team.

We depend on the leadership and experience of key members of our management team. The loss of the services of any of our executive management team members could have a material adverse effect on our business and prospects, as we may not be able to find suitable individuals to replace such personnel on a timely basis or without incurring increased costs, or at all. We do not maintain key person life insurance policies on any of our officers. We believe that our future success will depend on our continued ability to attract and retain highly skilled and qualified personnel. There is a high level of competition for experienced, successful personnel in our industry. Our inability to meet our executive staffing requirements in the future could impair our growth and harm our business.

We may not be able to adequately protect our intellectual property, which, in turn, could harm the value of our brands and adversely affect our business.

Our ability to implement our business plan successfully depends in part on our ability to further build brand recognition using our trademarks, service marks, proprietary products, and other intellectual property, including our name and logos and the unique character and atmosphere of our restaurants. We rely on United States and foreign trademark, copyright and trade secret laws, as well as franchise agreements, non-disclosure agreements, and confidentiality and other contractual provisions to protect our intellectual property. Nevertheless, our competitors may develop similar menu items and concepts, and adequate remedies may not be available in the event of an unauthorized use or disclosure of our trade secrets and other intellectual property. We may not be able to adequately protect our trademarks and service marks, and our competitors and others may successfully challenge the validity and/or enforceability of our trademarks and service marks and other intellectual property.

Additionally, we may be prohibited from entering into certain new markets due to restrictions surrounding competitors' trademarks. The steps we have taken to protect our intellectual property in the United States and in foreign countries may not be adequate. We may also from time to time be required to institute litigation to enforce our trademarks, service marks and other intellectual property. Such litigation could result in substantial costs and diversion of resources and could negatively affect our sales, profitability, and prospects regardless of whether we are able to successfully enforce our rights.

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

We maintain various insurance policies for employee health, workers' compensation, cyber security, general liability, and property damage. We believe that we maintain insurance customary for businesses of our size and type. There are, however, types of losses we may incur that cannot be insured against or that we believe are not economically reasonable to insure. Such losses could have a material adverse effect on our business and results of operations.

REGULATORY AND LEGAL RISKS

We are subject to many federal, state and local laws, as well as other statutory and regulatory requirements, with which compliance is both costly and complex. Failure to comply with, or changes in these laws or requirements, could have an adverse impact on our business.

We are subject to extensive federal, state, local, and foreign laws and regulations, as well as other statutory and regulatory requirements, including those related to: (1) nutritional content labeling and disclosure requirements; (2) food safety regulations; (3) local licensure, building, and zoning regulations; (4) employment regulations; (5) the Patient Protection and Affordable Care Act of 2010 (the *"PPACA"*); (6) the Americans with Disabilities Act (*"ADA"*) and similar state laws; (7) privacy and cybersecurity; and (8) laws and regulations related to our franchised operations. The impact of current laws and regulations, the effect of future changes in laws or regulations that impose additional requirements and the consequences of litigation relating to current or future laws and regulations, uncertainty around future changes in laws made by new regulatory administrations or our inability to respond effectively to significant regulatory or public policy issues, could increase our compliance and other costs of doing business and, therefore, have an adverse effect on our results of operations.

Failure to comply with the laws and regulatory requirements of federal, state, and local authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, certain laws, including the ADA, could require us to expend significant funds to make modifications to our restaurants if we fail to comply with applicable standards. Compliance with all of these laws and regulations can be costly and can increase our exposure to litigation or governmental investigations or proceedings.

Failure to comply with laws and regulations relating to our franchised operations could negatively affect our licensing sales and our relationships with our franchisees.

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

Nutritional content labeling and disclosure requirements may change consumer buying habits in a way that adversely impacts our sales.

In recent years, there has been an increased legislative, regulatory and consumer focus on the food industry, including nutritional and advertising practices. These changes have resulted in, and may continue to result in, the enactment of laws and regulations that impact the ingredients and nutritional content of our menu offerings, or laws and regulations requiring us to disclose the nutritional content of our food offerings. For example, a number of states, counties, and cities have enacted menu labeling laws requiring multi-unit restaurant operators to disclose certain nutritional information to customers or have enacted legislation restricting the use of certain types of ingredients in restaurants.

Furthermore, the PPACA establishes a uniform, federal requirement for certain restaurants to post certain nutritional information on their menus. Specifically, the PPACA amended the Federal Food, Drug and Cosmetic Act to require certain chain restaurants to publish the total number of calories of standard menu items on menus and menu boards, along with a statement that puts this calorie information in the context of a total daily calorie intake. These labeling laws may also change consumer buying habits in a way that adversely impacts our sales. Additionally, an unfavorable report on, or reaction to, our menu ingredients, the size of our portions or the nutritional content of our menu items could negatively influence the demand for our offerings.

Failure to comply with local licensure, building, and zoning regulations could adversely affect our business.

The development and operation of restaurants depend, to a significant extent, on the selection of suitable sites, which are subject to zoning, land use, environmental, traffic, liquor laws, and other regulations and requirements. We also are subject to licensing and regulation by state and local authorities relating to health, sanitation, safety, and fire standards. Typically, licenses, permits and approvals under such laws and regulations must be renewed annually and may be revoked, suspended, or denied renewal for cause at any time if governmental authorities determine that our conduct violates applicable regulations. Difficulties or failure to maintain or obtain the required licenses, permits, and approvals could adversely affect our existing restaurants and delay or result in our decision to cancel the opening of new restaurants, which could adversely affect our business.

Failure to comply with privacy and cybersecurity laws and regulations could cause us to face litigation and penalties that could adversely affect our business, financial conditions, and results of operations.

Our business requires the collection, transmission, and retention of large volumes of guest and employee data, including credit and debit card numbers and other personally identifiable information, in various information technology systems that we maintain and in those maintained by third parties with whom we contract to provide services. The collection and use of such information are regulated at the federal and state levels. Regulatory requirements, both domestic and internationally, have been changing and increasing regulation relating to the privacy, security, and protection of data. Such regulatory requirements may become more prevalent in other states and jurisdictions as well. It is our responsibility to ensure that we are complying with these laws by taking the appropriate measures as well as monitoring our practices as these laws continue to evolve.

As our environment continues to evolve in this digital age and reliance upon new technologies, for example, cloud computing and its digital methods of ordering, become even more prevalent, it is imperative we secure the private and sensitive information we collect. Failure to do so, whether through fault of our own information systems or those of outsourced third-party providers, could not only cause us to fail to comply with these laws and regulations, but also could cause us to face litigation and penalties that could adversely affect our business, financial condition, and results of operations. Our brand's reputation and our image as an employer could also be harmed by these types of security breaches or regulatory violations.

Changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our results of operations and financial condition.

We are subject to taxes by the U.S. federal, state, local and foreign tax authorities, and our tax liabilities will be affected by the allocation of expenses to differing jurisdictions. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including: (1) changes in the valuation of our deferred tax assets and liabilities; (2) expected timing and amount of the release of any tax valuation allowance; (3) tax effects of stock-based compensation; and (4) changes in tax laws, regulations, or interpretations thereof. We may also be subject to audits of our income, sales and other transaction taxes by U.S. federal, state, local and foreign taxing authorities. Outcomes from these audits could have an adverse effect on our operating results and financial condition.

An "ownership change" could limit our ability to utilize tax loss and credit carryforwards to offset future taxable income.

We have certain general business credit tax credits (*"Tax Attributes"*). Our ability to use these Tax Attributes to offset future taxable income may be significantly limited if we experience an "ownership change," as discussed below. Under the Internal Revenue Code of 1986, as amended (*"IRC"* or *"Internal Revenue Code"*), and regulations promulgated by the U.S. Treasury Department, we may carry forward or otherwise utilize the Tax Attributes in certain circumstances to offset any current and future taxable income and thus reduce our federal income tax liability, subject to certain requirements and restrictions. To the extent that the Tax Attributes do not otherwise become limited, we believe that we will have available a significant amount of Tax Attributes in future years, and therefore the Tax Attributes could be a substantial asset to us. However, if we experience an "ownership change," as defined in Section 382 of the IRC, our ability to use the Tax Attributes may be substantially limited, and the timing of the usage of the Tax Attributes could be substantially delayed, which could therefore significantly impair the value of that asset

In general, an "ownership change" under Section 382 occurs if the percentage of stock owned by an entity's 5% stockholders (as defined for tax purposes) increases by more than 50 percentage points over a rolling three-year period. An entity that experiences an ownership change generally will be subject to an annual limitation on its pre-ownership change tax loss and credit carryforwards equal to the equity value of the entity immediately before the ownership change, multiplied by the long-term, tax-exempt rate posted monthly by the Internal Revenue Service (subject to certain adjustments). The annual limitation would be increased each year to the extent that there is an unused limitation in a prior year. The limitation on our ability to utilize the Tax Attributes arising from an ownership change under Section 382 of the IRC would depend on the value of our equity at the time of any ownership change. If we were to experience an "ownership change," it is possible that a significant portion of our tax loss and credit carryforwards could expire before we would be able to use them to offset future taxable income.

If we fail to maintain effective internal controls over financial reporting, our ability to produce timely and accurate financial information or comply with Section 404 of the Sarbanes-Oxley Act of 2002 could be impaired, which could have a material adverse effect on our business and stock price.

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002, as amended (the *"Sarbanes-Oxley Act"*), and the listing standards of Nasdaq. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. It also requires annual management assessments of the effectiveness of our internal control over financial reporting and disclosure of any material weaknesses in such controls. As an emerging growth company, if we become a large accelerated filer or when we are no longer an emerging growth company and become an accelerated filer, we will be required to have our independent registered public accounting firm provide an attestation report on the effectiveness of its internal control over financial reporting. To maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting, we anticipate that we will expend significant resources, including accounting-related costs and significant management oversight. We expect that the requirements of these rules and regulations will continue to increase our legal, accounting, and financial compliance costs, make some activities more difficult, time consuming and costly, and place significant strain on our personnel, systems, and resources.

Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting also could adversely affect the results of management evaluations and independent registered public accounting firm audits of our internal control over financial reporting that we may become required to include in our periodic reports that will be filed with the SEC. Ineffective disclosure controls and procedures and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which may have a negative effect on the trading price of our common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on Nasdaq.

We have significant stockholders whose interests may differ from those of our public stockholders.

As of March 27, 2023, approximately 61.8% of the voting power of our common stock was held, directly or indirectly, by our current board of directors, executive officers and greater than 5% beneficial owners. Certain of these, and other, stockholders, including L Catterton as discussed below, for the foreseeable future, have influence over corporate management and affairs, as well as matters requiring stockholder approval, and they will be able to participate in the election of the members of our board of directors, including amendments to the Amended and Restated Certificate of Incorporation and our Amended and Restated Bylaws and approval of significant corporate transactions, including mergers and sales of substantially all of our assets. Our board of directors will have the authority, subject to the terms of our indebtedness and applicable rules and regulations, to issue additional stock, implement stock repurchase programs, declare dividends and make other decisions.

It is possible that the interests of these stockholders may in some circumstances conflict with our interests and the interests of our other stockholders. This could influence their decisions, including with regard to whether and when to dispose of assets and whether and when to incur new or refinance existing indebtedness. In addition, the determination of future tax reporting positions, the structuring of future transactions and the handling of any future challenges by any taxing authorities to our tax reporting positions may take into consideration these stockholders' tax or other considerations, which may differ from our considerations or those of our other stockholders.

On February 27, 2023, the Company filed an amended and restated certificate of designation, dated as of February 24, 2023 (the "*A&R CoD*"), with the Delaware Secretary of State regarding the Company's shares of preferred stock, par value $0.0001 per share, designated as Series A Preferred Stock (the " *Series A Junior Preferred Stock*"), to amend certain powers, designations, preferences and other rights set forth therein, as more fully described below, to be effective February 27, 2023. As of January 2, 2023, CP7, an affiliate of Cardboard Box LLC and L Catterton, holds substantially all of the issued and outstanding shares of Series A Junior Preferred Stock.

The A&R CoD added a provision providing that, subject to certain limitations, CP7 shall have the right (but not the obligation) to designate up to two directors to the Company's Board of Directors. In addition, the A&R CoD added to the list of major decisions of the Company that require the written consent of the holders of at least a majority of the then outstanding shares of Series A Junior Preferred Stock the following actions: (x) hire, appoint, remove, replace, terminate or otherwise change the Chief Executive Officer or fail to consult with holders of a majority of the then outstanding shares of Series A Junior Preferred Stock prior to any other hiring, removal, replacement, termination or appointment of any other executive officer of the Corporation and (y) except as required by applicable law, amend, waive or modify any rights under, terminate or approve (1) any incurrence of debt or guarantee thereof involving more than $2,500,000, or (2) any incurrence of debt or guarantee thereof between the Company or any of its subsidiaries, on the one hand, and any director, officer or stockholder of the Company or any of their respective affiliates, on the other hand. (1) and (2) above are subject to certain exceptions set forth in the A&R CoD, including the Credit Agreement.

The A&R CoD added a provision providing that in the event the Company fails to timely redeem any shares of Series A Junior Preferred Stock on November 3, 2027, the applicable dividend rate shall automatically increase to the lesser of (A) the sum of 10.00% plus the applicable 2% default rate (with such aggregate rate increasing by an additional 0.35% per quarter from and after November 3, 2027), or (B) the maximum rate that may be applied under applicable law, unless waived in writing by a majority of the outstanding shares of Series A Junior Preferred Stock.

The A&R also added a provision providing that in the event the Company fails to timely redeem any shares of Series A Junior Preferred Stock in connection with a Qualified Financing (as defined in the A&R CoD) or on November 3, 2027 (a "*Default*"), the Company agrees to promptly commence a debt or equity financing transaction or sale process to solicit proposals for the sale of the Company and its subsidiaries (or, alternatively, the sale of material assets) designed to yield the maximum cash proceeds to the Company available for redemption of the Series A Junior Preferred Stock as promptly as practicable, but in any event, within 12 months from the date of the Default. If on or after November 3, 2026, the Company is aware that it is reasonably unlikely to have sufficient cash to timely effect the redemption in full of the Series A Junior Preferred Stock when first due, the Company shall, prior to such anticipated due date, take reasonable steps to engage an investment banking firm of national standing (and other appropriate professionals) to conduct preparatory work for such a financing transaction and sale process of the Company and its subsidiaries to provide for such transaction to occur as promptly as possible after any failure for a timely redemption of the Series A Junior Preferred Stock.

For further description of the Series A Junior Preferred Stock, see Risk Factor - "Our common stock ranks junior to our Series A Junior Preferred Stock."

Our anti-takeover provisions could prevent or delay a change in control of the Company, even if such change in control would be beneficial to our stockholders.

Provisions of our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, as well as provisions of Delaware law, could discourage, delay or prevent a merger, acquisition or other change in control of the Company, even if such change in control would be beneficial to our stockholders. These provisions include: (1) the authority to issue "blank check" preferred stock that could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt; (2) our classified board of directors, which provides that not all members of our board of directors are elected at one time; (3) prohibitions regarding the use of cumulative voting for the election of directors; (4) limitations on the ability of stockholders to call special meetings or amend our Amended and Restated Bylaws; (5) requirements that all stockholder actions be taken at a meeting of our stockholders; and (6) advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

These provisions could also discourage proxy contests and make it more difficult for stockholders to elect directors of their choosing and cause us to take other corporate actions. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team. In addition, Delaware law, to which the Company is subject, prohibits it, except under specified circumstances, from engaging in any mergers, significant sales of stock or assets or business combinations with any stockholder or group of stockholders who owns at least 15% of its common stock.

The provision of our Amended and Restated Certificate of Incorporation requiring exclusive venue in the Court of Chancery in the State of Delaware for certain types of lawsuits may have the effect of discouraging lawsuits against our directors and officers.

Our Amended and Restated Certificate of Incorporation includes an exclusive venue provision. This provision requires, to the fullest extent permitted by law, that (1) any derivative action or proceeding brought on behalf of our Company, (2) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders, (3) any action asserting a claim against us arising pursuant to any provision of Delaware General Corporation Law or our Amended and Restated Certificate of Incorporation or the Amended and Restated Bylaws, or (5) any action asserting a claim against us governed by the internal affairs doctrine will have to be brought only in the Court of Chancery in the State of Delaware.

This choice-of-forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with the Company or its directors, officers or other employees and may result in increased costs to a stockholder who has to bring a claim in a forum that is not convenient to the stockholder, which may discourage such lawsuits. If a court were to find the exclusive forum provision of our Amended and Restated Certificate of Incorporation inapplicable or unenforceable with respect to one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could materially and adversely affect our business, financial condition and results of operations and result in a diversion of the time and resources of our management and board of directors.

As a "smaller reporting company" we are permitted to provide less disclosure than larger public companies, which may make our common stock less attractive to investors.

We are currently a "smaller reporting company," as defined by Rule 12b-2 of the Exchange Act. As a smaller reporting company, we are eligible to take advantage of certain exemptions from various reporting requirements applicable to other public companies. Consequently, it may be more challenging for investors to analyze our results of operations and financial prospects, which may result in less investor confidence. Investors may find our common stock less attractive as a result of our smaller reporting company status. If some investors find our common stock less attractive, there may be a less active trading market for our common stock, and our stock price may be more volatile.

We are an emerging growth company within the meaning of the Securities Act of 1933, as amended (the "Securities Act",) and if we take advantage of certain exemptions from disclosure requirements available to emerging growth companies, this could make our securities less attractive to investors and may make it more difficult to compare our performance with other public companies.

The Jumpstart Our Business Startups Act of 2012 ("*JOBS Act*") permits "emerging growth companies" like us to take advantage of certain exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies. As long as we qualify as an emerging growth company, we would be permitted, and we intend to, omit the auditor's attestation on internal control over financial reporting that would otherwise be required by the Sarbanes-Oxley Act, as described above. We also intend to take advantage of the exemption provided under the JOBS Act from the requirements to submit say-on-pay, say-on-frequency and say-on-golden parachute votes to our stockholders, and we will avail ourselves of reduced executive compensation disclosure that is already available to smaller reporting companies.

In addition, Section 107 of the JOBS Act also provides that we can take advantage of the exemption from complying with new or revised accounting standards provided in Section 7(a)(2)(B) of the Securities Act as long as we are an emerging growth company. An emerging growth company can therefore delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to take advantage of these benefits until we are no longer an emerging growth company or until we affirmatively and irrevocably opt out of this exemption. Our financial statements may therefore not be comparable to those of companies that comply with such new or revised accounting standards.

We will continue to be an emerging growth company until the earliest to occur of (1) the last day of the fiscal year during which we had total annual gross revenue of at least $1.07 billion (as indexed for inflation), (2) the last day of the fiscal year following the fifth anniversary of the date of the first sale of securities by OPES at its initial public offering on March 16, 2018, (3) the date on which we have, during the previous three-year period, issued more than $1 billion in non-convertible debt, or (4) the date on which we are deemed to be a "large accelerated filer," as defined under the Exchange Act.

Until such time that we lose "emerging growth company" status, which currently is anticipated by the end of fiscal year 2023, it is unclear if investors will find our securities less attractive because we may rely on these exemptions. If some investors find our securities less attractive as a result, there may be a less active trading market for our securities, and our stock prices may be more volatile and could cause our stock prices to decline.

We may be unable to maintain the listing of our securities in the future.

If we fail to meet the continued listing requirements of the Nasdaq, we could face significant material adverse consequences, including: (1) a limited availability of market quotations for our securities; (2) reduced liquidity with respect to our securities; (3) a determination that our shares are a "penny stock" if they are not already determined to be a "penny stock" at the time of such failure to meet such requirements, which will require brokers trading in our securities to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our securities; (4) a limited amount of news and analyst coverage for us; and (5) a decreased ability to issue additional securities or obtain additional financing in the future.

RISKS RELATED TO OUR CAPITAL STOCK

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

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us, our business, our market, or our competitors. Securities and industry analysts do not currently, and may never, publish research on us. Research coverage from industry analysts may be limited. If no securities or industry analysts commence coverage of us, our stock price and trading volume could be negatively impacted. If any of the analysts who may cover us change their recommendation regarding our stock adversely, provide more favorable relative recommendations about our competitors or publish inaccurate or unfavorable research about our business, our stock price would likely decline. If any analyst who may cover us ceases coverage of us or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

A significant number of shares of our common stock are subject to issuance upon exercise of the outstanding warrants, which upon such exercise may result in dilution to our security holders.

Outstanding warrants (including (A) warrants to purchase shares of common stock, at an exercise price of $11.50 per share, issued in connection with the IPO (the *"Public Warrants"*) and (B)(i) warrants to purchase shares of common stock, at an exercise price of $11.50 per share, which consist of warrants that are part of the units issued to Lion Point Capital, L.P. (*"Lion Point"*) and Lionheart Equities, under the Amended and Restated Forward Purchase Contracts that the Company entered into, at the time of the BurgerFi acquisition, with Lion Point and Lionheart Equities, (ii) private placement warrants and (iii) working capital warrants, all of which were issued pursuant to private placement exemptions (together with (i) and (ii), the *"Private Warrants"*)) and warrants exercisable for shares underlying units outstanding pursuant to the unit purchase option to purchase units of the Company issued to EarlyBirdCapital and its designees in connection with the IPO (the *"Unit Purchase Option"*) to purchase shares of our common stock are exercisable at a price of $11.50 per share. Refer to Note 12, "*Stockholders' Equity*," as it relates to the number of warrants and options outstanding as of fiscal year end. To the extent such warrants are exercised, additional shares of our common stock will be issued, which will result in dilution to our existing holders of common stock and increase the number of shares eligible for resale in the public market. Sales of substantial numbers of such shares in the public market could adversely affect the market price of our common stock.

The Company's shares of common stock are currently deemed a "penny stock," which may make it more difficult for investors to sell their common stock.

The SEC has adopted regulations which generally define "penny stock" to be any equity security that has a market price less than $5.00 per common share or an exercise price of less than $5.00 per common share, subject to certain exceptions. The Company's securities are covered by the penny stock rules, which impose additional sales practice requirements on broker-dealers who sell to persons other than established customers and "accredited investors." The term "accredited investor" refers generally to institutions with assets in excess of $5,000,000 or individuals with a net worth in excess of $1,000,000, exclusive of their principal residence, or annual income exceeding $200,000 or $300,000 jointly with their spouse. The penny stock rules require a broker-dealer, prior to a transaction in a penny stock not otherwise exempt from the rules, to deliver a standardized risk disclosure document in a form prepared by the SEC which provides information about penny stocks and the nature and level of risks in the penny stock market. The broker-dealer also must provide the customer with current bid and offer quotations for the penny stock, the compensation of the broker-dealer and its salesperson in the transaction and monthly account statements showing the market value of each penny stock held in the customer's account. The bid and offer quotations and the broker-dealer and salesperson compensation information must be given to the customer orally or in writing prior to effecting the transaction and must be given to the customer in writing before or with the customer's confirmation. In addition, the penny stock rules require that prior to a transaction in a penny stock not otherwise exempt from these rules, the broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive the purchaser's written agreement to the transaction. These disclosure requirements may have the effect of reducing the level of trading activity in the secondary market for the stock that is subject to these penny stock rules. Consequently, these penny stock rules may affect the ability of broker-dealers to trade its securities. The Company believes that the penny stock rules may discourage investor interest in and limit the marketability of its common stock.

Sales of a substantial number of shares of our common stock in the public market by our existing stockholders could cause our stock price to decline.

Continued sales of a substantial number of shares of our common stock in the public market or the perception that these sales might occur has depressed and may continue to depress the market price of our shares of common stock and could impair our ability to raise capital through the sale of additional equity securities. We are unable to predict the effect that sales may have on the prevailing market price of our common stock.

Trading volatility and the price of our common stock may be adversely affected by many factors.

Many factors are expected to affect the volatility and price of our common stock in addition to its operating results and prospects. Some of these factors, several of which are outside our control, are the following:

- the unpredictable nature of economic and market conditions;
- governmental action or inaction in light of key indicators of economic activity or events that can significantly influence financial markets, and media reports and commentary about economic, trade or other matters, even when the matter in question does not directly relate to our business;
- trading activity in our common stock or trading activity in derivative instruments with respect to our common stock or debt securities, which can be affected by market commentary (including commentary that may be unreliable or incomplete); and
- investor confidence, driven in part by expectations about our performance.

Our common stock ranks junior to our Series A Junior Preferred Stock.

In the event of any voluntary or involuntary liquidation, dissolution or winding up or Deemed Liquidation Event (as defined in the A&R CoD), the holders of Series A Junior Preferred Stock are entitled to be paid out of the assets of the Company available for distribution to its stockholders before any payment is made to the holders of our common stock.

The rights of our holders of common stock to participate in the distribution of our assets rank junior to the prior claims of our current and future creditors, the Series A Junior Preferred Stock and any future series or class of preferred stock we may issue that ranks senior to our common stock. Our Amended and Restated Certificate of Incorporation authorizes us to issue up to 10,000,000 shares of preferred stock, par value $0.0001 per share, in one or more series on terms determined by our board of directors. As a result of the Anthony's acquisition, shares of Series A Junior Preferred Stock were issued.

The issuance of Series A Junior Preferred Stock in connection with the Anthony's acquisition and any other future offerings of debt or senior equity securities may adversely affect the market price of our common stock. If we decide to issue debt or senior equity securities in the future, it is possible that these securities will be governed by an indenture or other instrument containing covenants restricting our operating flexibility. The Series A Junior Preferred Stock ranks senior to the Common Stock and may be redeemed at the option of the Company at any time and must be redeemed by the Company in limited circumstances.

Additionally, any convertible or exchangeable securities that we issue in the future may have rights, preferences and privileges more favorable than those of the Series A Junior Preferred Stock or common stock and may result in dilution to holders of the Series A Junior Preferred Stock or common stock. We and, indirectly, our stockholders will bear the cost of issuing and servicing such securities. Because our decision to issue debt or equity securities in any future offering will depend on market conditions and other factors beyond our control, we do not know the amount, timing or nature of any future offerings. Thus, holders of the Series A Junior Preferred Stock and common stock will bear the risk of our future offerings reducing the market price of our capital securities and diluting the value of their holdings in us.

The Series A Junior Preferred Stock is entitled to both preference dividends and participating dividends and no dividends, may be declared or paid on our common stock until (i) such preference dividends and participating dividends have been paid in full or (ii) all such dividends have been declared and a sum sufficient for the payment of them has been set aside for the benefit of the holders of the Series A Junior Preferred Stock.

The terms of the Series A Junior Preferred Stock place significant limitations on our ability to pay dividends on shares of our common stock, and payments made on the Series A Junior Preferred Stock are expected to significantly reduce or eliminate any cash that we might otherwise have available for the payment of dividends on shares of common stock. In particular, no dividends may be declared or paid on our common stock until (i) any accrued and unpaid preference dividends and participating dividends (as described below) with respect to the Series A Junior Preferred Stock have been paid in full or (ii) all such dividends have been or contemporaneously are declared and a sum sufficient for the payment of them has been or is set aside for the benefit of the holders of the Series A Junior Preferred Stock.

In addition, holders of Series A Junior Preferred Stock are entitled to participate in dividends paid to holders of our common stock to the same extent as if such holders of Series A Junior Preferred Stock had shares of common stock in accordance with the terms of the A&R CoD. As a result, the success of an investment in the common stock may depend entirely upon any future appreciation in the value of the common stock. There is no guarantee that the common stock will appreciate in value or even maintain its initial value.

Item 1B. Unresolved Staff Comments.

Not applicable.

Item 2. Properties.

Our BurgerFi and Anthony's brand restaurants are primarily end-cap facilities, and, to a lesser extent in-line or free-standing. Two of our franchised restaurants feature a drive-thru. As of January 2, 2023, for all of the corporate-owned restaurants, we lease the premises in which our corporate-owned restaurants are operating. Our restaurant leases generally have initial terms averaging ten years, with two to four renewal options of five years each. Most restaurant leases provide for a specified annual rent, although some call for additional or contingent rent. Generally, leases are “net leases” that require the restaurant to pay a pro rata share of property taxes, insurance and common area maintenance costs. As of January 2, 2023, our restaurant system consisted of 114 restaurants comprised of 25 corporate-owned restaurants and 89 franchised restaurants located in the United States and Saudi Arabia.

We previously leased our executive offices, consisting of approximately 16,500 square feet in North Palm Beach, Florida, for a term expiring in 2023, with an option to renew. In January 2022, we exercised our right to terminate this North Palm Beach lease effective as of July 2022. We currently lease approximately 35,000 square feet in Fort Lauderdale, Florida for our executive offices, for a term expiring in 2032, with an option to renew. Please see Certain Relationships and Related Transactions, and Director Independence for information about this lease.

We believe our current office space is suitable and adequate for its intended purposes and provides opportunity for expansion. The following chart shows the number of restaurants in each of the states in which we operated as of January 2, 2023:

State/Country	Corporate-Operated	Franchise-Operated	Total
Domestic:			
Alabama	—	3	3
Alaska	—	1	1
Arizona	—	1	1
Colorado	—	1	1
Connecticut	—	1	1
Delaware	2	—	2
Florida	51	37	88
Georgia	—	4	4
Illinois	—	1	1
Indiana	—	2	2
Kansas	—	1	1
Kentucky	—	2	2
Maryland	1	7	8
Massachusetts	4	—	4
Michigan	—	1	1
Nevada	—	1	1
New Jersey	8	1	9
New York	6	4	10
North Carolina	—	4	4
Ohio	—	2	2
Pennsylvania	11	3	14
Puerto Rico	—	3	3
Rhode Island	1	—	1
South Carolina	—	2	2
Tennessee	1	1	2
Texas	—	1	1
Virginia	—	4	4
International:			
Saudi Arabia	—	1	1
Total	85	89	174

Item 3. Legal Proceedings.

Information regarding our legal proceedings can be found under the Contingencies sections of Note 7 *"Commitments and Contingencies,"* to the Consolidated Financial Statements included within this report.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

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

Trading Market

BurgerFi's shares of common stock and public warrants, are each traded on Nasdaq, under the symbols "BFI," and "BFIIW," respectively. Each Public Warrant entitles the holder to purchase one share of common stock at a price of $11.50 per share. BurgerFi's common stock and Public Warrants commenced trading on Nasdaq on March 16, 2018.

Record Holders

As of March 27, 2023, we had 23,823,105 shares of common stock outstanding and 131 record holders of our common stock.

Dividends

BurgerFi has not paid any cash dividends on its shares of common stock to date. The payment of any dividends within the discretion of the board of directors. It is the present intention of the board of directors to retain all earnings, if any, for use in our business operations and, accordingly, the board of directors does not anticipate declaring any dividends in the foreseeable future.

Item 6. Reserved

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion should be read in conjunction with our financial statements and footnotes thereto included elsewhere in this Annual Report.

Overview

The Company is a leading multi-brand restaurant company that develops, markets and acquires fast-casual and premium-casual dining restaurant concepts around the world, including corporate-owned stores and franchises. As of January 2, 2023, we were the owner and franchisor of the two following brands:

BurgerFi. BurgerFi is a fast-casual "better burger" concept, renowned for delivering an exceptional, all-natural premium "better burger" experience in a refined, contemporary environment. BurgerFi's chef-driven menu offerings and eco-friendly restaurant design drive our brand communication. It offers a classic American menu of premium burgers, hot dogs, crispy chicken, frozen custard, hand-cut fries, shakes, beer, wine and more. Originally founded in 2011 in Lauderdale-by-the-Sea, Florida, the purpose was simple – "RedeFining" the way the world eats burgers by providing an upscale burger offering, at a fast-casual price point. BurgerFi is committed to an uncompromising and rewarding dining experience that promises fresh food of transparent quality. Since its inception, BurgerFi has grown to 114 BurgerFi locations, and as of January 2, 2023, was comprised of 25 corporate-owned restaurants and 89 franchised restaurants in 2 countries and 23 states, as well as Puerto Rico.

BurgerFi was named "The Very Best Burger" at the 2023 edition of the nationally acclaimed SOBE Wine and Food Festival, "Best Fast Casual Restaurant" in USA Today's 10Best 2022 Readers' Choice Awards for the second consecutive year, QSR Magazine's Breakout Brand of 2020 and Fast Casual's 2021 #1 Brand of the Year. In 2021, in Consumer Report's Chain Reaction Report, BurgerFi was praised for serving "no antibiotic beef" across all its restaurants and Consumer Reports awarded BurgerFi an "A-Grade Angus Beef" rating for the third consecutive year.

Anthony's. Anthony's is a premium pizza and wing brand operating 60 corporate-owned casual restaurant locations, as of January 2, 2023. Anthony's prides itself on serving fresh, never frozen, high-quality ingredients. The concept is centered around a 900-degree coal fired oven, and its menu offers "well-done" pizza, coal fired chicken wings, homemade meatballs, and a variety of handcrafted sandwiches and salads. The restaurants also feature a deep wine and craft beer selection to round out the menu. The pizzas are prepared using a unique coal fired oven to quickly seal in natural flavors while creating a lightly charred crust. Anthony's provides a differentiated offering among its casual dining peers driven by its coal fired oven, which enables the use of fresh, high-quality ingredients with quicker ticket times.

Since its inception in 2002, the Anthony's brand has grown to 60 corporate-owned locations, as of January 2, 2023, primarily along the East coast and has restaurants in eight states, including Florida (28), Pennsylvania (11), New Jersey (8), New York (5), Massachusetts (4), Delaware (2), Maryland (1), and Rhode Island (1).

Anthony's was named "The Best Pizza Chain in America" by USA Today's Great American Bites and "Top 3 Best Major Pizza Chain" by Mashed in 2021.

Acquisition

On November 3, 2021, we completed the Anthony's acquisition, which through its subsidiaries, owns and operates casual dining pizza restaurants under the trade name Anthony's Coal Fired Pizza & Wings. The results of operations, financial position and cash flows of Anthony's is included in our consolidated financial statements as of the closing date of the acquisition.

Segments

We have two operating and reportable segments: (1) BurgerFi and (2) Anthony's. Our business generates revenue from the following sources: (i) restaurant sales, (ii) royalty and other fees, consisting primarily of royalties based on a percentage of sales reported by franchised restaurants and paid by franchisees, and (iii) franchise fees, consisting primarily of licensing fees paid by franchisees. Prior to the Anthony's acquisition in November 2021, the Company had one reportable segment.

Key Metrics

Systemwide Restaurant Sales

"Systemwide Restaurant Sales" are not revenues to the Company, however the Company records royalty revenue based as a percentage of Systemwide Restaurant Sales. Systemwide Restaurant Sales is presented as informational data in order to understand the aggregation of franchised stores sales, ghost kitchen and corporate-owned store sales performance. Systemwide Restaurant Sales growth refers to the percentage change in sales at all franchised restaurants, ghost kitchens and corporate-owned restaurants in one period from the same period in the prior year. Systemwide Restaurant Same Store Sales growth refers to the percentage change in sales at all franchised restaurants, ghost kitchens, and corporate-owned restaurants once the restaurant has been in operation after 14 months. See definition below under *Digital Channel* discussion for Same Store Sales.

Corporate-Owned Restaurant Sales

"Corporate-Owned Restaurant Sales" represent the sales generated only by corporate-owned restaurants. Corporate-Owned Restaurant Sales growth refers to the percentage change in sales at all corporate-owned restaurants in one period from the same period in the prior year. Corporate-Owned Restaurant Same-Store Sales growth refers to the percentage change in sales at all corporate-owned restaurants once the restaurant has been in operation after 14 months. These measures highlight the performance of existing corporate-owned restaurants.

Franchise Restaurant Sales

"Franchise Restaurant Sales" represent the sales generated only by franchisee-owned restaurants and are not recorded as revenue, however, the royalties based on a percentage of these franchise restaurant sales are recorded as revenue. Franchise Restaurant Sales growth refers to the percentage change in sales at all franchised restaurants in one period from the same period in the prior year. Franchise Restaurant Same-Store Sales growth refers to the percentage change in sales at all franchised restaurants once the restaurant has been in operation after 14 months. These measures highlight the performance of existing franchised restaurants.

Same-Store Sales

We use the measure of "Same Store Sales" to evaluate the performance of our store base, which excludes the impact of new stores and closed stores, in both periods under comparison. We include a restaurant in the calculation of Same-Store Sales once it has been in operation after 14 months. A restaurant that is temporarily closed, is included in the Same-Store Sales computation. A restaurant that is closed permanently, such as upon termination of the lease, or other permanent closure, is immediately removed from the Same-Store Sales computation. Our calculation of Same-Store Sales may not be comparable to others in the industry.

Digital Channel Orders

We use the measure of "Digital Channel" percentage of systemwide sales to evaluate the performance of our investments made in our digital platform and partnerships with third party delivery partners. We believe our digital platform capabilities are a vital element to continuing to serve our customers and will continue to be a differentiator for the Company as compared to some of our competitors. Digital Channel as percentages of systemwide sales are indicative of the sales placed through our digital platforms and the percentage of those digital sales when compared to total sales at all our franchised and corporate-owned restaurants.

Unless otherwise stated, "Systemwide Restaurant Sales", "Systemwide Sales Growth", and "Same-Store Sales" are presented on a systemwide basis, which means they include franchise restaurants and corporate-owned restaurants. Franchise restaurant sales represent sales at all franchise restaurants and are revenues to our franchisees. We do not record franchise sales as revenues; however, our royalty revenues and brand royalty revenues are calculated based on a percentage of franchise sales.

The following key metrics are important indicators of the overall direction of our business, including trends in sales and the effectiveness of our marketing, operating, and growth initiatives. By providing these key metrics, we believe we are enhancing investors' understanding of our business as well as assisting investors in evaluating how well we are executing our strategic initiatives. :

(in thousands, except for percentage data)	**Year Ended January 2, 2023[1,2]**	**Year Ended December 31, 2021[3]**
Systemwide Restaurant Sales	$ 289,640	$ 166,124
Systemwide Restaurant Sales Growth	— %	31%
Systemwide Restaurant Same-Store Sales Growth	(2)%	14%
Corporate-Owned Restaurant Sales	$ 166,198	$ 33,435
Corporate-Owned Restaurant Sales Growth	6 %	39%
Corporate-Owned Restaurant Same-Store Sales Growth	2 %	14%
Franchise Restaurant Sales	$ 123,442	$ 127,165
Franchise Restaurant Sales Growth	(7)%	30%
Franchise Restaurant Same-Store Sales Growth	(6)%	15%
Digital Channel % of Systemwide Sales	35 %	39%

(in thousands, except for percentage data)	Year Ended January 2, 2023[1]		Year Ended December 31, 2021[3]
	BurgerFi	Anthony's[2]	BurgerFi[3]
Systemwide Restaurant Sales	$ 160,821	$ 128,819	$ 166,124
Systemwide Restaurant Sales Growth	(3)%	5 %	31%
Systemwide Restaurant Same-Store Sales Growth	(7)%	5 %	14%
Corporate-Owned Restaurant Sales	$ 37,379	$ 128,819	$ 33,435
Corporate-Owned Restaurant Sales Growth	10 %	5 %	39%
Corporate-Owned Restaurant Same-Store Sales Growth	(11)%	5 %	14%
Franchise Restaurant Sales	$ 123,442	N/A	$ 127,165
Franchise Restaurant Sales Growth	(7)%	N/A	30%
Franchise Restaurant Same-Store Sales Growth	(6)%	N/A	15%
Digital Channel % of Systemwide Sales	33 %	37 %	39%

1. *Refer to "Key Metrics Definitions" and "About Non-GAAP Financial Measures" sections below.*

2. *Included within Systemwide Restaurant Sales Growth, Systemwide Restaurant Same-Store Sales Growth, Corporate-Owned Restaurant Sales Growth and Corporate-Owned Restaurant Same-Store Sales Growth data presented above is information for Anthony's for the respective periods in 2021 which is presented only for informational purposes as Anthony's was not under common ownership until November 2021, the date of acquisition.*

3. *Includes only BurgerFi*

Results of Operations

We present our results of operations as reported in our consolidated financial statements in accordance with generally accepted accounting principles in the United States of America (*"GAAP"*). The results of operations of Anthony's is included in our consolidated financial statements from the acquisition date of November 3, 2021.

(in thousands)	Year Ended January 2, 2023	Year Ended December 31, 2021
Revenue:		
Restaurant sales	**$ 167,201**	**$ 57,790**
Royalty and other fees	**9,733**	**9,090**
Royalty - brand development and co-op	**1,786**	**1,987**
Total Revenue	**178,720**	**68,867**
Restaurant level operating expenses:		
Food, beverage and paper costs	**48,487**	**17,153**
Labor and related expenses	**49,785**	**16,272**
Other operating expenses	**30,277**	**12,039**
Occupancy and related expenses	**15,607**	**4,940**
General and administrative expenses	**25,974**	**17,300**
Depreciation and amortization expense	**17,138**	**10,060**
Share-based compensation expense	**10,239**	**7,573**
Brand development, co-op and advertising expense	**3,870**	**2,462**
Goodwill and intangible asset impairment	**66,569**	**114,797**
Asset impairment	**6,946**	**—**
Store closure costs	**1,949**	**—**
Restructuring costs	**1,459**	**—**
Pre-opening costs	**474**	**1,905**
Total Operating Expenses	**278,774**	**204,501**
Operating Loss	**(100,054)**	**(135,634)**
Other income, net	**2,675**	**2,047**
Gain on change in value of warrant liability	**2,511**	**13,811**
Interest expense, net	**(8,659)**	**(1,406)**
Loss before Income Taxes	**(103,527)**	**(121,182)**
Income tax benefit (expense)	**95**	**(312)**
Net Loss	**$ (103,432)**	**$ (121,494)**

Sales

The following table presents our corporate-owned restaurant sales by segment:

Revenue:	Year Ended January 2, 2023	Year Ended December 31, 2021
BurgerFi	**$ 38,382**	**$ 35,371**
Anthony's	**128,819**	**22,419**
Consolidated	**$ 167,201**	**$ 57,790**

Comparison of the years ended January 2, 2023 and December 31, 2021

Restaurant Sales

For the year ended January 2, 2023, the Company's restaurant sales increased by approximately $109.4 million or 189% as compared to the year ended December 31, 2021. This increase was primarily related to the acquisition of Anthony's included for 12 months while in the prior year it was only included for nine weeks, which contributed approximately $106.4 million, or 97% of the increase in restaurant sales. The remaining increase of $3 million resulted from an increase in sales related to new BurgerFi restaurant openings and higher average transaction values, offset by lower same-store sales. For the Anthony's brand, same-store sales increased 5% primarily due to an increase in average transaction values. For the BurgerFi brand, same-store sales decreased 11% in corporate-owned locations, respectively.

Royalty and Other Fees

Royalty and other fees increased by approximately $0.6 million, or 7% for the year ended January 2, 2023 as compared to the year ended December 31, 2021. This increase was primarily driven by higher franchise fees realized as a result of franchise agreement terminations during the period.

Royalties – Brand Development and Co-op

Royalties – brand development and co-op advertising decreased by approximately $0.2 million, or 10% for the year ended January 2, 2023 as compared to the year ended December 31, 2021. This decrease was primarily due to a decrease in our franchisees' sales for the year ended January 2, 2023 as compared to the year ended December 31, 2021. Franchise restaurant same-store sales decreased by 6%.

Restaurant Level Operating Expenses

Restaurant level operating expenses are as follows:

(in thousands, except for percentage data)	Year Ended January 2, 2023		Year Ended December 31, 2021*	
	In dollars	As a % of restaurant Sales	In dollars	As a % of restaurant sales
Consolidated:				
Restaurant sales	$ 167,201	100 %	$ 57,790	100.0 %
Restaurant level operating expenses:				
Food, beverage and paper costs	$ 48,487	29.0 %	$ 17,153	29.7 %
Labor and related expenses	49,785	29.8 %	16,272	28.2 %
Other operating expenses	30,277	18.1 %	12,039	20.8 %
Occupancy and related expenses	15,607	9.3 %	4,940	8.5 %
Total	$ 144,156	86.2 %	$ 50,404	87.2 %
Anthony's*:				
Restaurant sales	$ 128,819	100 %	$ 22,419	100.0 %
Restaurant level operating expenses:				
Food, beverage and paper costs	$ 36,618	28.4 %	$ 6,419	28.6 %
Labor and related expenses	38,789	30.1 %	6,679	29.8 %
Other operating expenses	22,237	17.3 %	4,321	19.3 %
Occupancy and related expenses	11,798	9.2 %	1,931	8.6 %
Total	$ 109,442	85.0 %	$ 19,350	86.3 %
BurgerFi:				
Restaurant sales	$ 38,382	100 %	$ 35,371	100.0 %
Restaurant level operating expenses:				
Food, beverage and paper costs	$ 11,869	30.9 %	$ 10,734	30.3 %
Labor and related expenses	10,996	28.6 %	9,593	27.1 %
Other operating expenses	8,040	20.9 %	7,718	21.8 %
Occupancy and related expenses	3,809	9.9 %	3,009	8.5 %
Total	$ 34,714	90.4 %	$ 31,054	87.8 %

** Amounts for Anthony's are only presented from November 3, 2021, the date of acquisition. As such, expenses as a percentage of sales for Anthony's are not necessarily representative or comparable of that of a full period for Anthony's.*

Total restaurant level operating expenses as a percentage of revenue was 86.2% for the year ended January 2, 2023 and 87.2% the year ended December 31, 2021. Restaurant-level operating expenses for the fiscal year of 2022 were approximately $144.2 million compared to approximately $50.4 million million in the fiscal year 2021; the increase was driven by the inclusion of a full year of Anthony’s operations, while the prior year included only nine weeks. For the Anthony's brand, restaurant-level operating expenses, as a percentage of sales, decreased 1.3% for the fiscal year 2022, compared to the fiscal year 2021, primarily due to lower other operating expenses and reduction in food costs due to continued stabilization of commodity costs, especially in chicken wing prices, partially offset by higher labor costs. For the BurgerFi brand, restaurant-level operating expenses, as a percentage of sales, increased 2.6% for the fiscal year 2022, compared to the fiscal year 2021, primarily due to lower leverage on fixed costs driven by lower same-store sales.

Food, Beverage and Paper Costs

Food, beverage, and paper costs for the year ended January 2, 2023 increased by approximately $31.3 million, or 183% as compared to the year ended December 31, 2021. This increase was primarily related to the acquisition of Anthony's, which contributed approximately $30.2 million, or 96% of the increase. The remaining increase of $1.1 million related to additional BurgerFi locations. As a percentage of corporate restaurant sales, food, beverage and paper costs were 29.0% for the year ended January 2, 2023 as compared to 29.7% for the year ended December 31, 2021. This 0.7% percentage of sales improvement primarily resulted from lower food costs due to continued stabilization of commodity costs, especially in chicken wing prices at Anthony's.

Labor and Related Expenses

Labor and related expenses for the year ended January 2, 2023 increased by approximately $33.5 million, or 206% as compared to the year ended December 31, 2021. This increase was primarily related to the acquisition of Anthony's, which contributed approximately $32.1 million, or 96% of the increase. The remaining increase of $1.4 million related to additional BurgerFi restaurants and higher wages. As a percentage of corporate restaurant sales, labor and related expenses were 29.8% for the year ended January 2, 2023 as compared to 28.2% for the year ended December 31, 2021. This 1.6% percentage of corporate restaurant sales increase is due to lower same-store sales at existing BurgerFi locations and increased labor costs experienced in both of our restaurant brands as compared to that of the prior year stemming from higher wages.

Other Operating Expenses

Other operating expenses for the year ended January 2, 2023 increased by approximately $18.2 million, or 151% as compared to the year ended December 31, 2021. This increase was primarily related to the acquisition of Anthony's, which contributed approximately $17.9 million, or 98% of the increase. The remaining increase of $0.3 million related to BurgerFi. As a percentage of corporate restaurant sales, other operating expenses were 18.1% for the year ended January 2, 2023 as compared to 20.8% for the year ended December 31, 2021. This 2.7% in percentage of corporate restaurant sales improvement primarily relates to sales increases during the year ended January 2, 2023, creating leverage on certain store operating costs that are not variable with sales and cost reduction initiatives.

Occupancy and Related Expenses

Occupancy and related expenses for the year ended January 2, 2023 increased by approximately $10.7 million, or 216% as compared to the year ended December 31, 2021. This increase was primarily related to the acquisition of Anthony's, which contributed approximately $9.9 million, or 93% of the increase. The remaining increase of $0.8 million related to BurgerFi. As a percentage of corporate restaurant sales, occupancy and related expenses, which are primarily fixed in nature, were 9.3% for the year ended January 2, 2023 and 8.5% the year ended December 31, 2021. The increase of 0.8% in percentage of corporate restaurant sales is primarily driven by the result of higher occupancy percent of sales for new BurgerFi restaurants and BurgerFi negative same-store sales resulting in lower leverage on fixed costs.

General and Administrative Expenses

General and administrative expenses for the year ended January 2, 2023 increased by approximately $8.7 million, or 50% as compared to the year ended December 31, 2021. This increase partially related to Anthony's general and administrative expenses, being included for the full year, which contributed approximately $7.8 million, or 89% of the increase. The remaining increase of $0.9 million related to BurgerFi and was primarily driven by higher legal, professional, and insurance fees and labor and related costs during the year ended January 2, 2023 as compared to the year ended December 31, 2021. These increases were a result of investments made related to the integration of Anthony's, costs associated with legal settlements, and insurance costs, partially offset by the absence of merger’s and acquisition costs incurred during 2022 compared to such costs incurred during 2021.

Depreciation and Amortization Expense

Depreciation and amortization expense was $17.1 million for the year ended January 2, 2023 as compared to $10.1 million for the year ended December 31, 2021. The increase of $7.1 million was primarily due to the acquisition of Anthony's for the full year which contributed approximately $6.2 million or 88% of the increase. The remaining increase of $0.9 million was primarily attributable to more assets placed in service as a result of more corporate-owned BurgerFi stores opened during the prior year.

Share-Based Compensation Expense

Share-based compensation expense was $10.2 million for the year ended January 2, 2023 as compared to $7.6 million for the year ended December 31, 2021 primarily as a result of a greater number of unrestricted restricted stock grants and restricted stock unit awards under the Company's 2020 Omnibus Equity Stock Incentive Plan as compared to the year ended December 31, 2021.

Brand Development, Co-op and Advertising Expense

Brand development and co-op advertising increased by approximately $1.4 million, or 57% for the year ended January 2, 2023 as compared to the year-ended December 31, 2021. This increase primarily relates to the acquisition of Anthony's for the full year which contributed $1.3 million of the increase.

Goodwill and Intangible Asset Impairment

As part of the Company's interim and annual goodwill impairment assessment during fiscal year 2022, the Company recorded goodwill impairment charges of approximately $66.6 million for the year ended January 2, 2023, of which $49.1 million related to the Anthony's reporting unit and $17.5 million related to the BurgerFi reporting unit. These charges were primarily driven by the impact on the Company's market capitalization caused by the decrease in stock price experienced during the period. For the year ended December 31, 2021, the Company recorded a goodwill impairment charge of $114.8 million for the BurgerFi reporting unit. This impairment charge was primarily related to a goodwill impairment charge of $106.5 million and a definite-lived intangible asset impairment charge of $7.7 million. The majority of the goodwill impairment amount was driven by the impact on the Company's market capitalization due to the decrease in stock price during 2021, coupled with a significant decline in the equity values of our peers. The impairment amount for definite-lived intangible assets was primarily the result of a change in estimate of the remaining life of a licensing agreement.

Asset Impairment

The Company recorded a non-cash asset impairment charge of $6.9 million related to property & equipment and right-of-use assets for certain underperforming stores for the year ended January 2, 2023 of which $6.7 million related to BurgerFi and $0.2 million related to Anthony's.

Store Closure Costs

Store closure costs were $1.9 million for the year ended January 2, 2023 as compared to $0.1 million during the year ended December 31, 2021 primarily as a result of the Company's decision to close its commissary during 2022 and, to not open certain stores under development partially offset by the net gain on three store transfers to a franchisee for BurgerFi and the closure of one Anthony's store in October 2022. Store closure costs include asset impairment expenses, and contract termination expenses including lease termination, rent expense and other expenses incurred by a restaurant after the Company's decision to cease development or closure of a restaurant. Store closure costs can fluctuate significantly from period to period based on the number and timing of restaurant closures and the specific closing costs incurred for each restaurant.

Restructuring Costs

Restructuring costs for the year ended January 2, 2023 of $1.5 million included severance costs and other termination benefits related to the departure of members of executive management and professional fees and other costs incurred in connection with our Credit Facility requirements to raise additional capital or debt. See Note 9, "*Debt*," for further discussion of our credit facilities and indebtedness.

Pre-opening Costs

Pre-opening costs were $0.5 million for the year ended January 2, 2023 as compared to $2 million for the year ended December 31, 2021 primarily as a result of opening three new stores during the year ended January 2, 2023 compared to ten during the year ended December 31, 2021. Pre-opening costs include all expenses incurred by a restaurant prior to the restaurant's opening for business. These pre-opening costs include costs to relocate and reimburse restaurant management staff members, costs to recruit and train hourly restaurant staff members, wages, travel, and lodging costs for our training team and other support staff members, as well as rent expense. Pre-opening costs can fluctuate significantly from period to period based on the number and timing of restaurant openings and the specific pre-opening costs incurred for each restaurant.

Other Income, net

Other income,net for the year ended January 2, 2023 was $2.7 million and related to recording an Employee Retention Credit made available through the amended Coronavirus Aid, Relief, and Economic Security Act legislation. Other income, net was $2.0 million for the year ended December 31, 2021 as a result of $2.2 million of debt forgiveness on all of our PPP loans, offset by loss on disposal of assets.

Change in Value of Warrant Liability

The Company recorded a non-cash gain of approximately $2.5 million during the year ended January 2, 2023 related to change in the fair value of the warrant liability as compared to a gain of $13.8 million during the year ended December 31, 2021. The increase in the gain is primarily attributable to the decrease in value of the warrant liability primarily due to a decrease in the trading price of our common stock.

Interest Expense

Interest expense was approximately $8.7 million during the year ended January 2, 2023 as compared to $1.4 million during the year ended December 31, 2021, an increase of $7.3 million. Interest expense related to the debt assumed as part of the Anthony’s acquisition contributed to $4.1 million of the increase. The remaining increase of $3.2 million in non-cash interest expense related to the accretion in value of redeemable preferred stock.

Income Tax Expense (Benefit)

For the year ended January 2, 2023, the Company recorded an income tax benefit of $0.1 million, primarily as a result of a valuation allowance on the Company’s deferred tax assets. This resulted in an effective tax rate of less than 1.0%. For the year ended December 31, 2021, the Company recorded income tax expense of $0.3 million.

Net Loss

Net loss for the year ended January 2, 2023 was $103.4 million compared to a net loss of $121.5 million for the year ended December 31, 2021. The improvement in net loss of $18.1 million was primarily due to $41.3 million in lower non-cash impairment charges and the results of a full year of Anthony’s operations, while the prior year included only nine weeks. The improvement of $18.1 million in net loss was also partially offset by $11.3 million of lower gains on change in value of warrant liability, $7.3 million increase in interest expense, $7.1 million increase in depreciation and amortization expense, $2.7 million increase in share-based compensation expense and $1.9 million increase in store closure costs.

Non-U.S. GAAP Financial Measures

As appropriate, we supplement our reported U.S. GAAP financial information with certain non-U.S. GAAP financial measures, including earnings before interest, income taxes, depreciation and amortization (*"Adjusted EBITDA"*). We define Adjusted EBITDA as net loss before goodwill and asset impairment charges, gain on change in value of warrant liability, interest expense (which includes non-cash interest on preferred stock and interest accretion on related party notes), income tax benefit (expense), depreciation and amortization expense, share-based compensation expense, pre-opening costs, employee retention credits and PPP loan gain, store closure costs and other, net, legal settlements, restructuring costs and, merger, acquisition and integration costs.

We use Adjusted EBITDA to evaluate our performance, both internally and as compared with our peers, because this measure excludes certain items that may not be indicative of our core operating results, as well as items that can vary widely across different industries or among companies within the same industry. We believe that this adjusted measure provides a baseline for analyzing trends in our underlying business.

We believe that this non-U.S. GAAP financial measure provides meaningful information and helps investors understand our financial results and assess our prospects for future performance. Because non-U.S. GAAP financial measures are not standardized, it may not be possible to compare these financial measures with other companies' non-U.S. GAAP financial measures having the same or similar names. These financial measures should not be considered in isolation from, as substitutes for, or alternative measures of, reported net income or diluted earnings per share, and should be viewed in conjunction with the most comparable U.S. GAAP financial measures and the provided reconciliations thereto. We believe this non-U.S. GAAP financial measure, when viewed together with our U.S. GAAP results and the related reconciliations, provides a more complete understanding of our business. We strongly encourage investors to review our consolidated financial statements and publicly filed reports in their entirety and not rely on any single financial measure.

Below is a reconciliation of Non-GAAP Adjusted EBITDA to the most directly comparable GAAP measure, net loss on a consolidated basis and by segment for the years ended:

	Consolidated		BurgerFi		Anthony's	
Year Ended *(in thousands)*	**January 2, 2023**	**December 31, 2021**	**January 2, 2023**	**December 31, 2021**	**January 2, 2023**	**December 31, 2021**
Net Loss	$ (103,432)	$ (121,494)	$ (50,375)	$ (121,352)	$ (53,057)	$ (142)
Goodwill and asset impairment charges	73,515	114,797	24,195	114,797	49,320	—
Gain on change in value of warrant liability	(2,511)	(13,811)	(2,511)	(13,811)	—	—
Interest expense	8,659	1,406	3,843	673	4,816	733
Income tax (benefit) expense	(95)	312	240	473	(335)	(161)
Depreciation and amortization expense	17,138	10,060	9,571	8,694	7,567	1,366
Share-based compensation expense	10,239	7,573	10,239	7,573	—	—
Pre-opening costs	474	1,905	474	1,905	—	—
Employee retention credits/ PPP loan gain	(2,626)	(2,237)	(2,626)	(2,237)	—	—
Store closure costs and other, net	1,934	324	1,899	279	35	45
Legal settlements	1,623	689	1,588	689	35	—
Restructuring costs	1,459	—	696	—	763	—
Merger, acquisition, and integration costs	2,787	4,275	2,633	4,119	154	156
Adjusted EBITDA	$ 9,164	$ 3,799	$ (134)	$ 1,802	$ 9,298	$ 1,997

Liquidity and Capital Resources

Our primary sources of liquidity are cash from operations, cash and cash equivalents on hand. As ofJanuary 2, 2023, we maintained a cash and cash equivalents balance of approximately $11.9 million.

Our primary requirements for liquidity are to fund our working capital needs, operating and finance lease obligations, capital expenditures and general corporate needs. Our requirements for working capital are generally not significant because our guests pay for their food and beverage purchases in cash or on debit or credit cards at the time of the sale and we are able to sell many of our inventory items before payment is due to the supplier of such items. Our ongoing capital expenditures are principally related to remodels and maintenance as well as investments in our digital and corporate infrastructure. We estimate our capital expenditures will be approximately $1.0 million - $2.0 million for the year ending January 1, 2024 and primarily used for minor remodeling and equipment replacements in existing locations.

We have implemented, and may continue to further implement price increases to mitigate the inflationary effects of food and labor costs, however we cannot predict the long-term impact of these negative economic conditions on our restaurant profitability.

We currently believe we are able to pay our obligations as they become due for at least the next 12 months and for the foreseeable future, with our cash flow generated from operations and our cash on hand balance of $11.9 million.

The following table presents the summary cash flow information for the periods indicated (in thousands):

	Year Ended January 2, 2023	Year Ended December 31, 2021
Net cash (used in) provided by:		
Operating activities	$ 2,168	$ (7,467)
Investing activities	(1,549)	(5,015)
Financing activities	(3,591)	(13,012)
Net decrease in cash	$ (2,972)	$ (25,494)

Cash Flows (Used in) Provided By Operating Activities

During the year ended January 2, 2023, cash flows (used in) provided by operating activities were approximately $2.2 million. The cash flows used in operating activities resulted from results of operations, non-cash items and changes in operating assets and liabilities.

Cash Flows Used in Investing Activities

During the year ended January 2, 2023, cash flows (used in) investing activities were approximately $1.5 million, which was primarily the result of constructing two stores, and minor remodel equipment replacements in existing locations of $2.5 million offset by $1.1 million of proceeds from sale of property & equipment in connection with the sale of three corporate-owned BurgerFi restaurants to franchisees.

Cash Flows Used in Financing Activities

During the year ended January 2, 2023, cash flows (used in) financing activities were approximately $3.6 million, which was primarily related to principal payments on borrowings of approximately $3.3 million.

Credit Agreement

On November 3, 2021, as part of the Anthony's acquisition, the Company joined a credit agreement with a syndicate of commercial banks (as amended, the *"Credit Agreement"*). The Credit Agreement, which was scheduled to terminate on June 15, 2024, provides the Company with lender financing structured as a $57.8 million term loan and a $4 million revolving loan. The terms of the Credit Agreement require the Company to repay the principal of the term loan in quarterly installments of approximately $0.8 million 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 and incurred interest on outstanding amounts of 4.75% until December 31, 2022. Effective March 9, 2022, certain of the covenants of (i) the Company and Plastic Tripod, Inc., as the borrowers (the *"Borrowers"*), and (ii) the subsidiary guarantors (the *"Guarantors"*) party to the Credit Agreement were amended (such amendment herein referred to as the "*Twelfth Amendment*"). Pursuant to the terms of the Twelfth Amendment, the Borrowers and Guarantors agreed to pay incremental deferred interest of 2% per annum, in the event that the obligations under the Credit Agreement were not repaid on or prior to June 15, 2023; provided, however, that if no event of default has occurred and is continuing then (1) no incremental deferred interest will be due if all of the obligations under the Credit Agreement have been paid on or prior to December 31, 2022, and (2) only 50% of the incremental deferred interest will be owed if all of the obligations under the Credit Agreement have been paid from and after January 1, 2023 and on or prior to March 31, 2023.

The Credit Agreement was further amended on December 7, 2022 (such amendment herein referred to as the "*Thirteenth Amendment")* by amending certain covenants of the Credit Agreement and extending the maturity date from June 15, 2024 to September 30, 2025. The amendment also provided for periodic increases to the annual rate of interest changing the rate per annum to (1) 5.75% from January 1, 2023 through June 15, 2023; (2) 6.75% per annum from June 16, 2023 through December 31, 2023; (3) 7.25% per annum from January 1, 2024 through June 15, 2024; and (4) 7.75% per annum from and after June 16, 2024 through maturity. In addition, the 2% incremental deferred interest implemented on March 9, 2022 was reduced to 1% beginning January 3, 2023 and will be eliminated at December 31, 2023. In addition, the terms of the Thirteenth Amendment provided for additional increases to the interest rate by 0.5% commencing on January 1, 2024 through June 15, 2024 and by 0.5% on June 16, 2024 through maturity.

The terms of the Thirteenth Amendment also provided for a change in the timing of paying approximately $0.3 million of deferred interest payments previously scheduled to be paid on June 16, 2023, to be paid monthly from January to June 2023, while deferring the balance of deferred interest amount of approximately $1.3 million from June 15, 2023 to December 31, 2023. The Borrowers and Guarantors also agreed to obtain $5,000,000 in net cash proceeds from (x) a shelf registration and equity issuance by not later than January 2, 2023, or (y) issuance of unsecured subordinated debt by not later than January 30, 2023, referred to as the "Init*ial New Capital Infusion Covenant*".

Under the terms of the Thirteenth Amendment, certain modifications were made to the accounting definitions in the Credit Agreement to bring such definitions in line with Company practices and needs.

In addition, under the terms of the Thirteenth Amendment, the Borrowers and Guarantors agreed to reset their consolidated senior lease-adjusted leverage ratio and fixed charge coverage ratio as follows:

(a) maintain a quarterly consolidated senior lease-adjusted leverage ratio greater than (i) 7.00 to 1.00 as of the end of the fiscal quarter ending on or about December 31, 2022, (ii) 7.00 to 1.00 as of the end of the fiscal quarter ending on or about March 31, 2023, and (iii) 6.50 to 1.00 as of the end of the fiscal quarter ending on or about June 30, 2023 and the end of each fiscal quarter thereafter;

(b) maintain a quarterly minimum fixed charge coverage ratio of 1.10 to 1.00 as of the end of the fiscal quarter ending on or about December 31, 2022 and the end of each fiscal quarter thereafter; and

(c) the liquidity requirement of the Credit Agreement remains unchanged; provided, that in the event the Company has not received by January 2, 2023 at least $5,000,000 in net cash proceeds as a result of shelf registration and equity issuance then the required liquidity amount as of January 2, 2023 is reduced to $9,500,000.

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

If upon delivery of the quarterly financial statements, the consolidated fixed charge coverage ratio as of the end of any fiscal quarter of the Company ending after January 2, 2023 was less than 1.15 to 1.00, then Borrowers and Guarantors agreed to engage a consulting firm to help with certain operational activities and other matters as reasonably determined; provided, that, if after delivery of the quarterly financial statements, (x) the consolidated fixed charge coverage ratio as of the end of each of the two prior consecutive fiscal quarters of Company was greater than 1.15 to 1.00, and (y) the consolidated senior lease-adjusted leverage ratio as of the end of each of the two prior consecutive fiscal quarters of Company was less than the correlative amount of the consolidated senior lease-adjusted leverage ratio required for the financial covenants for such fiscal quarters by 0.25 basis points or more, then retention of the consulting firm shall not be required during the following fiscal quarter.

On February 1, 2023, the Credit Agreement was further amended (such amendment herein referred to as the "*Fourteenth Amendment*") to amend the Initial New Capital Infusion Covenant to provide that, not later than February 24, 2023, the Company will obtain $5,000,000 of new indebtedness through the Initial New Capital Infusion, and exchange $10,000,000 of existing debt from a delayed draw term loan, which was part of the Credit Agreement and provided by a related party and significant stockholder, for $10,000,000 in new junior subordinated secured debt, resulting in the Company holding $15,000,000 in junior subordinated secured debt on terms reasonably acceptable to the Required Lenders (as defined in the Credit Agreement), including without limitation, that (1) such indebtedness shall not mature until at least two (2) years after the maturity date of the credit facility of September 30, 2025; (2) no payments of cash interest shall be made on such indebtedness until after the repayment in full of the obligations under the Credit Agreement; and (3) no scheduled or voluntary payments of principal shall be made until after the repayment in full of the obligations under the Credit Agreement.

On February 24, 2023, the Credit Agreement was further amended (such amendment herein referred to as the "*Fifteenth Amendment*"), whereby, the Borrowers and the Guarantors were released from liability with respect to the Delayed Draw Term Loan in the amount of $10,000,000 under the Credit Agreement (the "Existing Loan") in consideration of the continuation and amendment and restatement of the Existing Loan under the Note (as such term is defined below). We are in compliance with our financial covenants under the amended Credit Agreement as of February 24, 2023.

On February 24, 2023, the Borrowers also entered into the Note with the Junior Lender, pursuant to which the Junior Lender continued, amended and restated the Existing Loan of $10,000,000, which is junior subordinated secured indebtedness, and also provided $5,100,000 of new junior subordinated secured indebtedness, to the Borrowers (collectively, the "Junior Indebtedness"), which Junior Indebtedness was incurred outside of the Credit Agreement. See also Part III, Item 13 Certain Relationships and Related Transactions, and Director Independence.

The Junior Indebtedness, which accrues interest at 4% per annum (i) is secured by a second lien on substantially all of the assets of the Borrowers and the Guarantors pursuant to the terms of the Note and that certain Guaranty and Security Agreement, dated February 24, 2023, by and among the Guarantors and the Junior Lender, (ii) is subject to the terms of that certain Intercreditor and Subordination Agreement dated February 24, 2023, by and between the Administrative Agent and the Junior Lender and acknowledged by the Borrowers and the Guarantors, and (iii) matures on the date that is the second anniversary of the maturity date under the Credit Agreement (the "*Junior Maturity Date*") (September 30, 2027, based on the maturity date under the Credit Agreement of September 30, 2025).

Under the terms of the Note, no payments of cash interest or payments of principal shall be due until the Junior Maturity Date, and no voluntary prepayments may be made on the Junior Indebtedness prior to the Junior Maturity Date until after the repayment in full of the obligations under the Credit Agreement.

Redeemable Preferred Stock

On November 3, 2021, and as part of the Anthony's acquisition, the Company issued 2,120,000 shares of redeemable preferred stock as Series A Junior Preferred Stock. The Series A Junior Preferred Stock is redeemable on November 3, 2027 and accrues dividends at 7.00% per annum compounded quarterly from June 15, 2024 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 Credit Agreement 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, shall accrue dividends at 5.00% per annum, compounded quarterly, until June 15, 2024.

As of January 2, 2023 and December 31, 2021, the redeemable preferred stock accreted value was $51.4 million and $47.5 million, respectively and the redemption amount was $53.0 million. During the years ended January 2, 2023 and December 31, 2021, the Company recorded non-cash interest expense on the redeemable preferred stock in the amount of $3.9 million and $0.6 million respectively related to accretion of the preferred stock to its estimated redemption value.

On February 24, 2023, the Company filed the A&R CoD, which among other matters, added a provision providing that in the event the Company fails to timely redeem any shares of Series A Preferred Stock on November 3, 2027, the applicable dividend rate shall automatically increase to the lesser of (A) the sum of 10% plus the 2% applicable default rate (with such aggregate rate increasing by an additional 0.35% per quarter from and after November 3, 2027), or (B) the maximum rate that may be applied under applicable law, unless waived in writing by a majority of the outstanding shares of Series A Junior Preferred Stock.

The A&R CoD also added a provision providing that in the event of a Default, the Company agrees to promptly commence a debt or equity financing transaction or sale process to solicit proposals for the sale of the Company and its subsidiaries (or, alternatively, the sale of material assets) designed to yield the maximum cash proceeds to the Company available for redemption of the Series A Junior Preferred Stock as promptly as practicable, but in any event, within 12 months from the date of the Default. If on or after November 3, 2026, the Company is aware that it is reasonably unlikely to have sufficient cash to timely effect the redemption in full of the Series A Junior Preferred Stock when first due, the Company shall, prior to such anticipated due date, take reasonable steps to engage an investment banking firm of national standing (and other appropriate professionals) to conduct preparatory work for such a financing transaction and sale process of the Company and its subsidiaries to provide for such transaction to occur as promptly as possible after any failure for a timely redemption of the Series A Junior Preferred Stock.

The Series A Junior Preferred Stock ranks senior to the Common Stock and may be redeemed at the option of the Company at any time and must be redeemed by the Company in limited circumstances. The Series A Junior Preferred Stock shall not have voting rights or conversion rights. The Series A Junior Preferred Stock is measured at fair value with changes in fair value reported as interest expense in the accompanying consolidated statement of operations.

For further discussion of the A&R CoD, including certain board and governance rights included in the A&R CoD, please see Part I, Item 1A Risk Factors "*We have significant stockholders whose interests may differ from those of our public stockholders*." and Part III, Item 10 Directors and Executive Officers.

Critical Accounting Policies and Use of Estimates

Management's Discussion and Analysis of Financial Condition and Results of Operations is based upon the Company's consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses as well as related disclosures. On an ongoing basis, the Company evaluates its estimates and judgments based on historical experience and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates.

The Company reviews its financial reporting and disclosure practices and accounting policies quarterly to confirm that they provide accurate and transparent information relative to the current economic and business environment. The Company believes that of its significant accounting policies, the following involve a higher degree of judgment and/or complexity:

- ***Goodwill***

We review goodwill for impairment annually at the end of the fourth quarter, or more frequently if circumstances indicate a possible impairment. The Company first assesses qualitative factors to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying amount, including goodwill. If management concludes that it is more likely than not that the fair value of the reporting unit is less than its carrying amount, management conducts a quantitative goodwill impairment test. The Company estimates the fair values of its reporting unit using a combination of the income, or discounted cash flows approach and the market approach, which utilizes comparable companies' data. If the estimated fair value of the reporting unit is less than its carrying value, a goodwill impairment exists for the reporting unit and an impairment loss is recorded. The estimated fair value of goodwill is subject to change as a result of many factors including, among others, any changes in the our business plans, changing economic conditions, a potential decrease in our stock price and market capitalization, and the competitive environment. Should actual cash flows and the Company's future estimates vary adversely from those estimates used, the Company may be required to recognize impairment charges in future years. Refer to Note 5, "*Impairment*" and Note 13, "*Fair Value Measurements*," for more information.

- ***Long-lived assets and definite-lived intangible assets***

We evaluate our long-lived assets and definite-lived intangible assets for impairment at the end of each reporting period or whenever events or changes in circumstances indicate that the carrying value of the assets or asset group may not be recoverable. Indefinite-lived intangible assets are tested for impairment at least annually, or more frequently if events or changes in circumstances indicate that the assets may be impaired. 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.

To estimate future cash flows, we make certain assumptions about expected future operating performance, such as revenue growth rates, royalties, gross margins, and operating expense in relation to the current economic environment and the Company's future expectations. Estimates of future cash flows are highly subjective judgments based on the Company's experience and knowledge of its operations. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds their fair value.

For more information, refer to Note 5, "*Impairment*" and Note 13, "*Fair Value Measurements.*"

- ***Warrant Liability***

The fair value of our warrant liability is measured at fair value on a recurring basis, classified as Level 2 in the fair value hierarchy. The fair value is calculated using the Black-Scholes option-pricing model. The Black-Scholes model requires us to make assumptions and judgments about the variables used in the calculation, including the expected term, expected volatility, risk-free interest rate, dividend rate and service period. Refer to Note 13, "*Fair Value Measurements,*" for further disclosure.

- ***Acquisitions***

The determination of the fair value of net assets acquired in an acquisition requires estimates and judgments of future cash flow expectations for the acquired business and the related identifiable tangible and intangible assets. Fair values of net assets acquired are calculated using expected cash flows and industry-standard valuation techniques. For current assets and current liabilities, book value is generally assumed to equal fair value.

Due to the time required to gather and analyze the necessary data for each acquisition, U.S. GAAP provides a*"measurement period"* of up to one year in which to finalize these fair value determinations. During the measurement period, preliminary fair value estimates may be revised if new information is obtained about the facts and circumstances existing as of the date of acquisition, or based on the final net assets and working capital of the acquired business, as prescribed in the applicable purchase agreement. Such adjustments may result in the recognition of, or an adjustment to the fair values of, acquisition-related assets and liabilities and/or consideration paid, and are referred to as *"measurement period adjustments."* Measurement period adjustments are recorded to goodwill. Other revisions to fair value estimates for acquisitions are reflected as income or expense, as appropriate.

Consideration paid generally consists of cash and, from time to time, shares, and potential future payments that are contingent upon the acquired business achieving certain levels of earnings in the future, also referred to as *"acquisition-related contingent consideration"* or *"earn-outs."* Earn-out liabilities are measured at their estimated fair values as of the date of acquisition. Subsequent to the date of acquisition, if future Earn-out payments are expected to differ from Earn-out payments estimated as of the date of acquisition, any related fair value adjustments, including those related to finalization of completed earn-out arrangements, are recognized in the period that such expectation is considered probable. Changes in the fair value of Earn-out liabilities for the Company's traditional earn-outs, other than those related to measurement period adjustments, as described above, are recorded within other income or expense in the consolidated statements of operations.

Refer to Note 4, "*Acquisitions*," for additional information.

- ***Income Taxes***

We make certain estimates and judgments in the calculation of our provision for income taxes, in the resulting tax liabilities, and in the recoverability of deferred tax assets. We record valuation allowances against our deferred tax assets, when necessary. Realization of deferred tax assets is dependent on future taxable earnings and is therefore uncertain. Refer to Note 11, "*Income Taxes,*" for additional information.

New Accounting Pronouncements

See Note 1, *"Organization and Summary of Significant Accounting Policies,"* of the notes to the consolidated financial statements included in Part II, Item 8 "Financial Statements and Supplementary Data" for additional information about new accounting pronouncements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Not applicable.

Item 8. Financial Statements and Supplementary Data.

BURGERFI INTERNATIONAL, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors
BurgerFi International, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheet of BurgerFi International, Inc. and subsidiaries (the Company) as of January 2, 2023 and the related consolidated statement of operations, changes in stockholders' equity, and cash flows for the year then ended, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of January 2, 2023, and the results of its operations and its cash flows for the year then ended, in conformity with U.S. generally accepted accounting principles.

Change in Accounting Principle

As discussed in Note 10 to the consolidated financial statements, the Company has changed its method of accounting for leases as of January 1, 2022 due to the adoption of Accounting Standards Codification Topic 842, *Leases*.

Basis for Opinion

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

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

Our audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 2022.

Miami, Florida
April 3, 2023

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Shareholders and Board of Directors
BurgerFi International, Inc.
North Palm Beach, Florida

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheet of BurgerFi International, Inc. and Subsidiaries (the "Company") as of December 31, 2021, and the related consolidated statements of operations, changes in stockholders' equity and cash flows for the year then ended and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2021, and the results of its operations and its cash flows for the year ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

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

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ BDO USA, LLP

We served as the Company's auditor from 2015 to 2022.

West Palm Beach, Florida
April 14, 2022

BurgerFi International Inc., and Subsidiaries
Consolidated Balance Sheets

(in thousands, except for per share data)	January 2, 2023	December 31, 2021
Assets		
Current Assets		
Cash and cash equivalents	$ 11,917	$ 14,889
Accounts receivable, net	1,766	1,689
Inventory	1,320	1,387
Asset held for sale	732	732
Other current assets	2,724	2,526
Total Current Assets	18,459	21,223
Property & equipment, net	19,371	29,035
Operating right-of-use assets, net	45,741	—
Goodwill	31,621	98,000
Intangible assets, net	160,208	168,723
Other assets	1,380	738
Total Assets	$ 276,780	$ 317,719
Liabilities and Stockholders' Equity		
Current Liabilities		
Accounts payable - trade and other	$ 8,464	$ 7,841
Accrued expenses	10,589	5,302
Short-term operating lease liability	9,924	—
Other liabilities	6,241	7,856
Short-term borrowings	4,985	3,331
Total Current Liabilities	40,203	24,330
Non-Current Liabilities		
Long-term borrowings	53,794	56,797
Redeemable preferred stock, $0.0001 par value, 10,000,000 shares authorized, 2,120,000 shares issued and outstanding, $53 million principal redemption value	51,418	47,525
Long-term operating lease liability	40,748	—
Related party note payable	9,235	8,724
Warrant liability	195	2,706
Other non-current liabilities	1,017	3,009
Deferred income taxes	1,223	1,353
Total Liabilities	197,833	144,444
Commitments and Contingencies - Note 7		
Stockholders' Equity		
Common stock, $0.0001 par value, 100,000,000 shares authorized, 22,257,772 and 21,303,500 shares issued and outstanding as of January 2, 2023 and December 31, 2021, respectively	2	2
Additional paid-in capital	306,096	296,992
Accumulated deficit	(227,151)	(123,719)
Total Stockholders' Equity	78,947	173,275
Total Liabilities and Stockholders' Equity	$ 276,780	$ 317,719

See accompanying notes to consolidated financial statements.

BurgerFi International Inc., and Subsidiaries
Consolidated Statements of Operations

(in thousands, except for per share data)	Year Ended January 2, 2023	Year Ended December 31, 2021
Revenue:		
Restaurant sales	$ 167,201	$ 57,790
Royalty and other fees	9,733	9,090
Royalty - brand development and co-op	1,786	1,987
Total Revenue	178,720	68,867
Restaurant level operating expenses:		
Food, beverage and paper costs	48,487	17,153
Labor and related expenses	49,785	16,272
Other operating expenses	30,277	12,039
Occupancy and related expenses	15,607	4,940
General and administrative expenses	25,974	17,300
Depreciation and amortization expense	17,138	10,060
Share-based compensation expense	10,239	7,573
Brand development, co-op and advertising expense	3,870	2,462
Goodwill and intangible asset impairment	66,569	114,797
Asset impairment	6,946	—
Store closure costs	1,949	—
Restructuring costs	1,459	—
Pre-opening costs	474	1,905
Operating Loss	(100,054)	(135,634)
Other income, net	2,675	2,047
Gain on change in value of warrant liability	2,511	13,811
Interest expense, net	(8,659)	(1,406)
Loss before Income Taxes	(103,527)	(121,182)
Income tax benefit (expense)	95	(312)
Net Loss	$ (103,432)	$ (121,494)
Weighted average common shares outstanding:		
Basic	22,173,694	18,408,247
Diluted	22,173,694	18,624,447
Net Loss per common share:		
Basic	$ (4.66)	$ (6.60)
Diluted	$ (4.66)	$ (7.20)

See accompanying notes to consolidated financial statements.

BurgerFi International Inc., and Subsidiaries
Consolidated Statements of Changes in Stockholders' Equity

(in thousands, except for share data)	Common Stock Shares		Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Total
Balance at December 31, 2020	**17,541,838**		**$ 2**	**$ 261,298**	**$ (2,225)**	**$ 259,075**
Share-based compensation	—		—	7,573	—	7,573
Stock issued in acquisition of Anthony's	3,362,424		—	28,120	—	28,120
Vested shares issued	107,500		—	—	—	—
Shares issued for warrant exercises	8,069		—	1	—	1
Exchange of unit purchase option units	283,669		—	—	—	—
Net loss	—		—	—	(121,494)	(121,494)
Balance, December 31, 2021	**21,303,500**	**21,303,500**	**$ 2**	**$ 296,992**	**$ (123,719)**	**$ 173,275**
Share-based compensation	—		—	10,239	—	10,239
Stock issued in acquisition of Anthony's[1]	123,131		—	—	—	—
Vested shares issued	1,001,532		—	—	—	—
Shares withheld for taxes	(170,391)		—	(1,135)	—	(1,135)
Net loss	—		—	—	(103,432)	(103,432)
Balance, January 2, 2023	**22,257,772**		**$ 2**	**$ 306,096**	**$ (227,151)**	**$ 78,947**

[1]*Timing of share issuance differs from recognition of related financial statement dollar amounts.*

See accompanying notes to consolidated financial statements.

BurgerFi International Inc., and Subsidiaries
Consolidated Statements of Cash Flows

(in thousands)	Year Ended January 2, 2023	Year Ended December 31, 2021
Cash Flows Provided By (Used In) Operating Activities		
Net loss	$ (103,432)	$ (121,494)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities		
Goodwill and intangible asset impairment	66,569	114,797
Asset impairment	6,946	—
Gain on change in value of warrant liability	(2,511)	(13,811)
Depreciation and amortization	17,138	10,060
Share-based compensation	10,239	7,573
Forfeited franchise deposits	(1,481)	(834)
Deferred income taxes	(130)	312
Non-cash interest	4,457	841
Provision for bad debts	8	234
Loss on disposal of property & equipment	38	203
Non-cash store closure costs	661	—
Non-cash lease cost	185	—
Gain on extinguishment of debt	—	(2,237)
Changes in operating assets and liabilities, net of acquisitions		
Accounts receivable	(268)	(633)
Inventory	67	(142)
Other assets	(499)	81
Accounts payable - trade and other	224	303
Accrued expenses	3,576	(4,045)
Deferred rent	—	871
Deferred revenue and other liabilities	381	454
Cash Flows Provided By (Used In) Operating Activities	2,168	(7,467)
Net Cash Flows From Investing Activities		
Purchase of property & equipment	(2,517)	(10,665)
Cash acquired as part of the Anthony's acquisition	—	5,522
Proceeds from the sale of property & equipment	1,087	80
Other investing activities	(119)	48
Net Cash Flows Used In Investing Activities	(1,549)	(5,015)
Net Cash Flows From Financing Activities		
Proceeds from borrowings	1,500	—
Payments on borrowings	(3,339)	(12,168)
Payment of direct costs on issuance of common stock	(1,089)	(844)
Debt issuance costs	(486)	—
Repayments of finance leases	(177)	—
Net Cash Flows Used In Financing Activities	(3,591)	(13,012)
Net Decrease in Cash and Cash Equivalents	(2,972)	(25,494)
Cash and Cash Equivalents, beginning of year	14,889	40,383
Cash and Cash Equivalents, end of year	$ 11,917	$ 14,889
Supplemental cash flow disclosures:		
Cash paid for interest	$ 2,884	$ 551
Value of common stock issued in Anthony's acquisition	$ —	$ 28,965
Value of preferred stock issued in Anthony's acquisition	$ —	$ 46,906
Cash paid for income taxes	$ —	$ 7

BurgerFi International Inc., and Subsidiaries
Notes to Consolidated Financial Statements
For the Years Ended January 2, 2023 and December 31, 2021

1. Organization and Summary of Significant Accounting Policies

Organization

BurgerFi International, Inc. and its wholly owned subsidiaries (*"BFI," the "Company," also "we," "us," and "our"*), is a multi-brand restaurant company that develops, markets and acquires fast-casual and premium-casual dining restaurant concepts around the world, including corporate-owned stores and franchises located in the United States and Saudi Arabia. As of January 2, 2023, the Company has 174 franchised and corporate-owned restaurants of the two following brands:

BurgerFi. BurgerFi is a fast-casual "better burger" concept with 114 franchised and corporate-owned restaurants as of January 2, 2023, offering burgers, hot dogs, crispy chicken, frozen custard, hand-cut fries, shakes, beer, wine and more.

Anthony's. Anthony's is a pizza and wing brand that operated 60 corporate-owned casual restaurant locations, as of January 2, 2023. The concept is centered around a coal fired oven, and its menu offers "well-done" pizza, coal fired chicken wings, homemade meatballs, and a variety of handcrafted sandwiches and salads.

Basis of presentation

The accompanying Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles in the United States of America (*"GAAP"*) and the rules and regulations of the Securities and Exchange Commission (*"SEC"*) assuming the Company will continue as a going concern. The going concern assumption contemplates the realization of assets and satisfaction of liabilities in the normal course of business. However, during the third quarter of 2022, substantial doubt about the Company's ability to continue as a going concern was raised due to uncertainty surrounding the Company's ability to comply with its forecasted financial covenants. The going concern uncertainty was cured by the Credit Agreement, as amended on February 24, 2023. See Note 9, "*Debt*," for additional disclosure surrounding the amended Credit Agreement.

On November 3, 2021, the Company completed the acquisition of Hot Air, Inc. (the *"Anthony's acquisition"*), which through its subsidiaries, owns and operates casual dining pizza restaurants under the trade name Anthony's Coal Fired Pizza & Wings (*"Anthony's"*). The results of operations, financial position and cash flows of Anthony's is included in its consolidated financial statements as of the closing date of the acquisition.

On July 28, 2022, the Company's Board of Directors approved the change to a 52-53-week fiscal year ending on the Monday nearest to December 31 of each year in order to improve the alignment of financial and business processes following the acquisition of Anthony's. With this change, the Company's fiscal year 2022 ended on January 2, 2023. For the year ended December 31, 2021, the BurgerFi brand operated on a calendar year-end and Anthony's operated on a 52-53 week fiscal year ended on the Monday closest to December 31. Differences arising from the different fiscal year-ends were not deemed material for the year ended December 31, 2021.

Reclassifications

Certain current year amounts primarily in restaurant level operating expenses, general and administrative expenses and brand development, co-op and advertising expense have been reclassified within the consolidated statements of operations and are not comparable to the year ended December 31, 2021.

Principles of Consolidation

The consolidated financial statements present the consolidated financial position, results from operations and cash flows of BurgerFi International, Inc., and its wholly owned subsidiaries. All material balances and transactions between the entities have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingencies at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Corporate-owned stores and Franchised stores

The Company grants franchises to independent operators who in turn pay an initial franchise fee, royalties and other fees as stated in the franchise agreement.Store activity for the years ended January 2, 2023 and December 31, 2021 is as follows:

	2022			2021		
	Corporate-owned	**Franchised**	**Total**	**Corporate-owned**	**Franchised**	**Total**
Total BurgerFi and Anthony's	**85**	**89**	**174**	**86**	**93**	**179**
BurgerFi stores, beginning of year	25	93	118	17	102	119
BurgerFi stores opened	3	8	11	10	6	16
BurgerFi stores transferred/sold	(3)	3	—	(1)	1	—
BurgerFi stores closed	—	(15)	(15)	(1)	(16)	(17)
BurgerFi total stores, end of year	**25**	**89**	**114**	**25**	**93**	**118**
Anthony's stores, beginning of period	61	—	61	—	—	—
Anthony's stores, acquired	—	—	—	61	—	61
Anthony's stores opened	—	—	—	—	—	—
Anthony's stores closed	(1)	—	(1)	—	—	—
Anthony's total stores, end of year	**60**	**—**	**60**	**61**	**—**	**61**

End of year store totals included one international store for both fiscal year's ended January 2, 2023 and December 31, 2021, respectively.

Cash and Cash Equivalents

The Company considers highly liquid investments with maturities of three months or less as cash equivalents. Cash and cash equivalents also include approximately $3.4 million and $1.1 million as of January 2, 2023 and December 31, 2021, respectively, of amounts due from commercial credit card companies, such as Visa, MasterCard, Discover, and American Express, which are generally received within a few days of the related transactions. At times, the balances in the cash and cash equivalents accounts may exceed federal insured limits. The Federal Deposit Insurance Corporation insures eligible accounts up to $250,000 per depositor at each financial institution. The Company limits uninsured balances to only large, well-known financial institutions and believes that it is not exposed to significant credit risk on cash and cash equivalents.

Accounts Receivable, net

Accounts receivable consist of amounts due from vendors for rebates on purchases of goods and materials, franchisees for training and royalties and are stated at the amount invoiced. Accounts receivable are stated at the amount management expects to collect from balances outstanding at year end. Management provides for probable uncollectible amounts through a charge to earnings and a credit to allowance for uncollectible accounts based on its assessment of the current status of individual accounts. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to the allowance for uncollectible accounts and a credit to accounts receivable. The allowance for uncollectible accounts was approximately $0.2 million at January 2, 2023, and nominal at December 31, 2021.

Employer Retention Tax Credits

The Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020, made a number of changes to employer retention tax credits previously made available under The Coronavirus Aid, Relief, and Economic Security Act, including modifying and extending the Employee Retention Credit ("*ERC*") for the six calendar months ending June 30, 2021. As a result of such legislation, the Company qualified for ERC for the first and second calendar quarters of 2021 and has applied for ERC through amended payroll tax filings for the applicable quarters. We recognized $2.6 million, net of third party preparation fees, in other income, net related to ERC in the Company's consolidated statements of operations for the year ended January 2, 2023 of which approximately $1.4 million had been collected as of January 2, 2023. As of January 2, 2023, the Company had $1.5 million included in other current assets on its consolidated balance sheets.

Inventories

Inventories primarily consist of food and beverages. 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 & Equipment, net

Property & equipment are carried at cost, net of accumulated depreciation. Depreciation is provided by the straight-line method over an estimated useful life. Leasehold improvements are amortized using the straight-line method over the lesser of the estimated useful life of the asset and the term of the related lease. The estimated lives for kitchen equipment and other equipment, computers and office equipment, furniture and fixtures, and vehicles range from five to seven years. Maintenance and repairs which are not considered to extend the useful lives of the assets are charged to operations as incurred. Expenditures for additions and improvements are capitalized. Expenditures for renewals and betterments, which materially extend the useful lives of assets or increase their productivity, are capitalized. The Company capitalizes construction costs during construction of the restaurant and will begin to depreciate them once the restaurant is placed in service. Wage costs directly related to and incurred during a restaurant's construction period are capitalized. Interest costs incurred during a restaurant's construction period are capitalized. Upon sale or retirement, the cost of assets and related accumulated depreciation and amortization are removed from the accounts and any resulting gains or losses are included in operating expense.

Impairment of Long-Lived Assets and Definite-Lived Intangible Assets

The Company assesses the potential impairment of its 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, the Company may be monitoring a small number of locations, and future impairment charges could be required if individual restaurant performance does not improve or if the decision is made 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.

Definite-lived intangible assets are amortized on a straight-line basis using the following estimated useful lives of the related classes of intangibles:7 years for franchise agreements, 30 years for trade names,10 years for the license agreement (adjusted to22 months at December 31, 2021), and 10 years for the VegeFi product. Right of use assets are amortized based on the expected remaining term of the lease agreement which can range from 5 to 10 years at inception of the lease or renewal term. Refer to leases below for discussion of amortization of right of use assets.

The Company reviews definite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the intangible asset may not be recoverable.

The Company recorded an impairment charge of approximately $6.9 million during the year ended January 2, 2023, of which $3.1 million related to property & equipment and $3.8 million related to right-of-use assets included in asset impairment on our consolidated statements of operations. For the year ended December 31, 2021 the Company recorded an impairment charge of $8.3 million, of which $7.7 million related to licensing agreements and $0.6 million related to property & equipment included within goodwill and intangible asset impairment on the consolidated statements of operations. Additionally, as a result of impairment of the Company's licensing agreements at December 31, 2021, the Company reevaluated the useful life of 10 years and determined that such useful life be adjusted to22 months through October 2023. Refer to Note 5, "*Impairment*" and Note 3, "*Intangible Assets,*" for additional information.

Goodwill and Indefinite-Lived Intangible Assets

The Company accounts for goodwill and indefinite-lived intangible assets in accordance with FASB ASC No. 350, Intangibles—Goodwill and Other ("ASC 350"). ASC 350 requires goodwill and indefinite-lived intangible assets to be reviewed for impairment annually, or more frequently if circumstances indicate a possible impairment. The Company evaluates goodwill at the end of the fourth quarter or more frequently if management believes indicators of impairment exist. Such indicators could include but are not limited to (1) changes in the Company's business plans, (2) changing economic conditions including a potential decrease in the Company's stock price and market capitalization, (3) a significant adverse change in legal factors or in business climate, (4) unanticipated competition, or (5) an adverse action or assessment by a regulator.

In evaluating goodwill, the Company first assesses qualitative factors to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying amount, including goodwill. If management concludes that it is more likely than not that the fair value of the reporting unit is less than its carrying amount, management conducts a quantitative goodwill impairment test. This impairment test involves comparing the fair value of the reporting unit with its carrying value (including goodwill). The Company estimates the fair values of its reporting unit using a combination of the income, or discounted cash flows approach and the market approach, which utilizes comparable companies' data. If the estimated fair value of the reporting unit is less than its carrying value, a goodwill impairment exists for the reporting unit and an impairment loss is recorded.

Based on the results of the Company's interim and annual goodwill impairment tests, it determined it was more likely than not that goodwill was impaired at the Anthony's and the BurgerFi reporting units. Accordingly, the Company recorded goodwill impairment charges of approximately $66.6 million during the year ended January 2, 2023. Refer to Note 5, "*Impairment*," for additional information.

The estimated fair value of goodwill is subject to change as a result of many factors including, among others, any changes in the Company's business plans, changing economic conditions, a potential decrease in its stock price and market capitalization, and the competitive environment. Should actual cash flows and the Company's future estimates vary adversely from those estimates used, the Company may be required to recognize impairment charges in future years.

The following table represents changes to the Company's goodwill during the year ended January 2, 2023 andDecember 31, 2021:

	Reporting Unit		
(in thousands)	BurgerFi	Anthony's	Total Goodwill
Balance, December 31, 2020	$ 119,542	$ —	$ 119,542
Goodwill acquired in connection with Anthony's acquisition	—	80,495	80,495
Adjustment to goodwill acquired	4,439	—	4,439
Impairment Loss	(106,476)	—	(106,476)
Balance, December 31, 2021	$ 17,505	$ 80,495	$ 98,000
Adjustment to goodwill acquired	—	190	190
Impairment Loss	(17,505)	(49,064)	(66,569)
Balance January 2, 2023	$ —	$ 31,621	$ 31,621

For details on the goodwill acquired in connection with the Anthony's acquisition, as well as the measurement period adjustment to goodwill (which related to other current liabilities) associated with the purchase price accounting for the Anthony's acquisition, refer to Note 4, "*Acquisitions*." As it relates to impairment of goodwill, refer to Note 5, "*Impairment*."

Indefinite-lived intangible assets are tested for impairment at least annually, or more frequently if events or changes in circumstances indicate that the assets may be impaired. The annual impairment test for indefinite-lived intangible assets may be completed through a qualitative assessment to determine if the fair value of the indefinite-lived intangible assets is more likely than not to be greater than the carrying amount. If the Company elects to bypass the qualitative assessment, or if a qualitative assessment indicates it is more likely than not that the estimated carrying value exceeds the fair value, it tests for impairment using a quantitative process. If the Company determines that impairment of its intangible assets may exist, the amount of impairment loss is measured as the excess of carrying value over fair value. The Company's estimates in the determination of the fair value of indefinite-lived intangible assets include the anticipated future revenue of corporate-owned and franchised restaurants and the resulting cash flows.

The Company's liquor licenses are considered to have an indefinite life with a value of $6.7 million for both years ended January 2, 2023 and December 31, 2021 and is included in intangible assets, net on our consolidated balance sheets. Refer to Note 3, "*Intangible Assets,*" for additional information.

Deferred Financing Costs

Deferred financing costs relate to the Company's debt instruments, the short and long-term portions of which are reflected as deductions from the carrying amounts of the related debt instrument, including the Company's Credit Agreement. Deferred financing costs are amortized over the terms of the related debt instruments using the effective interest method. For the years ended January 2, 2023 and December 31, 2021, the Company deferred $0.9 million and $1.0 million, respectively of financing costs in connection with its Credit Agreement. Amortization expense associated with deferred financing costs, which is included within interest expense, net, totaled $0.5 million for the year ended January 2, 2023 and $0.1 million for the year ended December 31, 2021. See Note 9, "*Debt*," for additional information.

Share-Based Compensation

The Company has granted share-based compensation awards to certain employees under the 2020 Omnibus Equity Incentive Plan (the *"Plan"*). The Company measures the cost of employee services received in exchange for an equity award, which may include grants of employee stock options and restricted stock units, based on the fair value of the award at the date of grant. The Company recognizes share-based compensation expense over the requisite service period unless the awards are subject to performance conditions, in which case the Company recognizes compensation expense over the requisite service period to the extent performance conditions are considered probable. Forfeitures are recognized as they occur. The Company will determine the grant date fair value of stock options using a Black-Scholes-Merton option pricing model (the *"Black-Scholes Model"*). The grant date fair value of restricted stock unit awards (*"RSU Awards"*) and performance-based awards are determined using the fair market value of the Company's common stock on the date of grant, as set forth in the applicable plan document, unless the awards are subject to market conditions, in which case the Monte Carlo simulation model is used. The Monte Carlo simulation model utilizes multiple input variables to estimate the probability that market conditions will be achieved.

Warrant Liability

The Company has certain warrants which include provisions that affect the settlement amount. Such variables are outside of those used to determine the fair value of a fixed-for-fixed instrument, and as such, the warrants are accounted for as liabilities in accordance with ASC 815-40, *Derivatives and Hedging*, with changes in fair value included in the consolidated statement of operations.

Fair Value Measurements

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. A three-level fair value hierarchy is required to prioritize the inputs used to measure fair value. The three levels of the fair value hierarchy are described as follows:

- Level 1 – Quoted prices in active markets for identical assets or liabilities.
- Level 2 – Observable inputs other than quoted prices included in 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.

Restructuring Costs

Restructuring costs for the year ended January 2, 2023 of $1.5 million included $0.8 million in severance costs and other termination benefits related to the departure of certain members of the leadership team notified prior to January 2, 2023 and $0.7 million in professional fees and other costs incurred in connection with the Company's Credit Facility requirements to raise additional capital or debt. See Note 9, "*Debt*," for further discussion of the Company's credit facilities and indebtedness. The Company expects restructuring costs to be settled from operating cash flows within the next 12 months.

Net Loss per Common Share

Net loss per common share is computed by dividing net loss by the weighted average number of common shares outstanding for the period. The Company has considered the effect of (1) warrants outstanding to purchase 15,063,800 shares of common stock, (2)75,000 shares of common stock and warrants to purchase75,000 shares of common stock in the unit purchase option, (3) 1,495,600 shares of restricted stock unit grants in the calculation of income per share, and (4) the impact of any dividends associated with its redeemable preferred stock and they have not been included in the calculation of net loss per common share as it would be anti-dilutive.

Reconciliation of Net Loss per Common Share

Basic and diluted net loss per common share is calculated as follows:

(in thousands, except for per share data)	Year Ended January 2, 2023	Year Ended December 31, 2021
Numerator:		
Net loss available to common shareholders	$ (103,432)	$ (121,494)
Reversal of gain on change in value of warrant liability	$ —	$ (12,619)
Net loss available to common shareholders - diluted	**$ (103,432)**	**$ (134,113)**
Denominator:		
Weighted-average shares outstanding	22,173,694	18,408,247
Effect of dilutive securities		
Warrants	—	211,854
UPOs	—	4,346
Diluted weighted-average shares outstanding	22,173,694	18,624,447
Basic net loss per common share	$ (4.66)	$ (6.60)
Diluted net loss per common share	$ (4.66)	$ (7.20)

For the year ended December 31, 2021, there were dilutive warrants and UPOs during the interim period, as such the reversal of the change in value of warrant liability is included for that period only to calculate the net loss available to common shareholders - diluted. The diluted weighted shares outstanding for the year ended December 31, 2021 represent the average dilutive warrant and UPOs share equivalents for the year ended December 31, 2021 including the impact of the dilutive warrants and UPOs share equivalents during the interim period for which the warrant and UPOs were dilutive.

Concentration of Risk

Management believes there is no concentration of risk with any single franchisee or small group of franchisees whose failure or nonperformance would materially affect the Company's results of operations. The Company had no customers which accounted for 10% or more of consolidated revenue for the year ended January 2, 2023, or for the year ended December 31, 2021. As of January 2, 2023, the Company had two main in-line distributors of food, packaging and beverage products that provided approximately 80% of the Company's restaurants purchasing of those products in the U.S. We believe that the Company's vulnerability to risk concentrations related to significant vendors and sources of its raw materials is mitigated as it believes that there are other vendors who would be able to service its requirements. However, if a disruption of service from any of its main in-line distributors was to occur, the Company could experience short-term increases in its costs while distribution channels were adjusted.

The Company's restaurants are principally located throughout the United States. The Company has corporate-owned and franchised locations in 23 states, with the largest number in Florida. We believe the risk of geographic concentration is not significant. The Company could be adversely affected by changing consumer preferences resulting from concerns over nutritional or safety aspects of ingredients it sells or the effects of food safety events or disease outbreaks.

The Company is subject to credit risk through its accounts receivable consisting primarily of amounts due from vendors for rebates, franchisees for royalties and franchise fees. This concentration of credit risk is mitigated, in part, by the number of franchisees and the short-term nature of the franchise receivables.

Revenue Recognition

Revenue consists of restaurant sales and franchise licensing revenue.

Restaurant Revenue

Revenue from restaurant sales is presented net of discounts and recognized when food, beverage and retail products are sold. Sales tax collected from customers is excluded from restaurant sales and the obligation is included in sales tax payable until the taxes are remitted to the appropriate taxing authorities. Revenue from restaurant sales is generally paid at the time of sale. Credit cards and delivery service partners sales are generally collected shortly after the sale occurs.

The revenue from gift cards is included in unearned revenue when purchased by the customer and revenue is recognized when the gift cards are redeemed. Unearned revenues include liabilities established for the value of the gift cards when sold and are included in other current liabilities on the Company's consolidated balance sheets. The Company estimates the amount of gift cards for which the likelihood of redemption is remote, referred to as "breakage," using historical gift card redemption patterns. The estimated breakage is recognized over the expected period of redemption as the remaining gift card values are redeemed and is immaterial. If actual redemption patterns vary from these estimates, actual gift card breakage income may differ from the amounts recorded. Estimates of the redemption period and breakage rate applied are updated periodically.

The Company contracts with delivery service partners for delivery of goods and services to customers. The Company has determined that the delivery service partners are agents, and the Company is the principal. Therefore, restaurant sales through delivery services are recognized at gross sales and delivery service commission is recorded as expense.

Franchise Revenue

The franchise agreements require the franchisee to pay an initial, non-refundable fee and continuing fees based upon a percentage of sales. Generally, payment for the initial franchise fee is received upon execution of the franchise agreement. Owners can make a deposit equal to 50% of the total franchise fee to reserve the right to open additional locations. The remaining balance of the franchise fee is due upon signing by the franchisee of the applicable location's lease or mortgage. Franchise deposits received in advance for locations not expected to open within one year are classified as long-term liabilities, while franchise deposits received in advance for locations expected to open within one year are classified as short-term liabilities.

Generally, the licenses granted to develop, open and operate each BurgerFi franchise in a specified territory are the predominant performance obligations transferred to the licensee in the Company's contracts, and represent symbolic intellectual property. Certain initial services such as training, site selection and lease review are considered distinct services that are recognized at a point in time when the performance obligations have been provided, generally when the BurgerFi franchise has been opened. We determine the transaction price for each contract and allocate it to the distinct services based on the costs to provide the service and a profit margin. On an annual basis, the Company performs a review to reevaluate the amount of this initial franchise fee revenue that is recognized.

The remainder of the transaction price is recognized over the remaining term of the franchise agreement once the BurgerFi restaurant has been opened. Because the Company transfers licenses to access its intellectual property during a contractual term, revenue is recognized on a straight-line basis over the license term.

Franchise agreements and deposit agreements outline a schedule for store openings. Failure to meet the schedule can result in forfeiture of deposits made. Forfeiture of deposits is recognized as terminated franchise fee revenue once contracts have been terminated for failure to comply. All terminations are communicated to the franchisee in writing using formal termination letters. Additionally, a franchise store that is already open may terminate before its lease term has ended, in which case the remainder of the transaction price is recognized as terminated franchise fee revenue.

Revenue from sales-based royalties (i.e. royalty and other fees, brand development and advertising co-op royalty) is recognized as the related sales occur. The sales-based royalties are invoiced and collected from the franchisees on a weekly basis. Rebates from vendors received on franchisee's sales are also recognized as revenue from sales-based royalties.

Contract Balances

Opening and closing balances of contract liabilities and receivables from contracts with customers for the years ended January 2, 2023 and December 31, 2021 are as follows:

(in thousands)	Year Ended January 2, 2023	Year Ended December 31, 2021
Franchising receivables	$ 168	$ 212
Gift card liability	$ 1,847	$ 2,587
Unearned revenue, current	$ 84	$ 468
Unearned revenue, long-term	$ 1,008	$ 2,109

Franchise Revenue

Revenue recognized during the years ended are as follows:

(in thousands)	Year Ended January 2, 2023	Year Ended December 31, 2021
Franchise Fees	$ 1,806	$ 1,069

An analysis of unearned revenue is as follows:

(in thousands)	January 2, 2023	December 31, 2021
Balance, beginning of period	$ 2,577	$ 3,306
Initial/Transfer franchise fees received	364	290
Revenue recognized for stores open and transfers during period	(325)	(235)
Revenue recognized related to franchise agreement terminations	(1,481)	(834)
Other unearned revenue (recognized) received	(43)	50
Balance, end of period	$ 1,092	$ 2,577

Presentation of Sales Taxes

The Company collects sales tax from customers and remits the entire amount to the respective states. The Company's accounting policy is to exclude the tax collected and remitted from revenue and cost of sales. Sales tax payable amounted to approximately $1.0 million and $1.1 million at January 2, 2023 and December 31, 2021, respectively, and is presented in accrued expenses and other current liabilities in the accompanying consolidated balance sheets.

Advertising Expenses

Advertising costs are expensed as incurred. Advertising expense for the years ended January 2, 2023 and December 31, 2021 was $2.4 million and $0.9 million, respectively and are included in other operating expenses for specific store related advertising costs and brand development, co-op and advertising expense on the consolidated statements of operations. Anthony's includes nine weeks of advertising costs in 2021 and a full year in 2022 as a result of the acquisition on November 3, 2021.

Brand Development Royalties and Expenses

The Company's franchise agreements provide for franchisee contributions of a percentage of gross restaurant sales, which are recognized as royalty income. Amounts collected are required to be used for advertising and related costs, including reasonable costs of administration. For the year ended January 2, 2023, the Company had brand development royalties of approximately $1.4 million and brand development expenses of approximately $1.8 million. For the year ended December 31, 2021, the Company had brand development royalties of approximately $1.5 million and approximately $1.7 million of brand development expenses.

Advertising Co-Op Royalties and Expenses

The Company's South Florida franchises contribute a percentage of gross restaurant sales, which are recognized as royalty income. Amounts collected are required to be used for local advertising and related costs, including reasonable costs of administering the advertising program. For the year ended January 2, 2023, the Company had advertising co-op royalties of approximately $0.4 million and advertising co-op expenses of approximately $0.8 million. For the year ended December 31, 2021, the Company had advertising co-op royalties of approximately $0.5 million and approximately $0.8 million of advertising co-op expenses.

Pre-opening Costs

The Company follows ASC Topic 720-15, "*Start-up Costs,"* which provides guidance on the financial reporting of start-up costs and organization costs. In accordance with this ASC Topic, costs of pre-opening activities and organization costs are expensed as incurred. Pre-opening costs include all expenses incurred by a restaurant prior to the restaurant's opening for business. These pre-opening costs include costs to relocate and reimburse restaurant management staff members, costs to recruit and train hourly restaurant staff members, wages, travel, and lodging costs for the Company's training team and other support staff members, as well as rent expense. Pre-opening costs can fluctuate significantly from period to period based on the number and timing of restaurant openings and the specific pre-opening costs incurred for each restaurant.

Pre-opening costs expensed for the years ended January 2, 2023 and December 31, 2021 were $0.5 million and $1.9 million, respectively.

Leases

The Company currently leases all of its corporate-owned restaurants, corporate offices, and certain equipment. The Company's leases are accounted for under the requirements of ASC Topic 842, "*Leases*", effective January 1, 2022.

Upon the possession of a leased asset, the Company determines its classification as an operating or finance lease. The Company's real estate leases are classified as operating leases, and the Company's equipment leases are classified as finance leases. Generally, the real estate leases have initial terms averaging 10 years and typically include two five-year renewal options. Renewal options are generally not recognized as part of the initial right-of-use assets and lease liabilities as it is not reasonably certain at commencement date that the Company would exercise the options to extend the lease. The real estate leases typically provide for fixed minimum rent payments or variable rent payments based on a percentage of monthly sales or annual changes to the Consumer Price Index. Fixed minimum rent payments are recognized on a straight-line basis over the lease term from the date the Company takes possession of the leased property. Lease expense incurred before a corporate-owned store opens is recorded in pre-opening costs in the consolidated statements of operations. Once a corporate-owned store opens, the straight-line lease expense is recorded in occupancy and related expenses in the consolidated statements of operations. Many of the leases also require the Company to pay real estate taxes, common area maintenance costs and other occupancy costs which are included in occupancy and related expenses in the consolidated statements of operations. The Company from time to time enters into sublease agreements as lessor which are immaterial for the years ended January 2, 2023 and December 31, 2021. See Note 10, "*Leases*," for further discussion.

Income Taxes

The Company accounts for income taxes under the asset and liability method. A deferred tax asset or liability is recognized whenever there are (1) future tax effects from temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and (2) operating loss, capital loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to the years in which those differences are expected to be recovered or settled.

Deferred tax assets are recognized to the extent the Company believes these assets will more likely than not be realized. In evaluating the realizability of deferred tax assets, the Company considers all available positive and negative evidence, including the interaction and the timing of future reversals of existing temporary differences, projected future taxable income, recent operating results and tax-planning strategies. When considered necessary, a valuation allowance is recorded to reduce the carrying amount of the deferred tax assets to their anticipated realizable value.

The Company measures income tax uncertainties in accordance with a two-step process of evaluating a tax position. We first determine if it is more likely than not that a tax position will be sustained upon examination based on the technical merits of the position. A tax position that meets the more-likely-than-not recognition threshold is then measured, for purposes of financial statement recognition, as the largest amount that has a greater than 50% likelihood of being realized upon effective settlement. We had $0.2 million and $0.7 million unrecognized tax benefits at January 2, 2023 and December 31, 2021, respectively.

The Company accrues interest related to uncertain tax positions in “Interest expense” and penalties in “General and administrative expenses.” At January 2, 2023 and December 31, 2021, there were no amounts accrued for interest or for penalties.

The statute of limitations for the Company’s state tax returns varies, but generally the Company’s federal and state income tax returns from its 2019 fiscal year forward remain subject to examination.

New Accounting Pronouncements

In October 2021, the FASB issued guidance which requires entities to recognize contract assets and contract liabilities in a business combination. As a public company, this standard was effective for the Company’s fiscal year beginning after January 3, 2023, including interim periods and will be applied prospectively to business combinations. It is not possible to determine the future impact of the application of this standard to future transactions.

2. Property & Equipment

Property & equipment consisted of the following:

(in thousands)	January 2, 2023	December 31, 2021
Leasehold improvements	$ 17,029	$ 19,900
Kitchen equipment and other equipment	8,196	7,810
Computers and office equipment	1,468	1,425
Furniture and fixtures	2,677	2,340
Vehicles	37	88
	29,407	31,563
Less: Accumulated depreciation and amortization	(10,036)	(2,528)
Property & equipment – net	$ 19,371	$ 29,035

Depreciation expense for the years ended January 2, 2023 and December 31, 2021 was $8.7 million and $2.5 million.

The Company's long-lived assets are reviewed for impairment annually and whenever there are triggering events that require us to perform this review. The Company recorded $3.1 million and $0.6 million of property & equipment impairment during the years ended January 2, 2023 and December 31, 2021, respectfully. Refer to Note 5, "*Impairment,*" for further discussion.

3. Intangible Assets

The following is a summary of the components of intangible assets and the related amortization expense:

	January 2, 2023			December 31, 2021		
(in thousands)	**Amount**	**Accumulated Amortization**	**Net Carrying Value**	**Amount**	**Accumulated Amortization**	**Net Carrying Value**
Franchise agreements	$ 24,839	$ 7,245	$ 17,594	$ 24,839	$ 3,696	$ 21,143
Trade names / trademarks	143,726	8,010	135,716	143,750	3,220	140,530
Liquor license	6,678	—	6,678	6,678	—	6,678
License agreement	1,176	1,063	113	1,176	925	251
VegeFi product	135	28	107	135	14	121
	$ 176,554	$ 16,346	$ 160,208	$ 176,578	$ 7,855	$ 168,723

Liquor license is considered to have an indefinite life, and in addition to the Company's definite-lived intangible assets, is reviewed for impairment at the end of each reporting period and whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable.

The Company recorded a $7.7 million impairment charge for the year ended December 31, 2021, in relation to the Company's license agreement. No impairment charge was recorded for the year ended January 2, 2023 related to this license agreement. See Note 5 "*Impairment*," for further information.

Amortization expense for the years ended January 2, 2023 and December 31, 2021 was $8.5 million and $7.6 million, respectively. The estimated aggregate amortization expense for intangible assets over the next five years ending January 2 and thereafter is as follows:

(in thousands)	
2023	$ 8,467
2024	8,353
2025	8,353
2026	8,353
2027	8,204
Thereafter	111,800
Total	$ 153,530

4. Acquisitions

Acquisition of Hot Air, Inc.

On November 3, 2021, the Company acquired 100% of the outstanding common shares and voting interest of Anthony's. The results of Anthony's operations have been included in the consolidated financial statements since that date. Anthony's, through its subsidiaries, owns and operates casual dining pizza restaurants under the trade name Anthony's Coal Fired Pizza & Wings. As of the acquisition date, Anthony's had 61 restaurants open and operational in Florida, Delaware, Pennsylvania, New Jersey, New York, Massachusetts, Maryland, and Rhode Island.

The acquisition-date fair value of the consideration transferred totaled $75.9 million, which consisted of the following:

Consideration Paid

(in thousands)		
Common Stock	$	25,562
Preferred Stock		46,906
Option Consideration Shares		3,403
Total Consideration	$	75,871

The fair value of the common shares issued and option consideration shares was determined based on the closing market price of the Company's common shares on the day preceding the acquisition date. The fair value of the preferred stock was determined using a discounted cash flow methodology. The expected future redemption payment was forecasted based on the contractual PIK (payment in kind) interest and estimated redemption date of December 31, 2024.

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the acquisition date. The Company determined the fair value of certain intangible assets. The measurement period for such purchase price allocations ended on November 3, 2022 or twelve months from the date of acquisition and the allocation below is final.

(in thousands)		Fair Value November 3, 2021
Cash	$	5,522
Accounts receivable		597
Inventory		986
Other current assets		1,662
Property & equipment		13,534
Intangible assets		67,344
Accounts payable, accrued expenses, and other current liabilities		(15,451)
Long-term borrowings		(77,063)
Deferred tax liability	$	(1,755)
Fair Value of Tangible and Identifiable Intangible assets and liabilities assumed	$	(4,624)
Consideration paid		75,871
Goodwill	$	80,495

Of the $67.3 million of acquired intangible assets, $60.7 million was assigned to registered trademarks with a 30-year useful life and $6.6 million was assigned to acquired liquor licenses with an indefinite life. The goodwill recognized is attributable primarily to expected synergies and the assembled workforce of Anthony's. None of the goodwill is expected to be deductible for income tax purposes.

The Company recognized $3.1 million of acquisition-related costs that were expensed in the year ended December 31, 2021. These costs are included in the consolidated statement of operations within general and administrative expenses. The Company also recognized $0.8 million in costs associated with issuing and registering the shares issued as consideration in the Anthony's acquisition during the year ended December 31, 2021. Those costs were deducted from the recognized proceeds of issuance within stockholders' equity.

During the year ended January 2, 2023, the Company adjusted its preliminary estimate of the fair value of net assets acquired by $0.2 millions. The adjustments to the preliminary estimate of net assets acquired resulted in a corresponding increase in estimated goodwill and include updates to estimates of provisional amounts recorded for certain accruals and receivables as of the Anthony's closing date.

The amounts of revenue and net loss for Anthony's included in the Company's consolidated statement of operations for the period from November 3, 2021, the acquisition date, through December 31, 2021 are as follows:

(in thousands)	2021
Revenue	$ 22,419
Net Loss	(142)

Proforma Information (Unaudited)

The following represents the unaudited proforma consolidated statement of operations as if the Anthony's acquisition had been included in the consolidated results of the Company for the entire year ending December 31, 2021:

(in thousands)	Year Ended December 31, 2021
Revenue	$ 168,906
Net Loss	(138,490)

These amounts have been calculated after applying the Company's accounting policies and adjusting the results of Anthony's to reflect the additional depreciation and amortization that would have been charged assuming the fair value adjustments to property, plant and equipment, and intangible assets had been applied on January 1, 2021, together with the consequential tax effects.

5. Impairment

The Company recognized a non-cash impairment charge of approximately $73.5 million during the year ended January 2, 2023 and $114.8 million for the year ended December 31, 2021. This consisted of the following:

(in thousands)	Year Ended January 2, 2023	Year Ended December 31, 2021
Goodwill	$ 66,569	$ 106,476
Definite-lived intangible assets	—	7,706
Long-lived assets	3,100	615
Right-of-use assets	3,846	—
Total non-cash impairment charge	$ 73,515	$ 114,797

Based on the results of the Company's interim and annual goodwill impairment tests, the Company determined it was more likely than not that goodwill was impaired for the Anthony's and BurgerFi reporting units. Accordingly, for the BurgerFi reporting unit the Company recorded goodwill impairment charges of approximately $17.5 million and $106.5 million for the years ended January 2, 2023 and December 31, 2021. We also recognized impairment charges for Anthony's reporting unit's goodwill for the year ended January 2, 2023 of $49.1 million. The majority of the goodwill impairment was driven by the impact on the Company's market capitalization due to the decrease in stock price, coupled with significant declines to the equity values of its peers.

Based on the Company's review at the end of each reporting period of its long-lived assets and definite-lived intangible assets, it performed impairment testing for the related asset group for which there are independently identifiable cash flows. Based on its impairment testing, the Company determined that certain long-lived assets relating to its right-of-use assets, and property & equipment at certain corporate-owned restaurants were impaired at the BurgerFi and Anthony's reporting units, and accordingly, the Company recorded impairment charges of approximately $6.9 million for the year ended January 2, 2023. For the year ended December 31, 2021, the Company recorded impairment charges of approximately $7.7 million for the BurgerFi reporting unit and none for Anthony's. The impairment amount was primarily the result of lower cash flow estimates associated with the licensing agreements, as well as a change in estimate of the related useful life.

As it relates to determining the fair values of the assets impaired such as goodwill and definite lived intangible assets, refer to Note 13, "*Fair Value Measurements*." The Company utilized the income approach to fair value it's long-lived and right-of-use assets and based on the weight of unobservable inputs classifies their fair value measurements as level 3 of the fair value hierarchy.

6 Related Party Transactions

The Company is affiliated with various entities through common control and ownership. The accompanying consolidated balance sheets reflect amounts related to periodic advances between the Company and these entities for working capital and other needs as due from related companies or due to related companies, as appropriate. The amounts due from related companies are not expected to be repaid within one year and accordingly, are classified as non-current assets in the accompanying consolidated balance sheets. These advances are unsecured and non-interest bearing.

There was approximately $0.3 million and a nominal amount due from related companies as of January 2, 2023 and December 31, 2021.

For the years ended January 2, 2023 and December 31, 2021, the Company received royalty revenue from franchisees related to a significant shareholder totaling approximately $0.1 million and $0.3 million.

The Company leases building space for its corporate office from an entity under common ownership with a significant shareholder. This lease had a 36-month term, effective January 1, 2020. For the years ended January 2, 2023 and December 31, 2021, rent expense was approximately $0.1 million and $0.2 million. In January 2022, the Company exercised its right to terminate this North Palm Beach lease effective as of July 2022.

The Company leases building space for its new combined BurgerFi and Anthony's corporate office from an entity controlled by Ophir Sternberg, its Executive Chairman. In February 2022, the Company amended the lease agreement to, among other things, (1) extend the term to ten years beginning March 1, 2022 expiring in 2032, and (2) expand its square footage from approximately 16,500 square feet to approximately 18,500 square feet. For the year ended January 2, 2023 rent expense was approximately $0.5 million.

In addition, in April 2021, the Company entered into an independent contractor agreement with a company (the *"Consultant"*) for which the Chief Operating Officer (the "*Consultant Principal*") of Lionheart Capital, LLC, an entity controlled by Ophir Sternberg, the Executive Chairman of the Board, serves as President. Pursuant to the terms of the agreement, the Consultant Principal shall provide certain strategic advisory services to the Company in exchange for total annual cash compensation and expense reimbursements of $0.1 million, payable in twelve (12) equal monthly payments. For the years ended January 2, 2023 and December 31, 2021, the Consultant Principal received $0.1 million and a nominal amount of cash compensation and expense reimbursement for services provided in each year, respectively. In 2021, the Consultant Principal received an award of 50,000 restricted stock units, which shall vest in five equal annual installments, subject to the Company achieving certain annual revenue targets starting in 2021. In November 2021, the Consultant Principal received a $0.25 million bonus in connection with the Company's Anthony's Acquisition. As of January 2, 2023, 10,000 of these units vested. On January 3, 2022, the Company granted the Consultant Principal approximately 38,000 unrestricted shares of common stock of the Company. The Company recorded share-based compensation expense of $0.4 million and $0.2 million for the years ended January 2, 2023 and December 31, 2021, respectively.

On November 3, 2021, and as part of the Anthony's acquisition, the Company issued redeemable preferred stock and assumed certain liabilities, which were incurred from a related party and a significant shareholder. Refer to Note 8, "*Redeemable Preferred Stock*" and Note 9, "*Debt,*" for further discussion including recent amendments to these instruments executed subsequent to January 2, 2023,

7. Commitments and Contingencies

Sale Commitment

In February 2020, the Company entered into an asset purchase agreement with an unrelated third party for the sale of substantially all of the assets used in connection with the operation of BF Dania Beach, LLC for an aggregate purchase price of $1.3 million. During January to March 2020, the Company received three cash deposits totaling $0.9 million in connection with this transaction. The closing of this transaction has been delayed due to additional negotiation that has been ongoing. In the event the transaction is terminated, the Company would resume operating the restaurant, and return the $0.9 million to the unrelated third-party purchaser. Assets used in the operations of BF Dania Beach, LLC totaling $0.7 million have been classified as held for sale in the consolidated balance sheets as of January 2, 2023 and December 31, 2021.

Contingencies

Eric Gilbert v. BurgerFi International, Inc., Ophir Sternberg, et al. (Court of Chancery of the State of Delaware, Case No. 2022-0185- , filed on February 25, 2022). Mr. Gilbert filed a class action lawsuit against BurgerFi International, Inc. and each of the members of the Board of Directors alleging that the Company's Amended and Restated Bylaws improperly contains a provision restricting written consents by the stockholders. Mr. Gilbert sought an amendment to the bylaws, as well as attorney' fees and costs. On March 23, 2022, BurgerFi made conforming amendments to its bylaws to remove the provision restricting written consent by the stockholders. On March 24, 2022, the Court of Chancery entered a stipulated order pursuant to which plaintiff voluntarily dismissed the action with prejudice as to himself only. The Court of Chancery retained jurisdiction solely for the purpose of deciding the anticipated application of plaintiff's counsel for an award of attorneys' fees and reimbursement of expenses in connection with the corrective actions. The Company subsequently agreed to pay $150 thousand to plaintiff's counsel for attorneys' fees and expenses in full satisfaction of the claim for attorneys' fees and expenses in the action and to finally settle the matter, which amount is included in accrued expenses in the accompanying consolidated balance sheets.

Second 82nd SM, LLC v. BF NY 82, LLC, BurgerFi International, LLC and BurgerFi International, Inc. (in the Supreme Court of the State of New York County of New York, having index No. 654907/2021 filed August 11, 2021). A lawsuit was filed by Second 82 nd SM, LLC ("*Landlord*") against BF NY 82, LLC ("*Tenant*") whereby Landlord brought a seven-count lawsuit for, among other things, breach of the lease agreement and underlying guaranty of the lease. The amount of damages Landlord is seeking approximately $1.5 million, which constitutes back rent, late charges, real estate taxes, illuminated sign charges and water/sewer charges. On November 3, 2021, the Company filed a Motion to Dismiss the Complaint. On November 17, 2021, the Tenant filed an Answer to Landlord's Complaint and a cross claim against the Company, which the Company answered on December 7, 2021. On December 22, 2021, the Company filed its Response in Opposition to Landlord's Motion for Summary Judgment and Memo in further Support of its Motion to Dismiss. The parties continue to discuss possible settlement, including turning over possession of the premises and payment of certain rent amounts to the Landlord. The Company is unable to predict the ultimate outcome of this matter, however, losses may be material to the Company's financial position and results of operations.

Lion Point Capital, L.P.("Lion Point") v. BurgerFi International, Inc. (Supreme Court of the State of New York County of New York, Index No. 653099/2022, filed August 26, 2022. A lawsuit filed by Lion Point against the Company, alleging that the Company failed to timely register Lion Point's shares in violation of the registration rights agreement to which Lion Point is a party, which allegedly resulted in losses in excess of $26 million. In November 2022, as amended in February 2023, the Company filed its answer to the complaint and continues to believe that all claims are meritless and plans to vigorously defend these allegations. Management is unable to determine the likelihood of a loss or range of loss, if any, which may result from the cases described above, therefore, no contingent liability has been recorded as of January 2, 2023; any losses, however, may be material to the Company's financial position and results of operations.

John Rosatti, as Trustee of the John Rosatti Revocable Trust U/A/D 08/27/2001 (the "JR Trust") v. BurgerFi International, Inc.(*In the Circuit Court for the Eleventh Judicial Circuit, Florida, File No. 146578749*). On March 28, 2022, the JR Trust filed a suit against BurgerFi alleging that the JR Trust suffered losses in excess of $10 million relating to BurgerFi's alleged failure to timely file a registration rights agreement. The parties entered into a settlement agreement on January 11, 2023, whereby (i) the Company agreed to pay Mr. Rosatti $0.5 million in cash and issue him 200,000 shares of BFI common stock and, (ii) Mr. Rosatti agreed to transfer the assets and liabilities of the five former JR Trust stores to the Company. This settlement agreement, which the Company values on a net basis to be approximately $0.8 million of value transferred to Mr. Rosatti, resolved all remaining disputes between the parties, and Mr. Rosatti withdrew the related lawsuits against the Company.

Burger Guys of Dania Pointe, et. al. v. BFI, LLC(Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, Case No. 50-2021-CA -006501-XXXX-MB *filed May 21, 2021).* In response to a demand letter issued by BurgerFi to Gino Gargiulo, a former franchisee, demanding that Mr. Gargiulo pay the balance owed under an asset purchase agreement wherein BurgerFi sold the Dania Beach, Florida BurgerFi location to Mr. Gargiulo, Mr. Gargiulo filed suit against BurgerFi claiming, in addition to other matters, that no further monies are owed under the asset purchase agreement and alleges that the Company is responsible for one of Mr. Gargiulo's failed franchises in Sunny Isles, Florida, losses he has allegedly sustained at his Dania Beach location, and reimbursement of expenses in connection with his marketing company. Mr. Gargiulo seeks damages in excess of $2 million in the aggregate. The parties attended mediation on January 20, 2022, which ended in an impasse. Mr. Gargiulo amended his complaint in April 2022, which, among other matters, amended the defendant parties. In October 2022, the Company filed an additional motion to dismiss the amended complaint and a motion to stay discovery. In January 2023, Mr. Gargiulo filed a third amended complaint. In March 2023, the Company filed an answer to Mr. Gargiulo's complaint and a counterclaim against Mr. Gargiulo relating to the breach of the asset purchase agreement discussed above. The matter is scheduled for trial in the second half of 2023. We believe that all Mr. Gargiulo claims are meritless, and the Company plans to vigorously defend these allegations. Management is unable to determine the likelihood of a loss or range of loss, if any, which may result from the cases described above, therefore, no contingent liability has been recorded as of January 2, 2023; any losses, however, may be material to the Company's financial position and results of operations.

All Round Food Bakery Products, Inc. v. BurgerFi International, LLC and Neri's Bakery Products, Inc. et al (Supreme Court Westchester County, New York (Index Number 52170-2020)). In a suit filed in February 2020, the plaintiff, All Round Food Bakery Products, Inc. (*"All Round Food"*) alleges breach of contract and lost profits in excess of $1 million over the course of the supply agreement with the Company and Neri's Bakery Products, Inc. ("*Neri's*" and together with the Company, the *"Defendants"*). The Defendants assert, among other matters, that the supply agreement amongst the parties, whereby All Round Food was warehousing BurgerFi products produced by Neri's, was terminated when All Round Food failed to cure its material breach of the supply agreement after due notice. The parties attended mediation to attempt to resolve the dispute, however, no resolution was reached. The parties have been ordered to attend an additional mediation on March 22, 2023. We believe that all claims are meritless, and the Company plans to vigorously defend these allegations. Management is unable to determine the likelihood of a loss or range of loss, if any, which may result from the cases described above, therefore, no contingent liability has been recorded as of January 2, 2023; any losses, however, may be material to the Company's financial position and results of operations.

Employment Related Claims.

In July 2021, the Company received a demand letter from the attorney of one of its now former hourly restaurant employees. The letter alleges that the former employee was sexually harassed by one of her co-workers. The demand letter claims that the Company discriminated and retaliated against the former employee based on her gender and age and also alleged intentional infliction of emotional distress, negligent hiring, negligent training, and negligent supervision. While the Company entered into a partial settlement with the former employee in December 2022 for a *de minimus* cash amount relating solely to the discrimination claim, the other claims remain.

While the Company believes that all claims of the above mentioned Employment Related Claims, which are covered under the Company's insurance policies, are meritless, and it plans to defend these allegations, it is reasonably possible that the Company may ultimately be required to pay substantial damages to the claimants, which could be up to $0.8 million or more in aggregate compensatory damages, attorneys' fees and costs. Management believes that any liability, in excess of applicable insurance coverages or accruals, which may result from these claims, would not be significant to the Company's financial position or results of operations.

General Liability and Other Claims.

The Company is subject to other legal proceedings and claims that arise during the normal course of business, including landlord disputes, slip and fall cases, and various food related matters. While it intends to vigorously defend these matters, it is reasonably possible that the Company may be required to pay substantial damages to the claimants. Management believes that any liability, in excess of applicable insurance coverages or accruals, which may result from these claims, would not be significant to the Company's financial position or results of operations.

Purchase Commitments

From time to time, the Company enters into purchase commitments for food commodities in the normal course of business. As of January 2, 2023, it has entered into $3.1 million in conditional purchase obligations over the next 12 months.

8. Redeemable Preferred Stock

On November 3, 2021, and as part of the Anthony's acquisition, the Company issued 2,120,000 shares of redeemable preferred stock, par value $0.0001 per share, as Series A Preferred Stock (the *"Series A Junior Preferred Stock"*). The Series A Junior Preferred Stock is redeemable on November 3, 2027 and accrues dividends at 7% per annum compounded quarterly from June 15, 2024 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 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, shall accrue dividends at 5% per annum, compounded quarterly, until June 15, 2024.

As of January 2, 2023 and December 31, 2021, the value of the redeemable preferred stock was $51.4 million and $47.5 million, respectively and the principal redemption amount was $53.0 million. During the years ended January 2, 2023 and December 31, 2021, the Company recorded non-cash interest expense on the redeemable preferred stock in the amount of $3.9 million and $0.6 million respectively related to accretion of the preferred stock to its estimated redemption value.

On February 24, 2023, the Company filed an amended and restated certificate of designation, (the "*A&R CoD*"), which among other matters, added a provision providing that in the event the Company fails to timely redeem any shares of Series A Preferred Stock on November 3, 2027, the applicable dividend rate shall automatically increase to the lesser of (A) the sum of 10% plus the 2% applicable default rate (with such aggregate rate increasing by an additional 0.35% per quarter from and after November 3, 2027), or (B) the maximum rate that may be applied under applicable law, unless waived in writing by a majority of the outstanding shares of Series A Junior Preferred Stock.

The A&R CoD also added a provision providing that in the event the Company fails to timely redeem any shares of Series A Junior Preferred Stock in connection with a Qualified Financing (as defined in the A&R CoD) on November 3, 2027 (a "*Default*"), the Company agrees to promptly commence a debt or equity financing transaction or sale process to solicit proposals for the sale of the Company and its subsidiaries (or, alternatively, the sale of material assets) designed to yield the maximum cash proceeds to the Company available for redemption of the Series A Junior Preferred Stock as promptly as practicable, but in any event, within 12 months from the date of the Default. If on or after November 3, 2026, the Company is aware that it is reasonably unlikely to have sufficient cash to timely effect the redemption in full of the Series A Junior Preferred Stock when first due, the Company shall, prior to such anticipated due date, take reasonable steps to engage an investment banking firm of national standing (and other appropriate professionals) to conduct preparatory work for such a financing transaction and sale process of the Company and its subsidiaries to provide for such transaction to occur as promptly as possible after any failure for a timely redemption of the Series A Junior Preferred Stock.

The Series A Junior Preferred Stock ranks senior to the Common Stock and may be redeemed at the option of the Company at any time and must be redeemed by the Company in limited circumstances. The Series A Junior Preferred Stock shall not have voting rights or conversion rights.

For further discussion of the A&R CoD, including certain board and governance rights included in the A&R CoD, please see Part I, Item 1A Risk Factors "*We have significant stockholders whose interests may differ from those of our public stockholders*." and Part III, Item 10 Directors and Executive Officers.

9. Debt

(in thousands)	January 2, 2023	December 31, 2021
Term loan	$ 54,507	$ 57,761
Related party note payable	10,000	10,000
Revolving line of credit	4,000	2,500
Other notes payable	780	874
Finance lease liability	933	—
Total Debt	$ 70,220	$ 71,135
Less: Unamortized debt discount to related party note	(765)	(1,276)
Less: Unamortized debt issuance costs	(1,441)	(1,007)
Total Debt, net	68,014	68,852
Less: Short-term borrowings, including finance leases	(4,985)	(3,331)
Total Long-term borrowings, including finance leases and related party note	$ 63,029	$ 65,521

Credit Agreement

On November 3, 2021, as further amended as described below and as part of the Anthony's acquisition, the Company joined a credit agreement with a syndicate of commercial banks (as amended, the *"Credit Agreement"*). The Credit Agreement, which was scheduled to terminate on June 15, 2024, provides the Company with lender financing structured as a $57.8 million term loan and a $4.0 million revolving loan. The terms of the Credit Agreement require the Company to repay the principal of the term loan in quarterly installments of approximately $0.8 million 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 and incurred interest on outstanding amounts of 4.75% until December 31, 2022.

Effective March 9, 2022, certain of the covenants of (i) the Company and Plastic Tripod, Inc., as the borrowers (the *"Borrowers"*), and (ii) the subsidiary guarantors (the *"Guarantors"*) party to the Credit Agreement were amended (such amendment herein referred to as the "*Twelfth Amendment*"). Pursuant to the terms of the Twelfth Amendment, the Borrowers and Guarantors agreed to pay incremental deferred interest of 2% per annum, in the event that the obligations under the Credit Agreement were not repaid on or prior to June 15, 2023; provided, however, that if no event of default has occurred and is continuing then (1) no incremental deferred interest will be due if all of the obligations under the Credit Agreement have been paid on or prior to December 31, 2022, and (2) only 50% of the incremental deferred interest will be owed if all of the obligations under the Credit Agreement have been paid from and after January 1, 2023 and on or prior to March 31, 2023.

The Credit Agreement was further amended on December 7, 2022 (such amendment herein referred to as the "*Thirteenth Amendment")* by amending certain covenants of the Credit Agreement and extending the maturity date from June 15, 2024 to September 30, 2025. The amendment also provided for periodic increases to the annual rate of interest changing the rate per annum to (1) 5.75% from January 1, 2023 through June 15, 2023; (2) 6.75% per annum from June 16, 2023 through December 31, 2023; (3) 7.25% per annum from January 1, 2024 through June 15, 2024; and (4) 7.75% per annum from and after June 16, 2024 through maturity. In addition, the 2% incremental deferred interest implemented on March 9, 2022 was reduced to 1% beginning January 3, 2023 and will be eliminated at December 31, 2023.

The terms of the Thirteenth Amendment also provided for a change in the timing of paying approximately $0.3 million of deferred interest payments previously scheduled to be paid on June 16, 2023 to be paid monthly from January to June 2023, while deferring the balance of deferred interest amount of approximately $1.3 million from June 15, 2023 to December 31, 2023. The Borrowers and Guarantors also agreed to obtain $5,000,000 in net cash proceeds from (x) a shelf registration and equity issuance by not later than January 2, 2023, or (y) issuance of unsecured subordinated debt by not later than January 30, 2023, referred to as the "*Initial New Capital Infusion Covenant*".

Under the terms of the Thirteenth Amendment, certain modifications were made to the accounting definitions in the Credit Agreement to bring such definitions in line with Company practices and needs.

In addition, under the terms of the Thirteenth Amendment, the Borrowers and Guarantors agreed to reset their consolidated senior lease-adjusted leverage ratio and fixed charge coverage ratio as follows:

(a) maintain a quarterly consolidated senior lease-adjusted leverage ratio greater than (i) 7.00 to 1.00 as of the end of the fiscal quarter ending on or about December 31, 2022, (ii) 7.00 to 1.00 as of the end of the fiscal quarter ending on or about March 31, 2023, and (iii) 6.50 to 1.00 as of the end of the fiscal quarter ending on or about June 30, 2023 and the end of each fiscal quarter thereafter;
(b) maintain a quarterly minimum fixed charge coverage ratio of 1.10 to 1.00 as of the end of the fiscal quarter ending on or about December 31, 2022 and the end of each fiscal quarter thereafter; and
(c) the liquidity requirement of the Credit Agreement remains unchanged; provided, that in the event the Company has not received by January 2, 2023 at least $5,000,000 in net cash proceeds as a result of shelf registration and equity issuance then the required liquidity amount as of January 2, 2023 is reduced to $3,500,000.

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

If upon delivery of the quarterly financial statements, the consolidated fixed charge coverage ratio as of the end of any fiscal quarter of the Company ending after January 2, 2023 was less than 1.15 to 1.00, then Borrowers and Guarantors agreed to engage a consulting firm to help with certain operational activities and other matters as reasonably determined by the lenders; provided, that, if after delivery of the quarterly financial statements, (x) the consolidated fixed charge coverage ratio as of the end of each of the two prior consecutive fiscal quarters of the Company was greater than 1.15 to 1.00, and (y) the consolidated senior lease-adjusted leverage ratio as of the end of each of the two prior consecutive fiscal quarters of the Company was less than the correlative amount of the consolidated senior lease-adjusted leverage ratio required for the financial covenants for such fiscal quarters by 0.25 basis points or more, then retention of the consulting firm shall not be required during the following fiscal quarter.

The terms of the amended Credit Agreement require the Company to repay the principal of the term loan in quarterly installments with the balance due at the maturity date, as follows:

in thousands		
2023	$	3,254
2024		3,254
2025		47,999
Total		54,507

The Delayed Draw Term Loan Facility is a non-interest bearing loan and accordingly was recorded at fair value as part of the Anthony's acquisition which resulted in a debt discount of approximately $1.3 million which is being amortized over the period of the Delayed Draw Term Loan Facility. For the years ended January 2, 2023 and December 31, 2021, the Company recorded $0.5 million and $0.1 million, respectively as amortization of the debt discount which is included within interest expense in the accompanying consolidated statements of operations. The Company had $9.2 million outstanding under the Delayed Draw Term Loan Facility as of January 2, 2023 included in related party note payable in the consolidated balance sheets.

On February 1, 2023, the Credit Agreement was further amended through the Fourteenth Amendment to amend the Initial New Capital Infusion Covenant to provide that, not later than February 24, 2023, the Company will obtain $5,000,000 of new indebtedness through the Initial New Capital Infusion, and exchange $10,000,000 of existing debt from delayed draw term loan, which was part of the Credit Agreement and provided by a related party and significant stockholder, for $ 10,000,000 in new junior subordinated secured debt, resulting in the Company holding $15,000,000 in junior subordinated secured debt on terms reasonably acceptable to the Required Lenders (as defined in the Credit Agreement),including , without limitation, that (1) such indebtedness shall not mature until at least two (2) years after the maturity date of the credit facility of September 30, 2025; (2) no payments of cash interest shall be made on such indebtedness until after the repayment in full of the obligations under the Credit Agreement; and (3) no scheduled or voluntary payments of principal shall be made until after the repayment in full of the obligations under the Credit Agreement.

On February 24, 2023, the Credit Agreement was further amended through Fifteenth Amendment, whereby, the Borrowers and the Guarantors were released from liability with respect to the Delayed Draw Term Loan in the amount of $ 10,000,000 under the Credit Agreement (the *"Existing Loan"*) in consideration of the continuation and amendment and restatement of the Existing Loan under the Note (as such term is defined below). The Company was in compliance with its financial covenants under the amended Credit Agreement as of January 2, 2023.

On February 24, 2023, the Borrowers entered into the Note with Junior Lender, pursuant to which the Junior Lender continued, amended and restated the Existing Loan of $10,000,000, which is junior subordinated secured indebtedness, and also provided $5,100,000 of new junior subordinated secured indebtedness, to the Borrowers (collectively, the "*Junior Indebtedness*"), which Junior Indebtedness was incurred outside of the Credit Agreement. See also Part III, Item 13 Certain Relationships and Related Transactions, and Director Independence.

The Junior Indebtedness, which accrues interest at4% per annum (i) is secured by a second lien on substantially all of the assets of the Borrowers and the Guarantors pursuant to the terms of the Note and that certain Guaranty and Security Agreement, dated February 24, 2023, by and among the Guarantors and the Junior Lender, (ii) is subject to the terms of that certain Intercreditor and Subordination Agreement dated February 24, 2023, by and between the Administrative Agent and the Junior Lender and acknowledged by the Borrowers and the Guarantors, and (iii) matures on the date that is the second anniversary of the maturity date under the Credit Agreement (the "*Junior Maturity Date*") (September 30, 2027, based on the maturity date under the Credit Agreement of September 30, 2025).

Under the terms of the Note, no payments of cash interest or payments of principal shall be due until the Junior Maturity Date, and no voluntary prepayments may be made on the Junior Indebtedness prior to the Junior Maturity Date until after the repayment in full of the obligations under the Credit Agreement.

The loan and revolving line of credit are secured by substantially all of the Company's assets and incur interest on outstanding amounts at the following rates per annum through maturity:

Time Period	Interest Rate
Through December 31, 2022	6.75 %
From January 1, 2023 through June 15 2023	6.75 %
From June 16, 2023 through December 31, 2023	6.75 %
From January 1, 2024 through June 15, 2024	7.25 %
From June 16, 2024 through maturity	7.75 %

For the years ended January 2, 2023 and December 31, 2021, the Company deferred $0.9 million and $1.0 million respectively of financing costs in connection with Credit Agreement. Amortization expense associated with deferred financing costs, in the amounts of $0.5 million for the year ended January 2, 2023 and $0.1 million, for the year ended December 31, 2021 is included in interest expense in the accompanying consolidated statements of operations.

Other Notes Payable

Other notes payable relates to a note payable to an individual, issued in connection with the Company's acquisition of a franchised restaurant, which requires monthly payments of $9,000 over a seven-year amortization, including 7% interest, with a maturity date of May 1, 2027. The other notes payable relates to an Economic Injury Disaster Loan from the Small Business Administration (*"SBA"*) and is primarily for one corporate-owned restaurant.

PPP Loans

On May 11, 2020, the Company received loan proceeds in the amount of $2.2 million under the Paycheck Protection Program (*"PPP"*). During the year ended December 31, 2021, all PPP loans amounting to $2.2 million were forgiven by the SBA. The SBA may undertake a review of a loan of any size during the six-year period following forgiveness of the loan; however, loans in excess of $2 million are subject to a mandatory audit. The audit will include the loan forgiveness application, as well as whether the Company met the eligibility requirements of the PPP and received the proper loan amount. The timing and outcome of any SBA review is not known.

10. Leases

The Company has entered into various lease agreements. For the years ended January 2, 2023 and December 31, 2021, rent expense was approximately $6.2 million and $5.2 million, respectively. The Company's lease agreements expire on various dates through 2032 and have renewal options.

On January 1, 2022, the Company adopted ASU 2016-02. Results for reporting periods beginning on or after January 1, 2022 are presented under Accounting Standards Codification Topic 842 (*"ASC 842"*). Prior period amounts were not revised and continue to be reported in accordance with ASC Topic 840, the accounting standard then in effect.

Upon transition, on January 1, 2022, the Company recorded the following increases (decreases) to the respective line items on the Condensed Consolidated Balance Sheet:

(in thousands)	**Adjustment as of January 2, 2022**
Prepaid expenses	$ (773)
Operating right-of-use asset, net	57,385
Finance right-of-use asset, net	855
Deferred rent	(900)
Short-term operating lease liability	9,457
Short-term finance lease liability	143
Long-term operating lease liability	49,149
Long-term finance lease liability	712

A summary of finance and operating lease right-of-use assets and liabilities as of January 2, 2023 is as follows:

(in thousands)	Classification	Year Ended January 2, 2023
Operating leases	Operating right-of-use asset, net	$ 45,741
Finance leases	Property & equipment, net	852
Total right-of-use assets		$ 46,593
Operating leases:		
	Short-term operating lease liability	$ 9,924
	Long-term operating lease liability	40,748
Finance leases:		
	Short-term borrowings, including finance leases	150
	Long-term borrowings, including finance leases	783
Total lease liabilities		$ 51,604

The components of lease expense for the year ended January 2, 2023 is as follows:

(in thousands)	Classification	Year Ended January 2, 2023
Operating lease cost	Occupancy and related expenses Pre-opening costs Store closure costs	$ 12,969
Operating lease impairment	Asset impairment	3,846
Finance lease cost:		
Amortization of right-of-use assets	Depreciation and amortization expense	258
Interest on lease liabilities	Interest expense	63
Less: Sublease income	Occupancy and related expenses	(194)
Total lease cost		**$ 16,942**

The maturity of the Company's operating and finance lease liabilities as of January 2, 2023 is as follows:

(in thousands)		Operating Leases	Finance Leases
	2023	$ 12,653	$ 200
	2024	11,040	184
	2025	9,544	170
	2026	7,728	159
	2027	6,318	152
	2028 and thereafter	13,442	253
Total undiscounted lease payments		60,726	1,118
Less: present value adjustment		(10,054)	(185)
Total net lease liabilities		$ 50,672	$ 933

As most of the Company's leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at the commencement date of the lease in determining the present value of lease payments. The Company gives consideration to its recent debt issuances as well as publicly available data for instruments with similar characteristics when calculating its incremental borrowing rates.

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

	Year Ended January 2, 2023
Weighted-average remaining lease term (in years):	
Operating leases	6.02 years
Finance leases	6.30 years
Weighted-average discount rate:	
Operating leases	6.0 %
Finance leases	6.1 %

11. Income Taxes

The provision for (benefit) from income taxes is set forth below:

(in thousands)	January 2, 2023	December 31, 2021
Current:		
U.S. Federal	$ —	$ —
State	35	—
Total current income tax expense	35	—
Deferred:		
U.S. Federal	(10,002)	(7,833)
State	(1,469)	(2,192)
Total deferred income tax benefit	(11,471)	(10,025)
Valuation allowance	11,341	10,337
	(130)	312
Income tax (benefit) expense	$ (95)	$ 312

The reconciliation of income tax computed at the U.S. federal statutory rate of 21% to the Company's effective tax rate is set forth below:

(in thousands)	January 2, 2023	December 31, 2021
Income tax provision at the U.S. federal statutory rate	$ (21,741)	$ (25,407)
Permanent differences	870	402
Share-based compensation	(463)	496
State income taxes, net of federal benefit	(1,640)	(1,888)
Change in warrant liability	(527)	(2,900)
Goodwill impairment	11,471	19,820
True-up	1,983	42
Change in valuation allowance	11,342	10,337
Change in rate	(249)	(406)
Tax credits	(1,141)	(184)
Total income tax (benefit) expense	$ (95)	$ 312

The components of the Company's deferred tax liabilities at January 2, 2023 and December 31, 2021 are set forth below:

(in thousands)	January 2, 2023	December 31, 2021
Deferred tax assets (liabilities):		
Allowance for doubtful accounts	$ 40	$ 57
Goodwill	4,625	2,794
Fixed Assets	2,164	—
Deferred franchise fees	277	684
Deferred rent	—	239
Stock compensation	1,730	1,250
Net operating losses, Federal	13,649	11,215
Net operating losses, State	2,691	2,066
Deferred payroll taxes	—	217
Interest expense	5,351	3,540
Lease liability	13,104	—
Tax credits	1,854	713
Other	1,599	1,075
Gross deferred tax assets	47,084	23,850
Valuation allowance	(22,629)	(11,383)
Net deferred tax assets	24,455	12,467
Intangible assets	(13,878)	(13,300)
Lease ROU asset	(11,800)	—
Fixed assets	—	(520)
Deferred tax liabilities	(25,678)	(13,820)
Total net deferred tax (liabilities) assets	$ (1,223)	$ (1,353)

As of January 2, 2023, the Company's federal net operating loss carryforwards for income tax purposes was $64.9 million. On a tax-effected basis, the Company also had net operating losses of $2.7 million related to various state jurisdictions. $55.4 million of the federal net operating loss carryforwards will be carried forward indefinitely and will be available to offset 80% of taxable income. The remaining amount of the federal net operating loss carryforwards will expire at varying dates through 2037.

Pursuant to Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, and corresponding provisions of state law, the utilization of net operating loss carryforwards and tax credits may be limited as a result of a cumulative change in stock ownership of more than 50% over a three year period. The Company underwent such a change and consequently, the utilization of a portion of the net operating loss carryforwards and tax credits is subject to certain limitations.

In assessing the realizability of deferred income tax assets, ASC 740 requires that a more likely than not standard be met. If the Company determines that it is more likely than not that deferred income tax assets will not be realized, a valuation allowance must be established. The realization of deferred tax assets depends on the generation of future taxable income during the periods in which the temporary differences become deductible. Management considers reversal of deferred income tax liabilities, projected future taxable income, and tax planning strategies when making this determination. The Company has experienced cumulative losses in recent years which is significant negative evidence that is difficult to overcome in order to reach a determination that a valuation allowance is not required. Based on the Company's evaluation of its deferred tax assets, a valuation allowance of approximately $22.6 million has been recorded against the deferred tax asset.

The following table summarizes the Company's unrecognized tax benefits at January 2, 2023 and December 31, 2021:

(in thousands)	January 2, 2023	December 31, 2021
Beginning balance	$ 660	$ —
Additions based on tax positions related to the current year	—	—
Additions for tax positions of prior years	—	660
Reductions for positions of prior years	(431)	—
Ending balance	$ 229	$ 660

The statute of limitations for the Company's state tax returns varies, but generally the Company's federal and state income tax returns from its 2019 fiscal year forward remain subject to examination.

12. Stockholders' Equity

Common Stock

The Company is authorized to issue 100,000,000 shares of common stock with a par value of $0.0001 per share. Holders of the Company's common stock are entitled to one vote for each share. At January 2, 2023 and December 31, 2021, there were 22,257,772 shares and 21,303,500 shares of common stock outstanding, respectively.

Preferred Stock

The Company is authorized to issue 10,000,000 shares of preferred stock with a par value of $0.0001 per share with such designation, rights and preferences as may be determined from time to time by the Company's Board of Directors.

As of January 2, 2023 and December 31, 2021 there were 2,120,000 shares of preferred stock outstanding. See Note 8, "*Redeemable Preferred Stock*," for further information.

Warrants

As of January 2, 2023 and December 31, 2021, the Company had the following warrants and options outstanding: 15,063,800 warrants outstanding, each exercisable for one share of common stock at an exercise price of $11.50 including 11,468,800 in Public Warrants, 3,000,000 in Private Placement Warrants, 445,000 in Private Warrants and 150,000 in Working Capital Warrants, 75,000 Unit Purchase Option *"UPO"* units that are exercisable for one share of common stock at an exercise price of $10.00 and warrants exercisable for one share of common stock at an exercise price of $11.50. The Public Warrants expire in December 2025. There were no warrants exercised during the year ended January 2, 2023.

During the year ended December 31, 2021, the Company exchanged 675,000 UPO units for 283,669 common shares in a cashless exercise, issued 100 shares for warrants exercised in cash and issued 7,969 shares in cashless warrant exercises.

The Public Warrants became exercisable 30 days after the completion of the BurgerFi acquisition, provided that the Company has an effective registration statement under the Securities Act covering the shares of common stock issuable upon exercise of the Public Warrants and a current prospectus relating to them is available. Warrant holders may, during any period when the Company shall have failed to maintain an effective registration statement, exercise warrants on a cashless basis pursuant to the exemption provided by Section 3(a)(9) of the Securities Act, provided that such exemption is available. If that exemption, or another exemption, is not available, holders will not be able to exercise their warrants on a cashless basis.

The Company may redeem the Public Warrants:

- in whole and not in part;
- at a price of $0.01 per warrant;
- at any time during the exercise period;
- upon a minimum of 30 days' prior written notice of redemption;
- if, and only if, the last sale price of the Company's common stock equals or exceeds $18.00 per share for any 20 trading days within a 30-trading day period ending on the third business day prior to the date on which the Company sends the notice of redemption to the warrant holders; and
- if, and only if, there is a current registration statement in effect with respect to the shares of common stock underlying such warrants.

If the Company calls the Public Warrants for redemption, management will have the option to require all holders that wish to exercise the Public Warrants to do so on a "cashless basis," as described in the warrant agreement. The exercise price and number of shares of common stock issuable upon exercise of the warrants may be adjusted in certain circumstances including in the event of a stock dividend, or recapitalization, reorganization, merger or consolidation. However, the warrants will not be adjusted for issuance of common stock at a price below its exercise price. Additionally, in no event will the Company be required to net cash settle the warrants.

The Private Placement Warrants are identical to the Public Warrants, except that the Private Placement Warrants and the common stock issuable upon the exercise of the Private Placement Warrants became transferable, assignable or salable after the completion of the BurgerFi acquisition, subject to certain limited exceptions. Additionally, the Private Placement Warrants will be exercisable on a cashless basis and be non-redeemable so long as they are held by the initial purchasers or their permitted transferees. If the Private Placement Warrants are held by someone other than the initial purchasers or their permitted transferees, the Private Placement Warrants will be redeemable by the Company and exercisable by such holders on the same basis as the Public Warrants. Due to this provision, the Private Placement Warrants are accounted for as liabilities.

The Private Warrants are identical to the Public Warrants, except that the Private Warrants and the common stock issuable upon the exercise of the Private Warrants became transferable, assignable or salable after the completion of the BurgerFi acquisition, subject to certain limited exceptions. Additionally, the Private Warrants may be exercisable on a cashless basis and be non-redeemable so long as they are held by the initial purchasers or their permitted transferees. If the Private Warrants are held by someone other than the initial purchasers or their permitted transferees, the Private Warrants will be redeemable by the Company and exercisable by such holders on the same basis as the Public Warrants. Due to this provision, the Private Warrants are accounted for as liabilities.

The Working Capital Warrants are identical to the Public Warrants, except that the Working Capital Warrants and the common stock issuable upon the exercise of the Working Capital Warrants became transferable, assignable or salable after the completion of the BurgerFi acquisition, subject to certain limited exceptions. Additionally, the Working Capital Warrants will be exercisable on a cashless basis and be non-redeemable so long as they are held by the initial purchasers or their permitted transferees. If the Working Capital Warrants are held by someone other than the initial purchasers or their permitted transferees, the Working Capital Warrants will be redeemable by the Company and exercisable by such holders on the same basis as the Public Warrants. Due to this provision, the Working Capital Warrants are accounted for as liabilities.

Unit Purchase Options

The Company had an outstanding Unit Purchase Option Agreement with an investor, to purchase up to 750,000 Units (Units include 1 common share and 1 warrant per Unit) exercisable at $10.00 per Unit. The unit purchase option could have been exercised for cash or on a cashless basis, at the holder's option, however, it expired on on March 17, 2023 without being exercised. There were no UPO exchanges during the year ended January 2, 2023. During the year ended December 31, 2021, the Company exchanged 675,000 UPO units for 283,669 common shares in a cashless exercise and issued 7,969 shares in cashless warrant exercises.

Share-Based Compensation

The Company has the ability to grant stock options, stock appreciation rights, restricted stock, restricted stock units, other stock-based awards and performance compensation awards to current or prospective employees, directors, officers, consultants or advisors under the Plan. The Plan was established to benefit the Company and its stockholders, by assisting the Company to attract, retain and provide incentives to key management employees, directors, and consultants of the Company, and to align the interests of such service providers with those of the Company's stockholders. Accordingly, the Plan provides for the granting of Non-qualified Stock Options, Incentive Stock Options, Restricted Stock Unit Awards, Restricted Stock Awards, Stock Appreciation Rights, Performance Stock Awards, Performance Unit Awards, Unrestricted Stock Awards, Distribution Equivalent Rights or any combination of the foregoing.

The initial aggregate number of Shares that may be issued under the Plan shall not exceed Two Million ₴,000,000) Shares. The aggregate number of Shares reserved for Awards under the Plan (other than Incentive Stock Options) shall automatically increase on January 1 of each year, for a period of not more than ten (10) years, commencing on January 1 of the year following the year after the date the Plan became effective in an amount equal to five percent (5%) of the total number of shares of common stock outstanding on December 31st of the preceding calendar year, provided that the Committee may determine prior to the first day of the applicable fiscal year to lower the amount of such annual increase. On January 3, 2022, the Company filed a Registration Statement with the SEC to register 1,065,175 additional shares of common stock, $0.0001 par value per share, of the Company under the Plan, pursuant to the "evergreen" provision of the Plan providing for an automatic increase in the number of shares reserved for issuance under the Plan. On January 5, 2023, the Company filed a Registration Statement with the SEC to register 1,112,889 additional shares of common stock, $0.0001 par value per share, of the Company under the Plan, pursuant to the "evergreen" provision of the Plan providing for an automatic increase in the number of shares reserved for issuance under the Plan.

As of January 2, 2023 and December 31, 2021, there were approximately 600,000 and 126,000 shares of common stock available for future grants under the 2020 Plan, respectively.

Restricted Stock Unit Awards

The Company grants RSU Awards with service, performance and market conditions. The RSU Awards granted with service conditions generally vest over4 years. The market conditions include an index to the market value of the stock price of BurgerFi, and the performance conditions are based on key performance indicators, as identified in the grant agreements. The fair value of restricted stock units granted is determined using the fair market value of the Company's common stock on the date of grant, as set forth in the applicable plan document.

The following table summarizes activity of restricted stock units during the year ended January 2, 2023:

	Number of Restricted Stock Units	Weighted Average Grant Date Fair Value
Non-vested at December 31, 2021	1,783,698	$ 14.18
Granted	587,847	4.55
Vested	(477,799)	13.08
Forfeited	(448,146)	10.85
Non-vested at January 2, 2023	1,445,600	$ 11.68

Share-based compensation recognized during the year ended January 2, 2023 was approximately $10.2 million, inclusive of restricted stock unit grants of $6.4 million and stock grants of $3.9 million. Share-based compensation recognized during the year ended December 31, 2021 was approximately $7.6 million, comprised of restricted stock unit grants. As of January 2, 2023, there was approximately $11.9 million of total unrecognized compensation cost related to unvested restricted stock units or performance-based restricted stock unit awards to be recognized over a weighted average period of 1.3 to 2.8 years.

The unrecognized portion of share-based compensation for unvested market condition restricted stock units (included in above) is approximately $9.5 million over 1.28 years. As detailed below, the fair value of the market condition restricted stock units was determined using a Monte Carlo simulation model.

Performance-Based Restricted Stock Unit Awards

The Company grants performance-based awards (restricted stock units) to certain officers and key employees. The vesting of these awards is contingent upon meeting one or more defined operational or financial goals (a performance condition) or common stock share prices (a market condition) or employment conditions.

The fair values of the performance condition awards granted were determined using the fair market value of the Company's common stock on the date of grant. Share-based compensation expense recorded for performance condition awards is reevaluated at each reporting period based on the probability of the achievement of the goal. Certain goals were achieved as of January 2, 2023. Accordingly, the Company recognized share-based compensation expense of approximately $3.7 million in relation to these awards during the year ended January 2, 2023 and $4.6 million during the year ended December 31, 2021.

The fair value of market condition awards granted were estimated using the Monte Carlo simulation model. The Monte Carlo simulation model utilizes multiple input variables to estimate the probability that the market conditions will be achieved and is applied to the trading price of the Company's common stock on the date of grant. In January 2022 and July 2021, the Company modified the terms related to certain market condition awards that the Compensation Committee previously approved. As a result of these modifications, the Company recorded additional share-based compensation of $0.2 million during the year ended January 2, 2023 and $0.1 million for the year ended December 31, 2021 for these modifications.

The input variables are noted in the table below:

	Year Ended January 2, 2023	Year Ended December 31, 2021
Risk-free interest rate	0.4% - 4.1%	1.03 %
Expected life in years	2.0 years	3.0 years
Expected volatility	57.3% - 65.9%	65.9 %
Expected dividend yield *	0 %	0 %
** The Monte Carlo method assumes a reinvestment of dividends.*		

Share-based compensation expense is recorded ratably for market condition awards during the requisite derived service period and is not reversed, except for forfeitures, at the vesting date regardless of whether the market condition is met. During the years ended January 2, 2023 and December 31, 2021, $0.6 million and $1.5 million, respectively, was recognized ratably as share-based compensation expense for the market condition awards.

Service-Based Restricted Stock Unit Awards

The Company grants service-based awards (restricted stock units) to certain officers and key employees. The vesting of these awards is contingent upon meeting the requisite service period. The fair value of restricted stock unit awards is determined using the publicly-traded price of its common stock on the grant date. During the years ended January 2, 2023 and December 31, 2021, $2.1 million and $1.3 million, respectively, was recognized ratably as share-based compensation expense for the service-based awards.

The following table summarizes activity of the restricted stock units during the year ended January 2, 2023:

	Performance Condition		Service Condition		Market Condition	
	Restricted Stock Units	Weighted Average Grant Date Fair Value	Restricted Stock Units	Weighted Average Grant Date Fair Value	Restricted Stock Units	Weighted Average Grant Date Fair Value
Non-vested at December 31, 2021	1,251,698	$ 15.15	252,000	$ 15.79	280,000	$ 8.42
Granted	282,000	4.12	115,847	6.26	190,000	4.13
Vested	(241,952)	15.14	(205,847)	11.33	(30,000)	8.41
Forfeited	(240,646)	13.14	—	—	(207,500)	8.20
Non-vested at January 2, 2023	1,051,100	$ 12.62	162,000	$ 14.65	232,500	$ 5.34

13. Fair Value Measurements

Fair values of financial instruments are estimated using public market prices, quotes from financial institutions, and other available information. The fair values of cash equivalents, receivables, net, accounts payable and short-term debt approximate their carrying amounts due to their short duration.

The following tables summarize the fair values of financial instruments measured at fair value on a recurring basis as of January 2, 2023 and December 31, 2021.

	Items Measured at Fair Value at January 2, 2023		
(in thousands)	Quoted prices in active market for identical assets (liabilities) (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Warrant liability	—	195	—
Total	$ —	$ 195	$ —

	Items Measured at Fair Value at December 31, 2021		
(in thousands)	Quoted prices in active market for identical assets (liabilities) (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
Warrant liability	—		2,706
Total	$ —	$ —	$ 2,706

The fair value of non-financial assets measured at fair value on a non-recurring basis, classified as Level 3 in the fair value hierarchy, is determined based on the income approach or third-party market appraisals.

In estimating our fair value disclosures for financial instruments, we use the following methods and assumptions:
Cash and cash equivalents: The carrying amount reported in the Consolidated Balance Sheets for these items approximates fair value due to their liquid nature.
Accounts receivable, inventory, other current assets, accounts payable, accrued expenses and other current liabilities: The carrying value reported on the consolidated balance sheets for these items approximates their fair value, which is the likely amount for which the receivable or liability with short settlement periods would be transferred from/to a market participant with a similar credit standing as the Company's.
Long-term borrowings: The fair value of the Company's long-term borrowings under the Credit Agreement approximates $53.2 million and it's carrying value was $58.5 million. The fair value is estimated using Level 2 inputs based on quoted prices for those or similar instruments. Refer to Note 9, "*Debt*,"for further discussion.

The fair value of the Company warrant liability is measured at fair value on a recurring basis, classified as Level 2 in the fair value hierarchy. The fair value of the private placement warrants, private warrants, and working capital warrants are determined using the publicly-traded price of its common stock on the valuation dates of $1.26 on January 2, 2023 and $5.67 on December 31, 2021. The fair value is calculated using the Black-Scholes option-pricing model. The Black-Scholes model requires us to make assumptions and judgments about the variables used in the calculation, including the expected term, expected volatility, risk-free interest rate, dividend rate and service period. The calculated warrant price for private warrants was $0.05 and $0.75 on January 2, 2023 and December 31, 2021. The input variables for the Black-Scholes are noted in the table below:

	January 2, 2023	December 31, 2021
Risk-free interest rate	4.14 %	1.11 %
Expected life in years	3.0 years	3.96 years
Expected volatility	68.0 %	41.8 %
Expected dividend yield	0 %	0 %

Assets and liabilities that are measured at fair value on a non-recurring basis include the Company's long-lived assets and definite-lived intangible assets. In determining fair value, the Company uses an income-based approach. As a number of assumptions and estimates were involved that are largely unobservable, they are classified as Level 3 inputs within the fair value hierarchy. Assumptions used in these forecasts are consistent with internal planning, and include revenue growth rates, royalties, gross margins, and operating expense in relation to the current economic environment and the Company's future expectations.

14. Segment Information

Prior to the Anthony's acquisition in November 2021, the Company had one operating and reportable segment. Following the Anthony's acquisition, the Company has two operating and reportable segments:

- BurgerFi, which includes operations of corporate-owned and franchised BurgerFi restaurants, which offer a fast-casual "better burger" concept; and
- Anthony's, which includes operations of casual dining pizza restaurants under the name Anthony's Coal Fired Pizza & Wings.

The CODM includes the CEO, CFO, and Executive Chairman as they assess the performance of the reportable segments and make all the significant strategic decisions, including the allocation of resources.

External sales are derived principally from food and beverage sales, royalty and franchise revenue. The Company does not rely on any major customers as a source of sales, and the customers and long-lived assets of its reportable segments are predominantly in the U.S. There were no material transactions among reportable segments.

The following tables present revenue, capital expenditures, depreciation and amortization, pre-opening costs, interest expense and net loss by segment:

BurgerFi International Inc., and Subsidiaries
Notes to Consolidated Financial Statements
For the Years Ended January 2, 2023 and December 31, 2021

(in thousands)	Year Ended January 2, 2023	Year Ended December 31, 2021
Revenue:		
BurgerFi	$ 49,901	$ 46,448
Anthony's*	128,819	22,419
Total	$ 178,720	$ 68,867
Capital expenditures:		
BurgerFi	$ 1,428	$ 10,348
Anthony's*	1,090	317
Total	$ 2,517	$ 10,665
Depreciation and amortization:		
BurgerFi	$ 9,571	$ 8,694
Anthony's	7,567	1,366
Total	$ 17,138	$ 10,060
Pre-opening costs:		
BurgerFi	$ 474	$ 1,905
Anthony's	—	—
Total	$ 474	$ 1,905
Interest expense:		
BurgerFi	$ 3,843	$ 673
Anthony's	4,816	733
Total	$ 8,659	$ 1,406
Net loss:		
BurgerFi	$ (50,375)	$ (121,352)
Anthony's*	(53,057)	(142)
Total	$ (103,432)	$ (121,494)

** Amounts for Anthony's are only presented from November 3, 2021, the date of acquisition.*

Total assets by segment are as follows:

(in thousands)	Year Ended January 2, 2023	Year Ended December 31, 2021
Total assets:		
BurgerFi	$ 136,811	$ 161,675
Anthony's	139,969	156,044
Total	$ 276,780	$ 317,719

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

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures. As of the end of the period covered by this Form 10-K, our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act. We maintain disclosure controls and procedures designed to ensure that information required to be disclosed in reports filed or submitted by us under the Exchange Act is recorded, processed, summarized and reported within time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Based on management's evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of January 2, 2023.

Management's Report on Internal Control Over Financial Reporting. Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Management, including our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our internal control over financial reporting as of the end of the period covered by this Annual Report on Form 10-K. In making its assessment of the effectiveness of internal control, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (*"COSO criteria"*) in Internal Control-Integrated Framework (2013). Our internal control over financial reporting is designed to provide reasonable assurance to management and to our Board of Directors regarding the reliability of financial reporting and the preparation and fair presentation of financial statements for external purposes in accordance with generally accepted accounting principles. Our internal control over financial reporting includes those policies and procedures that:

(i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets;

(ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations of our management and directors; and

(iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Based on this assessment, management has concluded that our internal control over financial reporting was effective as of January 2, 2023.

Limitations on Effectiveness of Controls and Procedures. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives, as specified above. Our management recognizes that any control system, no matter how well designed and operated, is based upon certain judgments and assumptions and cannot provide absolute assurance that its objectives will be met.

Remediation of Previously Identified Material Weaknesses in Internal Control. As disclosed under Item 9A. Controls and Procedures, in our Annual Report on Form 10-K for the year ended December 31, 2021, management concluded that a material weakness in our internal control related to the design and implementation of controls over the accounting for income taxes existed as of December 31, 2021. In response to this material weakness, management implemented changes to the Company's internal control over accounting for income taxes, including: (1) expanded review processes for the Company's assessment of its ability to realize historical deferred tax assets on its acquired businesses in accordance with Section 382 of the Internal Revenue Code and the Company's tax provision controls and (2) the utilization of additional third-party professionals and consultants regarding income tax matters.

Management has determined that the remediation actions discussed above were effectively designed and demonstrated effective operation for a sufficient period of time to enable management to conclude that the previously disclosed material weakness has been remediated as of January 2, 2023.

Changes in Internal Control Over Financial Reporting. Other than as described above, there have been no changes in the Company's internal control over financial reporting during the quarter ended January 2, 2023 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Item 9B. Other Information.

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Our current directors and executive officers are as follows:

Name	Age	Class	Position
Ophir Sternberg	52	C	Executive Chairman of the Board
Ian Baines	66	N/A	Chief Executive Officer
Michael Rabinovitch	53	N/A	Chief Financial Officer
Martha Stewart	81	A	Director
Vivian Lopez-Blanco	65	B	Director
Gregory Mann	51	A	Director
Allison Greenfield	50	B	Director
Andrew Taub	54	C	Director
David Heidecorn	66	A	Director

Directors

Ophir Sternberg has been the Company's Executive Chairman of the Board since December 2020, having served as a member of our Board of Directors since October 2019, Chairman since April 2020, and Chief Executive Officer from June 2020 to December 2020. Mr. Sternberg has over 30 years of experience in investing across numerous industries and segments. Mr. Sternberg additionally serves on the Board of Directors for MSP Recovery, Inc. d/b/a LifeWallet (NASDAQ: LIFW) and is Chairman of the Board for Security Matters Public Limited Company (NASDAQ: SMX). Mr. Sternberg is the Founder and Chief Executive Officer of Miami-based Lionheart Capital, founded in 2009. We believe Mr. Sternberg is well-qualified to serve on our board of directors due to his business experience, contacts and relationships, as well as his extensive experience in both the public and private company sectors.

Allison Greenfield has served as a member of the Company's Board of Directors since June 2020. Ms. Greenfield has over two decades of experience in real estate development. Ms. Greenfield is the Chief Development Officer and has been a partner of Lionheart Capital, LLC, since it was founded in 2009 and has over 25 years of experience in the entitlement, design, construction and management of projects in all segments of the real estate industry, including industrial, retail, hospitality, and ultra-luxury residential condominiums. At Lionheart Capital, LLC, she has been responsible for the successful acquisition, development, and repositioning of real estate assets around the world. Prior to her tenure at Lionheart Capital, LLC, Ms. Greenfield ran the development and construction arm of Oz Holdings, LLC as a partner from 2001-2010. Ms. Greenfield studied Architecture at The New School University, Parsons School of Design and holds a B.A. in History from Barnard College/Columbia University. We believe Ms. Greenfield is well-qualified to serve on our Board of Directors due to her business experience, contacts and relationships.

David Heidecorn is a Senior Advisor to L Catterton, the world's largest consumer-focused private equity firm. Prior to becoming a Senior Advisor, Mr. Heidecorn was a Partner and Chief Risk Officer for over 2 decades at L Catterton. Prior to joining L Catterton, Mr. Heidecorn was the Chief Financial Officer of Alarmguard Holdings, Inc. (AMEX: AGD). In 1992, Mr. Heidecorn joined Nantucket Holding Company, a merchant bank specializing in the acquisition and management of troubled companies and the consolidation of fragmented sectors within the consumer products and services industry. From 1986 to 1992, Mr. Heidecorn held various senior positions in the Corporate Finance Group of GE Capital, including heading up the Restructuring Group for the Northeast. Mr. Heidecorn received a B.A in Economics from Lehigh University and an M.B.A. in Finance from Columbia Business School. We believe Mr. Heidecorn is qualified to serve on our board of directors due to his extensive business experience. Mr. Heidecorn serves as a director pursuant to CP7's right under the A&R CoD regarding the Company's Series A Junior Preferred Stock, whereby, for so long as CP7, its affiliates or certain related persons of CP7, directly or indirectly, hold collectively 70% or more of the shares of the Series A Junior Preferred Stock issued as of the date of the A&R CoD, CP7 shall have the option and the right (but not the obligation) to designate two directors.

Vivian Lopez-Blanco has served as a member of the Company's Board of Directors since July 2021. Ms. Lopez-Blanco also serves on the board of Jumptuit Health, Inc. Prior to joining the Company, Ms. Lopez-Blanco served as an advisory board member of BBVA, South Florida operations, from 2019 until June 2021, Chief Financial Officer of Mednax, Inc. (NYSE: MD) from 2010 until 2018, Vice President and Treasurer of Mednax, Inc. from 2008 to 2010 and Chief Financial Officer of Carrols Corporation's Hispanic Restaurants Division, which includes the Pollo Tropical and Taco Cabana concepts, from 2003 to 2008. Ms. Lopez-Blanco joined Pollo Tropical in 1997 as Controller and was promoted to Chief Financial Officer in 1998, and led the company through its acquisition by Carrols Corporation, developed and realigned key business processes and implemented several financial systems. Earlier in her career, Ms. Lopez-Blanco spent years in an international accounting firm where she progressed through different management roles and gained extensive experience in public company reporting and capital market expansions. Ms. Lopez-Blanco earned a bachelor's degree in accounting from Florida International University and is a certified public accountant. We believe Ms. Lopez-Blanco is well-qualified to serve on our Board of Directors due to her business experience, including her experience in public accounting and as the Chief Financial Officer of public companies, her contacts and relationships.

Gregory Mann has served as a member of the Company's Board of Directors since December 2020. Mr. Mann has over 20 years of experience in delivering outstanding results for leading U.S. and global companies. Mr. Mann previously served as Chief Marketing Officer for Trustly, Inc. He has also previously served at Hydrus Technology as a Board member and in a variety of advising, consulting, leadership, and managerial roles where he developed the firm's commercialization and go to market (GTM) strategy that led to the company's first long-term commercial contract. Prior to Hydrus, from March 2017 to November 2018, Mr. Mann created a stand-alone P&L division at Catalina Marketing as President of Emerging Brands where he architected and implemented a new three-year business strategy that included the launch of new data and marketing services which significantly increased new client deal size and improved client retention. Mr. Mann also developed and drove the vision and general management for the newly founded Emerging Brands division focused on thousands of consumer-packaged goods companies. Prior to Catalina, Mr. Mann worked as the Chief Marketing Officer for LoopPay, where he was part of the founding team which was then acquired by Samsung in order to develop and launch Samsung Pay. Mr. Mann holds an MBA from The Wharton School and a Master's Degree in International Studies from the University of Pennsylvania's Lauder Institute. We believe that Mr. Mann's experience as an entrepreneurial executive and corporate innovator that has built and led established startup, turnaround, and hyper-growth companies and divisions globally will continue to be a valuable asset to the Company's Board of Directors.

Martha Stewart has served as a member of the Company's Board of Directors since February 2021. Ms. Stewart is a businesswoman, writer, and television personality. As founder of Martha Stewart Living Omnimedia, *"MSLO,"* she gained success through a variety of business ventures, encompassing publishing, broadcasting, merchandising and e-commerce. She has written numerous bestselling books, is the publisher of Martha Stewart Living magazine and hosted two syndicated television programs: Martha Stewart Living, which ran from 1993 to 2004, and Martha, which ran from 2005 to 2012. Ms. Stewart currently serves as the Chief Creative Officer of Marquee Brands, a position she has held since June 2019. Prior to that, Ms. Stewart served as Chief Creative Officer of Sequential Brands Group, Inc. from December 2015 to June 2019. Ms. Stewart has served on the board of directors of the Sequential Brands Group, Inc. since December 2015. Ms. Stewart has also served on the board of AppHarvest, Inc. since May 2020. Ms. Stewart was Founder, Chief Creative Officer and Non-Executive Chairman of the board of directors of MSLO from 1996 through June 2003. She also served as Chief Executive Officer from 1996 through June 2003. Ms. Stewart earned a bachelor's degree in European history and architectural history from Barnard College. We believe Ms. Stewart is well-qualified to serve on the Company's Board of Directors due to her business experience, extensive contacts and relationships.

Andrew Taub has served as a member of the Company's Board of Directors since November 2021. 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, and has advised certain funds affiliated with the entity that sold Anthony's to the Company and has provided advisory services to subsidiaries of the Company. Mr. Taub'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 of Directors, Mr. Taub currently serves as a director of several L Catterton portfolio companies, including JustFoodForDogs, PatientPoint Health Technologies, and FYidoctors. Mr. Taub 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. We believe Mr. Taub is qualified to serve on our Board of Directors due to his extensive business experience. Mr. Taub serves as a director pursuant to CP7's right under the A&R CoD regarding the Company's Series A Junior Preferred Stock, whereby, for so long as CP7, its affiliates or certain related persons of CP7, directly or indirectly, hold collectively 70% or more of the shares of the Series A Junior Preferred Stock issued as of the date of the A&R CoD, CP7 shall have the option and the right (but not the obligation) to designate two directors.

Executive Officers

Ian Baines has served as our Chief Executive Officer since November 2021. 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, Inc. 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 Partners, Inc., where he continued for several years as President and Chief Executive Officer. He was recruited back to Brinker International, Inc. in 2011 as Senior Vice President of Strategic Innovation. From 2013 to 2014, Mr. Baines served as President and Chief Executive Officer of Uno Restaurant Holdings Corporation. From 2014 to 2018, he served as President and Chief Executive Officer of Cheddar's Scratch Kitchen (*"Cheddar's"*); 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 Restaurant Group, Inc. during the transition from a public company to three independent brands and ultimately the sale of the steak division. Except for the Amended and Restated Stock Purchase Agreement dated November 3, 2021 (as subsequently amended) by and among the Company, Cardboard and Hot Air, pursuant to which the Anthony's acquisition was consummated., there are no arrangements or understandings between Mr. Baines and any other person pursuant to which he was appointed.

Michael Rabinovitch joined the Company on February 26, 2021 and assumed the position of Chief Financial Officer on May 3, 2021. Mr. Rabinovitch served as Senior Vice President and Chief Accounting Officer of Tech Data Corporation from March 2018 until September 2020. Prior thereto, Mr. Rabinovitch was employed at Office Depot, where he served as Vice President of Finance, North America from January 2015 to March 2017 and Senior Vice President, Finance and Chief Accounting Officer from March 2017 to February 2018. From 2005 through 2015, he served as Executive Vice President and Chief Financial Officer of Birks Group (a/k/a Mayors Jewelers), a North American manufacturer and retailer of fine jewelry and luxury timepieces. Prior to joining Birks Group, Mr. Rabinovitch was Vice President of Finance of Claire's Stores, Inc., a specialty retailer of fashion jewelry and accessories, from 1999 to 2005. Mr. Rabinovitch began his career as an auditor with Price Waterhouse LLP. Mr. Rabinovitch is a licensed certified public accountant (inactive) and a member of the American Institute of Certified Public Accountants.

Board Composition

BurgerFi's business affairs are managed under the direction of its Board of Directors. The Company's Board of Directors consists of seven members. The Board of Directors is classified into three classes, each comprising as nearly as possible one-third of the directors to serve three-year terms. Class A directors shall serve until 2023, Class B directors shall serve until 2024 and Class C directors shall serve until 2025.

Committees of the Board of Directors

The standing committees of our Board currently include an audit committee, a compensation committee, and a nominating committee. Each of the committees reports to the Board as they deem appropriate and as the Board may request. The composition, duties and responsibilities of these committees are set forth below.

Audit Committee

Ms. Greenfield, Ms. Lopez-Blanco, and Mr. Mann serve on the Audit Committee. Ms. Lopez-Blanco qualifies as the Audit Committee financial expert as defined in Item 407(d)(5) of Regulation S-K promulgated under the Securities Act and serves as Chairperson of the Audit Committee. The Audit Committee operates under a written charter adopted by the Board of Directors. The charter contains a detailed description of the scope of the Audit Committee's responsibilities and how they will be carried out. The Audit Committee's charter is available on our website at https://ir.burgerfi.com/corporate-governance/governance-documents, under *"Governance Documents."*

According to its charter, the Audit Committee consists of at least three members, each of whom shall be a non-employee director who has been determined by the Board to meet the independence requirements of Nasdaq, and also Rule 10A-3(b)(1) of the SEC, subject to the exemptions provided in Rule 10A-3(c). The Audit Committee Charter describes the primary functions of the Audit Committee, including the following:

- reviewing and discussing with management and the independent auditor the annual audited financial statements, and recommending to the Board whether the audited financial statements should be included in our Form 10-K;
- discussing with management and the independent auditor significant financial reporting issues and judgments made in connection with the preparation of our financial statements;
- discussing with management major risk assessment and risk management policies;
- monitoring the independence of the independent auditor;
- verifying the rotation of the lead (or coordinating) audit partner having primary responsibility for the audit and the audit partner responsible for reviewing the audit as required by law;
- reviewing and approving, subject to subsequent Board approval, all related-party transactions;
- inquiring and discussing with management our compliance with applicable laws and regulations;
- pre-approving all audit services and permitted non-audit services to be performed by our independent auditor, including the fees and terms of the services to be performed;
- appointing or replacing the independent auditor;
- determining the compensation and oversight of the work of the independent auditor (including resolution of disagreements between management and the independent auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work;
- establishing procedures for the receipt, retention and treatment of complaints received by us regarding accounting, internal accounting controls or reports which raise material issues regarding our financial statements or accounting policies; and
- approving reimbursement of expenses incurred by our management team in identifying potential target businesses.

Compensation Committee

Ms. Greenfield, Mr. Mann, and Ms. Lopez-Blanco serve on the Compensation Committee. Ms. Greenfield serves as the Chairperson of the Compensation Committee. The Compensation Committee operates under a written charter adopted by the Board of Directors. The charter contains a detailed description of the scope of the Compensation Committee's responsibilities and how they will be carried out. The Compensation Committee's charter is available on our website at https://ir.burgerfi.com/corporate-governance/governance-documents, under *"Governance Documents."* The Compensation Committee may delegate any of its responsibilities to one or more subcommittees as the Compensation Committee may from time to time deem appropriate.

The Compensation Committee's duties, which are specified in our Compensation Committee Charter, include, but are not limited to:

- reviewing and recommending approval to the Board on an annual basis the corporate goals and objectives relevant to our Chief Executive Officer's compensation, evaluating our Chief Executive Officer's performance in light of such goals and objectives and recommending to the Board the remuneration (if any) of our Chief Executive Officer based on such evaluation;
- reviewing and recommending approval to the Board the compensation of all other executive officers;
- reviewing our executive compensation policies and plans;

- implementing and administering our incentive compensation equity-based remuneration plans; provided, however, that grants of stock options, restricted stock, and other equity awards for executive officers of the Company or as inducements for new executive officers shall be approved by the Board upon the recommendation of such grants by the Committee;
- assisting management in complying with our proxy statement and annual report disclosure requirements;
- recommending approval by the Board of all special perquisites, special cash payments and other special compensation and benefit arrangements for our executive officers and employees;
- if required, producing a report on executive compensation to be included in our annual proxy statement; and
- reviewing, evaluating, and recommending changes, if appropriate, to the remuneration for directors.

The charter also provides that the Compensation Committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, legal counsel or other adviser and will be directly responsible for the appointment, compensation and oversight of the work of any such adviser. However, before engaging or receiving advice from a compensation consultant, external legal counsel or any other adviser, the Compensation Committee will consider the independence of each such adviser, including the factors required by Nasdaq and the SEC. In addition, members of our senior management may report on the performance of the other executive officers of the Company and make compensation recommendations to the Compensation Committee, which will review and, as appropriate, approve the compensation recommendations.

Nominating Committee

Ms. Greenfield, Ms. Lopez-Blanco, and Mr. Mann serve on the Nominating Committee. Ms. Greenfield serves as the Chairperson of the Nominating Committee. The Nominating Committee operates under a written charter adopted by the Board of Directors. The charter contains a detailed description of the scope of the Nominating Committee's responsibilities and how they will be carried out. The Nominating Committee's charter is available on our website at https://ir.burgerfi.com/corporate-governance/governance-documents, under *"Governance Documents."*

The Nominating Committee will identify, evaluate and recommend candidates to become members of the Board with the goal of creating a balance of knowledge and experience. The Nominating Committee has no specific minimum qualifications for director candidates. However, the Nominating Committee will consider several qualifications relating to management and leadership experience, background and integrity and professionalism in evaluating a person's candidacy for membership on the Board of Directors. The Nominating Committee may require certain skills or attributes, such as financial or accounting experience, to meet specific Board needs that arise from time to time and will also consider the overall experience and makeup of its members to obtain and maintain a broad and diverse mix of Board members, including with respect to race, gender, ethnicity, background, experience and viewpoints of the Board. The Nominating Committee does not distinguish among nominees recommended by stockholders and other persons.

Code of Ethics

We have adopted a Code of Ethics applicable to our directors, executive officers and employees that complies with the rules and regulations of Nasdaq. Our Code of Ethics is available on our website at https://ir.burgerfi.com/corporate-governance/governance-documents, under *"Governance Documents."* The information on this website is not incorporated by reference into, or a part of, this Annual Report on Form 10-K. In addition, a copy of the Code of Ethics will be provided without charge upon request to us in writing at 200 West Cypress Creek Drive, Suite 220, Fort Lauderdale, FL 33309. We intend to disclose any amendments to or waivers of certain provisions of our Code of Ethics in a Current Report on Form 8-K.

Indemnification Agreements and Directors and Officers Liability Insurance

Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws limit the personal liability of our directors to our stockholders or us for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to us or our stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the Delaware General Corporate Law (*"DGCL"*) or (4) for any transaction from which the director derived an improper personal benefit. Our Amended and Restated Bylaws also provide for such limitation of liability with respect to our officers. In addition, our Amended and Restated Certificate of Incorporation provides for indemnification of each of our directors and officers who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a director or officer of ours or is or was serving at our request as a director, officer, partner, trustee or employee of another corporation, partnership, joint venture, trust or other enterprise, to the fullest extent permitted by the DGCL. Our Amended and Restated Bylaws also provide for such indemnification other than with respect to an action by or in the right of the Company and so long as such director or officer acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, and our Amended and Restated Bylaws provide for similar indemnification with respect to actions by or in the right of the Company. In addition, we maintain directors' and officers' liability insurance to provide our directors and officers with insurance coverage for losses arising from claims based on breaches of duty, negligence, errors and other wrongful acts.

Delinquent Section 16(a) Reports

Section 16(a) of the Securities Exchange Act requires our executive officers and directors, and persons who own more than 10% of our common stock, to file reports regarding ownership of, and transactions in, our securities with the Securities and Exchange Commission and to provide us with copies of those filings. To the Company's knowledge, based solely on a review of the copies of such reports furnished to the Company and written representations that no other reports were required, all such filing requirements applicable to the Company's directors, executive officers and greater than 10% beneficial owners were complied with during the year ended January 2, 2023, (1) Cardboard Box LLC did not timely file one Form 4 representing one transaction, and (2) the John Rosatti Revocable Trust Dated 8/27/2001 did not timely file five Form 4s, each representing one transaction.

Item 11. Executive Compensation.

The following table presents information regarding the total compensation awarded to, earned by, and paid to the named executive officers of BurgerFi for services rendered to BurgerFi in all capacities for the years indicated.

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards ($)	All Other Compensation ($)	Total ($)
Ophir Sternberg	2022	—	—	1,902,765 (4)	13,429 (8)	1,916,194
Executive Chairman	2021	—	—	—	—	—
Ian Baines	2022	523,628	—	—	10,560 (9)	534,188
Chief Executive Officer (1)	2021	543,000	178,000	—	—	721,000
Michael Rabinovitch	2022	400,000 (3)		1,093,077 (5)	89,901 (10)	1,582,970
Chief Financial Officer (2)	2021	215,000	250,000	3,295,000 (6) (7)	—	3,760,000

(1) Mr. Baines was appointed as Chief Executive Officer in November 2021.
(2) Mr. Rabinovitch was appointed as Chief Financial Officer in February 2021.
(3) In February 2022. Mr. Rabinovitch's annual salary was increased to $400,000.
(4) Represents the grant of 303,956 unrestricted shares of Company common stock on January 3, 2022. The amounts reflected in this column represent the aggregate grant date fair value of the awards made during 2022, as computed in accordance with FASB ASC Topic 718. For additional information related to the measurement of stock-based compensation awards, refer to Note 12, "*Stockholders' Equity*," to the financial statements included in this Annual Report. See the Outstanding Equity Awards table below for additional information relating to these grants.
(5) Represents the grant of 174,613 unrestricted shares of Company common stock on January 3, 2022. See the Outstanding Equity Awards table below for additional information relating to these grants.
(6) Represents the grants of 52,000 restricted stock units, 78,000 incentive restrictive stock units, and 100,000 benchmark restricted stock units, granted on July 13, 2021. See the Outstanding Equity Awards table below for additional information relating to these grants.

(7) The amounts reflected in this column represent the aggregate grant date fair value of the awards made during 2021, as computed in accordance with FASB ASC Topic 718. For additional information related to the measurement of stock-based compensation awards, refer to Note 12, "*Stockholders' Equity,*" to the financial statements included in this Annual Report.
(8) Represents the value of services provided for a driver of Mr. Sternberg's vehicle, which was not a Company-owned vehicle. This service to Mr. Sternberg was discontinued by the Company during 2022.
(9) Represents the aggregate value of a monthly allowance relating to a personal vehicle and cell phone provided by the Company to Mr. Baines.
(10) Represents the value of $63,501 paid to Mr. Rabinovitch in 2022 relating to a certain relocation allowance, as well as the aggregate value of $26,400 with respect to a monthly allowance relating to a personal vehicle.

Narrative Disclosure to Summary Compensation Table

For 2022, the principal elements of compensation provided to the named executive officers were base salaries, grants of equity-based compensation and broad-based employee benefits. Base salaries are generally set at levels deemed necessary to attract and retain individuals with superior talent commensurate with their relative expertise and experience. Grants of restricted stock units vest in installments over a number of years subject to continued employment, the Company's achievement of certain performance benchmarks, satisfaction of certain key performance indicators set by the Compensation Committee or by meeting certain share price thresholds of the Company's common stock. See the Outstanding Equity Awards table below for additional information relating to these grants.

Employment Agreements. We have entered into Employment Agreements with Ophir Sternberg, Ian Baines, and Michael Rabinovitch.

Employment Agreement with Ophir Sternberg

Under the terms of Mr. Sternberg's employment agreement, Mr. Sternberg serves as our Executive Chairman of the Board of Directors and does not receive a base salary. Mr. Sternberg has the ability to earn restricted stock grants ("*Restricted Stock Grants*") and incentive restricted stock grants ("*Incentive Restricted Stock Grants*") and has been granted restricted stock unit grants (the "*Sternberg RSU Grants*") in lieu of such Restricted Stock Grants and Incentive Restricted Stock Grants. During the term of Mr. Sternberg's employment agreement, which is initially five years, subject to earlier termination or extension, Mr. Sternberg will be bound by confidentiality and non-disparagement obligations. If there is a Change of Control (as defined in Mr. Sternberg's employment agreement) during the term of employment all unearned Restricted Stock Grants and Incentive Restricted Stock Grants, therefore, effectively, all Sternberg RSU Grants, shall be deemed to have been earned immediately prior to the Change of Control.

Employment Agreement with Ian Baines

In connection with the Anthony's Acquisition, the Company entered into an amended and restated employment agreement with Mr. Baines to serve as the Company's Chief Executive Officer. Under the terms of his employment agreement, he will earn a base salary of not less than $523,628, subject to annual review by the Board. In addition, Mr. Baines is eligible to receive an annual cash performance bonus of up to 60% of his base salary, based upon the achievement of individual and Company performance objectives as mutually agreed by the Board and Mr. Baines.

In relation to Mr. Baines' previous role as Chief Executive Officer of Anthony's, Mr. Baines received options to purchase common stock of Hot Air (the "*Anthony's Options*") pursuant to a Non-Qualified Stock Option Agreement (the "*Option Agreement*") dated September 30, 2020 under the Hot Air, Inc. Amended and Restated 2016 Stock Option Plan (the "*Hot Air Plan*"). In relation to the consummation of the Anthony's acquisition, the Company and Mr. Baines entered into an Amendment to the Option Agreement pursuant to which the Anthony's Options held by Mr. Baines were converted (the " *Option Conversion*") into 211,662 shares of common stock of the Company (the "*Baines Issued Shares").* Except with respect to certain permitted transfers by operation of law, to permitted transferees or to pay up to forty percent (40%) of his federal and state income tax obligations arising from the Option Conversion, Mr. Baines could not, without the express written consent of the Board, (1) transfer any Baines Issued Shares until June 20, 2022, or (2) 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. All restrictions on the transfer of Baines Issued Shares ceased as of December 31, 2022.

During the term of Mr. Baines's employment agreement, Mr. Baines will be bound by non-competition and non-solicitation obligations. Upon a termination of Mr. Baines' employment without Cause (as defined in his employment agreement) or the resignation by Mr. Baines for Good Reason (as defined in his employment agreement), Mr. Baines will 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.

Amended Employment Agreement with Michael Rabinovitch

Under the terms of Mr. Rabinovitch's amended employment agreement, he will earn a base salary of $400,000 (subject to annual review) and will be entitled to receive such performance bonuses as determined by the Compensation Committee of our Board of Directors in its sole discretion in consultation with the Executive Chairman and Chief Executive Officer. In addition, Mr. Rabinovitch is entitled to up to six months severance and reimbursement of COBRA expenses in the event of termination of the employment agreement by the Company without cause or by Mr. Rabinovitch for good reason (as defined in the employment agreement). Mr. Rabinovitch has the ability to earn Restricted Stock Grants and benchmark restricted stock grants (*"Benchmark Restricted Stock Grants"*) and has been granted restricted stock unit grants (the "*Rabinovitch RSU Grants*") in lieu of such Restricted Stock Grants and Benchmark Restricted Stock Unit Grants. During the term of Mr. Rabinovitch's employment agreement Mr. Rabinovitch will be bound by non-competition and non-solicitation obligations. If there is a Change of Control during the term of employment all unearned Restricted Stock Grants and Benchmark Restricted Stock Grants, therefore, effectively, all Rabinovitch RSU Grants, shall be deemed to have been earned and vested immediately prior to the Change of Control. If Mr. Rabinovitch is terminated without cause, or resigns due to good reason, as defined in the employment agreement, all unvested portions of the Restricted Stock Grants and Benchmark Restricted Stock Grant, therefore, effectively, the Rabinovitch RSU Grants, scheduled to vest in the year of such termination or resignation shall be deemed to have been earned and vested immediately.

Potential Payments upon Termination or Change in Control

Except as discussed above, no named executive officer has a contractual or other entitlement to severance or other payments upon termination or a change in control.

Director Compensation

For fiscal year ending December 31, 2021, each independent director was granted restricted stock units in an amount equal to $150,000 divided by the closing price on the last trading day of the fiscal year, generally to vest on the one-year anniversary of the date of grant and be settled in shares of common stock, subject to such director's continuous service as a director until such time and earlier vesting due to a change of control. In addition, for fiscal year ending December 31, 2021, each independent director received annual cash compensation of $7,500.

For fiscal year ending January 2, 2023, each independent director was granted restricted stock units in an amount equal to $100,000 divided by the closing price on the last trading day of the calendar year, generally to vest on the one-year anniversary of the date of grant and to be settled in shares of common stock, subject to such directors continuous service as a director until such time and earlier vesting due to a change of control. In addition, for the fiscal year ending January 2, 2023, each independent director is entitled to receive annual cash compensation of $50,000, payable on or before December 31, 2023, subject to such director's continuous service as a director until such time.

Outstanding Equity Awards at Fiscal Year End

	Stock Awards	
Name	**Number of shares or units of stock that have not vested (#)**	**Market value of shares or units of stock that have not vested (6)**
Ophir Sternberg	100,000 (1) 560,000 (2)	$126,000 $705,600
Michael Rabinovitch	63,000 (3) 60,000 (4) 42,000 (5)	$79,380 $75,600 $52,920

(1) Represents restricted stock units granted, for financial reporting purposes, on December 16, 2020. The legal grant date of the restricted stock units was July 13, 2021, the date that applicable grant award agreements were executed by the Company and Mr. Sternberg. The restricted stock units vest in five equal parts, with 20% vesting on the grant date and an additional 20% vesting on January 1 for each of the ensuing four years of employment, beginning on January 1, 2022. If there is a change of control (as defined in the employment agreement) or certain termination or resignation events occur during the term of employment all unearned restricted stock units shall be deemed to have been earned immediately prior to the change of control or termination or resignation event.

(2) Represents incentive restricted stock units granted, for financial reporting purposes, on December 16, 2020. The legal grant date of the restricted stock units was July 13, 2021, the date that applicable grant award agreements were executed by the Company and Mr. Sternberg. The restricted stock units vest upon achievement by the Company of the following benchmarks: (i) 20%, or 140,000 incentive restricted stock units,vested because Company revenue for fiscal year 2021, as calculated and presented in the Company's audited financial statements included in the Form 10-K report for the relevant year, was 10% or greater than $34,382,000 (the *"Base Year Revenue"*); (ii) 20%, or 140,000 incentive restricted stock units, if Company revenue for fiscal year 2022 is 20% or greater than Base Year Revenue; (iii) 20%, or 140,000 incentive restricted stock units, if Company revenue for fiscal year 2023 is 30% or greater than Base Year Revenue; (iv) 20%, or 140,000 incentive restricted stock units, if Company revenue for fiscal year 2024 is 40% or greater than Base Year Revenue; (v) 20%, or 140,000 incentive restricted stock units, if Company revenue for fiscal year 2025 is 50% or greater than Base Year Revenue. If there is a change of control (as defined in the employment agreement) or certain termination or resignation events occur during the term of employment all unearned incentive restricted stock units shall be deemed to have been earned immediately prior to the change of control.

(3) Represents restricted stock units granted on July 13, 2021. The restricted stock units were initially scheduled to vest in equal amounts at the yearly anniversary of his commencement date (February 26, 2021) for each of the first four years of employment, subject to the achievement of annual key performance indicators, including the Company's adjusted EBITDA target, and diversity targets as set by the Compensation Committee. On March 4, 2022, the Compensation Committee approved of an amendment to the applicable grant agreement to revise the time of vesting so that, subject to achievement of such annual key performance indicators for the respective prior fiscal year, the third and fourth-year vesting dates were accelerated to occur on the second-year anniversary date, which is measured from February 26, 2021. If there is a change of control (as defined in the employment agreement) during the term of employment all unearned restricted stock units shall be deemed to have been earned and vested immediately prior to the change of control.

(4) Represents benchmark restricted stock units granted on July 13, 2021. The benchmark restricted stock units were initially scheduled to vest as follows: (i) 20,000 restricted stock units, if the last reported closing price of Company's common stock for any 20 trading days within any consecutive 30 trading day period was greater than or equal to $19.00 per share during the calendar year 2021 and if not achieved then would rollover to calendar year 2022 and would vest if the last reported closing price of Company's common stock for any 20 trading days within any consecutive 30 trading day period was greater than or equal to $11.00 per share during the calendar year 2022; (ii) 20,000 restricted stock units, if the last reported closing price of the Company's common stock for any 20 trading days within any consecutive 30 trading day period was greater than or equal to $11.00 per share during the calendar year, 2022; (iii) 20,000 restricted stock units, if the last reported closing price of the Company's common stock for any 20 trading days within any consecutive 30 trading day period was greater than or equal to $13.00 per share during the calendar year, 2023; and (iv) 40,000 restricted stock units, if the last reported closing price of the Company's common stock for any 20 trading days within any consecutive 30 trading day period was greater than or equal to $15.00 per share during the calendar year, 2024. Effective January 3, 2022, the Company's board of directors approved of an amendment and restatement of the applicable grant agreement to revise certain of such price thresholds from $19.00 per share, $19.00 per share, $22.00 per share and $25.00 per share to $11.00 per share, $11.00 per share, $13.00 per share and $15.00 per share, respectively. If there is a change of control (as defined in the employment agreement) during the term of employment all unearned benchmark restricted stock units shall be deemed to have been earned and vested immediately prior to the change of control. If Mr. Rabinovitch is terminated without cause, or resigns due to good reason, as defined in the employment agreement, all unvested portions of the restricted stock unit grant scheduled to vest in the year of such termination or resignation shall be deemed to have been earned and vested immediately; provided, that the grant agreement for such benchmark restricted stock units further provided that in no event shall the number of unearned restricted stock units underlying such grant that could vest in 2022 in accordance with such provision exceed 20,000 restricted stock units.

(5) Represents restricted stock units granted on July 13, 2021. The restricted stock units were initially scheduled to vest in four equal parts on February 26 for each of the ensuing four years of employment. On March 4, 2022, the Compensation Committee approved of an amendment to the applicable grant agreement to revise the time of vesting so that the third and fourth-year vesting dates were accelerated to occur on the second-year anniversary date, which is measured from February 26, 2021. If there is a change of control (as defined in the employment agreement) during the term of employment all unearned restricted stock units shall be deemed to have been earned immediately prior to the change of control.

(6) Market value of the restricted stock units was determined using the $1.26 closing price of the Company's common stock on December 30, 2022, which was the last trading day of the year.

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

The following table sets forth as of March 27, 2023, the number of shares of BurgerFi common stock beneficially owned by (i) each person who is known by us to be the beneficial owner of more than five percent of our issued and outstanding common stock, (ii) each of our named executive officers and directors; and (iii) all of our current executive officers and directors as a group.

Beneficial ownership is determined in accordance with SEC rules and includes voting or investment power with respect to securities. Except as indicated by the footnotes below, the Company believes, based on the information furnished to it, that the persons and entities named in the table below have sole voting and investment power with respect to all stock that they beneficially own, subject to applicable community property laws. All of the Company's shares of common stock subject to options or Warrants exercisable within 60 days are deemed to be outstanding and beneficially owned by the persons holding those options or Warrants for the purpose of computing the number of shares beneficially owned and the percentage ownership of that person. They are not, however, deemed to be outstanding and beneficially owned for the purpose of computing the percentage ownership of any other person.

Subject to the paragraph above, the percentage ownership of issued shares is based on 23,823,105 shares of common stock issued and outstanding as of March 27, 2023.

Name and Address of Beneficial Owner (1)	Amount and Nature of Beneficial Ownership	Percent of Class
Ophir Sternberg (2)	3,576,068	14.3%
Ian Baines	126,997	*
Michael Rabinovitch	472,866	2.0%
Allison Greenfield (3)	48,518	*
Martha Stewart	26,942	*
Vivian Lopez-Blanco	28,518	*
Gregory Mann	28,518	*
Andrew Taub	—	*
David Heidecorn	—	*
All directors and executive officers as a group (nine individuals)	4,308,427	17.2%
Greater than 5% Beneficial Owners		
Lionheart Equities, LLC (4)	2,010,112	8.1%
The John Rosatti Revocable Trust U/A DTD 8/27/2001 – Custody (5)	4,003,396	16.8%
Lion Point Capital, LP (6)	2,745,938	11.6%
CP7 Warming Bag, L.P. (7)	1,429,741	6.0%
Walleye Capital LLC (8)	1,903,820	8.0%

* Less than one percent.

(1) Unless otherwise indicated, the business address of each of the individuals is c/o BurgerFi International, Inc., 200 West Cypress Creek Rd., Suite 220, Fort Lauderdale, Florida 33309.

(2) Consist of (i) 720,725 shares of common stock, 150,000 shares (the *"Unit Shares"*) of common stock underlying units and 1,139,387 shares of common stock underlying warrants to purchase one share of common stock each, which are currently exercisable, owned directly by Lionheart Equities and (ii) 1,365,956 shares owned by Mr. Sternberg and 60,000 shares of common stock underlying warrants to purchase one share of common stock each, which are currently exercisable, owned by Mr. Sternberg. Mr. Sternberg, as manager of Lionheart Equities, has sole voting and dispositive control over the Unit Shares and Warrants held by Lionheart Equities. The business address for Lionheart Equities is 4218 NE 2nd Avenue, Miami, FL 33137. The business address for Mr. Sternberg is 4218 NE 2nd Avenue, Miami, FL 33137.

(3) Consist of 38,518 shares of common stock owned by Allison Greenfield, and 10,000 shares of common stock owned by Leviathan Group, LLC. Ms. Greenfield possesses sole voting and dispositive control over the shares.

(4) Consist of 720,725 shares of common stock, 150,000 Unit Shares and 1,139,387 shares of common stock underlying warrants to purchase one share of common stock each, which are currently exercisable, owned directly by Lionheart Equities. Mr. Sternberg, as manager of Lionheart Equities, has sole voting and dispositive control over the Unit Shares and Warrants held by Lionheart Equities. The business address for Lionheart Equities is 4218 NE 2nd Avenue, Miami, FL 33137.

(5) Shares of common stock held by The John Rosatti Family Trust U/A DTD 8/27/2001—Custody (the *"JR Trust"*). The business address of the JR Trust is 105 US Highway 1, North Palm Beach, FL 33408. John Rosatti, as trustee of the JR Trust, may be deemed to beneficially own the securities beneficially owned by the JR Trust and has sole voting and dispositive power over the shares held by the JR Trust. Information included in this footnote is derived from a Form 4 filed on March 24, 2023.

(6) Shares of common stock held by Lion Point. The business address of Lion Point is 250 West 55th Street, 33rd Floor, New York, NY 10019. Lion Point is the investment manager to its investment fund client Lion Point Master, LP. Lion Point Holdings GP, LLC (*"Lion Point Holdings"*) is the general partner of Lion Point. Didric Cederholm is a Founding Partner and Chief Investment Officer of Lion Point. Mr. Cederholm is also a Member and a Manager of Lion Point Holdings. Mr. Freeman is a Founding Partner and Head of Research of Lion Point. Mr. Freeman is also a Member and a Manager of Lion Point Holdings. By virtue of these relationships, each of Lion Point, Lion Point Holdings, Mr. Cederholm and Mr. Freeman may be deemed to beneficially own the securities beneficially owned by its investment fund client. Information included in this footnote is derived from a Schedule 13G/A filed on January 11, 2021.

(7) Shares of common stock held by CP7. The business address of CP7 is 599 West Putnam Avenue, Greenwich, CT 06830. CP7 Management, LLC (*"CP7 Management"*) is the general partner of CP7. Scott Dahnke is a managing member of CP7 Management. J. Michael Chu is a managing member of CP7 Management. By virtue of these relationships, each of CP7 Management, Mr. Dahnke and Mr. Chu may be deemed to beneficially own the securities beneficially owned by CP7. Each of Mr. Dahnke and Mr. Chu disclaims beneficial ownership of all shares of Common Stock held by CP7. CP7, CP7 Management, Mr. Dahnke and Mr. Chu each possess shared voting power and shared dispositive control over 1,429,741 of the shares. Information included in this footnote is derived from a Schedule 13D/A filed on March 1, 2023.

(8) Shares of Common Stock issuable upon the exercise of warrants beneficially owned by Walleye Capital LLC (*"Walleye Capital"*). The business address of Walleye Capital is 2800 Niagara Lane N, Plymouth, MN 55447. Walleye Capital possesses sole voting power and sole dispositive control over all 1,903,820 of the shares issuable upon exercise of such warrants. Information included in this footnote is derived from a Schedule 13G filed on February 15, 2023.

Securities Authorized for Issuance Under Equity Compensation Plans

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders (1)	1,445,600 (2)	N/A	600,000
Equity compensation plans not approved by security holders	—	N/A	—
Total	1,445,600	$ —	600,000

(1) The equity compensation plan approved by security holders is the 2020 Omnibus Equity Incentive Plan, which allows for an initial allotment of 2,000,000 shares. The aggregate number of shares reserved for awards under the plan (other than Incentive Stock Options) will automatically increase on January 1 of each year, for a period of not more than ten (10) years, commencing on January 1 of the year following the year after the date the plan became effective, in an amount equal to five percent (5%) of the total number of shares of common stock outstanding on December 31 of the preceding calendar year, provided that the Company's Compensation Committee may determine prior to the first day of the applicable fiscal year to lower the amount of such annual increase.

(2) Represents the maximum number of shares of common stock to be issued upon the vesting of outstanding RSUs.

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

Related Party Policy

Our Code of Ethics requires us to avoid, wherever possible, all related party transactions that could result in actual or potential conflicts of interests, except under guidelines approved by the Board of Directors (or the Audit Committee). Related-party transactions are defined as transactions in which (1) the aggregate amount involved will or may be expected to exceed the lesser of $120,000 or one percent (1%) of the average of the Company's total assets at year end for the last two completed fiscal years, (2) we or any of our subsidiaries is a participant, and (3) any (a) executive officer, director or nominee for election as a director, (b) greater than 5% beneficial owner of our shares of common stock, or (c) immediate family member, of the persons referred to in clauses (a) and (b), has or will have a direct or indirect material interest (other than solely as a result of being a director or a less than 10% beneficial owner of another entity). A conflict-of-interest situation can arise when a person takes actions or has interests that may make it difficult to perform his or her work objectively and effectively. Conflicts of interest may also arise if a person, or a member of his or her family, receives improper personal benefits as a result of his or her position.

We also require each of our directors and executive officers to annually complete a directors' and officers' questionnaire that elicits information about related party transactions.

Our Audit Committee, pursuant to its written charter, is responsible for reviewing and approving related-party transactions to the extent we enter into such transactions. All ongoing and future transactions between us and any of our officers and directors or their respective affiliates or other persons listed above will be on terms believed by us to be no less favorable to us than are available from unaffiliated third parties. Such transactions will require prior approval by our Audit Committee and a majority of our uninterested "independent" directors, or the members of our Board who do not have an interest in the transaction, in either case who had access, at our expense, to our attorneys or independent legal counsel. We will not enter into any such transaction unless our Audit Committee and a majority of our disinterested "independent" directors determine that the terms of such transaction are no less favorable to us than those that would be available to us with respect to such a transaction from unaffiliated third parties.

These procedures are intended to determine whether any such related party transaction impairs the independence of a director or presents a conflict of interest on the part of a director, employee or officer.

Contingent Forward Purchase Contract

In connection with the consummation of the BurgerFi acquisition, the Company entered into an Amended and Restated Forward Purchase Contract with each of Lion Point and Lionheart Equities for the purchase of forward purchase units ("*Forward Purchase Units*"), each Forward Purchase Unit consisting of one share of Common Stock and one warrant exercisable into one share of Common Stock. Lion Point purchased 2,000,000 Forward Purchase Units and Lionheart Equities purchased 1,000,000 Forward Purchase Units under the Amended and Restated Forward Purchase Agreement. In addition, OPES agreed to register a total of 4,829,376 shares of OPES common stock owned by Lion Point as of the consummation of the BurgerFi acquisition, which comprised of (i) 662,500 of shares held by certain of the initial stockholders (the"*Initial Stockholders*"), who held founders' shares ("*Founders' Shares*") prior to the initial public offering ("*IPO*") of OPES, (ii) 83,438 shares of OPES common stock underlying the (A) 400,000 units (each consisting of one share of Common Stock and one warrant exercisable into one share of Common Stock purchased by our Initial Sponsor, Lion Point Capital, L.P. (the "*Initial Sponsor"*) and certain of our Initial Stockholders who held Founders' Shares prior to the IPO and (B) additional 45,000 units sold in connection with the underwriter's over-allotment option in connection with our IPO (together with A, the " *Private Placement Units*") and 83,438 shares of OPES common stock underlying the private warrants, each of which entitles the holder thereof to purchase one share of Common Stock at an exercise price of $11.50 per share, and (iii) 2,000,000 shares of OPES common stock underlying the Forward Purchase Units and 2,000,000 shares of OPES common stock underlying the warrants that are part of the Forward Purchase Units, which shares have priority registration rights over all other shares of OPES common stock to be registered under the New Registration Rights Agreement (as defined below).

Registration Rights

Pursuant to a registration rights agreement, dated as of March 15, 2018 (the "*Original Registration Rights Agreement*"), those initial stockholders who held the Founders' Shares issued and outstanding prior to the IPO, as well as the holders of the Private Placement Units and any units the Initial Sponsor, the Initial Stockholders, their affiliates, officers, directors or third parties may be issued in payment of working capital loans made to us, were entitled to registration rights.

In connection with the BurgerFi acquisition, all of the parties to the Original Registration Rights Agreement (and those parties who as a result of the transfer of Founders' Shares became a party to the Original Registration Rights Agreement), along with the Members and all other holders of certain securities (the *"Registrable Securities"*) of the Company (other than the holders of Public Warrants), entered into a new registration rights agreement (the "*New Registration Rights Agreement*") covering the registration of Registrable Securities held by such parties. Pursuant to the New Registration Rights Agreement, the Company filed with the SEC a registration statement covering the resale of certain Registrable Securities held by the parties in accordance with SEC guidance and caused the registration statement to be declared effective under the Securities Act, and must use its commercially reasonable efforts to keep such registration statement continuously effective under the Securities Act until all Registrable Securities covered by such registration statement have been sold or may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 under the Securities Act ("*Rule 144*"), without the requirement that the Company be in compliance with the current public information requirement under Rule 144. Additionally, Lion Point Capital, LLC made a written demand for registration under the Securities Act of all or part of certain securities (the "*Lion Point Securities*") held by Lion Point Capital, LLC. The Company is not obligated to effect more than two demand registration statements in respect of the Lion Point Securities. The New Registration Rights Agreement also provides the holders of the Registrable Securities with certain piggy-back registration rights.

In connection with the Anthony's acquisition, on November 3, 2021, we entered into a registration rights and lock-up agreement with Cardboard (the*"RRA/Lock-Up"*) covering certain securities of the Company (the *"New Registrable Securities"*) held by Cardboard. Pursuant to the RRA/Lock-Up, the Company filed with the SEC a registration statement covering the resale of the New Registrable Securities in accordance with SEC guidance and caused the registration statement to be declared effective under the Securities Act and will use its commercially reasonable efforts to keep such registration statement continuously effective under the Securities Act until all New Registrable Securities covered by such registration statement have been sold or certain other events with respect to the New Registrable Securities have occurred. Additionally, Cardboard is entitled to make, from time to time, a written demand for registration under the Securities Act of all or part of the New Registrable Securities.

The Company is not obligated to effect more than three demand registration statements in respect of the New Registrable Securities. The RRA/Lock-Up also provides the holders of the New Registrable Securities with certain piggy-back registration and underwritten shelf offering rights, and subjects certain New Registrable Securities, except with respect to transfers to certain permitted assignees, to a lock-up until twelve (12) months after the Anthony's Closing, subject to (i) earlier expiration as follows: (A) 30% of such New Registrable Securities may be transferred, if after the Anthony's 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 such New Registrable Securities may be transferred, if after the Anthony's 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 such New Registrable Securities may be transferred, if after the Anthony's 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, such New Registrable Securities are subject to a lock-up for 180 days after the Anthony's Closing.

Other Transactions

We previously leased building space for our previous BurgerFi corporate office from an entity under common ownership with The John Rosatti Revocable Trust U/A DTD 8/27/2001, a significant stockholder. Rent expense for the year ended January 2, 2023 was $0.1 million and for the year ended December 31, 2021 was $0.2 million. In January 2022, we exercised our right to terminate this North Palm Beach lease effective as of July 2022.

The Company leases building space for our combined BurgerFi and Anthony's corporate office from an entity controlled by Ophir Sternberg, our Executive Chairman. In February 2022, the Company amended the lease agreement to, among other things, extend the term to ten years beginning as of March 1, 2022 and add additional square footage in order to combine headquarters following the Anthony's acquisition. For the year ended January 2, 2023 rent expense was approximately $0.5 million.

In addition, in April 2021, we entered into an independent contractor agreement with a corporation (the*"Consultant"*) for which the Chief Operating Officer (the "*Consultant Principal*") of Lionheart Capital, LLC, an entity controlled by Ophir Sternberg, the Executive Chairman of the Board, serves as President. Pursuant to the terms of the agreement, which the Company amended on September 1, 2022, the Consultant shall provide certain strategic advisory services to the Company in exchange for total annual cash compensation and expense reimbursements of $0.1 million, payable in 12 equal monthly payments. For the years ended January 2, 2023 and December 31, 2021 the Consultant received $0.1 million and a nominal amount of cash compensation and expense reimbursement for services provided in each year, respectively. In 2021, the Consultant Principal received an award of 50,000 restricted stock units, which shall vest in five equal annual installments, subject to the Company achieving certain annual revenue targets starting in 2021, and in November 2021, the Consultant Principal received a $0.25 million bonus in connection with the Company's Anthony's Acquisition. As of January 2, 2023, 10,000 of these units vested. On January 3, 2022, the Company granted the Consultant Principal 38,000 unrestricted shares of common stock of the Company. The Company recorded share-based compensation expense of $0.4 million and $0.2 million for the years ended January 2, 2023 and December 31, 2021.

On February 24, 2023, the Borrowers entered into a Secured Promissory Note in an aggregate principal amount of $15,100,000 with CP7, an affiliate of L Catterton, as lender. For additional information on this junior indebtedness, See Note 9, "*Debt*," to the consolidated financial statements included in Part II, Item 8 "Financial Statements and Supplementary Data" of our Annual Report.

Director Independence

The Board of Directors has determined that four of the Company's seven members of the Board of Directors, Allison Greenfield, Vivian Lopez-Blanco, Gregory Mann, and Martha Stewart, qualify as "independent directors" within the meaning of the independent director guidelines of Nasdaq and applicable SEC rules.

Item 14. Principal Accountant Fees and Services.

AUDITORS FEES AND SERVICES

KPMG, LLP

On May 10, 2022, the Audit Committee engaged KPMG LLP ("*KPMG"*) as the Company's independent registered public accounting firm for the fiscal year ending January 2, 2023 after conclusion of the Company's competitive auditor selection process and resignation of BDO USA, LLP ("BDO"). The following table lists the fees for services rendered by KPMG for the year ended January 2, 2023.

	2022
Audit Fees	$ 713,000
Audit Related Fees	20,000
Tax Fees	41,000
All Other Fees	—
Total Fees	$ 774,000

Audit Fees

"Audit Fees" relate to fees and expenses billed by KPMG for the annual audit, including the audit of our financial statements and review of our quarterly financial statements.

Audit Related Fees

"Audit Related Fees" consist of fees and expenses for assurance and related services that are reasonably related to the performance of the audit or review of our financial statements that are not "Audit Fees."

Tax Fees

"Tax Fees" consist of fees and related expenses billed for professional services for tax compliance, tax advice and tax planning. These services include assistance regarding federal and state tax compliance and tax planning and restructuring.

All Other Fees

"All Other Fees" consist of fees and expenses for products and services that are not *"Audit Fees," Audit Related Fees"* nor *"Tax Fees."*

BDO USA, LLP

The following table lists the fees for services rendered by BDO USA, LLP (*"BDO"*) for the years ended January 2, 2023 and December 31, 2021:

	2022	2021
Audit Fees	$ 591,000	$ 1,294,900
Audit Related Fees	—	—
Tax Fees	—	—
All Other Fees	—	—
Total Fees	$ 591,000	$ 1,294,900

Audit Fees

"Audit Fees" relate to fees and expenses billed by BDO for the annual audit, including the audit of our financial statements, review of our quarterly financial statements and for Form S-1, Form S-3 and Form S-8 filings. Fees for the year ended December 31, 2021 include $700,000 for incremental out-of-scope services agreed upon after issuance of Form 10-K.

Audit Related Fees

"Audit Related Fees" consist of fees and expenses for assurance and related services that are reasonably related to the performance of the audit or review of our financial statements that are not "Audit Fees."

Tax Fees

"Tax Fees" consist of fees and related expenses billed for professional services for tax compliance, tax advice and tax planning. These services include assistance regarding federal and state tax compliance and tax planning and restructuring.

All Other Fees

"All Other Fees" consist of fees and expenses for products and services that are not *"Audit Fees," Audit Related Fees"* nor *"Tax Fees."*

POLICY FOR APPROVAL OF AUDIT AND PERMITTED NON-AUDIT SERVICES

The Audit Committee has adopted a policy and related procedures requiring its pre-approval of all audit and non-audit services to be rendered by its independent registered public accounting firm. These policies and procedures are intended to ensure that the provision of such services do not impair the independent registered public accounting firm's independence. These services may include audit services, audit related services, tax services and other services. The policy provides for the approval by the Audit Committee of fees for various types of audit services, audit related services, tax services and the services that are within the scope of such fees are deemed to be pre-approved by the Audit Committee. The independent registered public accounting firm is required to provide to the Audit Committee back up information with respect to the performance of such services.

All services provided by KPMG and BDO during the fiscal years ended January 2, 2023 and December 31, 2021 were approved by the Audit Committee. The Audit Committee has delegated to its Chair the authority to pre-approve services, up to a specified fee limit, to be rendered by the independent registered public accounting firm and requires that the Chair report to the Audit Committee pre-approved decisions made by the Chair at the next scheduled meeting of the Audit Committee.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) We have filed the following documents as part of this Annual Report on Form 10-K:

1. The financial statements listed in the "Index to Financial Statements" in Item 8. Financial Statements and Supplementary Data are filed as part of this report.

2. Financial statement schedules are omitted because they are not applicable, or the required information is shown in the financial statements or notes thereto.

3. Exhibits included or incorporated herein: See below.

Exhibit Index

Exhibit Number	Description
2.1	Membership Interest Purchase Agreement (Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed by the registrant on June 30, 2020)
2.2	Amendment Agreement to the Membership Interest Purchase Agreement (Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed by the registrant on October 1, 2020)
2.3	Amended and Restated Stock Purchase Agreement dated November 3, 2021 by and among Hot Air, Inc., Cardboard Box LLC and the Company (Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed by the registrant on November 5, 2021)
2.4*	Amendment to the Amended and Restated Stock Purchase Agreement, dated February 24, 2023, by and among Hot Air, Inc., Cardboard Box LLC and the Company
3.1	Amended and Restated Certificate of Incorporation of the Company, effective on December 16, 2020 (Incorporated by reference to Exhibit 3.1 to the registrant's Annual Report on Form 10-K filed by the registrant on April 14, 2022)
3.2	Amended and Restated Certificate of Designation of Series A Preferred Stock of the Company, dated February 27, 2023 (Incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed by the Company on February 27, 2023)
3.3	Second Amended and Restated Bylaws of the Company (Incorporated by reference to Exhibit 32 to the Company's Current Report on Form 8-K filed by the Company on March 24, 2022)
4.1*	Description of Capital Stock
4.2	Specimen Common Stock Certificate (Incorporated by reference to Exhibit 4.2 to the Company's Annual Report on Form 10-K filed by the Company on April 14, 2022)
4.3	Specimen Warrant Certificate (Incorporated by reference to Exhibit 4.3 to the Company's Annual Report on Form 10-K filed by the Company on April 14, 2022)
4.4	Warrant Agreement between Continental Stock Transfer & Trust Company and the Registrant (incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 18, 2018)
10.1	Registration Rights Agreement dated December 16, 2020 (Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed by the registrant on December 23, 2020)
10.2	Amendment to IPO Escrow Agreement dated December 16, 2020 (Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed by the registrant on December 23, 2020)
10.3	Indemnification Escrow Agreement dated December 16, 2020 (Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed by the registrant on December 23, 2020)
10.4	Director Voting Agreement dated December 16, 2020 (Incorporated by reference to Exhibit 10.4 to the registrant's Current Report on Form 8-K filed by the registrant on December 23, 2020)

10.5+	Voting Agreement among BurgerFi International Inc., the John Rosatti Revocable Trust U/A/D 08/27/2001 and John Rosatti, dated March 15, 2023 (Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed by the registrant on March 16, 2023)
10.6 +	2020 Omnibus Equity Incentive Plan (Incorporated by reference to Exhibit 10.5 to the registrant's Current Report on Form 8-K filed by the registrant on December 23, 2020)
10.7	Standstill Letter (Incorporated by reference to Exhibit 10.6 to the registrant's Current Report on Form 8-K filed by the registrant on December 23, 2020)
10.8	Loan Agreement dated July 13, 2018 between BurgerFi International, LLC and Bank of America, N.A., as amended by the Amendment No. 1 to Loan Agreement dated October 31, 2019 (Incorporated by reference to Exhibit 10.9 to the registrant's Current Report on Form 8-K filed by the registrant on December 23, 2020)
10.9	Form of Franchise Agreement (Incorporated by reference to Exhibit 10.10 to the registrant's Current Report on Form 8-K filed by the registrant on December 23, 2020)
10.10+	Employment Agreement with Mr. Sternberg (Incorporated by reference to Exhibit 10.11 to the registrant's Current Report on Form 8-K filed by the registrant on December 23, 2020)
10.11+	Independent Contractor Agreement between BurgerFi International, Inc. and The Ivy Companies, Inc., dated April 23, 2021 (Incorporated by reference to Exhibit 10.10 to the Company's Annual Report on Form 10-K filed by the Company on April 14, 2022).
10.12+	Amended Independent Contractor Agreement between BurgerFi International, Inc. and The Ivy Companies, Inc., dated September 1, 2022 (Incorporated by reference to Exhibit 10.1 to the registrant's Quarterly Report on Form 10-Q filed by the registrant on November 16, 2022)
10.13+	Employment Agreement between the Company and Michael Rabinovitch (Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed by the registrant on March 3, 2021)
10.14+	Amended Employment Agreement between Michael Rabinovitch and BurgerFi International, Inc., dated March 4, 2022 (Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed by the registrant on March 10, 2022)
10.15+	Second Amended Employment Agreement between Michael Rabinovitch and the Company, dated January 3, 2023 (Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed by the registrant on January 6, 2023)
10.16	Escrow Agreement between the Company, Continental Stock Transfer & Trust Company, and the initial stockholders (incorporated by reference to the Company's Current Report on Form 8-K, filed with the SEC on March 15, 2018)
10.17+	Restricted Stock Unit Award Agreement between Ophir Sternberg and the Company, dated July 13, 2021 (Incorporated by reference to Exhibit 10.4 to the registrant's Current Report on Form 8-K filed by the registrant on July 16, 2021)
10.18+	Benchmark Restricted Stock Unit Award Agreement between Ophir Sternberg and the Company, dated July 13, 2021 (Incorporated by reference to Exhibit 10.5 to the registrant's Current Report on Form 8-K filed by the registrant on July 16, 2021)
10.19+	Restricted Stock Unit Award Agreement between Michael Rabinovitch and the Company, dated July 13, 2021 (Incorporated by reference to Exhibit 10.8 to the registrant's Current Report on Form 8-K filed by the registrant on July 16, 2021)
10.20+	Amended Restricted Stock Unit Award Agreement between Michael Rabinovitch and BurgerFi International, Inc., dated March 4, 2022 (Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed by the registrant on March 10, 2022)
10.21+	Amended and Restated Restricted Stock Unit Award Agreement between Michael Rabinovitch and BurgerFi International Inc., dated January 3, 2022 (Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed by the registrant on January 6, 2022)
10.22+	Employment Agreement by and between the Company and Stefan K. Schnopp, dated January 3, 2022 (Incorporated by reference to Exhibit 10.8 to the registrant's Quarterly Report on Form 10-Q filled by the registrant on May 16, 2022)

10.23+	Benchmark Restricted Stock Unit Award Agreement by and between the Company and Stefan K. Schnopp, dated January 3, 2022 (Incorporated by reference to Exhibit 10.10 to the registrant's Quarterly Report on Form 10-Q filled by the registrant on May 16, 2022)
10.24+	Restricted Stock Unit Award Agreement by and between the Company and Stefan K. Schnopp, dated January 3, 2022 (Incorporated by reference to Exhibit 10.11 to the registrant's Quarterly Report on Form 10-Q filled by the registrant on May 16, 2022)
10.25+	Restricted Stock Unit Award Agreement by and between the Company and Stefan K. Schnopp, dated January 3, 2022 (Incorporated by reference to Exhibit 10.12 to the registrant's Quarterly Report on Form 10-Q filled by the registrant on May 16, 2022)
10.26+	Amended and Restated Restricted Stock Unit Award Agreement by and between the Company and Karl Goodhew, dated January 3, 2022 (Incorporated by reference to Exhibit 10.16 to the registrant's Quarterly Report on Form 10-Q filled by the registrant on May 16, 2022)
10.27+	Unrestricted Stock Award Agreement between the Company and Karl Goodhew, dated January 3, 2022 (Incorporated by reference to Exhibit 10.18 to the registrant's Quarterly Report on Form 10-Q filed by the registrant on May 16, 2022)
10.28+	Unrestricted Stock Award Agreement between Ophir Sternberg and the Company, dated January 3, 2022 (Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed by the registrant on January 6, 2022)
10.29+	Unrestricted Stock Award Agreement between Michael Rabinovitch and the Company, dated January 3, 2022 (Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed by the registrant on January 6, 2022)
10.30+	Unrestricted Stock Award Agreement between Ophir Sternberg and BurgerFi International Inc., dated January 3, 2023 (Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed by the registrant on January 6, 2023)
10.31+	Unrestricted Stock Award Agreement between Michael Rabinovitch and BurgerFi International Inc., dated January 3, 2023 (Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed by the registrant on January 6, 2023)
10.32+	Form of Independent Director Restricted Stock Unit Award Agreement with the Company (Incorporated by reference to Exhibit 10.12 to the registrant's Current Report on Form 8-K filed by the registrant on July 16, 2021)
10.33+	Form of Independent Director Unrestricted Stock Award Agreement, dated December 21, 2021 (Incorporated by reference to Exhibit 10.4 to the registrant's Quarterly Report on Form 10-Q filed by the registrant on May 16, 2022)
10.34+	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)
10.35+	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)
10.36	Share Escrow Agreement, dated November 3, 2021, by and among the Company, Cardboard Box LLC and the Escrow Agent (Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed by the registrant on November 5, 2021)
10.37	Registration Rights and Lock-Up Agreement, dated November 3, 2021, by and between Cardboard Box LLC and the Company (Incorporated by reference to Exhibit 10.4 to the registrant's Current Report on Form 8-K filed by the registrant on November 5, 2021)
10.38	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 (Incorporated by reference to Exhibit 10.5 to the registrant's Current Report on Form 8-K filed by the registrant on November 5, 2021)

10.39	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 (Incorporated by reference to Exhibit 10.7 to the registrant's Current Report on Form 8-K filed by the registrant on November 5, 2021)
10.40	Eleventh Amendment to Credit Agreement, dated November 23, 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 (Incorporated by reference to Exhibit 10.32 to the registrant's Annual Report on Form 10-K filed by the registrant on April 14, 2022)
10.41	Twelfth Amendment to Credit Agreement, dated March 9, 2022, 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, and the other lenders party from time to time thereto (Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed by the registrant on March 10, 2022)
10.42	Thirteenth Amendment to Credit Agreement, dated December 7, 2022, 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, and the other lenders party from time to time thereto (Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed by the registrant on December 9, 2022)
10.43	Fourteenth Amendment to Credit Agreement, dated February 1, 2023, 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, and the other lenders party from time to time thereto (Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed by the registrant on February 2, 2023)
10.44*	Fifteenth Amendment to Credit Agreement, dated February 24, 2023, 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, and the other lenders party from time to time thereto
10.45*	Secured Promissory Note, dated February 24, 2023, by Company and Plastic Tripod, Inc.in favor of CP7 Warming Bag, L.P.
10.46*	Guaranty and Security Agreement, dated February 24, 2023, by and among the Company, Hot Air, Inc., ACFP Management, Inc., Anthony's Pizza Holding Company, LLC, the subsidiary guarantors party thereto, and CP7 Warming Bag, L.P., as lender.
10.47*	Intercreditor and Subordination Agreement, dated February 24, 2023, by and between Regions Bank, as administrative agent and collateral agent for the senior creditors,,and CP7 Warming Back, LP.
10.48+	Amended and Restated Employment Agreement, dated November 4, 2021, by and between ACFP Management, Inc., the Company and Ian Baines (Incorporated by reference to Exhibit 10.8 to the registrant's Current Report on Form 8-K filed by the registrant on November 5, 2021)
10.49+	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 (Incorporated by reference to Exhibit 10.9 to the registrant's Current Report on Form 8-K filed by the registrant on November 5, 2021)
10.50+	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)
21.1*	Subsidiaries of Registrant

23.1*	Consent of Independent Registered Public Accounting Firm
23.2*	Consent of Independent Registered Public Accounting Firm
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	The cover page from the Company's Annual Report on form 10-K for the year ended January 2, 2023 has been formatted in Inline XBRL.

* Filed herewith.
** Furnished.
+ Indicates a management contract or a compensatory plan or agreement.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 23 and 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this amended report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: April 3, 2023

BurgerFi International, Inc.

By: */s/ Ian Baines*
Ian Baines
Chief Executive Officer

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

Name	Title	Date
/s/ Ian Baines Ian Baines	Chief Executive Officer (Principal Executive Officer)	April 3, 2023
/s/ Michael Rabinovitch Michael Rabinovitch	Chief Financial Officer (Principal Accounting and Financial Officer)	April 3, 2023
/s/ Ophir Sternberg Ophir Sternberg	Executive Chairman of the Board of Directors	April 3, 2023
/s/ Martha Stewart Martha Stewart	Director	April 3, 2023
/s/ Vivian Lopez-Blanco Vivian Lopez-Blanco	Director	April 3, 2023
/s/ Gregory Mann Gregory Mann	Director	April 3, 2023
/s/ Allison Greenfield Allison Greenfield	Director	April 3, 2023
/s/ Andrew Taub Andrew Taub	Director	April 3, 2023
/s/ *David Heidecorn* David Heidecorn	Director	April 3, 2023

AMENDMENT
TO THE
AMENDED AND RESTATED STOCK PURCHASE AGREEMENT

THIS AMENDMENT TO THE AMENDED AND RESTATED STOCK PURCHASE AGREEMENT (this " **Amendment**"), dated as of February 24, 2023 (the "**Effective Date**"), is entered into by and 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**").

WHEREAS, the Parties entered into an Amended and Restated Stock Purchase Agreement, dated as of November 3, 2021 (the " **Stock Purchase Agreement**"), whereby Buyer acquired all of the issued and outstanding shares of common stock, par value $0.001 (the "**Shares**"), of the Company; and

WHEREAS, as the Effective Date, the Company issued an Amended and Restated Certificate of Designation for the Series A Preferred Stock of the Company, which included updated terms and conditions with respect to the designation of the Board of Directors; and

WHEREAS, the Parties desire to modify and amend the terms of the Stock Purchase Agreement in accordance with the terms and conditions set forth in this Amendment.

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:

1. Recitals. The recitals set forth above are true and correct and are part of this Amendment.

2. Definitions. The terms used in this Amendment without definition shall have the same meaning as when used in the Stock Purchase Agreement.

3. Amendments to the Stock Purchase Agreement. Pursuant to Section 10.09 of the Stock Purchase Agreement, the Stock Purchase Agreement shall be amended as follows effective as of the Effective Date.

(a) The following definitions in Article I of the Stock Purchase Agreement are hereby deleted in their entirety: (i) "**Seller Designated BFI Board Observer**", (ii) **"Seller Designated**

BFI Director", (iii) "**Seller Designated Committee Observer**" and (iv) "**Seller Ownership Threshold"**.

(b) Section 5.21 of the Stock Purchase Agreement is hereby amended and restated in its entirety to read as follows:

Section 5.21 *[INTENTIONALLY OMITTED]*

4. Full Force and Effect. Except as specifically modified or amended hereby, the Stock Purchase Agreement shall remain in full force and effect and, as so modified or amended, is hereby ratified, confirmed and approved.

5. Counterparts. This Amendment 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 Amendment 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 Amendment.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the Effective Date by their respective officers thereunto duly authorized.

COMPANY:

HOT AIR, INC.

By */s/ Michael Rabinovitch*
Name: Michael Rabinovitch
Title: Chief Financial Officer

SELLER:

CARDBOARD BOX LLC

By */s/ Andrew C. Taub*
Name: Andrew C. Taub
Title: Authorized Officer

BUYER:

BURGERFI INTERNATIONAL, INC.

By */s/ Michael Rabinovitch*
Name: Michael Rabinovitch
Title: Chief Financial Officer

Exhibit 4.1

DESCRIPTION OF OUR SECURITIES

The following summary of the Company's securities is based on and qualified by the Company's Amended and Restated Certificate of Incorporation and Certificate of Designation thereto and Amended and Restated Bylaw. References to the "Company" and to "we," "us," and "our" refer to BurgerFi International, Inc. and its subsidiaries.

Authorized and Outstanding Stock

Our Amended and Restated Certificate of Incorporation authorizes the issuance of a total number of 110,000,000, shares of all classes of capital stock, of which 100,000,000 shares shall be common stock of the par value $.0001 per share ("Common Stock") and 10,000,000 shares shall be preferred stock of the par value of $.0001 per share ("Preferred Stock"). Pursuant to the CoD, the Company designated 2,620,000 shares of our Preferred Stock as "Series A Preferred Stock," as referred to throughout this prospectus. In connection with the Stock Acquisition, the Company issued 2,120,000 shares of Series A Junior Preferred Stock.

Common Stock

Voting Power

Except as otherwise required by law or as otherwise provided in any certificate of designation for any series of preferred stock, the holders of the Common Stock shall exclusively possess all voting power and each share of Common Stock shall have one vote. Unless otherwise required by the DGCL, any proposals (other than the election of directors) brought before any meeting of stockholders shall be decided by the vote of the holders of a majority of the stock represented and entitled to vote thereat. At all meetings of stockholders for the election of directors, a plurality of the votes cast shall be sufficient to elect a director. There is no cumulative voting with respect to the Common Stock.

Dividends

Subject to the rights of holders of any series of outstanding Preferred Stock, holders of common stock will be entitled to receive dividends and other distributions, if any, in amounts declared from time to time by our Board in its discretion out of funds legally available therefor and shall share equally on a per share basis in these dividends and distributions.

Liquidation, Dissolution and Winding Up

In the event of our liquidation, dissolution or winding up, holders of Common Stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to the prior distribution rights of any outstanding preferred stock.

Other

Our stockholders have no conversion, preemptive or other subscription rights and there are no sinking fund or redemption provisions applicable to the shares of Common Stock.

Preferred Stock

Our Amended and Restated Certificate of Incorporation provides the Board of Directors is expressly granted authority to issue shares of the Preferred Stock, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series (a "Preferred Stock Designation"). The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, without a separate vote of the holders of the Preferred Stock, or any series thereof, unless a vote of any such holders is required pursuant to any Preferred Stock Designation.

Warrants

The Public Warrants became exercisable 30 days after the completion of the Business Combination; provided that the Company has an effective registration statement under the Securities Act covering the shares of common stock

issuable upon exercise of the Public Warrants and a current prospectus relating to them is available. The Company has agreed that as soon as practicable, the Company will use its best efforts to file with the SEC a registration statement for the registration, under the Securities Act, of the shares of common stock issuable upon exercise of the Public Warrants. The Company will use its best efforts to cause the same to become effective and to maintain the effectiveness of such registration statement, and a current prospectus relating thereto, until the expiration of the Public Warrants in accordance with the provisions of the warrant agreement. Notwithstanding the foregoing, if a registration statement covering the shares of common stock issuable upon exercise of the Public Warrants is not effective within the specified period following the consummation of Business Combination, warrant holders may, until such time as there is an effective registration statement and during any period when the Company shall have failed to maintain an effective registration statement, exercise warrants on a cashless basis pursuant to the exemption provided by Section 3(a)(9) of the Securities Act, provided that such exemption is available. If that exemption, or another exemption, is not available, holders will not be able to exercise their warrants on a cashless basis. The Public Warrants will expire five years after the completion of a Business Combination or earlier upon redemption or liquidation.

The Company may redeem the Public Warrants:

- in whole and not in part;
- at a price of $0.01 per warrant;
- at any time during the exercise period;
- upon a minimum of 30 days' prior written notice of redemption;
- if, and only if, the last sale price of the Company's common stock equals or exceeds $18.00 per share for any 20 trading days within a 30-trading day period ending on the third business day prior to the date on which the Company sends the notice of redemption to the warrant holders; and
- if, and only if, there is a current registration statement in effect with respect to the shares of common stock underlying such warrants.

If the Company calls the Public Warrants for redemption, management will have the option to require all holders that wish to exercise the Public Warrants to do so on a "cashless basis," as described in the warrant agreement. The exercise price and number of shares of common stock issuable upon exercise of the warrants may be adjusted in certain circumstances including in the event of a stock dividend, or recapitalization, reorganization, merger or consolidation. However, the warrants will not be adjusted for issuance of common stock at a price below its exercise price. Additionally, in no event will the Company be required to net cash settle the warrants.

The Private Warrants are identical to the Public Warrants, except that the Private Warrants and the common stock issuable upon the exercise of the Private Warrants were not be transferable, assignable or saleable until after the completion of the Business Combination, subject to certain limited exceptions. Additionally, the Private Warrants will be exercisable on a cashless basis and be non-redeemable so long as they are held by the initial purchasers or their permitted transferees. If the Private Warrants are held by someone other than the initial purchasers or their permitted transferees, the Private Warrants will be redeemable by the Company and exercisable by such holders on the same basis as the Public Warrants.

The Company has issued an additional 150,000 warrants in satisfaction of certain working capital loans made by the Company's officers, directors, initial stockholders and affiliates. The working capital warrants are identical to the Public Warrants, except that the working capital warrants and the common stock issuable upon the exercise of the working capital warrants were not be transferable, assignable or saleable until after the completion of the Business Combination, subject to certain limited exceptions. Additionally, the working capital warrants may be exercisable on a cash or cashless basis and will be non-redeemable so long as they are held by the initial purchasers or their permitted transferees. If the working capital warrants are held by someone other than the initial purchasers or their permitted transferees, the working capital warrants will be redeemable by the Company and exercisable by such holders on the same basis as the Public Warrants.

Unit Purchase Option

The Company entered into a Unit Purchase Option Agreement with EarlyBirdCapital pursuant to which EarlyBirdCapital and its designees can purchase up to 750,000 units (each unit consists of one share of Common Stock and one Warrant) exercisable at $10.00 per unit. The unit purchase option may be exercised for cash or on a cashless basis, at the holder's option, and expires on March 17, 2023. As of April 27, 2021, 283,669 shares of Common Stock have been issued pursuant to the cashless exercises and 75,000 shares and 75,000 shares of Common Stock issuable upon the exercise of the warrants remain issuable pursuant to the exercise of the units that remain outstanding pursuant to such unit purchase option.

The unit purchase option grants to holders demand and "piggyback" rights for periods of five and seven years, respectively, from March 13, 2018 with respect to the registration under the Securities Act of the securities directly and indirectly issuable upon exercise of the option. The 283,669 shares of Common Stock that have been issued pursuant to the cashless exercises of the unit purchase option and the 75,000 shares and 75,000 shares of Common Stock issuable upon the exercise of the warrants that remain issuable pursuant to the exercise of the units that remain outstanding pursuant to such unit purchase option are being registered pursuant to this registration statement. The Company will bear all fees and expenses attendant to registering the securities, other than underwriting commissions which will be paid for by the holders themselves. The exercise price and number of units issuable upon exercise of the option may be adjusted in certain circumstances including in the event of a stock dividend, or the Company's recapitalization, reorganization, merger or consolidation. However, the option will not be adjusted for issuances of common stock at a price below its exercise price.

Transfer Agent and Warrant Agent

The transfer agent for our common stock and warrant agent for our warrants is Continental Stock Transfer & Trust Company. We have agreed to indemnify Continental Stock Transfer & Trust Company in its role as transfer agent and warrant agent, its agents and each of its stockholders, directors, officers and employees against all claims and losses that may arise out of acts performed or omitted for its activities in that capacity, except for any liability due to any gross negligence, willful misconduct or bad faith of the indemnified person or entity.

Certain Anti-Takeover Provisions of Delaware Law and our Charter and Bylaws

Our Amended and Restated Certificate of Incorporation contains provisions that may discourage unsolicited takeover proposals that stockholders may consider to be in their best interests. These provisions may make more difficult the removal of management and may discourage transactions that otherwise could involve payment of a premium over prevailing market prices for our securities.

Staggered Board

Our Amended and Restated Certificate of Incorporation provides that our Board be classified into three classes of directors of approximately equal size. As a result, in most circumstances, a person can gain control of our Board only by successfully engaging in a proxy contest at two or more annual or special meetings.

Special meeting of stockholders

Our Amended and Restated Bylaws provide that special meetings of stockholders may be called only by a majority vote of our Board or our President or Executive Chairman.

Advance notice requirements for stockholder proposals and director nominations

Our Amended and Restated Bylaws provide that stockholders of record seeking to bring business before an annual meeting of stockholders, or to nominate candidates for election as directors at our annual meeting of stockholders, must provide timely notice of their intent in writing. To be timely, a stockholder's notice will need to be received at our principal executive offices not less than sixty (60) days nor more than ninety (90) days prior to the meeting; provided, however, that in the event that less than seventy (70) days' notice or prior public disclosure of the date of the annual meeting is given or made to stockholders, notice by a stockholder, to be timely, must be received no later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made, whichever first occurs. Pursuant to Rule 14a-8 of the Exchange Act, proposals seeking inclusion in our annual proxy statement must comply with the notice periods contained therein. Our Amended and Restated Bylaws also specify certain requirements as to the form and content of a stockholders' meeting. These provisions may preclude our stockholders from bringing matters before the annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders.

Authorized but unissued shares

Our authorized but unissued Common Stock and Preferred Stock are available for future issuances without stockholder approval and could be utilized for a variety of corporate purposes, including future offerings to raise additional capital, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved Common Stock and Preferred Stock could render more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

Stockholder action by written consent

Our Amended and Restated Bylaws provide that any action required or permitted to be a taken by stockholders must be effected at an annual or special meeting, and may not be taken by written consent (subject to the rights of any preferred stock then outstanding).

Exclusive forum selection

Our Amended and Restated Certificate of Incorporation requires that unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of we, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee or agent of we to we or its stockholders, (iii) any action asserting a claim against we arising pursuant to any provision of the DGCL or our charter or bylaws (as either may be amended from time to time), and (iv) any action asserting a claim against we governed by the internal affairs doctrine. The enforceability of similar choice of forum provisions in other companies' organizational documents has been challenged in legal proceedings, and it is possible that, in connection with claims arising under federal securities laws, a court could find the choice of forum provisions contained in our Amended and Restated Certificate of Incorporation to be inapplicable or unenforceable. If that were the case, because stockholders will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder, it would allow stockholders to bring claims for breach of these provisions in any appropriate forum. Although we believe this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, the provision may have the effect of discouraging lawsuits against our directors and officers.

Notwithstanding the foregoing, Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

Section 203 of the DGCL

We have not opted out of Section 203 of the DGCL under the Amended and Restated Certificate of Incorporation. As a result, pursuant to Section 203 of the DGCL, we are prohibited from engaging in any business combination with any stockholder for a period of three years following the time that such stockholder (the "interested stockholder") came to own at least 15% of the outstanding voting stock (the "acquisition"), except if:

- the Board approved the acquisition prior to its consummation;
- the interested stockholder owned at least 85% of the outstanding voting stock upon consummation of the acquisition; or
- the business combination is approved by the Board of we, and by a 2/3 majority vote of the other stockholders in a meeting.

Generally, a "business combination" includes any merger, consolidation, asset or stock sale or certain other transactions resulting in a financial benefit to the interested stockholder. Subject to certain exceptions, an "interested stockholder" is a person who, together with that person's affiliates and associates, owns, or within the previous three years owned, 15% or more of our outstanding voting stock.

Under certain circumstances, declining to opt out of Section 203 of the DGCL will make it more difficult for a person who would be an "interested stockholder" to effect various business combinations with us for a three-year period. This may encourage companies interested in acquiring us to negotiate in advance with the Board because the

stockholder approval requirement would be avoided if the Board approves the acquisition which results in the stockholder becoming an interested stockholder. This may also have the effect of preventing changes in the Board and may make it more difficult to accomplish transactions which stockholders may otherwise deem to be in their best interests.

Limitation on Liability and Indemnification of Directors and Officers

Our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws limit the personal liability of our directors to our stockholders or us for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to us or our stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL or (4) for any transaction from which the director derived an improper personal benefit. Our Amended and Restated Bylaws also provide for such limitation of liability with respect to our officers. The DGCL provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability:

- for any transaction from which the director derives an improper personal benefit;
- for any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- for any unlawful payment of dividends or redemption of shares; or
- for any breach of a director's duty of loyalty to the corporation or its stockholders.

If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors will be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Delaware law and our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws provide that, in certain circumstances and subject to certain limitations, we will indemnify our directors and officers and may indemnify other employees and other agents, to the fullest extent permitted by law. Any indemnified person is also entitled, subject to certain limitations, to advancement of expenses (including attorneys' fees) in advance of the final disposition of the proceeding.

We currently maintain a directors' and officers' insurance policy pursuant to which our directors and officers are insured against liability for actions taken in their capacities as directors and officers.

We believe these provisions in the Amended and Restated Certificate of Incorporation and in our Amended and Restated Bylaws and these indemnification agreements are necessary to attract and retain qualified persons as directors and officers. However, these provisions may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit
us and its stockholders. Furthermore, a stockholder's investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.
Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or control persons, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Registration Rights

Pursuant to a registration rights agreement, dated as of March 15, 2018 (the "Original Registration Rights Agreement"), those initial stockholders who held the Founders' Shares issued and outstanding prior to the IPO, as well as the holders of the Private Placement Units and any units issued to the Initial Sponsor, the initial stockholders, their affiliates, officers, directors or third parties in payment of working capital loans made to us, were entitled to registration rights.

In connection with the Business Combination, all of the parties to the Original Registration Rights Agreement (and those parties who as a result of the transfer of Founders' Shares became a party to the Original Registration Rights Agreement), along with the Members and all other holders of Registrable Securities (other than the holders of Public Warrants), entered into a new registration rights agreement (the "New Registration Rights Agreement") covering the

registration of Registrable Securities held by such parties. Pursuant to the New Registration Rights Agreement, the Company filed with the SEC a registration statement covering the resale of certain Registrable Securities held by the parties in accordance with SEC guidance and caused the registration statement to be declared effective under the Securities Act, and must use its commercially reasonable efforts to keep such registration statement continuously effective under the Securities Act until all Registrable Securities covered by such registration statement have been sold or may be sold without volume or manner-of-sale restrictions pursuant to Rule 144, without the requirement that the Company be in compliance with the current public information requirement under Rule 144. Additionally, Lion Point Capital, LLC made a written demand for registration under the Securities Act of all or part of the Lion Point Securities. The Company is not obligated to effect more than two demand registration statements in respect of the Lion Point Securities. The New Registration Rights Agreement also provides the holders of the Registrable Securities with certain piggy-back registration rights.

In connection with the Stock Acquisition, on November 3, 2021, we entered into a registration rights and lock-up agreement with Cardboard (the "the RRA/Lock-Up") covering certain registrable securities (the "New Registrable Securities"). Pursuant to the RRA/Lock-Up, the Company will file with the SEC a registration statement covering the resale of the New Registrable Securities in accordance with SEC guidance and will use its commercially reasonable efforts to cause the registration statement to be declared effective under the Securities Act as promptly as practicable after the filing thereof and will use its commercially reasonable efforts to keep such registration statement continuously effective under the Securities Act until all New Registrable Securities covered by such registration statement have been sold or certain other events with respect to the New Registrable Securities have occurred. Additionally, Cardboard is entitled to make, from time to time, a written demand for registration under the Securities Act of all or part of the New Registrable Securities. The Company is not obligated to effect more than three demand registration statements in respect of the New Registrable Securities. The RRA/Lock-Up also provides the holders of the New Registrable Securities with certain piggy-back registration and underwritten shelf offering rights, and subjects the shares of Common Stock issued to Cardboard in the Stock Acquisition (the "BFI Consideration Common Shares"), except with respect to transfers to certain permitted assignees, to a lock-up until twelve (12) months after the ACFP Closing, subject to (i) earlier expiration as follows: (A) 30% of the BFI Consideration Common Shares may be transferred, if after the ACFP 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 ACFP 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 ACFP 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 are subject to a lock-up for 180 days after the ACFP Closing.

FIFTEENTH AMENDMENT TO CREDIT AGREEMENT

THIS FIFTEENTH AMENDMENT TO CREDIT AGREEMENT (this "Agreement"), dated as of February 24, 2023, is entered into by and among BURGERFI INTERNATIONAL, INC., a Delaware corporation ("Parent"), PLASTIC TRIPOD, INC., a Delaware corporation (together with Parent, each a "Borrower" and collectively, the "Borrowers"), the other Subsidiaries of Parent party hereto (each a "Guarantor" and collectively, the "Guarantors"), the Lenders party hereto, REGIONS BANK, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), and CP7 WARMING BAG, LP, as a Delayed Draw Term Loan Lender and as the Junior Lender (as defined below).

RECITALS

WHEREAS, the Borrowers, the 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, that certain Tenth Amendment to Credit Agreement and Joinder dated as of November 3, 2021, that certain Eleventh Amendment to Credit Agreement dated as of November 23, 2021, that certain Twelfth Amendment to Credit Agreement dated as of March 9, 2022, that certain Thirteenth Amendment to Credit Agreement dated as of December 7, 2022 and that certain Fourteenth Amendment to Credit Agreement dated February 1, 2023, and as further amended, modified, extended, restated, replaced, or supplemented in writing from time to time, the "Credit Agreement").

WHEREAS, the Credit Parties have requested that the Required Lenders agree to make certain amendments to the Credit Agreement to (i) permit the Borrowers to incur additional Indebtedness from CP7 Warming Bag, LP (in such capacity, the "Junior Lender") pursuant to a Secured Promissory Note, dated as of the date hereof, in the original principal amount of $15,000,000, executed by the Borrowers in favor of the Junior Lender (the "Secured Promissory Note"), (ii) permit the Borrowers to refinance the Delayed Draw Term Loan with the proceeds of the Secured Promissory Note and (iii) remove the Delayed Draw Term Loan from the Credit Agreement.

WHEREAS, the Required Lenders have agreed to do so, subject 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 prior to 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:

"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.

"Credit Agreement" has the meaning set forth in the Recitals.

"DDTL Consideration" has the meaning set forth in Section 3(a) hereto.

"Effective Date" has the meaning set forth in Section 8 hereto.

"Fifteenth Amendment Fee" has the meaning set forth in Section 7 hereto.

"Guarantor" and "Guarantors" have the meanings set forth in the preamble.

"Junior Debt Documents" has the meaning set forth in Section 3(c) hereto.

"Junior Lender" has the meaning set forth in the Recitals.

"Lender Party" has the meaning set forth in Section 10 hereto.

"Outstanding DDTL Obligations" all Obligations owing to the Delayed Draw Term Loan Lenders under the Credit Agreement and other Credit Documents.

"Parent" has the meaning set forth in the preamble.

"Secured Promissory Note" has the meaning set forth in the Recitals.

"Thirteenth Amendment Fee" means the "Thirteenth Amendment Fee" as defined in the Thirteenth Amendment.

"Twelfth Amendment Fee" means the "Amendment Fee" as defined in the Twelfth Amendment.

2. Estoppels, Consents, Acknowledgements, and Reaffirmations from the Credit Parties.

(a) *Estoppel (Loans Other Than Delayed Draw Term Loan)* . Each Credit Party hereby acknowledges and agrees that, as of the close of business on February [__], 2023, (i) the Outstanding Amount of the Revolving Loans was $[2,500,000.00], (ii) the Outstanding Amount of the Term Loan was $[54,507,429.85], (iii) the Outstanding Amount of the Swingline Loans was $[0.00], (iv) the Outstanding Amount of the Letter of Credit Obligations was $[0.00], (v) the accrued and unpaid portion of the Twelfth Amendment Fee was $154,403.57, (vi) the accrued and unpaid portion of the Thirteenth Amendment Fee was $296,604.65, each of which constitutes a valid and subsisting obligation, as a borrower or a guarantor, as applicable, of each 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 (except in the case of (i) the Twelfth Amendment Fee, fifty percent (50%) of which fee may be deemed cancelled and forgiven upon the occurrence of certain events as more specifically set forth in Section 4 of the Twelfth Amendment and (ii) the Thirteenth Amendment Fee, in respect of which the Thirteenth Amendment Fee 2023 Portion (as defined in the Thirteenth Amendment) may be deemed cancelled and forgiven upon the occurrence of events as more specifically set forth in Section 4 of the Thirteenth Amendment).

(b) *Estoppel (Delayed Draw Term Loan)*. Each Credit Party hereby acknowledges and agrees that, as of the close of business on February [__], 2023, 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 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 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. Release of Credit Parties in Respect of Outstanding DDTL Obligations.

(a) Effective as of the Effective Date and upon the terms and subject to the conditions herein, and in reliance on the representations and warranties contained herein, each Credit Party is hereby released from liability with respect to the Outstanding DDTL Obligations under the Credit Documents, free and clear of any and all claims, liens or encumbrances relating to such Credit Party, in consideration of the continuation and amendment and restatement of the Outstanding DDTL Obligations under the Secured Promissory Note (the "DDTL Consideration"). The Delayed Draw Term Loan Lenders hereby acknowledge and agree that, immediately prior to the occurrence of the Effective Date, the DDTL Consideration constitutes all liabilities, obligations and indebtedness owing by the Credit Parties under the Credit Agreement and the other Credit Documents in respect of the Delayed Draw Term Loan, other than contingent obligations for which no claim has been made and no amounts are owed as of the Effective Date.

(b) Subject to the receipt by the Junior Lender of the DDTL Consideration, as evidenced by the Borrowers' execution and delivery of the Secured Promissory Note, the Credit Parties are hereby irrevocably and finally released from all liability with respect to the Outstanding DDTL Obligations under the Credit Agreement, including any contingent obligations for which no claim has been made and no amounts are owed as of the Effective Date.

(c) All of the Outstanding DDTL Obligations shall continue only as obligations of the Borrowers under the Secured Promissory Note and all other [Loan Documents] (as defined in the Secured Promissory Note) (collectively, the "Junior Debt Documents"). The Outstanding DDTL Obligations represent loans and extensions of credit directly used and benefiting the Borrowers and for which the Borrowers received reasonably equivalent value. The allocation of the Outstanding DDTL Obligations to the Borrowers as continuing obligations and liabilities of the Borrowers under the Junior Debt Documents and the release of the liability of the Credit Parties from the Outstanding DDTL Obligations under the Credit Documents, represent bargained for exchanges and reasonably equivalent value for such allocation and releases. This Agreement shall be considered a "[Loan Document]" under the Secured Promissory Note.

4. Amended Credit Agreement. Effective as of the Effective Date, the Credit Agreement (but excluding the Appendices, Schedules, and Exhibits thereto) is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold and double-underlined text (indicated textually in the same manner as the following example: double underlined text) as set forth in the pages of the amended Credit Agreement attached as Annex A hereto.

5. Appendix D to Credit Agreement. Appendix D to the Credit Agreement is hereby deleted in its entirety.

6. Exhibit 2.5-4 to Credit Agreement. Exhibit 2.5-4 to the Credit Agreement is hereby deleted in its entirety.

7. Fifteenth Amendment Fee. In consideration of the written consent of each consenting Lender to this Amendment, the Borrowers hereby agree to pay to the Administrative Agent, for the account of each Lender, a one-time fee (the "Fifteenth Amendment Fee") in an amount equal to ten basis points (0.10%) of the sum of (i) the Outstanding Amount of the Term Loans as of the Effective Date plus

(ii) the amount of the Aggregate Revolving Commitments as of the Effective Date. The Fifteenth Amendment Fee shall be fully earned and non-refundable as of the Effective Date and shall be due and payable in immediately available funds on December 31, 2023; provided, that the Fifteenth Amendment Fee shall be automatically deemed cancelled and waived upon repayment in full in cash of all Obligations (other than any contingent obligations for which a claim has not been made and, for the avoidance of doubt, the Fifteenth Amendment Fee) on or prior to December 31, 2023.

8. 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 Lenders, and the Administrative Agent.

(b) *Junior Debt Documents.* The Administrative Agent shall have received (i) duly executed true and complete copies of (A) the Secured Promissory Note and any other Junior Debt Document and (B) an intercreditor and subordination agreement in the form attached hereto as Annex B and (ii) evidence, reasonably acceptable to the Administrative Agent, that (Y) the Delayed Draw Term Loan Lenders have returned to the Borrowers the Delayed Draw Term Loan Note marked "satisfied" or words of similar effect, providing a copy thereof to the Administrative Agent and (Z) the Borrowers have received an advance of funds under the Secured Promissory Note in an amount not less than $5,000,000 (exclusive of reasonable and documented expenses of the Delayed Draw Term Loan Lenders incurred in connection with the Borrowers' issuance of the Junior Debt Documents).

(c) *Equity Documents*. The Administrative Agent shall have received (i) a duly executed true and complete copy of an amended and restated certificate of designation, in form and substance reasonably satisfactory to the Administrative Agent, setting forth the terms of Parent's preferred stock as of the Effective Date and (ii) evidence reasonably satisfactory to the Administrative Agent that the board of directors of Parent have approved such amended and restated certificate of designation.

(d) *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).

(e) *Administrative Agent's Fees and Expenses* . The Administrative Agent shall have received reimbursement from the Borrowers for all of the Administrative Agent's reasonable, documented, and invoiced fees and expenses incurred 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).

9. 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.

(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) 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 (B) 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) No Default or Event of Default exists on and as of the Effective Date.

(f) The parties executing this Agreement as Guarantors include each Subsidiary of any Credit Party that is required pursuant to Section 7.13 of the Credit Agreement to become a Credit Party as of the date hereof.

(g) After giving effect to this Agreement, the Credit Parties have delivered to the Administrative Agent all documents evidencing existing shareholder agreements or other agreements to which any Credit Party is a party in respect of the Equity Interests of such Credit Party. Except as previously disclosed to the Administrative Agent, there is no membership interest or other Equity Interest of any Credit Party outstanding which upon conversion or exchange would require the issuance by any Credit Party of any additional membership interests or other Equity Interests of any Credit Party or other Equity Interests convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interest of any Credit Party.

10. 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.

11. 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.

12. Continuing Effectiveness 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.

13. 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 10 and Section 11 hereof.

14. Entirety. This Agreement, 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 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.

15. 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.

16. 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*.

17. 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.

18. 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 Fifteenth Amendment to Credit Agreement 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

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 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 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 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*.]

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 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 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: REGIONS BANK

By: /s/ J. Richard Baker
Name: J. Richard Baker
Title: Senior Vice President

LENDERS: REGIONS BANK,
as a Lender

By: /s/ J. Richard Baker
Name: J. Richard Baker
Title: Senior Vice President

CADENCE BANK,

as a Lender

By:/s/ Michael R. Moers
Name: Michael R. Moers
Title: S.V.P.

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.

CP7 WARMING BAG, LP,
as a Delayed Draw Term Loan Lender and as the Junior Lender

By:/s/ Andrew C. Taub
Name: Andrew C. Taub
Title: Authorized Officer

ANNEX A

Conformed Credit Agreement

[attached]

CREDIT AGREEMENT

dated as of December 15, 2015
(amended in its entirety as of ~~November 3, 2021~~ February 24, 2023 by
that certain ~~Tenth~~ Fifteenth 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

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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 and the Letter of Credit Fees, (i) from the Tenth Amendment Effective Date through December 31, 2022, 4.75% per annum; (ii) from January 1, 2023 through June 15, 2023, 5.75% per annum; (iii) from June 16, 2023 through December 31, 2023, 6.75% per annum; (iv) from January 1, 2024 through June 15, 2024, 7.25% per annum; and (v) from and after June 16, 2024, 7.75% 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), transfer or 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 or the 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 and the 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) additional losses, fees, charges, and expenses (or minus gains or income) relating to the consolidation or closing of restaurants (or attributable to disposed or discontinued operations) or lease cancellation costs previously identified in writing to the Administrative Agent, and litigation settlement costs related to matters previously identified in writing to the Administrative Agent, in the aggregate amount for such restaurants, cancelled leases and litigation matters not to exceed $2,700,000 incurred during the four (4) Fiscal Quarter period ending on June 30, 2023; (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, (y) commencing with the Fiscal Year ended on or about January 2, 2023, (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, and (z) with respect to the unsuccessful Permitted Acquisition entitled Project "Guacamole" for the four (4) Fiscal Quarter period ending on or prior to the Fiscal Quarter ending on or about March 31, 2023 reasonable and documented non-recurring fees, costs and expenses paid in cash in connection therewith, in an aggregate amount for this clause (z) not to exceed $1,000,000, and (aa) reasonable and documented non-recurring fees, costs and expenses incurred in connection with the Twelfth Amendment and Thirteenth Amendment (including, without limitation, legal fees, Financial Advisor fees, valuation report fees, arrangement fees, amendment fees and other consent fees) and 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 and any cash payments made in respect to any Incremental Deferred Interest, 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), (l), (w), (x), (y), (z) and (aa), (z) and (aa) 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 (excluding, in any event, payments made in respect of any Incremental Deferred Interest), premium payments, debt discount, fees, charges and related expenses in connection with borrowed money 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) theaggregate outstanding principal amount of the Junior Debt.

"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 (excluding, in any event, rental payments attributable to leases that have been cancelled) 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.

"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.

"Fifteenth Amendment Effective Date" means February 24, 2023.

"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 Advisor" means as defined in Section 7.15.

"Financial Advisor Scope" means as defined in Section 7.15.

"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 fifty-two (52) or fifty-three (53) week fiscal year of Parent and its Subsidiaries ending on the Monday nearest to 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 supranational 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.

"Incremental Accrual Period" means with respect to the Loans , the period from the Twelfth Amendment Effective Date through the earlier to occur of (i) repayment (whether by acceleration or otherwise) thereof and (ii) June 15, 2023.

"Incremental Deferred Interest" means as defined in Section 2.7(b).

"Incremental Margin Rate" means, with respect to the Loans , (i) 2.00% per annum from and after the Twelfth Amendment Effective Date through December 31, 2022, (ii) 1.00% per annum from and after January 1, 2023 through June 15, 2023, and (iii) 0% per annum thereafter.

"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).

"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.

"Intercreditor and Subordination Agreement" means that certain Intercreditor Agreement and Subordination Agreement dated as of the Fifteenth Amendment Effective Date among the Administrative Agent, the Collateral Agent, CP7 Warming Bag, LP, and the Credit Parties, in form and substance satisfactory to the Administrative Agent and Required Lenders.

"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.

"Junior Debt" means the Indebtedness of the Borrowers owing to CP7 Warming Bag, LP in an aggregate original principal amount not to exceed $15,100,000 pursuant to the Junior Secured Promissory Note and subject to the Intercreditor and Subordination Agreement.

"Junior Secured Promissory Note" means that certain Secured Promissory Note, dated as of the Fifteenth Amendment Effective Date (as amended, restated supplemented or otherwise modified from time to time), by and among the Borrowers and CP7 Warming Bag, LP with respect to the Junior Debt, in form and substance reasonably satisfactory to the Administrative Agent and Required Lenders, evidencing the Junior Debt.

"Lender" means each financial institution with a Term Loan Commitment or a Revolving Commitment or that holds Revolving Obligations or a Term Loan , 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, as of any date of determination, an amount equal to the sum of (a) the greater of zero and the amount, if any, by which the Aggregate Revolving Commitments shall exceed the Total Revolving Outstandings as of such date plus (b) the aggregate amount of cash and Cash Equivalents (but only those identified in clauses (a) and (b) of the definition thereof) of the Credit Parties (i) on deposit in a deposit account or securities account owned by a Credit Party and located within the United States of America, (ii) 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, (iii) to which the Credit Parties have unfettered and immediate access for payment of any Obligations that may then be due hereunder and (iv) 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 or 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, September 30, 2025 and (ii) with respect to the Revolving Loans, the earliest to occur of (a) September 30, 2025, (b) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.1(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 contributed 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 or a 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; and (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

"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. 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. 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;.

"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.

"Thirteenth Amendment" means, that certain Thirteenth Amendment to Credit Agreement dated as of December 7, 2022.

"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.

"Twelfth Amendment" means, that certain Twelfth Amendment to Credit Agreement dated as of March 9, 2022.

"Twelfth Amendment Effective Date" means March 9, 2022.

"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 form 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

(h) 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.

(i) 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. 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).

(k) Any reference to "calendar month", "month" or any variation thereof in this Agreement or in any other Credit Document shall mean and be a reference to "fiscal month of any Fiscal Year".

Section 2 LOANS AND LETTERS OF CREDIT

Section 2.1 **Revolving Loans and 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.

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 or 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:

Payment Dates	Principal Amortization Payment
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

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) Each Loan shall bear additional interest on the unpaid principal amount thereof during the Incremental Accrual Period at the Incremental Margin Rate (such accrued additional interest, the "Incremental Deferred Interest"), which shall be payable in arrears upon the earlier of (i) the repayment of the Obligations in full in cash and (ii) December 31, 2023; provided that if no Event of Default has occurred and is continuing, then (A) the Incremental Deferred Interest shall be automatically deemed cancelled and waived upon repayment in full in cash of all

Obligations (other than the Incremental Deferred Interest, and any contingent obligations for which a claim has not been made) on or prior to December 31, 2022, and (B) fifty percent (50%) of the Incremental Deferred Interest shall be automatically deemed cancelled and waived upon repayment in full in cash of all Obligations (other than fifty percent (50%) of the Incremental Deferred Interest and any contingent obligations for which a claim has not been made) from and after January 1, 2023 and on or prior to March 31, 2023.

(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; provided that Incremental Deferred Interest shall be payable in accordance with Section 2.7(b).

(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.

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.]

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.

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, 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.

(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; and second, 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.

(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; and second, 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(c)(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; and second, 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.

(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;

(i i) 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;

(i i i) 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 expect 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.

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 8106 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) MonthlyQuarterly Restaurant Reports. Within thirty (30) days after the end of each Fiscal Quarter (commencing with the Fiscal Quarter ending as of March 31, 2023), 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, 2022) 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".

(o) Valuation Report for Parent and its Subsidiaries. The Credit Parties shall provide, by no later than March 31, 2023, to Administrative Agent a market valuation of Parent and its Subsidiaries as of Fiscal Year ending on January 2, 2023 (the "Valuation"). The Valuation shall be conducted by a firm reasonably acceptable to the Required Lenders and the Credit Parties (the "Valuation Firm"). For the avoidance of doubt, Marcum LLP shall be deemed acceptable to the Required Lenders as the Valuation Firm. If the methodologies of the Valuations of Marcum LLP are not satisfactory to the Required Lenders in their reasonable discretion then the Credit Parties shall, no later than ten (10) Business Days after notice from the Administrative Agent, retain another Valuation Firm reasonably acceptable to the Required Lenders and the Credit Parties to conduct a new Valuation, which shall be delivered to the Administrative Agent no later than June 30, 2023.

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 (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.

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 7.15 **Financial Advisor**.

(a) The Credit Parties shall engage by no later than December 31, 2022, and at all times thereafter the Credit Parties shall continue to retain, an investment banking firm (the "Investment Banker") reasonably acceptable to the Required Lenders and the Credit Parties. For the avoidance of doubt, Arlington Capital Advisors and the engagement letter dated as of October 19, 2022 shall be deemed acceptable to the Required Lenders as the Investment Banker. The scope of the Investment Banker's engagement shall relate to a refinancing of the Obligations and otherwise be on terms reasonably acceptable to the Required Lenders and the Credit Parties.

(b) If upon delivery of the financial statements referred to in Section 7.1(a) hereof the Consolidated Fixed Charge Coverage Ratio as of the end of any Fiscal Quarter of Parent ending after January 2, 2023 was less than 1.15 to 1.00, the Credit Parties shall engage, no later than ten (10) Business Days after the date such financial statements are due pursuant to Section 7.1(a), a management consulting firm (the "Consulting Firm"; the Investment Banker and the Consulting Firm shall be referred to together as the "Financial Advisors" and each a "Financial Advisor") reasonably acceptable to the Required Lenders and the Credit Parties; provided, however, if upon delivery of the financial statements to Administrative Agent referred to in and required by Section 7.1(a) hereof, (x) the Consolidated Fixed Charge Coverage Ratio as of the end of each of the two prior consecutive Fiscal Quarters of Parent was greater than 1.15 to 1.00, and (y) the Consolidated Senior Lease-Adjusted Leverage Ratio as of the end of each of the two prior consecutive Fiscal Quarters of Parent was less than the correlative amount set forth in Section 8.8(a) for such Fiscal Quarters by 0.25 basis points or more, then retention of the

Consulting Firm shall not be required during the following Fiscal Quarter. To the extent applicable, the scope of the Consulting Firm's engagement shall relate to the Credit Parties' disposition of abandoned restaurants and leases, franchising stores, projections, and other matters as reasonably determined by the Required Lenders, and upon such terms, reasonably acceptable to the Required Lenders and the Credit Parties.

(c) The Credit Parties shall be solely responsible for the fees and expenses incurred in connection with the engagement of each Financial Advisor. The Credit Parties shall not make any material change, limitation, or revision to the scope of engagement of the Investment Banker or, if applicable, to the scope of the Consulting Firm (collectively, the "Financial Advisor Scope") without the prior written consent of the Required Lenders, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that, notwithstanding the foregoing the Credit Parties may broaden the Financial Advisor Scope of either Financial Advisor without the consent of the Required Lenders. The Credit Parties shall be prohibited from terminating either Financial Advisor's engagement without the prior written consent of the Required Lenders, which shall not be unreasonably withheld, conditioned, or delayed and shall not be required if such terminated Financial Advisor is replaced with another firm whose identity and scope of engagement are reasonably acceptable to the Required Lenders within fifteen (15) days of such termination. Each Financial Advisor shall report to the Chief Executive Officer of the Borrowers and work with management for the purpose of carrying out its respective Financial Advisor Scope. The Credit Parties shall cause the Financial Advisors to meet with the Administrative Agent and Required Lenders, not more frequently than quarterly, to report on matters within their respective Financial Advisor Scope.

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;

(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; and

(n) the Junior Debt.

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 statue, 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);

(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; and

(y) Liens securing the Junior Debt so long as such Liens are subject to the Intercreditor and Subordination Agreement.

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 closest to the calendar 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	8.05 to 1.00
June 30, 2022	7.95 to 1.00
September 30, 2022	7.10 to 1.00
December 31, 2022	7.00 to 1.00
March 31, 2023	7.00 to 1.00
June 30, 2023 and thereafter	6.50 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 the correlative amount set forth in the table below:

Each Fiscal Quarter ending closest to the calendar quarters ending	Minimum Consolidated Fixed Charge Coverage Ratio
March 31, 2022	1.00 to 1.00
June 30, 2022	1.00 to 1.00
September 30, 2022	1.00 to 1.00
December 31, 2022 and thereafter	1.10 to 1.00

(c) Minimum Liquidity. Permit Liquidity (on a bank balance basis and available for withdrawal), as of the close of business on the Monday nearest to the last day of each month below, to be less than the correlative amount set forth in the table below:

Month(s) ending	Minimum Liquidity
November 30, 2021 through November 30, 2022	$12,500,000
December 31, 2022	$9,500,000
January 31, 2023	$8,000,000
February 28, 2023 and the Monday nearest to the last day of each month thereafter	$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 $5,000,000; 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 rising 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, and (h) leases and Intellectual Property licenses entered into in the ordinary course of business

Section 8.12 **Prepayment of Subordinated Debt**. No Credit Party shall, nor shall it permit any of its Subsidiaries to:

(a) after the issuance thereof, amend or modify (or permit the amendment or modification of) the terms of any Funded Debt in a manner materially adverse to the interests of the Lenders (including specifically shortening any maturity or average life to maturity or requiring any payment sooner than previously scheduled or increasing the interest rate or fees applicable thereto);

(b) make any payment in contravention of the terms of the Junior Debt;

(c) amend or modify, or permit or acquiesce to the amendment or modification (including waivers) of, any material provisions of the Junior Secured Promissory Note in a manner adverse to the interests of the Lenders or the Borrower, including any other governing instruments relating thereto (including, without limitation, any increase in the principal amount of the Junior Debt (other than with respect to any paid-in-kind interest permitted therein)); and

(d) make any payment, grant any Lien, or take any action in contravention of the terms of the Intercreditor and Subordination Agreement.

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; provided, that the holders of the Junior Debt shall be permitted to receive reimbursement of actual and reasonable documented out-of-pocket expenses incurred in connection with the Junior Debt (subject to the terms of the Intercreditor and Subordination Agreement).

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; (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 (iii) breach or default by the Borrowers or any Credit Party with respect to the Junior Secured Promissory Note or any other agreement relating to the Junior Debt; 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, Section 7.15, Section 7.16 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 ; or

(m) Junior Debt. (i) Any of the Obligations for any reason shall cease to be "senior debt," "senior indebtedness," "designated senior debt" or "senior secured financing" (or any comparable term) under, and as defined in, the documentation governing the Junior Debt (in terms of payment and Lien priority) to the Obligations, (ii) the subordination provisions set forth in the Intercreditor and Subordination Agreement shall, in whole or in part, cease to be effective or cease to be legally valid, binding and enforceable against the holders of the Junior Debt, or (iii) any Credit Party or any Subsidiary of any Credit Party, shall assert any of the foregoing in writing.

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 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

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 subagent 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 a Defaulting Lender except as provided in clause (a)(iii) above and as set forth at the end of this clause (b)) 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.

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).

(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 PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving

insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) 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]

ANNEX B

Form of Intercreditor and Subordination Agreement

[attached]

THIS PROMISSORY NOTE ("NOTE") HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THIS NOTE HAS BEEN ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF REGISTRATION OF THE RESALE THEREOF UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY IN FORM, SCOPE AND SUBSTANCE TO THE MAKER THAT SUCH REGISTRATION IS NOT REQUIRED.

THIS SECURED PROMISSORY NOTE IS SUBJECT TO THE TERMS OF THAT CERTAIN INTERCREDITOR AND SUBORDINATION AGREEMENT, DATED AS OF FEBRUARY 24, 2023, BY AND AMONG REGIONS BANK, CP7 WARMING BAG, LP., BURGERFI INTERNATIONAL, INC., PLASTIC TRIPOD, INC. AND THE OTHER PARTIES THERETO (AS THE SAME MAY BE AMENDED, MODIFIED, RESTATED OR SUPPLEMENTED FROM TIME TO TIME, THE " SUBORDINATION AGREEMENT"), AND IS SUBORDINATED TO THE PRIOR PAYMENT-IN-FULL OF THE SENIOR INDEBTEDNESS, WITH ANY LIENS SECURING THE SECURED PROMISSORY NOTE SUBORDINATED TO THE LIENS SECURING THE SENIOR INDEBTEDNESS, ALL TO THE EXTENT, AND IN THE MANNER PROVIDED IN THE SUBORDINATION AGREEMENT.

SECURED PROMISSORY NOTE

$15,100,000.00 February 24, 2023

For value received, the undersigned, BURGERFI INTERNATIONAL, INC., a Delaware corporation (" Parent"), and PLASTIC TRIPOD, INC., a Delaware corporation (together with Parent, individually and collectively, "Borrower"), hereby jointly and severally promise to pay to the order of CP7 WARMING BAG, L.P. (together with its successors and assigns, " Lender"), the principal sum of FIFTEEN MILLION ONE HUNDRED THOUSAND DOLLARS ($15,100,000.00), together with interest on the unpaid principal balance hereunder, at the rate and payable as set forth below. Capitalized terms not otherwise defined in this Secured Promissory Note (this "Note") shall have the meanings set forth in Section 16 below. All other terms contained in this Note, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

1. REPAYMENT OF PRINCIPAL

(a) Repayment. The principal amount of the Term Loan, the unpaid interest thereon, and all other Obligations relating to the Term Loan shall be immediately due and payable on the Maturity Date. In the event the Borrower fails to repay the Obligations relating to the Term Loan

on or prior to the Maturity Date, Lender may exercise all right and remedies available to it under this Note and applicable law.

(b) Optional Prepayment. Commencing on the date on which the Senior Obligations shall have been Paid-In-Full, and at all times thereafter, Borrower may prepay the principal of and accrued interest on this Note from time to time and at any time, in whole or in part, without premium or penalty.

2. PAYMENT OF INTEREST

(a) Interest. Subject to Section 2(b), the principal amount outstanding under the Term Loan shall accrue interest at a rate equal to four percent (4.0%) per annum, with such interest accruing daily and compounding monthly on the first day of each month such that all accrued interest through such date ("PIK Interest") shall be added to the principal amount with interest continuing to accrue on such amount thereafter. Such interest shall begin to accrue on the date following the date hereof and continue to accrue on the sum of (i) the unpaid principal amount, plus (ii) all other unpaid costs, expenses and other amounts payable hereunder until payment of all such amounts payable hereunder is received by the Lender in full.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, the Obligations shall bear interest at a rate per annum which is two percentage points (2.0%) above the rate that is otherwise applicable thereto (the "Default Rate"). Expenses which are required to be paid by Borrower pursuant to this Note (including, without limitation, Lender Expenses subject to the limitations set forth herein) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Lender.

(c) Interest Computation. Interest shall be capitalized monthly on the first calendar day of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed.

3. LENDER EXPENSES

Borrower shall pay to Lender all Lender Expenses (including reasonable attorneys' fees and expenses of Lender's outside counsel) incurred in connection with the preparation, negotiation and documentation of this Note and all other documentation executed in connection with this Note and due diligence in connection therewith.

4. PAYMENTS; APPLICATION OF PAYMENTS

(a) All payments to be made by Borrower under this Note shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 p.m. Eastern time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Eastern time are considered received at the opening of business on the next Business Day.

When a payment is due on a day that is not a Business Day, the payment shall be due the next succeeding Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Payments hereunder shall be applied first to Lender Expenses due and payable hereunder, second to accrued but unpaid interest due and payable hereunder and third to outstanding principal.

5. SECURITY INTEREST

(a) To secure the prompt payment and performance to Lender of the Obligations, Borrower hereby assigns, pledges and grants to Lender a continuing, second priority security interest in and to, and lien on, all of its Collateral, whether now owned or existing or hereafter created, acquired or arising and wheresoever located.

(b) Borrower shall mark its books and records as may be necessary or appropriate to evidence, protect and perfect Lender's security interest and shall cause its financial statements to reflect such security interest.

(c) Borrower shall take all action that may be necessary or desirable, or that Lender may reasonably request, so as at all times to maintain the validity, perfection, enforceability and priority of Lender's security interest in and lien on the Collateral or to enable Lender to protect, exercise or enforce its rights hereunder and in the Collateral. By its signature hereto, Borrower hereby authorizes Lender to file against Borrower, one or more financing, continuation or amendment statements pursuant to the Code in form and substance satisfactory to Lender (which statements may have a description of Collateral as "all assets" and/or "all personal property" of Borrower). All charges, expenses and fees Lender may incur in doing any of the foregoing, and any local taxes relating thereto, shall be charged to and payable by Borrower immediately on demand, to the extent permitted under the Subordination Agreement.

(d) Borrower shall not create, incur, assume or permit to exist, any lien (other than Permitted Liens) upon or with respect to any assets in which Lender now or hereafter holds as a security interest.

6. CONDITIONS PRECEDENT

Lender's obligation to make the Term Loan is subject to the following conditions precedent, unless waived in writing by Lender:

(a) this Note and the Guaranty shall have been duly executed and delivered by Borrower to Lender;

(b) Lender and the Senior Administrative Agent shall have entered into the Subordination Agreement, in form and substance satisfactory to Lender;

(c) Lender, as seller, and certain other parties, as buyers, shall have entered into that certain Stock Purchase Agreement, dated as of February 24, 2023, in form and substance satisfactory to Lender and the Closing (as defined therein) shall have occurred;

(d) Lender shall have received satisfactory evidence that Parent's Board of Directors approved, and Parent filed with the appropriate Governmental Authorities, an amended and restated certificate of designation, in form and substance satisfactory to Lender, setting forth the terms of Parent's preferred stock;

(e) Lender 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 any of the foregoing certified copies of bylaws, operating agreements, partnership agreements and other Organizational Documents of the Credit Parties, as applicable, have not been modified, restated, annulled, rescinded, revoked or repealed since November 3, 2021, then an Authorized Officer of such Credit Party may deliver a certificate certifying as such along with the delivery of the same; and

(f) all governmental and third-party approvals necessary in connection with the financing contemplated hereby and the continuing operations of the Credit Parties and their Subsidiaries (if any) shall have been obtained on satisfactory terms and shall be in full force and effect.

7. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender as follows:

(a) Existence and Power. Borrower (a) is and will continue to be 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 this Note and the other 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.

(b) Authority. Borrower is, and will continue to be, duly empowered and authorized to enter into, and grant security interests in its property, pursuant to and perform its Obligations under this Note, and all other instruments and transactions contemplated hereby or relating hereto, and to continue its business as currently conducted, except for (a) filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Lender for filing and/or recordation, (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. The execution, delivery and performance by Borrower of this Note, and all other instruments and transactions contemplated hereby or relating hereto, have been duly and validly authorized, are enforceable against Borrower in accordance with their terms, and do not and will not violate any law or any provision of, nor be grounds for acceleration under, any agreement, indenture, note or instrument which is binding upon Borrower, or any of its property, including without limitation, Borrower's formation, organizational or constituent documents.

(c) Title to Collateral; Liens. Subject to Permitted Liens and the security interest granted to Lender, Borrower is now, and will at all times hereafter be, the true, lawful and sole owner of all the Collateral, and the Collateral now is, and will hereafter remain, free and clear of any and all liens, charges, security interests, encumbrances and adverse claims. Lender now has, and will hereafter continue to have, a fully perfected and enforceable second priority security interest in all of the Collateral, and Borrower will at all times defend the Collateral against all claims and demands of others.

(d) Solvency. Borrower, individually, and the Credit Parties and their subsidiaries taken as a whole on a consolidated basis are and, upon the incurrence of the Indebtedness evidenced by this Note, will be, Solvent.

(e) Tax Returns. Borrower has filed all federal and state income and other material tax returns and reports required to be filed, and has paid all federal and state income and other material taxes, assessments, fees and other governmental charges levied or imposed upon itself or its 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.

(f) No Default. Borrower is not 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.

(g) Compliance with Laws. The Credit Parties are in compliance with the Anti-Terrorism Laws.

(h) Senior Credit Agreement. As of the close of business on February 23, 2023, Borrower is indebted to Senior Administrative Agent and the Senior Lenders pursuant to the terms of the Senior Credit Agreement in the aggregate principal amount of $58,507,429.85, together with all interest accrued on said amount and all costs, expenses and other charges now owed by Borrower to Lender in accordance with the Loan Documents.

(i) Other. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (i) has complied in all material respects with all Requirements of Law, and (ii) has not violated any Requirements of Law, the violation of which could reasonably be expected to have a Material Adverse Effect. The execution and delivery by the Parent and the Borrower of this Note, the transactions contemplated hereby, the performance by Borrower of its obligations hereunder, do not and will not violate any provisions of ERISA.

8. COVENANTS

(a) Use of Proceeds. Borrower shall use the proceeds of the Term Loan solely (i) to refinance the Delayed Draw Term Loan in full and (ii) for working capital and general corporate purposes.

(b) Avoidance Claims.

(i) Borrower shall indemnify Lender from any loss (including defense costs, expenses and attorneys' fees) arising out of the assertion, defense, or judgment or otherwise of any Avoidance Claim, and shall pay to Lender on demand the amount thereof.

(ii) Borrower shall notify Lender within three (3) Business Days after Borrower becomes aware of the assertion of an Avoidance Claim.

(iii) This clause (b) shall survive termination of this Note for a period of two years.

9. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (each, an "Event of Default") under this Note:

(a) Borrower fails to pay (i) the principal of the Term Loan when due, whether at stated maturity, by acceleration or otherwise, or (ii) within three (3) Business Days of when due any interest on any Obligations or any fee or any other amount due hereunder;

(b) (i) Borrower 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 the Borrower shall make any assignment for the benefit of creditors, or (ii) Borrower shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due;

(c) An involuntary case shall be commenced against the Borrower 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

(d) Breach by Borrower of any other provision, agreement, representation, warranty or covenant set forth in this Note and such breach remains unremedied for thirty (30) days after written notice from Lender to Borrower of such breach.

10. LENDER'S RIGHTS AND REMEDIES

(a) After the occurrence of an Event of Default and for so long as such Event of Default has not been cured to Lender's satisfaction or waived by Lender in writing, as long as any Obligations remain outstanding hereunder, Lender may, without notice or demand, do any or all of the following:

(i) declare all Obligations immediately due and payable (but if an Event of Default described in Section 9(b) or (c) occurs, all Obligations are immediately due and payable without any action by Lender);

(ii) apply to the Obligations any (A) balances and deposits of Borrower it holds, or (B) any amount held by Lender owing to or for the credit or the account of Borrower;

(iii) take possession of any or all of the Collateral wherever it may be found, and for that purpose Borrower hereby authorizes Lender without judicial process to enter onto any of Borrower's premises without hindrance to search for, take possession of, keep, store, or remove any of the Collateral and remain on such premises or cause a custodian to remain thereon in exclusive control thereof without charge for so long as Lender deems necessary in order to complete the enforcement of its rights under this Note or any other agreement; provided, however, that, should Lender seek to take possession of any or all of the Collateral by court process or through a receiver, Borrower hereby irrevocably waives: (A) any bond and any surety or security relating thereto required by any statute, court rule or otherwise as an incident to such possession; (B) any demand for possession prior to the commencement of any suit or action to recover possession thereof; (C) any requirement that Lender retain possession of and not dispose of any such Collateral until after trial or final judgment;

(iv) (A) require Borrower to assemble any or all of the Collateral and make it available to Lender at a place or places to be designated by Lender which is reasonably convenient to Lender and Borrower, and to remove the Collateral to such locations as Lender may deem advisable; (B) place a receiver in exclusive control of Borrower's business and/or any or all of the Collateral, in order to assist Lender in enforcing its rights and remedies; (C) sell, reclaim, lease or otherwise dispose of all or any portion of the Collateral in its condition at the time Lender obtains possession or after further manufacturing, processing or repair; at any one or more public and/or private sale(s) (including execution sales); in lots or in bulk; for cash, exchange for other property or on credit; and to adjourn any such sale from time to time without

notice other than oral announcement at the time scheduled for sale; (D) demand payment of, and collect any Accounts, Instruments, Chattel Paper, Supporting Indebtedness and general intangibles comprising part or all of the Collateral; or (E) demand and receive possession of any of Borrower's federal and state income tax returns and the books, records and accounts utilized in the preparation thereof or referring thereto. Lender shall have the right to conduct such disposition on Borrower's premises without charge for such time or times as Lender deems fit, or on Lender's premises, or elsewhere and the Collateral need not be located at the place of disposition. Lender may directly or through any affiliate purchase or lease any Collateral at any such public disposition and, if permissible under applicable law, at any private disposition. Any sale or other disposition of Collateral by Lender shall not relieve Borrower of any liability Borrower may have if any Collateral is defective as to title or physical condition at the time of sale. Any and all reasonable and documented attorneys' fees, expenses, costs, liabilities and indebtedness incurred by Lender with respect to the foregoing shall be added to and become part of the Obligations and shall be due on demand; and

(v) exercise all rights and remedies available to Lender at law or equity, including all remedies provided under the Code.

(b) After the occurrence of an Event of Default and for so long as such Event of Default has not been cured to Lender's satisfaction or waived by Lender in writing, as long as any Obligations remain outstanding hereunder, Lender shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, or otherwise, to the Obligations. Lender shall pay any surplus to Borrower or to other Persons legally entitled thereto; Borrower shall remain liable to Lender for any deficiency.

(c) Lender's failure, at any time or times, to require strict performance by Borrower of any provision of this Note shall not waive, affect, or diminish any right of Lender or thereafter to demand strict performance and compliance herewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Lender's rights and remedies under this Note are cumulative. Lender has all rights and remedies provided under the Code, by law, or in equity. Lender's exercise of one right or remedy is not an election and shall not preclude Lender from exercising any other remedy under this Note or other remedy available at law or in equity, and Lender's waiver of any Event of Default is not a continuing waiver. Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

(d) Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Lender on which Borrower is liable.

(e) Power of Attorney. After the occurrence of an Event of Default and for so long as such Event of Default has not been cured to Lender's satisfaction, waived by Lender, or forborne

by Lender (each of the preceding in writing) as long as any Obligations remain outstanding hereunder (other than contingent obligations for which no claim has been made) and Borrower hereby: (x) grants to Lender an irrevocable power of attorney, coupled with an interest, authorizing and permitting Lender (acting through any of its employees, attorneys or agents) at any time at its option but without obligation, with or without notice to Borrower, and at Borrower's sole expense, to do any or all of the following, in Borrower's name or otherwise; and (y) irrevocably authorizes Lender at Borrower's expense, to exercise at any time any of the following powers:

(i) Receive, take, endorse, assign, deliver, accept and deposit, in the name of Lender or Borrower, any and all proceeds of any Collateral securing the Obligations or the proceeds thereof;

(ii) Take or bring, in the name of Lender or Borrower, all steps, actions, suits or proceedings deemed by Lender reasonably necessary or desirable to effect collection of, or other realization upon, any claims owed to Borrower;

(iii) With respect to any of the following established or issued for the benefit of Borrower, either individually or as a member of a class or group, file any claim under (A) any bond; or (B) any trust fund;

(iv) Pay any sums necessary to discharge any lien or encumbrance which is senior to Lender's security interest in any assets of Borrower, which sums shall be included as Obligations hereunder until paid;

(v) File in the name of Borrower or Lender or both: (A) mechanic's lien or related notices, or (B) Claims under any payment bond, in connection with goods or services sold by Borrower in connection with the improvement of realty;

(vi) change the address for delivery of mail to Lender and to receive and open mail addressed to Borrower;

(vii) File any initial financing statements and amendments thereto that: (A) indicate the Collateral as all assets of Borrower or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code, or as being of an equal or lesser scope or with greater detail; (B) contain any other information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Borrower is an organization, the type of organization, and any organization identification number issued to Borrower and, (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral to be "as-extracted" Collateral or "timber to be cut", a sufficient description of real property to which the collateral relates; and (c) contain a notification that Borrower has granted a negative pledge to the Lender, and that any subsequent lienor may be tortuously interfering with Lender's rights;

(viii) File any Correction Statement in the name of Borrower under Section 9-518 of the Code that Lender reasonably deems necessary to preserve its rights hereunder; and

(ix) Without expense to Lender, use any of Borrower's personnel, equipment, including computer equipment, programs, printed output and computer readable media, electronic data information systems, supplies and premises for the collection of accounts and realization on other Collateral as Lender, in its sole discretion, deems appropriate and in connection therewith Borrower hereby irrevocably authorizes all accountants and third parties to disclose and deliver to Lender at Borrower's expense all financial information, books and records, work papers, management reports and other information in their possession relating to Borrower.

(f) After the occurrence of an Event of Default and for so long as such Event of Default has not been cured to Lender's satisfaction, waived by Lender, or forborne by Lender (each of the preceding in writing) Borrower authorizes Lender to accept, endorse and deposit on behalf of Borrower any checks tendered by any Account Debtor "in full payment" of its obligation to Borrower. Borrower shall not assert against Lender any claim arising therefrom, irrespective of whether such action by Lender effects an accord and satisfaction of Borrower's claims, under Section 3-311 of the Code, or otherwise.

(g) Borrower grants Lender a full license to use any financial or payment data related to and collected during the term of this Note for internal and administrative purposes only; provided, that no personally identifiable information shall be disclosed to the public. Any information provided by Borrower under this Section 10(h) shall be treated as confidential information subject to Section 13(i).

11. NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Note must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Lender or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 11.

If to Borrower: BurgerFi International, Inc.
200 West Cypress Creek Drive
Suite 220
Fort Lauderdale, FL 33309

Attn: Legal Department
Email: Legal@Burgerfi.com

If to Lender: CP7 Warming Bag, L.P.
599 W. Putnam Avenue
Greenwich, CT 06830
Attn: David Heidecorn
Email: David.Heidecorn@lcatterton.com

12. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

New York law governs this Note without regard to principles of conflicts of law. Borrower and Lender each submit to the exclusive jurisdiction of the State and Federal courts in New York, New York; provided, however, that nothing in this Note shall be deemed to operate to preclude Lender from bringing suit or taking other legal action in any other jurisdiction to realize on any security for the Obligations or to enforce a judgment or other court order in favor of Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 11 of this Note and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS NOTE OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR ALL PARTIES TO ENTER INTO THIS NOTE. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

13. GENERAL PROVISIONS

(a) This Note binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Note or any rights or obligations under it without Lender's prior written consent (which may be granted or withheld in Lender's discretion). Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Note (including all or a portion of the Loans and Obligations hereunder at the time owing to it); provided that any such assignment shall be subject to the consent of

Borrower (such consent not to be unreasonably withheld or delayed) unless (i) an Event of Default shall have occurred and is continuing at the time of such assignment or (ii) such assignment is to an Affiliate of Lender or an Approved Fund; provided, further, that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Lender within ten (10) Business Days after having received notice thereof. In addition, Lender may at any time, sell participations to any Person (other than a natural Person) in all or a portion of Lender's rights and/or obligations under this Note (including all or a portion of the Loans owing to it), subject to the consent of Borrower (such consent not to be unreasonably withheld or delayed) unless (i) an Event of Default shall have occurred and is continuing at the time of the sale of such participation or (ii) such participation is sold to an Affiliate of Lender or an Approved Fund; provided that (i) Lender's obligations under this Note shall remain unchanged, (ii) Lender shall remain solely responsible to Borrower for the performance of such obligations, (iii) Borrower shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Note, and (iv) any agreement or instrument pursuant to which Lender sells such a participation shall provide that Lender shall retain the sole right to enforce this Note and the rights under all Loan Documents and to approve any amendment, modification or waiver of any provision of this Note and any other Loan Document. It is acknowledged, confirmed and agreed that Borrower may withhold its consent to any such assignment or participation if a result thereof would be the imposition of any material additional withholding pursuant to Section 14 hereof.

(b) To the extent permitted by applicable law, Borrower shall indemnify and hold harmless the Lender and each of its respective Affiliates and each of their respective officers, directors, employees, advisors and agents (each an "Indemnified Person") from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities, costs and expenses (including without limitation reasonable fees and expenses of legal counsel), joint or several, which may be incurred by or asserted or awarded against any Indemnified Person (including, without limitation, in connection with any investigation, litigation or other proceeding or preparation of a defense in connection therewith) (collectively, "Claims"), in each case arising out of or in connection with: (a) this Note or (b) any other transaction contemplated by any of the foregoing, except to the extent such claim, damage, loss, liability, cost or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Person's own gross negligence or willful misconduct or that of its respective Affiliates or each of their respective officers, directors, employees, advisors and agents. No Indemnified Person shall be liable for any damage arising from the use by others of information materials obtained through electronic, telecommunications or other information systems, except to the extent such damages are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such Indemnified Person. In addition, no Indemnified Person shall be liable for any special, indirect, consequential or punitive damages in connection with the Term Loan.

(c) This Section 13 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

(d) Time is of the essence for the performance of all Obligations in this Note.

(e) Each provision of this Note is severable from every other provision in determining the enforceability of any provision.

(f) No purported amendment or modification of this Note, or waiver, discharge or termination of any obligation under this Note, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on this Note. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. This Note represents the entire agreement about this subject matter and supersedes prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto about the subject matter of this Note merge into this Note.

(g) This Note may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one agreement.

(h) In handling any confidential information, Lender shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Lender's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Lender, collectively, "Lender Entities"); (b) to prospective transferees or purchasers of any interest in the Term Loan (provided, however, that, for any such disclosure to a prospective transferee or purchaser at any time prior to the occurrence and continuance of an Event of Default, Lender shall first obtain the prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Lender's regulators or as otherwise required in connection with Lender's examination or audit; (e) as Lender considers appropriate in exercising remedies under this Note; and (f) to third-party service providers of Lender so long as such service providers have executed a confidentiality agreement with Lender with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Lender's possession when disclosed to Lender, or becomes part of the public domain (other than as a result of its disclosure by Lender in violation of this Note) after disclosure to Lender; or (ii) disclosed to Lender by a third party, if Lender does not know that the third party is prohibited from disclosing the information.

Lender Entities may use confidential information for the development of databases, reporting purposes and market analysis so long as such confidential information is aggregated and anonymized prior to distribution unless otherwise expressly permitted by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Note.

(i) In any action or proceeding among Borrower and Lender arising out of or relating to this Note, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

(j) The words "execution," "signed," "signature" and words of like import in this Note 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 and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

(k) The headings used in this Note are for convenience only and shall not affect the interpretation of this Note.

(l) The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Note. In cases of uncertainty this Note shall be construed without regard to which of the parties caused the uncertainty to exist.

(m) The relationship of the parties to this Note is determined solely by the provisions of this Note. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

(n) Nothing in this Note, whether express or implied, is intended to: (i) confer any benefits, rights or remedies under or by reason of this Note on any persons other than the express parties to it and their respective permitted successors and assigns; (ii) relieve or discharge the obligation or liability of any person not an express party to this Note; or (c) give any person not an express party to this Note any right of subrogation or action against any party to this Note.

(o) Borrower shall at all times keep at its address set forth in Section 11 a register showing (i) the name and address of each holder for the time being of this Note; (ii) the amount (including principal and stated interest) of this Note held by such holder(s); and (iii) the date on which the name of each registered holder was entered in respect of this Note. Any change of name or address on the part of a holder shall forthwith be notified by such holder to Borrower and the register shall be altered accordingly. Except as required by law, Borrower will recognize the registered holder as the owner of this Note, of the principal thereon, the interest from time to time accruing thereon and any other moneys payable in respect thereof. The register shall be available for inspection by any holder (with respect to its own interest only) at any reasonable time and from time to time upon reasonable prior notice at the office of Borrower where the register is maintained. The Note is intended to be in registered form under Section 5f.103-1(c) of

the U.S. Treasury Regulations, and the parties hereto shall report consistently therewith for all tax purposes.

14. WITHHOLDING

(a) Payments received by Lender from Borrower under this Note will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto), except to the extent required by any Governmental Authority, applicable law, regulation or international agreement. If any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment payable hereunder to Lender, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction (including such deductions and withholdings applicable to additional sums payable under this Section 14), Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority, provided, however, that no additional amounts shall be required to be paid by Borrower to Lender pursuant to this Section 14 to the extent that any withholding or deduction is in respect of Excluded Taxes. Borrower will, upon request, furnish Lender with proof reasonably satisfactory Lender indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. Provided no Default or Event of Default has occurred and is continuing, Lender agrees to reimburse Borrower for any payments under this Section 14 to the extent Lender receives tax refunds or tax credits on account of such amounts paid by Borrower. The amount to be reimbursed by Lender will be determined by Lender as the amount that will leave Lender (after the reimbursement payment) in the same after-tax position that it would have been in had such withholding or deduction not been required to be made by Borrower. The agreements and obligations of Borrower contained in this Section 14 shall survive the termination of this Note.

(b) If Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments made by Borrower under this Note, Lender shall deliver to Borrower, at the time or times reasonably requested by Borrower, such properly completed and executed documentation (including, but not limited to, IRS Form W-9 or the appropriate IRS Form W-8, together with any applicable withholding certificates or other underlying documentation) reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, Lender, if reasonably requested by Borrower, shall deliver such other documentation prescribed by applicable law or reasonably requested by

Borrower as will enable Borrower to determine whether or not Lender is subject to backup withholding or information reporting requirements.

(c) If a payment made to Lender under this Note would be subject to U.S. federal withholding Tax imposed by FATCA if 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), Lender shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower 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 Borrower as may be necessary for Borrower to comply with its obligations under FATCA and to determine that Lender has complied with Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

(d) Lender agrees that if any form or certification Lender previously delivered pursuant to this Section 14 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower in writing of its legal inability to do so.

1 5 . CONFLICTS. For the avoidance of doubt, in the event of any conflict between the terms of this Note and the terms of the Subordination Agreement, the terms contained within the Subordination Agreement shall prevail.

16. DEFINITIONS

As used in this Note, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. Any reference to "calendar month", "month" or any variation thereof in this Note or in any other Loan Document shall mean and be a reference to "fiscal month of any Fiscal Year". As used in this Note, the following capitalized terms have the following meanings:

"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.

"Anti-Terrorism Laws" are any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such laws, all as amended, supplemented or replaced from time to time

"Approved Fund" means any Fund that is administered or managed by (a) Lender, (b) an Affiliate of Lender or (c) an entity or an Affiliate of an entity that administers or manages Lender.

"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.

"Avoidance Claim" means any claim that any lien or payment received by Lender is avoidable under the Bankruptcy Code, any other debtor relief statute, including fraudulent conveyance claims, or through receivership, assignment for the benefit of creditors or any equivalent type payment recovery laws, rules or regulations intended to benefit creditors.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"Borrower" has the meaning set forth in the preamble hereof.

"Business Day" has the meaning ascribed thereto in the Senior Credit Agreement.

"Claims" has the meaning set forth in Section 13(b).

"Code" means the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Lender's lien on any collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"Collateral" means, with respect to any Borrower, any and all right, title and interest of such Borrower in and to all of the following, whether now owned or existing or owned, acquired, or arising hereafter: (a) all Accounts; (b) all Chattel Paper; (c) those certain Commercial Tort Claims set forth on Schedule 16(a) hereto; (d) all Copyrights; (e) all Copyright Licenses; (f) all Deposit Accounts; (g) all Documents; (h) all Equipment; (i) all Fixtures; (j) all General Intangibles; (k) all Instruments; (l) all Inventory; (m) all Investment Property; (n) all Letter-of-Credit Rights; (o) all Money; (p) all Patents; (q) all Patent Licenses; (r) all Pledged Equity; (s) all Software; (t) all Supporting Obligations; (u) all Trademarks; (v) all Trademark Licenses; and (w) all Accessions and all Proceeds of any and all of the foregoing.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Copyright License" means any written agreement, naming any Borrower as licensor, granting any right under any Copyright.

"Copyrights" means all rights, title and interests arising under applicable laws in copyrights, now existing or hereafter created or acquired, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Copyright Office, and all renewals thereof.

"Credit Parties" has the meaning ascribed thereto in the Senior Credit Agreement.

"Debtor Relief Laws" has the meaning ascribed thereto in the Senior Credit Agreement.

"Default" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"Default Rate" has the meaning set forth in Section 2(b).

"Delayed Draw Term Loan" has the meaning ascribed thereto in the Senior Credit Agreement.

"Dollars", "dollars" or use of the sign "$" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "$" sign to denote its currency or may be readily converted into lawful money of the United States.

"Domestic Subsidiary" has the meaning ascribed thereto in the Senior Credit Agreement.

"Equity Interests" has the meaning ascribed thereto in the Senior Credit Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, and its regulations.

"Event of Default" has the meaning set forth in Section 9.

"Excluded Taxes" shall mean any of the following Taxes imposed on or with respect to Lender required to be withheld or deducted from a payment to Lender: (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 Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) that are imposed as a result of a present or former connection between Lender and the jurisdiction imposing such Tax (other than connections arising from Lender 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 this Note, or sold or assigned an interest in this Note), (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Lender with respect to an applicable interest in this Note pursuant to a law in effect on the date on which (i) Lender acquires such interest in this Note, or (ii) Lender changes its lending office, except to the extent that amounts with respect to such Taxes were payable to Lender immediately before it changed its lending office, (c) Taxes attributable to Lender's failure to provide the

documentation or forms required to be provided or reasonably requested by Borrower pursuant to Section 14 and (d) any withholding Taxes imposed under FATCA.

"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.

"Fiscal Year" has the meaning ascribed thereto in the Senior Credit Agreement.

"Foreign Subsidiary" has the meaning ascribed thereto in the Senior Credit Agreement.

"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.

"GAAP" means, subject to the limitations on the application thereof set forth in Section 1.2 of the Senior Credit Agreement, accounting principles generally accepted in the United States in effect as of the date of determination thereof.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"Guarantors" has the meaning ascribed thereto in the Senior Credit Agreement.

"Guaranty" means the Guaranty and Security Agreement, dated as of the date hereof, made by the Guarantors in favor of Lender.

"Hot Air" means Hot Air, Inc., a Delaware corporation.

"Indebtedness" has the meaning ascribed thereto in the Senior Credit Agreement.

"Indemnified Person" has the meaning set forth in Section 13(b).

"Insolvency Proceeding" means (a) any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief, or (b) Borrower taking any action or any legal proceedings are started or other steps taken (including the presentation of a petition) for: (i) it to be adjudicated or found insolvent, (ii) the winding-up or dissolution of Borrower, or (iii) the appointment of a trustee, receiver, administrative receiver, administrator or similar officer in respect of Borrower or any of its assets.

"Lender" has the meaning set forth in the preamble hereof.

"Lender Entities" has the meaning set forth in Section 13(i).

"Lender Expenses" means all reasonable and documented costs and expenses (including reasonable fees and expenses of Lender's outside counsel) for preparing, amending, negotiating, administering, defending and enforcing this Note (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Lender with respect to Borrower hereunder.

"Loan Documents" means this Note, the Guaranty and any other document, agreement or instrument executed or delivered at any time in connection herewith or therewith, as each such document is amended, restated, refinanced, replaced, increased, supplemented or otherwise modified from time to time. For the avoidance of doubt, no document, agreement or instrument executed in respect of any equity interests of Parent, or any Affiliate of Parent, shall constitute a Loan Document.

"Material Adverse Effect" means a material adverse effect on (i) 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 document delivered to the Lender in connection with this Note to which it is a party; or (d) the rights, remedies and benefits available to, or conferred upon, the Lender under any document delivered to the Lender in connection with this Note.

"Maturity Date" means the date that is the second anniversary of the Senior Credit Agreement Maturity Date.

"Note" has the meaning set forth in the preamble hereof.

"Obligations" means Borrower's obligations to pay when due any debts, principal, interest, fees, Lender Expenses, and other amounts Borrower owes Lender now or later, whether under this Note or the other Loan Documents, including any interest accruing hereunder or thereunder after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Lender in connection herewith or therewith, and to perform Borrower's duties under this Note.

"Organizational Documents" has the meaning ascribed thereto in the Senior Credit Agreement.

"Paid-in-Full" or "Payment-in-Full" has the meaning ascribed thereto in the Subordination Agreement.

"Parent" has the meaning set forth in the preamble hereof.

"Patent License" means any agreement, whether written or oral, providing for the grant by or to a Borrower of any right to manufacture, use or sell any invention covered by a Patent.

"Patents" means all rights, title and interests arising under applicable laws in letters patent of the United States or any other country and all reissues and extensions thereof, and all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof.

"Permitted Liens" has the meaning ascribed thereto in the Senior Credit Agreement.

"Person" means any individual, sole proprietorship, partnership (whether or not having separate legal personality), limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"PIK Interest" has the meaning set forth in Section 2(a).

"Pledged Equity" means, with respect to each Borrower, (i) 100% of the issued and outstanding Equity Interests of each Domestic Subsidiary of Hot Air or Parent that is directly owned by such Borrower and (ii) 65% of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956 2(c)(2)) and 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 each Foreign Subsidiary of Hot Air or Parent that is directly owned by such Borrower, including the Equity Interests of the Subsidiaries owned by such Borrower as set forth on Schedule 16(b) hereto, in each case together with the certificates (or other agreements or instruments), if any, representing such shares, and all options and other rights, contractual or otherwise, with respect thereto, including, but not limited to, the following:

(a) all Equity Interests representing a dividend thereon, or representing a distribution or return of capital upon or in respect thereof, or resulting from a stock split, revision, reclassification or other exchange therefor, and any subscriptions, warrants, rights or options issued to the holder thereof, or otherwise in respect thereof; and

(b) in the event of any consolidation or merger involving the issuer thereof and in which such issuer is not the surviving Person, all shares of each class of the Equity Interests of the successor Person formed by or resulting from such consolidation or merger, to the extent that such successor Person is a direct Subsidiary of a Borrower.

"Requirements of Law" means, as to any Person, 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.

"Senior Administrative Agent" means Regions Bank, in its capacity as administrative agent for the Senior Lenders.

"Senior Collateral Agent" means Regions Bank, in its capacity as collateral agent for the Senior Lenders.

"Senior Credit Agreement" means the Credit Agreement, dated as of December 15, 2015, between and among the Senior Lenders, the Senior Administrative Agent, the Senior Collateral Agent, the Borrower and certain Subsidiaries and Affiliates of the Borrower party thereto from time to time, as amended, supplemented or amended and restated from time to time; provided that no credit agreement, loan agreement or other agreement which replaces such Credit Agreement or refinances any of the Senior Obligations shall constitute the "Senior Credit Agreement" for the purposes hereof.

"Senior Credit Agreement Maturity Date" means the "Maturity Date" under and as defined in the Senior Credit Agreement.

"Senior Lenders" means the "Lenders" under and as defined in the Senior Credit Agreement.

"Senior Obligations" means the "Obligations" under and as defined in the Senior Credit Agreement.

"Solvent" has the meaning ascribed thereto in the Senior Credit Agreement.

"Subordination Agreement" has the meaning set forth in the legend to this Note.

"Subsidiary" has the meaning ascribed thereto in the Senior Credit Agreement.

"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.

"Term Loan" means the term loan in the principal amount of $15,100,000 made by Lender to Borrower on the date hereof.

"Trademark License" means any agreement, written or oral, providing for the grant by or to a Borrower of any right to use any Trademark.

"Trademarks" means all rights, title and interests arising under applicable laws in trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and the goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, or otherwise and all renewals thereof.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Secured Promissory Note to be executed as of the date first written above.

BORROWER:

BURGERFI INTERNATIONAL, INC.

By: /s/ Michael Rabinovitch

Name: Michael Rabinovitch

Title: Chief Financial Officer

PLASTIC TRIPOD, INC

By: /s/ Michael Rabinovitch

Name: Michael Rabinovitch

Title: Chief Financial Officer

LENDER:

CP7 WARMING BAG, L.P.

By: /s/ Andrew C. Taub

Name: Andrew C. Taub

Title: Authorized Officer

Schedule 16(a)

Commercial Tort Claims

None.

[Signature page to Secured Promissory Note]

Schedule 16(b)

Pledged Equity

Obligor: Plastic Tripod, Inc.				
Name of Subsidiary	**Number of Shares**	**Certificate Number**	**Percentage Ownership**	**Percentage Pledged**
ACFP Management, Inc.	1,000	3	100%	100%

Obligor: BurgerFi International, Inc.				
Name of Subsidiary	**Number of Shares**	**Certificate Number**	**Percentage Ownership**	**Percentage Pledged**
BURGERFI INTERNATIONAL, LLC	N/A	N/A	100%	100%
Hot Air, Inc.	122,542.644	9	100%	100%

THIS GUARANTY AND SECURITY AGREEMENT IS SUBJECT TO THE TERMS OF THAT CERTAIN INTERCREDITOR AND SUBORDINATION AGREEMENT, DATED AS OF FEBRUARY 24, 2023, BY AND AMONG REGIONS BANK, CP7 WARMING BAG, LP., BURGERFI INTERNATIONAL, INC., PLASTIC TRIPOD, INC. AND THE OTHER PARTIES THERETO (AS THE SAME MAY BE AMENDED, MODIFIED, RESTATED OR SUPPLEMENTED FROM TIME TO TIME, THE "SUBORDINATION AGREEMENT"), AND IS SUBORDINATED TO THE PRIOR PAYMENT-IN-FULL OF THE SENIOR INDEBTEDNESS, WITH ANY LIENS SECURING THE SECURED PROMISSORY NOTE SUBORDINATED TO THE LIENS SECURING THE SENIOR INDEBTEDNESS, ALL TO THE EXTENT, AND IN THE MANNER PROVIDED IN THE SUBORDINATION AGREEMENT.

GUARANTY AND SECURITY AGREEMENT

This GUARANTY AND SECURITY AGREEMENT, dated as of February 24, 2023, is made by and among the Persons listed on the signature pages hereof under the caption "Guarantors" and the guarantors from time to time party hereto by execution of a joinder agreement (the "Guarantors"), in favor of CP7 WARMING BAG, L.P. (" Lender"). This Agreement, as amended, restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, is referred to herein as the "Agreement".

W I T N E S S E T H:

WHEREAS, Lender has made or is about to make a term loan in the amount of $15,100,000 (the "Term Loan") to BurgerFi International, Inc., a Delaware corporation ("Parent"), and Plastic Tripod, Inc., a Delaware corporation (together with Parent, individually and collectively, "Borrower"), as evidenced by that certain Secured Promissory Note, dated as of February 24, 2023 (as amended, restated, supplemented or otherwise modified from time to time, the "Note"), executed and delivered by Borrower in favor of Lender;

WHEREAS, each Guarantor will receive substantial benefits from the Term Loan and each is, therefore, willing to enter into this Agreement;

WHEREAS, this Agreement is executed and delivered by each Guarantor in favor of Lender to secure the payment and performance of all of the Secured Obligations (as hereinafter defined); and

WHEREAS, it is a condition to the making of the Term Loan by Lender that each Guarantor execute and deliver this Agreement;

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Guarantor and Lender hereby agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms. The following terms shall have the following meanings:

"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.

"Anti-Terrorism Laws" are any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such laws, all as amended, supplemented or replaced from time to time.

"Collateral" means, with respect to any Guarantor, any and all right, title and interest of such Guarantor in and to all of the following, whether now owned or existing or owned, acquired, or arising hereafter: (a) all Accounts; (b) all Chattel Paper; (c) those certain Commercial Tort Claims set forth on Schedule 1.1(a) hereto; (d) all Copyrights; (e) all Copyright Licenses; (f) all Deposit Accounts; (g) all Documents; (h) all Equipment; (i) all Fixtures; (j) all General Intangibles; (k) all Instruments; (l) all Inventory; (m) all Investment Property; (n) all Letter-of-Credit Rights; (o) all Money; (p) all Patents; (q) all Patent Licenses; (r) all Pledged Equity; (s) all Software; (t) all Supporting Obligations; (u) all Trademarks; (v) all Trademark Licenses; and (w) all Accessions and all Proceeds of any and all of the foregoing.

"Copyright License" means any written agreement, naming any Guarantor as licensor, granting any right under any Copyright.

"Copyrights" means all rights, title and interests arising under Applicable Laws in copyrights, now existing or hereafter created or acquired, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Copyright Office, and all renewals thereof.

"Credit Parties" means the "Credit Parties" under and as defined in the Senior Credit Agreement.

"Domestic Subsidiary" has the meaning ascribed thereto in the Senior Credit Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, and its regulations.

"Excluded Property" has the meaning ascribed to it in the Senior Credit Agreement.

"Foreign Subsidiary" has the meaning ascribed thereto in the Senior Credit Agreement.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"Loan Documents" means, collectively and individually, the Note and all other writings, documents, and agreements delivered pursuant thereto.

"Material Adverse Effect" has the meaning ascribed to it in the Note.

"Obligations" has the meaning ascribed to it in the Note.

"Organization Documents" means the certificate of incorporation and by-laws or any comparable organizational documents of any corporate entity (including limited liability companies and partnerships).

"Patent License" means any agreement, whether written or oral, providing for the grant by or to a Guarantor of any right to manufacture, use or sell any invention covered by a Patent.

"Patents" means all rights, title and interests arising under Applicable Laws in letters patent of the United States or any other country and all reissues and extensions thereof, and all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof.

"Permitted Liens" has the meaning ascribed to it in the Senior Credit Agreement.

"Person" means any individual, sole proprietorship, partnership (whether or not having separate legal personality), limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Pledged Equity" means, with respect to each Guarantor, (i) 100% of the issued and outstanding Equity Interests of each Domestic Subsidiary of Hot Air or Parent that is directly owned by such Guarantor and (ii) 65% of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 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 each Foreign Subsidiary of Hot Air or Parent that is directly owned by such Guarantor, including the Equity Interests of the Subsidiaries owned by such Guarantor as set forth on Schedule 1.1(b) hereto, in each case together with the certificates (or other agreements or instruments), if any, representing such shares, and all options and other rights, contractual or otherwise, with respect thereto, including, but not limited to, the following:

(1) all Equity Interests representing a dividend thereon, or representing a distribution or return of capital upon or in respect thereof, or resulting from a stock split, revision, reclassification or other exchange therefor, and any subscriptions, warrants, rights or options issued to the holder thereof, or otherwise in respect thereof; and

(2) in the event of any consolidation or merger involving the issuer thereof and in which such issuer is not the surviving Person, all shares of each class of the Equity Interests of the successor Person formed by or resulting from

such consolidation or merger, to the extent that such successor Person is a direct Subsidiary of a Guarantor.

"Secured Obligations" shall mean the Obligations.

"Senior Administrative Agent" means Regions Bank, in its capacity as administrative agent for the Senior Lenders.

"Senior Collateral Agent" means Regions Bank, in its capacity as collateral agent for the Senior Lenders.

"Senior Lenders" means the "Lenders" under and as defined in the Senior Credit Agreement.

"Senior Credit Agreement" means the Credit Agreement, dated as of December 15, 2015, between and among the Senior Lenders, the Senior Administrative Agent, the Senior Collateral Agent, the Borrower and certain Subsidiaries and Affiliates of the Borrower party thereto from time to time, as amended, supplemented or amended and restated from time to time; provided that no credit agreement, loan agreement or other agreement which replaces such Credit Agreement or any of the Senior Agents or refinances any of the Senior Obligations shall constitute the "Senior Credit Agreement" for the purposes hereof.

"Solvent" means "Solvent" as defined in the Senior Credit Agreement.

"Subsidiary" has the meaning ascribed thereto in the Senior Credit Agreement.

"Trademark License" means any agreement, written or oral, providing for the grant by or to a Guarantor of any right to use any Trademark.

"Trademarks" means all rights, title and interests arising under Applicable Laws in trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and the goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, or otherwise and all renewals thereof.

"UCC" or "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, that (a) if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article thereof, the term shall have the meaning set forth in Article 9 and (b) if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection, of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, " UCC" or "Uniform Commercial Code" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the

provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy, as the case may be.

1.2 Certain Other Terms.

(a) Capitalized terms used but not otherwise defined herein that are defined in the Note shall have the meanings given to them in the Note. Capitalized terms used but not otherwise defined herein or in the Note that are defined in the Senior Credit Agreement shall have the meanings given to them in the Senior Credit Agreement. Unless otherwise defined herein, in the Note or in the Senior Credit Agreement, capitalized terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC (including the terms Accession, Account, Adverse Claim, As-Extracted Collateral, Chattel Paper, Commercial Tort Claim, Consumer Goods, Deposit Account, Document, Electronic Chattel Paper, Equipment, Farm Products, Financial Asset, Fixtures, General Intangible, Goods, Instrument, Inventory, Investment Company Security, Investment Property, Letter-of-Credit Right, Manufactured Home, Money, Proceeds, Securities Account, Security Entitlement, Security, Software, Supporting Obligation and Tangible Chattel Paper). The rules of interpretation specified in the Note shall be applicable to this Agreement. All references in this Agreement to Sections are references to Sections of this Agreement unless otherwise specified.

(b) Each Guarantor acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of this Agreement, that it and its counsel reviewed and participated in the preparation and negotiation of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against Lender as the drafting party shall not be applicable in the interpretation of this Agreement.

(c) In the event of any conflict between any provision in this Agreement and a provision in the Note, such provision of the Note shall control; provided, that in the event that any provision in this Agreement or the Note conflicts with the Subordination Agreement, the terms of the Subordination Agreement shall control.

SECTION 2. GUARANTY

2.1 Guaranty. Guarantors hereby absolutely and unconditionally, jointly and severally, guarantee to Lender and its successors, endorsees and assigns, the full and prompt payment, when due, of the Obligations, and agree to pay any and all Lender Expenses. The Obligations may be created and continued in any amount without affecting or impairing the Guarantors' liability hereunder.

2.2 Obligations Paid in Accordance with Terms. Guarantors guarantee that the Obligations will be paid strictly in accordance with their terms, regardless of any law, regulation or decree now or hereafter in effect in any jurisdiction which might in any manner effect any of such terms or Lender's rights with respect thereto, or which might cause or permit to be invoked any alteration in the time, amount or manner of payment by Borrower of any of the Obligations.

2.3 Enforcement of Guaranty. Lender may, in its sole discretion, proceed to exercise any right or remedy which Lender may have under this Agreement or by law (such rights and remedies being cumulative and not alternative or exclusive) without pursuing or exhausting any right or remedy which Lender may have against Borrower, or any other person or entity, or which Lender may have with respect to any collateral for any or all of the Obligations of Borrower or any other guaranty of the Obligations, including, without limitation, without joining Borrower as a party in any action brought to enforce the provisions hereof; and Lender may proceed to exercise any right or remedy which it may have under this Agreement without regard to any actions or omissions of Borrower or any other person.

2.4 Guaranty Absolute. The obligations of Guarantors hereunder shall be absolute and unconditional and shall continue to remain in full force and effect irrespective of the validity, legality or enforceability of the Loan Documents, or the value or condition of any collateral for any or all of the Obligations, or of any other guaranty of the Obligations, or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor (other than payment in full of all Obligations (other than contingent obligations for which no claim has been made)); and this Agreement and the obligations of Guarantors hereunder shall be irrevocable.

2.5 Guaranty Not Affected. Without limiting the generality of Section 2.4, Guarantors hereby consent and agree that, at any time, and from time to time, without affecting the legality or enforceability of this Agreement and without discharging the obligation of Guarantors hereunder:

(a) the time, manner, place or terms of payment of all or any of the Obligations may be settled, released (by operation of law or otherwise), compounded, compromised, collected, liquidated, extended (one or more times) or modified;

(b) any or all of any collateral for any or all of the Obligations may be exchanged, released, surrendered, or otherwise disposed of;

(c) any action may be taken under or in respect of the Loan Documents, in the exercise of any remedy, power or privilege therein contained or otherwise with respect thereto, or such remedy, power or privilege may be waived, omitted or not enforced;

(d) the time for Borrower's performance of or compliance with any term, covenant or agreement on its part to be performed or observed under the Loan Documents, may be renewed or extended (one or more times), or such performance or compliance waived, or failure in or departure from such performance or compliance consented to;

(e) the Loan Documents, or any term of any thereof, may be amended or modified in any respect (including, without limitation, with respect to interest rates); and

(f) the liability of Borrower to pay any and all of the Obligations may be settled or compromised, and payment of any and all of such Obligations may be subordinated to the prior payment of any other debts of, or claims against, Borrower;

all in such manner and upon such terms as Lender may deem proper, without notice to or further assent from Guarantors, and all without affecting this Agreement or the obligations of Guarantors hereunder, which shall continue in full force and effect until the Obligations and all obligations of Guarantors hereunder shall have been fully paid and performed (other than contingent obligations for which no claim has been made) and any agreement or commitment by Lender to grant loans, advances and extensions of credit to Borrower under the Loan Documents is terminated.

SECTION 3. GRANT OF SECURITY INTEREST

3.1 Grant of Security Interest. As collateral security for the payment and performance in full of all of the Secured Obligations, each Guarantor hereby pledges and grants to Lender a lien on and security interest in and to all of the right, title and interest of such Guarantor in, to and under all of the Collateral.

Notwithstanding anything to the contrary contained herein, the Collateral and any security interests granted under this Agreement shall not extend to Excluded Property; provided, however, that to the extent any such property shall no longer be deemed Excluded Property, a security interest in such property shall be automatically and simultaneously granted hereunder and shall be included as Collateral hereunder.

3.2 Filings.

(a) Each Guarantor hereby irrevocably authorizes Lender at any time and from time to time to authenticate and file in any relevant jurisdiction any financing statements (including fixture filings) and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral, including, without limitation, (i) whether such Guarantor is an organization, the type of organization and any organizational identification number issued to such Guarantor, (ii) a description of the Collateral as "all assets of the Debtor, wherever located, whether now owned or hereafter acquired" and (iii) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Collateral relates. Each Guarantor agrees to provide all information described in the immediately preceding sentence to Lender promptly upon request.

(b) Each Guarantor hereby ratifies its prior authorization for Lender to file in any relevant jurisdiction any financing statements or amendments thereto relating to the Collateral if filed prior to the date hereof.

SECTION 4. PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES

4.1 Financing Statements and Other Filings; Maintenance of Perfected Security Interest. Each Guarantor agrees that, at the sole cost and expense of the Guarantors, (i) such Guarantor will maintain the security interest created by this Agreement in the Collateral as a perfected second priority security interest and shall defend such security interest against the claims and demands of all Persons (other than with respect to Permitted Liens), (ii) such Guarantor shall furnish to Lender from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Lender may reasonably request, all in reasonable detail and (iii) at any time and from time to time, upon the request of Lender, such Guarantor shall promptly and duly execute and deliver, and file and have recorded, such further instruments and documents and take such further action as Lender may reasonably request, including the filing of any financing statements, continuation statements and other documents (including this Agreement) under the UCC (or other applicable laws) in effect in any jurisdiction with respect to the security interest created hereby (but excluding the right to request control agreements in respect of deposit accounts or investment property), all in form reasonably satisfactory to Lender and in such offices (including, without limitation, the United States Patent and Trademark Office and the United States Copyright Office) wherever required by applicable law in each case to perfect, continue and maintain a valid, enforceable, second priority security interest in the Collateral as provided herein and to preserve the other rights and interests granted to Lender hereunder, as against the Guarantors and third parties (other than with respect to Permitted Liens), with respect to the Collateral.

SECTION 5. REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Guarantor represents and warrants to Lender as follows:

5.1 Existence and Power. Each Guarantor (a) is and will continue to be 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 this Agreement and the other 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.

5.2 Authority. Each Guarantor is, and will continue to be, duly empowered and authorized to enter into, and grant security interests in its property, pursuant to and perform its obligations under this Agreement, and all other instruments and transactions contemplated hereby or relating hereto, and to continue its business as currently conducted, except for (a) filings and recordings with respect to the Collateral to be made, or otherwise delivered to the Lender for filing and/or recordation, (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. The execution, delivery and performance by each

Guarantor of this Agreement, and all other instruments and transactions contemplated hereby or relating hereto, have been duly and validly authorized, are enforceable against each Guarantor in accordance with their terms, and do not and will not violate any law or any provision of, nor be grounds for acceleration under, any agreement, indenture, note or instrument which is binding upon any Guarantor, or any of their property, including without limitation, each Guarantor's formation, organizational or constituent documents.

5.3 Name; Trade Names and Styles. Each Guarantor has set forth on the signature pages hereof such Guarantor's absolutely true and correct legal name. Each Guarantor shall provide Lender with five (5) days advance written notice before change its legal name.

5.4 Title to Collateral; Liens. Subject to Permitted Liens and the security interest granted to Lender pursuant hereto, the Guarantors are now, and will at all times hereafter be, the true, lawful and sole owner of all their respective Collateral, and the Collateral now is, and will hereafter remain, free and clear of any and all liens, charges, security interests, encumbrances and adverse claims. Lender now has, and will hereafter continue to have, a fully perfected and enforceable second priority security interest in all of the Collateral, and the Guarantors will at all times defend the Collateral against all claims and demands of others.

5.5 Solvency. Each Guarantor, individually, and the Credit Parties and their subsidiaries taken as a whole on a consolidated basis are and, upon the incurrence of the Indebtedness evidence by the Note, will be, Solvent.

5.6 Tax Returns. Each Guarantor has filed all federal, state and other material tax returns and reports required to be filed, and has paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon itself or its 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.

5.7 No Default. No Guarantor 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.

5.8 Compliance with Laws. The Guarantors are in compliance with the Anti-Terrorism Laws.

5.9 Location of Collateral. No Guarantor (i) has Collateral located outside of the United States, and (ii) shall maintain Collateral at any location outside of the United States as long as any Obligations remain outstanding.

5.10 Other. No Guarantor is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. No Guarantor is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Each Guarantor (i) has complied in all material respects with all Requirements of Law, and (ii) has not violated any Requirements of Law, the violation of which could reasonably be expected to have a Material Adverse Effect. The execution and delivery by the Guarantors under this Agreement, the transactions contemplated hereby, the performance by each Guarantor of its obligations hereunder, do not and will not violate any provisions of ERISA.

SECTION 6. COVENANTS. Each Guarantor covenants to comply with the covenants expressly applicable to such Guarantor under Section 8 of the Note.

SECTION 7. EVENTS OF DEFAULT AND REMEDIES

7.1 Events of Default. The occurrence or existence of any one or more of the events set forth in Section 9 of the Note are referred to herein individually as an "Event of Default", and collectively as "Events of Default".

7.2 Lender's Rights and Remedies.

(a) At any time an Event of Default has occurred and is continuing, and after the applicable cure period, if any, has passed, Lender shall have all rights and remedies provided in this Agreement, the other Loan Documents, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by Guarantors, except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to Lender hereunder, under any of the other Loan Documents, the UCC or other applicable law, are cumulative, not exclusive and enforceable, in Lender's discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach by Guarantors of this Agreement or any of the other Loan Documents. Lender may at any time or times an Event of Default has occurred and is continuing, proceed directly against any and all Guarantors to collect the Obligations without prior recourse to the Collateral.

(b) Without limiting the generality of the foregoing, at any time an Event of Default has occurred and is continuing, and after the applicable cure period, if any, has passed, Lender may accelerate the payment of all Obligations and demand immediate payment thereof to Lender (provided, that, upon the occurrence of any Event of Default described in Sections 9(b) and 9(c) of the Note, all Obligations shall automatically become immediately due and payable).

7.3 No Waiver; Cumulative Remedies.

(a) No failure on the part of Lender to exercise, no course of dealing with respect to, and no delay on the part of Lender in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such

right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy; nor shall Lender be required to look first to, enforce or exhaust any other security, collateral or guaranties. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law.

(b) In the event that Lender shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to Lender, then and in every such case, the Guarantors and Lender shall be restored to their respective former positions and rights hereunder with respect to the Collateral, and all rights, remedies and powers of Lender shall continue as if no such proceeding had been instituted.

7.4 Application of Proceeds. The proceeds received by Lender in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by Lender of its remedies shall be applied, together with any other sums then held by Lender pursuant to this Agreement, in accordance with and as set forth in the Note. Each Guarantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the Secured Obligations and the reasonable and documented fees of any attorneys employed by Lender to collect such deficiency.

7.5 Power of Attorney. After the occurrence and during the continuance of an Event of Default and for so long as such Event of Default has not been cured to Lender's satisfaction, waived by Lender, or forborne by Lender (each of the preceding in writing) as long as any Obligations remain outstanding hereunder (other than contingent obligations for which no claim has been made) and each Guarantor hereby: (x) grants to Lender an irrevocable power of attorney, coupled with an interest, authorizing and permitting Lender (acting through any of its employees, attorneys or agents) at any time, at its option but without obligation, with or without notice to such Guarantor, and at the Guarantors' sole expense, to do any or all of the following, in such Guarantor's name or otherwise; and (y) irrevocably authorizes Lender at the Guarantors' expense, to exercise at any time any of the following powers:

(a) Receive, take, endorse, assign, deliver, accept and deposit, in the name of Lender or such Guarantor, any and all proceeds of any Collateral securing the Obligations or the proceeds thereof;

(b) Take or bring, in the name of Lender or such Guarantor, all steps, actions, suits or proceedings deemed by Lender reasonably necessary or desirable to effect collection of, or other realization upon, any claims owed to such Guarantor;

(c) With respect to any of the following established or issued for the benefit of such Guarantor, either individually or as a member of a class or group, file any claim under (i) any bond; or (ii) any trust fund;

(d) Pay any sums necessary to discharge any lien or encumbrance which is senior to Lender's security interest in any assets of such Guarantor, which sums shall be included as Obligations hereunder until paid;

(e) File in the name of such Guarantor or Lender or both: (i) mechanic's lien or related notices, or (ii) claims under any payment bond, in connection with goods or services sold by such Guarantor in connection with the improvement of realty;

(f) change the address for delivery of mail to Lender and to receive and open mail addressed to such Guarantor;

(g) File any initial financing statements and amendments thereto that: (i) indicate the Collateral as all assets of such Guarantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code, or as being of an equal or lesser scope or with greater detail; (ii) contain any other information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether such Guarantor is an organization, the type of organization, and any organization identification number issued to such Guarantor and, (B) in the case of a financing statement filed as a fixture filing or indicating Collateral to be "as-extracted" Collateral or "timber to be cut", a sufficient description of real property to which the collateral relates; and (iii) contain a notification that such Guarantor has granted a negative pledge to the Lender, and that any subsequent lienor may be tortuously interfering with Lender's rights;

(h) File any correction statement in the name of such Guarantor under Section 9-518 of the Code that Lender reasonably deems necessary to preserve its rights hereunder; and

(i) Without expense to Lender, use any of such Guarantor's personnel, equipment, including computer equipment, programs, printed output and computer readable media, electronic data information systems, supplies and premises for the collection of accounts and realization on other Collateral as Lender, in its sole discretion, deems appropriate and in connection therewith such Guarantor hereby irrevocably authorizes all accountants and third parties to disclose and deliver to Lender at the Guarantors' expense all financial information, books and records, work papers, management reports and other information in their possession relating to such Guarantor.

SECTION 8. MISCELLANEOUS

8.1 Expenses. Each Guarantor will upon demand pay to Lender the amount of any and all amounts required to be paid pursuant to Section 3 of the Note.

8.2 Continuing Security Interest; Assignment. This Agreement shall create a continuing security interest in the Collateral and shall (a) be binding upon the Guarantors, their respective successors and assigns, and (b) inure to the benefit of Lender and its successors and permitted transferees and assigns; provided, that no Guarantor shall assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Lender and any attempted assignment or transfer without such consent shall be null and void. The

Lender may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other Person to whom the Note and the Obligations are assigned in accordance with the terms of the Note, and such other Person shall thereupon become vested with all benefits in respect hereof. No other Persons (including, without limitation, any other creditor of any Guarantor) shall have any interest herein or any right or benefit with respect hereto.

8.3 Waiver.

(a) Guarantors hereby waive all defenses based upon suretyship or impairment of collateral (including, without limitation, any actions or defenses identified generally or specifically under the Uniform Commercial Code or other body of law governing sureties or guarantors), notice of acceptance of this Agreement, presentment, demand, protest, notice of dishonor, notice of the occurrence of an Event of Default hereunder or under the Loan Documents, and any and all other notices of any kind whatsoever, with respect to the Obligations, and promptness in making any claim or demand hereunder; but no act or omission of any kind in the premises shall in any way affect or impair this Agreement. Furthermore, the release of any other guaranty or Lender's failure to obtain any other guaranty shall not affect the obligations of Guarantors hereunder.

(b) Guarantors shall not be released or discharged, either in whole or in part, by Lender's:

(i) failure or delay to obtain or maintain perfection or recordation of the interest in any property, including, but not limited to the Collateral which secures the Obligations;

(ii) release of any property, including, but not limited to the Collateral, which secures the Obligations, without substitution of property or collateral of equal value;

(iii) failure to perform a duty to preserve the value of property or collateral owed, under Article 9 of the Uniform Commercial Code or other law, to a debtor or surety or another person primarily or secondarily liable;

(iv) failure to comply with applicable law in disposing of any property, including, but not limited to the Collateral, which secures the Obligations; or

(v) failure or delay to otherwise protect or realize upon any property, including, but not limited to the Collateral, which secures the Obligations.

8.4 Reinstatement. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time, prepayment, payment, or other value received by Lender, from any source, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by Lender upon or by reason of:

(a) any judgment, decree, or order of any court or administrative body having competent jurisdiction;

(b) any settlement or compromise of any such claim;

(c) the insolvency or bankruptcy of each Guarantor; or

(d) otherwise, all as though such payment had not been made, notwithstanding any termination hereof or the cancellation of the Loan Documents or any note or other agreement evidencing any of the Obligations.

8.5 Subrogation. Until the Obligations shall have been fully paid and satisfied (other than contingent obligations for which no claim has been made) and any agreement or commitment by Lender to grant loans, advances and extensions of credit to each Guarantor under the Loan Documents is terminated, Guarantors agree that:

(a) any right of subrogation which Guarantors have or hereafter acquire against each Guarantor or against any collateral or security granted by each Guarantor to Lender;

(b) any right of contribution Guarantors have or hereafter acquire against each Guarantor or any other guarantor of the Obligations;

(c) any right to enforce any remedy which Guarantors have or hereafter acquire against each Guarantor; or

(d) any benefit of, and any right to participate in, any security now or hereafter held by Lender shall be junior and subordinate to the rights and remedies of Lender. Lender may use, sell or dispose of any item of collateral or security it sees fit without regard to any subrogation rights of Guarantors, and any such disposal or sale shall be free and clear of any rights of subrogation or other claims of Guarantors. If Guarantors shall receive any payments or other property on account of subrogation, contribution or other rights of Guarantors, at any time prior to full payment and satisfaction of the Obligations (other than contingent obligations for which no claim has been made) and any agreement or commitment by Lender to grant loans, advances and extensions of credit to each Guarantor is terminated, such amount or property shall be held in trust for, and shall immediately be paid over or delivered to Lender (together with any necessary endorsements), to be credited and applied against (or, at the option of Lender, held as additional collateral for) the Obligations.

8.6 Termination; Release.

(a) Upon the payment in full of the Obligations (other than contingent obligations for which no claim has been made), this Agreement and the security interest and lien in favor of Lender granted hereby shall terminate.

(b) Upon the termination hereof or any release of Collateral in accordance with the provisions of the Note, Lender shall, upon the request and at the sole cost and expense of the Guarantors, assign, transfer and deliver to Guarantors, against receipt and without recourse to or warranty by Lender, such of the Collateral to be released (in the case of a release) or all of the Collateral (in the case of termination of this Agreement) as may be in possession of Lender and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Collateral, proper documents and instruments (including UCC 3 termination

statements or releases) acknowledging the termination hereof or the release of such Collateral, as the case may be.

8.7 Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Guarantor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Note and unless in writing and signed by Lender and such of the Guarantors as Lender may specify. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Guarantor from the terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given. This Agreement shall be construed as a separate agreement with respect to each Guarantor and may be amended, modified, supplemented, terminated or waived with respect to any Guarantor without the approval of any other Guarantor and without affecting the obligations of any other Guarantor hereunder. Except where notice is specifically required by this Agreement or any other document evidencing the Secured Obligations, no notice to or demand on any Guarantor in any case shall entitle any Guarantor to any other or further notice or demand in similar or other circumstances.

8.8 Notices. Unless otherwise provided herein or in the Note, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Note, as to any Guarantor, addressed to it at the address of the each Guarantor set forth under their signature herein and as to Lender, addressed to it at the address set forth in the Note, or in each case at such other address as shall be designated by such party in a written notice to the other parties hereto complying as to delivery with the terms of this Section.

8.9 Governing Law. The validity, interpretation and enforcement of this Agreement and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

8.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS; WAIVER OF JURY TRIAL.

(a) EACH GUARANTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE 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 GUARANTY AND SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH GUARANTOR 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 GUARANTOR 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, SUBJECT TO APPLICABLE APPEALS. NOTHING IN THIS GUARANTY AND SECURITY AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY AND SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY GUARANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION IN ORDER TO REALIZE ON ANY COLLATERAL.

(b) EACH GUARANTOR 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 GUARANTY AND SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (a) OF THIS SECTION. EACH GUARANTOR 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.

(c) EACH GUARANTOR AGREES THAT ANY ACTION COMMENCED BY ANY GUARANTOR ASSERTING ANY CLAIM ARISING UNDER OR IN CONNECTION WITH THIS GUARANTY AND SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

(d) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8.8. NOTHING IN THIS GUARANTY AND SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) 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 GUARANTY AND SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT

OR ANY OTHER THEORY AND WHETHER INITIATED BY OR AGAINST ANY SUCH PERSON OR IN WHICH ANY SUCH PERSON IS JOINED AS A PARTY LITIGANT). EACH PARTY HERETO (i) 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 (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY AND SECURITY AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

8.11 Severability of Provisions. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

8.12 Execution in Counterparts; Effectiveness. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of 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 shall become effective when it shall have been executed by Lender and when Lender shall have received counterparts hereof signed by each of the other parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

8.13 No Release. Nothing set forth in this Agreement shall relieve any Guarantor from the performance of any term, covenant, condition or agreement on such Guarantor's part to be performed or observed under or in respect of any of the Collateral pursuant to the Loan Documents or shall impose any obligation on Lender to perform or observe any such term, covenant, condition or agreement on such Guarantor's part to be so performed or observed pursuant to the Loan Documents or shall impose any liability on Lender for any act or omission on the part of such Guarantor relating thereto or for any breach of any representation or warranty on the part of such Guarantor contained in this Agreement, the Note or the other Loan Documents, or under or in respect of the Collateral or made in connection herewith or therewith. The obligations of each Guarantor contained in this Section shall survive the termination hereof and the payment in full of such Guarantor's other obligations under this Agreement, the Note and the other Loan Documents.

8.14 Obligations Absolute. Each Guarantor hereby waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. All obligations of each Guarantor hereunder shall be absolute and unconditional irrespective of:

(a) any illegality or lack of validity or enforceability of any Secured Obligation or any Loan Document or any related agreement or instrument;

(b) any change in the time, place or manner of payment of, or in any other term of, the Secured Obligations or any other obligation of any Guarantor under any Loan Document, or any rescission, waiver, amendment or other modification of any Loan Document or any other agreement, including any increase in the Secured Obligations resulting from any extension of additional credit or otherwise;

(c) any taking, exchange, substitution, release, impairment or non-perfection of any Collateral, or any taking, release, impairment, amendment, waiver or other modification of any guaranty, for the Secured Obligations;

(d) any manner of sale, disposition or application of proceeds of any Collateral or any other collateral or other assets to all or part of the Secured Obligations;

(e) any default, failure or delay, willful or otherwise, in the performance of the Secured Obligations;

(f) any change, restructuring or termination of the corporate structure, ownership or existence of any Loan Party or any of its Subsidiaries or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Guarantor or its assets or any resulting release or discharge of any Secured Obligations;

(g) any failure of Lender to disclose to any Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Guarantor now or hereafter known to such Lender or Lender; each Guarantor waiving any duty of the Secured Parties to disclose such information;

(h) the failure of any other Person to execute or deliver this Agreement, any joinder agreement or any other agreement or the release or reduction of liability of any Guarantor or other Guarantor or surety with respect to the Secured Obligations;

(i) the failure of Lender or any Lender to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Loan Document or otherwise;

(j) any defense, set-off or counterclaim (other than a defense of payment or performance) that may at any time be available to, or be asserted by, any Guarantor against Lender or any Lender; or

(k) any other circumstance (including, without limitation, any statute of limitations) or manner of administering the loans or other financial accommodations under the Note, or any existence of or reliance on any representation by Lender or any Lender that might vary the risk of any Guarantor or otherwise operate as a defense available to, or a legal or equitable discharge of, any Guarantor or any other guarantor or surety.

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IN WITNESS WHEREOF, the Guarantors and Lender have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

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 Guarantors 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 Guarantors 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 Guarantors continue.*]

ANTHONY'S COAL FIRED PIZZA OF MARLBORO 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 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 Guarantors 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 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 Guarantors continue*.]

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 Guarantors continue.*]

BF WELLINGTON, LLC,
a Florida limited liability company
BF NEPTUNE BEACH, 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 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 Guarantors end.*]

LENDER:

CP7 WARMING BAG, L.P.

By: /s/ Andrew C. Taub

Name: Andrew C. Taub

Title: Authorized Officer

Schedule 1.1(a)

Commercial Tort Claims

None.

Schedule 1.1(b)

Pledged Equity

Obligor: Hot Air, Inc.				
Name of Subsidiary	**Number of Shares**	**Certificate Number**	**Percentage Ownership**	**Percentage Pledged**
Plastic Tripod, Inc.	100,000	1	100%	100%

Obligor: ACFP Management, Inc.				
Name of Subsidiary	**Number of Shares**	**Certificate Number**	**Percentage Ownership**	**Percentage Pledged**
Anthony's Pizza Holding Company, LLC	1,000	1	100%	100%

Obligor: Anthony's Pizza Holding Company, LLC				
Name of Subsidiary	**Number of Shares**	**Certificate Number**	**Percentage Ownership**	**Percentage Pledged**
Anthony's Coal Fired Pizza of Pike Creek, LLC	1,000	3	100%	100%
Anthony's Coal Fired Pizza of Wilmington, LLC	1,000	3	100%	100%
ACFP/NYNJ Ventures LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Aventura, LLC	1,000	1	100%	100%

Anthony's Coal Fired Pizza of Boca Raton, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Coral Springs, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Delray Beach, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Pembroke Pines, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Palm Beach Gardens, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Plantation, LLC	1,000	1	100%	100%
Anthony's Sports Bar and Grill, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Weston, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Stuart LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Coral Gables, LLC	1,000	1	100%	100%
Anthony's Coal-Fired Pizza, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of South Tampa, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Doral LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Pinecrest, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Wellington, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Miami Lakes, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Kendall, LLC	1,000	2	100%	100%

Anthony's Coal Fired Pizza of North Tampa, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Clearwater, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Sand Lake, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Brandon, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Altamonte Springs, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of East Boca LLC	1,000	1	100%	100%
ACFP BOCA MGT LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of North Lauderdale LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of North Miami LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Miramar LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Littleton LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Westwood LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Reading LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Clifton, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Ramsey, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Fair Lawn, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Wayne NJ, LLC	1,000	1	100%	100%

Anthony's Coal Fired Pizza of Livingston LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Marlboro LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Mount Laurel LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Commack LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Carle Place, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Woodbury, LLC	1,000	2	100%	100%
Anthony's Coal Fired Pizza of Wantagh, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Bohemia, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Horsham, LLC	1,000	3	100%	100%
Anthony's Coal Fired Pizza of Wayne, LLC	1,000	3	100%	100%
Anthony's Coal-Fired Pizza of Monroeville, LLC	1,000	3	100%	100%
Anthony's Coal-Fired Pizza of Settler's Ridge, LLC	1,000	3	100%	100%
Anthony's Coal Fired Pizza of Cranberry, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of McMurray, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Exton, LLC	1,000	1	100%	100%
Anthony's Coal Fired Pizza of Wyomissing, LLC	1,000	1	100%	100%

Anthony’s Coal Fired Pizza of Wynnewood LLC	1,000	1	100%	100%
Anthony’s Coal Fired Pizza of Trexlertown LLC	1,000	1	100%	100%
Anthony’s Coal Fired Pizza of Blue Bell LLC	1,000	1	100%	100%
Anthony’s Coal Fired Pizza of Cranston LLC	1,000	1	100%	100%
Anthony’s Coal Fired Pizza of Natick LLC	1,000	1	100%	100%
Anthony’s Coal Fired Pizza of West Palm Beach LLC	1,000	1	100%	100%
Anthony’s Coal Fired Pizza of Bethesda LLC	1,000	1	100%	100%
Anthony’s Coal Fired Pizza of Springfield LLC	1,000	1	100%	100%

Obligor: Anthony's Coal Fired Pizza of Clifton, LLC				
Name of Subsidiary	**Number of Shares**	**Certificate Number**	**Percentage Ownership**	**Percentage Pledged**
BH Sauce, LLC	1,000	2	100%	100%

Obligor: ACFP/NYNJ Ventures LLC				
Name of Subsidiary	**Number of Shares**	**Certificate Number**	**Percentage Ownership**	**Percentage Pledged**
Anthony’s Coal Fired Pizza of Edison LLC	1	1	100%	100%

Obligor: BURGERFI INTERNATIONAL, LLC				
Name of Subsidiary	**Number of Shares**	**Certificate Number**	**Percentage Ownership**	**Percentage Pledged**
BF Restaurant Management, LLC	N/A	N/A	100%	100%
BURGERFI IP, LLC	N/A	N/A	100%	100%

Obligor: BF Restaurant Management, LLC				
Name of Subsidiary	**Number of Shares**	**Certificate Number**	**Percentage Ownership**	**Percentage Pledged**
BURGERFI-DELRAY BEACH, LLC	N/A	N/A	100%	100%
BURGERFI ENTERPRISES, LLC	N/A	N/A	100%	100%
BURGERFI MANAGEMENT SERVICES, LLC	N/A	N/A	100%	100%
BF COMMISSARY, LLC	N/A	N/A	100%	100%
BF CORAL SPRINGS, LLC	N/A	N/A	100%	100%
BF City Place-West Palm, LLC	N/A	N/A	100%	100%
BF JUPITER, LLC	N/A	N/A	100%	100%
BF JUPITER - INDIANTOWN, LLC	N/A	N/A	100%	100%
BF PHILADELPHIA, LLC	N/A	N/A	100%	100%

BF WEST DELRAY, LLC	N/A	N/A	100%	100%
BF LBTS, LLC	N/A	N/A	100%	100%
BGM PEMBROKE PINES, LLC	N/A	N/A	100%	100%
BF JACKSONVILLE TOWN CENTER, LLC	N/A	N/A	100%	100%
BF JACKSONVILLE RIVERSIDE, LLC	N/A	N/A	100%	100%
BF DELRAY - LINTON, LLC	N/A	N/A	100%	100%
BF PINES CITY CENTER, LLC	N/A	N/A	100%	100%
BF DANIA BEACH, LLC	N/A	N/A	100%	100%
BF FORT MYERS - DANIELS, LLC	N/A	N/A	100%	100%
BF BOCA RATON - BOCA POINTE, LLC	N/A	N/A	100%	100%
BF BOCA RATON, LLC	N/A	N/A	100%	100%
BF PBG, LLC	N/A	N/A	100%	100%
BF WELLINGTON, LLC	N/A	N/A	100%	100%
BF NEPTUNE BEACH, LLC	N/A	N/A	100%	100%
BF WILLIAMSBURG, LLC	N/A	N/A	100%	100%
BF Orlando - Dr. Phillips, LLC	N/A	N/A	100%	100%

BF Miami Beach - Meridian, LLC	N/A	N/A	100%	100%
BF Odessa, LLC	N/A	N/A	100%	100%
BF TAMPA BAY, LLC	N/A	N/A	100%	100%
BF Tampa - Channelside, LLC	N/A	N/A	100%	100%
BF Tampa - Westchase, LLC	N/A	N/A	100%	100%
BF Food Truck, LLC	N/A	N/A	100%	100%
BF MIRAMAR LLC	N/A	N/A	100%	100%
BF TALLAHASSEE VARSITY, LLC	N/A	N/A	100%	100%
BF BABCOCK, LLC	N/A	N/A	100%	100%
BF MIAMI LAKES, LLC	N/A	N/A	100%	100%
BF Commack, LLC	N/A	N/A	100%	100%
BF Atlanta - Perimeter Marketplace, LLC	N/A	N/A	100%	100%
BF Charlottesville, LLC	N/A	N/A	100%	100%
BF Hendersonville, LLC	N/A	N/A	100%	100%
BF Hermitage LLC	N/A	N/A	100%	100%

INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement") is made as of February 24, 2023 (the "Closing Date"), by and between **REGIONS BANK**, in its capacity as administrative agent for the Senior Creditors (defined below) (in such capacity, and including any successor administrative agent, the "Senior Administrative Agent ") and as collateral agent for the Senior Creditors (defined below) (in such capacity, and including any successor collateral agent, the "Senior Collateral Agent"), and **CP7 WARMING BAG, LP**, a Delaware limited partnership (including its successors and assigns, the "Junior Creditor"), and is acknowledged by the Credit Parties (defined below).

RECITALS

WHEREAS, the Senior Creditors have made, and in the future may make, credit accommodations available to BURGERFI INTERNATIONAL, INC., a Delaware corporation ("Parent"), PLASTIC TRIPOD, INC., a Delaware corporation (together with Parent, each a "Borrower" and collectively, the "Borrowers"), the other Subsidiaries of Parent (each a "Guarantor" and collectively, the " Guarantors"), and such other Persons as are, or may from time to time become, a party as a borrower or guarantor (each such Person, together with the Borrower and Guarantor, the "Credit Parties" or individually, a " Credit Party"), under the terms and provisions of that certain Credit Agreement, dated as of December 15, 2015 (as amended, restated, refinanced, replaced, increased, supplemented or otherwise modified from time to time, the "Senior Credit Agreement"), between and among the Senior Lenders (defined below), the Senior Administrative Agent, the Senior Collateral Agent and the Credit Parties;

WHEREAS, the Credit Parties have requested certain amendments to the Senior Credit Agreement, including the ability to incur subordinated Indebtedness that is secured on a basis junior to the Liens securing the Senior Indebtedness (defined below);

WHEREAS, the Junior Creditor has made, or in the future may make, credit accommodations available to the Borrower pursuant to the terms and provisions of that certain Secured Promissory Note, dated as of the Closing Date (as amended, modified, restated or supplemented from time to time, the "Junior Credit Agreement"), among the Junior Creditor and the Credit Parties; and

WHEREAS, as a condition to their continued extensions of credit to the Credit Parties and the amendment of the Senior Credit Agreement as of the Closing Date, the Senior Creditors have required the execution of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the provisions set forth herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows, intending to be legally bound:

Section 1. Definitions. For purpose of this Agreement, the following terms used herein shall have the following meanings:

"Agreement" has the meaning set forth in the Preamble to this Agreement.

"Assignment" has the meaning set forth in Section 25(i).

"Avoidance Actions" means any causes of action arising under sections 544, 546, 547 or 548 of the Bankruptcy Code.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"Borrower" has the meaning set forth in the Recitals.

"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.

"Closing Date" has the meaning set forth in the Preamble to this Agreement.

"Collateral" means any and all property which now constitutes, is purported to constitute, or hereafter will constitute (i) collateral or other security for payment of the Senior Indebtedness under the terms of the Senior Loan Documents or (ii) collateral or other security for payment of the Junior Debt pursuant to the Junior Loan Documents and, in each case, the Proceeds thereof.

"Contingent Obligation" has the meaning set forth in Section 25(iii).

"Control Collateral" means any Collateral consisting of any Certificated Security, Instrument, Investment Property, Deposit Accounts (each as defined in the UCC), cash and any other Collateral as to which a Lien shall or may be perfected through possession or control by the secured party or any agent therefor.

"Credit Party" and "Credit Parties" have the respective meanings set forth in the Recitals.

"Creditor" means any of the Junior Creditor or the Senior Creditors, as the context may require.

"Debt Action" has the meaning set forth in Section 5(ii).

"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 and affecting the rights of creditors generally.

"Defaulting Creditor" has the meaning set forth in Section 25(vii).

"DIP Financing" has the meaning set forth in Section 9(iii).

"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.

"Excess Senior Obligations" means any Senior Indebtedness that is in excess of the Senior Debt Cap.

"Exercise of Secured Creditor Remedies" means (a) the taking of any action to enforce or realize upon any Lien in the Collateral, including the institution of any foreclosure proceedings or the noticing of any public or private sale or other disposition pursuant to Article 8 or Article 9 of the UCC or other applicable Laws of the United States, or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally, (b) the exercise of any right or remedy provided to a secured creditor or otherwise on account of a Lien in the Collateral under the Senior Loan Documents, Junior Loan Documents, applicable Law, in a Proceeding or otherwise, including the election to retain any Collateral in satisfaction of a Lien, (c) the taking of any action or the exercise of any right or remedy in respect of the collection on, set off against, marshaling of, or foreclosure on the Collateral or the Proceeds of Collateral, (d) the sale, lease, license, or other disposition of all or any portion of the Collateral, at a private or public sale, other disposition or any other means permissible under applicable Law at any time

that an event of default shall have occurred and is continuing, and (e) the exercise of any other right relating to any Collateral (including the exercise of any right of recoupment or set-off or any rights against Collateral obtained pursuant to or by foreclosure of a judgment Lien obtained against any Credit Party) whether under the Senior Loan Documents or Junior Loan Documents, applicable Law, in a Proceeding or otherwise; provided, that this definition shall not include any Debt Action.

"GAAP" means, subject to the limitations on the application thereof set forth in Section 1.2 of the Senior Credit Agreement, accounting principles generally accepted in the United States in effect as of the date of determination thereof.

"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).

"Indebtedness" has the meaning given such term in the Senior Credit Agreement.

"Indemnified Senior Person" has the meaning set forth in Section 25(i).

"Junior Credit Agreement" has the meaning set forth in the Recitals.

"Junior Creditor" has the meaning set forth in the Preamble to this Agreement.

"Junior Debt" means and includes all Indebtedness, obligations (contingent or otherwise) and liabilities of any Credit Party under the Junior Loan Documents, including, without limitation, all principal, interest, fees, charges, reimbursements and other amounts payable thereunder or with respect thereto, including, without limitation, all reasonable and documented out-of-pocket third-party costs and expenses incurred by Junior Creditor in commencing or pursuing any remedies or a Debt Action, including reasonable and documented attorneys' fees, costs and disbursements (including, without limitation, any attorneys' fees, disbursements and costs incurred after the filing of any Proceeding relating to any Credit Party, whether or not a claim for post-filing or post-petition fees, disbursements or costs is allowed in such Proceeding).

"Junior Event of Default" means an "Event of Default" (under and as defined in the Junior Credit Agreement).

"Junior Loan Documents" means the Secured Promissory Note, the other "Loan Documents" (as defined in the Secured Promissory Note) and any other document, agreement or instrument executed or delivered at any time in connection with as contemplated by the Secured Promissory Note, as each such document is amended, restated, refinanced, replaced, increased, supplemented or otherwise modified from time to time.

"Junior PIK Payments" means payments of interest, fees or other charges by payment-in-kind, adding to the principal balance of the Junior Credit Agreement or otherwise on an accretion basis (but in no event made in cash).

"Junior Securities" means any of the following securities of a Credit Party: (a) any note or debt security issued in substitution of all or any portion of the Junior Debt (including, without limitation, notes issued in payment of interest or other amounts under the Junior Credit Agreement) that is subordinated to the Senior Indebtedness (or any note or other securities issued in substitution of all or any portion of the Senior Indebtedness) at least to the same extent as the Junior Debt is subordinated to the Senior Indebtedness pursuant to the terms of this Agreement; and (b) any equity security, which, prior to the Payment-in-Full of the Senior Indebtedness, is non-cash-paying and does not provide for any cash

dividends, "puts" or mandatory redemptions and which does not have any terms (and is not subject to or entitled to the benefit of any agreement or instrument that has terms) that are more burdensome to any Credit Party than the terms of the Junior Debt.

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"Lien" means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Paid-in-Full" or "Payment-in-Full" means (a) when used in connection with Senior Indebtedness, (i) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Proceeding, whether or not a claim for such interest is, or would be, allowed in such Proceeding), on all Indebtedness outstanding under the Senior Loan Documents constituting Senior Indebtedness and termination of all commitments to lend or otherwise extend credit under the Senior Loan Documents, (ii) termination, cancellation, cash collateralization (or any other alternative arrangements reasonably satisfactory to the Senior Agent) of all letters of credit issued under the Senior Loan Documents and constituting Senior Indebtedness under this Agreement (it being understood that the cash collateralization of such letters of credit shall not be required in excess of 103% of the undrawn amount thereof), (iii) termination (and payment in full of any amounts due on termination) or cash collateralization (or any other alternative arrangements reasonably satisfactory to such holders) (in each case, as determined by such holders in their reasonable discretion) of each Secured Swap Agreement, (iv) payment in full in cash of all other Senior Indebtedness (including obligations in respect of Secured Treasury Management Agreements) that is due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including legal fees and other expenses, costs or charges accruing on or after the commencement of any Proceeding, whether or not a claim for such fees, expenses, costs or charges is, or would be, allowed in such Proceeding, in each case, to the extent limited by Section 11.2(a) of the Senior Credit Agreement) and (v) with respect to any other contingent obligations constituting Senior Indebtedness (other than contingent obligations of a Credit Party to any Senior Creditor to the extent that no claim giving rise thereto has been asserted), the cash collateralization of such obligations on terms reasonably acceptable to the holders of such obligations; and (b) when used in connection with the Junior Debt, payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Proceeding, whether or not a claim for such interest is, or would be, allowed in such Proceeding), on all Indebtedness outstanding under the Junior Loan Documents constituting Junior Debt.

"Permitted Non-Cash Payments" means Junior PIK Payments or Junior Securities.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Proceeding" means any (a) proceeding with respect to a Credit Party under any Debtor Relief Law, (b) proceeding for any liquidation, liquidating distribution, dissolution or other winding up of any of the Credit Parties, voluntary or involuntary, whether or not involving proceedings under any Debtor Relief Law, (c) assignment for the benefit of creditors of any of the Credit Parties or (d) other marshalling of the assets of any of the Credit Parties.

"Proceeds" has the meaning assigned to it under the UCC and shall include, but not be limited to (a) "products" (as such term is used in the UCC), (b) all proceeds of any insurance, indemnity, warranty, letter of credit or guaranty or collateral security payable to any debtor or Credit Party from time to time

with respect to any of the Collateral, (c) any and all payments (in any form whatsoever) made or due and payable to the owner of the Collateral from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture or all of any part of the Collateral by a Governmental Authority (or any Person acting under color of a Governmental Authority), and (d) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Purchase Date" has the meaning set forth in Section 25(ii).

"Purchase Notice" has the meaning set forth in Section 25(ii).

"Purchase Obligation" has the meaning set forth in Section 25(i).

"Purchase Price" has the meaning set forth in Section 25(iii).

"Recovery" has the meaning set forth in Section 9(vi).

"Remedies" shall mean, with respect to a Junior Event of Default, the exercise of any remedies in respect of such Junior Event of Default (including, without limitation, the right to sue any Credit Party or to file or institute any Proceeding against any Credit Party, but excluding the imposition of default rate interest).

"Required Senior Lenders" mean those Senior Lenders required under the Senior Credit Agreement in respect of the Senior Indebtedness for approval of the amendment, change, waiver, discharge, termination or other instruction to the Senior Agent under the Senior Credit Agreement necessary to accomplish the act contemplated herein.

"Secured Swap Agreement" has the meaning set forth in the Senior Credit Agreement.

"Secured Swap Obligations" has the meaning set forth in the Senior Credit Agreement.

"Secured Treasury Management Agreement" has the meaning set forth in the Senior Credit Agreement.

"Secured Treasury Management Obligations" has the meaning set forth in the Senior Credit Agreement.

"Senior Administrative Agent" has the meaning set forth in the Preamble to this Agreement.

"Senior Agent" means either the Senior Administrative Agent or the Senior Collateral Agent, as the case may be.

"Senior Collateral Agent" has the meaning set forth in the Preamble to this Agreement.

"Senior Credit Agreement" has the meaning set forth in the Recitals.

"Senior Creditor" means any holder of all or part of the Senior Indebtedness, including the Senior Agent, each Senior Lender, each holder of Secured Treasury Management Obligations, each holder of Secured Swap Obligations, each Issuing Bank (under and as defined in the Senior Credit Agreement) and each of their respective successors and assigns, and such Persons shall be referred to collectively as the "Senior Creditors".

"Senior Debt Cap" means the sum of (i) $70,208,915.80, *plus* (ii) all interest, fees, costs, expenses, indemnities and other amounts accrued or charged with respect to any of the Senior Indebtedness, as and when the same accrues or becomes due and payable, irrespective of whether the same is added to the principal amount of Senior Indebtedness and including the same as would accrue and become due but for the commencement of a Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Proceeding, *plus* (iii) the aggregate amount of obligations

under Secured Treasury Management Agreements and Secured Swap Agreements constituting Senior Indebtedness, *plus* (iv) the principal amount of any DIP Financing, up to a limit of $15,000,000, obtained by the Credit Parties in any Proceeding (if applicable).

"Senior Event of Default" means an "Event of Default" under and as defined in the Senior Credit Agreement.

"Senior Indebtedness" means all of the following: (a) the aggregate principal Indebtedness advanced from time to time under the Senior Credit Agreement and any other Senior Loan Documents, including without limitation the aggregate principal amount of any revolving credit commitments, revolving credit loans, letters of credit, term loans, bonds, debentures, notes or similar instruments; (b) all interest, fees, charges and premium accrued and accruing on the aggregate principal amounts outstanding under the Senior Loan Documents from time to time (including, without limitation, any interest, fees (including letter of credit fees), charges and premium accruing after the filing of any Proceeding relating to any Credit Party, whether or not a claim for post-filing or post-petition interest, fees, disbursements, charges, premium or costs is allowed in such Proceeding) in accordance with the terms hereof; (c) all reasonable and documented costs and expenses incurred by the holder of Senior Indebtedness under any of the Senior Loan Documents in commencing or pursuing any remedies or an Exercise of Secured Creditor Remedies including reasonable and documented attorneys' fees, costs and disbursements (including, without limitation, any attorneys' fees, disbursements and costs incurred after the filing of any Proceeding relating to any Credit Party, whether or not a claim for post-filing or post-petition fees, disbursements or costs is allowed in such Proceeding), in each case, to the extent limited pursuant to Section 11.2(a) of the Senior Credit Agreement; (d) all obligations under any Secured Treasury Management Agreement; and (e) all obligations and liabilities of any Credit Party under any Secured Swap Agreement.

"Senior Indebtedness" shall also include all amendments, modifications, renewals, replacements, restatements and refinancings of the foregoing, in whole or in part.

"Senior Lender" means any of the "Lenders" under and as defined in the Senior Credit Agreement from time to time, and each of their successor and assigns.

"Senior Loan Documents" means the Senior Credit Agreement and the other "Credit Documents" (as defined in the Senior Credit Agreement), all Secured Treasury Management Agreements, all Secured Swap Agreements and any other document, agreement or instrument executed or delivered at any time in connection with or as contemplated by the Senior Credit Agreement, the Secured Treasury Management Agreements or the Secured Swap Agreements, as each such document is amended, restated, refinanced, replaced, increased, supplemented or otherwise modified from time to time.

"Senior Maturity Date" means September 30, 2025.

"Senior Term Loan" means the Term Loan as defined in the Senior Credit Agreement.

"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, 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 the Borrower.

"Trigger Event" means (i) the occurrence of a Senior Event of Default or (ii) the commencement of a Proceeding.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York.

"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.

Section 2. General. Each Credit Party, for itself and its successors, and the Junior Creditor, by its acceptance of the Junior Debt, whether upon original issuance, transfer, assignment or exchange, agrees that on the terms and conditions herein that (a) the payment of the principal of, interest on and other amounts due and payable in respect of the Junior Debt and (b) any other payment on account of the acquisition, payment, prepayment or redemption of the Junior Debt by any Credit Party is subordinated, to the extent and in the manner provided in this Agreement, to the prior Payment-in-Full of the Senior Indebtedness; provided, however, that the failure to make a payment of principal of, interest on, or fees, costs or expenses relative to any of the Junior Debt by reason of any provision of this Agreement shall not be construed as preventing the occurrence or the continuance of a Junior Event of Default; provided, further, that until Payment-in-Full of the Senior Indebtedness, the Junior Creditor shall have the right to receive and retain only Permitted Non-Cash Payments on account of the Junior Debt.

Section 3. Payment Blockage. Until the Payment-in-Full of the Senior Indebtedness, no Credit Party shall make, and the Junior Creditor shall not accept, receive or retain, any payment, whether in cash, securities or other property (other than (a) payments in the form of Permitted Non-Cash Payments, (b) any refinancing in full of the Junior Debt made in accordance with and pursuant to the requirements set forth in Section 17 hereof, and (c) the reasonable and documented out-of-pocket costs and expenses payable by the Credit Parties to the Junior Creditor in connection with the preparation, negotiation, documentation and closing of the Junior Loan Documents, and any amendment, waiver, forbearance or other agreement executed in connection therewith,), on account of the Junior Debt or the redemption thereof, and no Credit Party shall defease or acquire any of the Junior Debt.

Section 4. Subordination in the Event of Dissolution. Upon any distribution of assets of any Credit Party upon any dissolution, winding up, total or partial liquidation or reorganization of any Credit Party, whether voluntary or involuntary, in a Proceeding or upon an assignment for the benefit of creditors:

(i) the holders of the Senior Indebtedness shall first be entitled to receive Payment-in-Full of the Senior Indebtedness before the Junior Creditor is entitled to receive any payment on account of the Junior Debt (other than Permitted Non-Cash Payments);

(ii) any payment or distribution of assets of any Credit Party of any kind or character, whether in cash, property or securities to which the Junior Creditor would be entitled under or on account of the Junior Debt except for the provisions of this Agreement and except for any Permitted Non-Cash Payments, shall be paid by the liquidating trustee or agent or other Person making such a payment or distribution, directly to the Senior Agent to the extent necessary to make Payment-in-Full of the Senior Indebtedness remaining unpaid after giving effect to all concurrent payments and distributions to the Senior Creditors of such Senior Indebtedness; and

(iii) in the event that, notwithstanding the foregoing, any payment or distribution of assets of any Credit Party of any kind or character, whether in cash, property or securities, shall be received by the Junior Creditor on account of the Junior Debt (other than Permitted Non-Cash Payments) before all Senior Indebtedness is Paid-in-Full, such payment or distribution shall be received and held in trust by such Junior Creditor for the benefit of the holders of such Senior Indebtedness and shall be paid over or transferred to the Senior Agent to the extent necessary to make Payment-in-Full of the Senior Indebtedness remaining unpaid after giving effect to all concurrent payments and distributions to the Senior Creditors of such Senior Indebtedness.

Section 5. Enforcement.

(i) Until Payment-in-Full of the Senior Indebtedness, (A) the Senior Creditors shall have the sole and exclusive right to enforce, collect or realize on any Collateral securing the Senior Indebtedness or exercise any right or remedy with respect to any of the Collateral, or

otherwise initiate any remedies for the collection of the Senior Indebtedness; and (B) the Junior Creditor shall not commence or continue any Remedies or any Exercise of Secured Creditor Remedies, in respect of a Junior Event of Default or otherwise, and will not take, receive or accept any proceeds of any Collateral securing the Junior Debt except as otherwise expressly provided in this Agreement.

(ii) Notwithstanding the foregoing or anything else to the contrary in this Agreement, the Junior Creditor may (each of the following actions, a "Debt Action"):

A. after the occurrence of a Proceeding against a Credit Party, take such action against such Credit Party as may be necessary (if any) to provide notice confirming that the occurrence of such Proceeding has resulted (or does result) in the acceleration of the Junior Debt;

B. in a Proceeding commenced by or against any Credit Party, file a claim or statement of interest against such Credit Party with respect to the Junior Debt;

C. take any action (not adverse to the priority status, validity or enforceability of the Liens on the Collateral securing the Senior Indebtedness, or the rights of the Senior Agent or any Senior Creditor to exercise remedies in respect thereof) in order to create, perfect, preserve or protect its Lien on any of the Collateral;

D. file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims for any of the Junior Debt, including any claims secured by the Collateral, if any, in each case not inconsistent with the other terms of this Agreement;

E. file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of any Credit Party arising under either the Bankruptcy Code or applicable non-bankruptcy Law, in each case not inconsistent with the terms of this Agreement; *provided* that in the event any Junior Creditor becomes a judgment lien creditor in respect of any Collateral as a result of its enforcement of its rights as an unsecured creditor, then such judgment lien shall be subordinated to the Liens securing the Senior Indebtedness on the same basis as the other Liens securing the Junior Debt are so subordinated to the Liens securing the Senior Indebtedness under this Agreement;

F. take any action to the extent necessary to prevent the running of any applicable statute of limitation or similar restriction on claims, or to assert a compulsory cross-claim or counterclaim against a Credit Party, in each case not otherwise inconsistent with the terms of this Agreement;

G. vote on any plan of reorganization in any Proceeding of any Credit Party; *provided* that the Junior Creditor agrees that it shall not take any action supporting or vote in favor of any such plan (1) that does not pay in full in cash all Senior Indebtedness (unless the requisite holders of the Senior Indebtedness vote in favor thereof), (2) that contradicts the subordination of the Junior Debt to the Senior Indebtedness or the subordination of the Liens securing the Junior Debt to the Liens securing the Senior Indebtedness, or (3) that challenges the validity or enforceability of any Lien securing the Senior Indebtedness or the validity or enforceability of this Agreement or any provision thereof;

H. declare a Junior Event of Default (and impose the default rate of interest in accordance with the Junior Loan Documents);

I. defend or otherwise contest any attempt to object to or disallow any portion of the Junior Debt in any manner not inconsistent with the other terms of this Agreement; and

J. accept or receive any Permitted Non-Cash Payments.

(iii) Until the Senior Indebtedness is Paid-in-Full, if the Junior Creditor, in contravention of the express terms of this Agreement, commences or participates in any action or proceeding against any Credit Party or the Collateral, to the extent permitted by law, the Borrower or such other Credit Party may interpose as a defense or dilatory plea the making of this Agreement, and any Senior Creditor may intervene and interpose such defense or plea in its or their name or, in the name of the Borrower or such other Credit Party, as applicable.

(iv) The Junior Creditor agrees that it will not assert, and hereby waives, to the fullest extent permitted by applicable Law: any defense based on the adequacy of a remedy at Law or equity which might be asserted as a bar to the remedy of specific performance of the terms of this Agreement in any action brought therefor by the Senior Agent (or an agent acting on its behalf) or any other Senior Creditor; and any claim it may now or hereafter have against the Senior Agent (or an agent acting on its behalf) or any other Senior Creditor arising out of presentment, demand, protest, notice of protest, notice of default or dishonor, notice of payment or nonpayment. Until the Senior Indebtedness is Paid-in-Full, if the Junior Creditor, in contravention of the express terms of this Agreement, in any way takes, attempts to take or threatens to take any action with respect to the Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement), or take any other action in violation of the express terms of this Agreement, or fail to take any action expressly required by the terms of this Agreement, in each case that is not otherwise unenforceable, this Agreement shall create an irrebuttable presumption and admission by such Junior Creditor that any Senior Creditor (in its own name or in the name of the relevant Credit Party) may obtain relief against such Junior Creditor by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by Junior Creditor that (a) the Senior Creditors' damages from such actions may at that time be difficult to ascertain and may be irreparable, and the harm to the Senior Creditors may not be adequately compensated in damages, and (b) each Junior Creditor waives any defense that the Credit Parties and/or the Senior Creditors cannot demonstrate damages and/or be made whole by the awarding of damages.

Section 6. No Prejudice or Impairment. Nothing contained in this Agreement, the Junior Credit Agreement or the other Junior Loan Documents is intended to or shall impair, as between the Credit Parties and the Junior Creditor, the obligation of each Credit Party, which is absolute and unconditional, to pay to the Junior Creditor the principal of, premium, if any, and interest on the Junior Debt as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Junior Creditor and creditors of any Credit Party (other than the Senior Creditors), nor shall anything herein prevent the occurrence of a Junior Event of Default or prevent the Junior Creditor from exercising all remedies otherwise permitted by this Agreement and applicable Law upon the occurrence of a Junior Event of Default, subject to the rights, if any, under this Agreement, of the Senior Creditors in respect of cash, property or securities of any Credit Party received upon the exercise of any such remedy. Notwithstanding anything to the contrary in this Agreement or in the Junior Loan Documents, upon any distribution of assets of any Credit Party, the Junior Creditor shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the liquidating trustee or agent or other Person making any distribution to the Junior Creditor for the purpose of ascertaining the Persons entitled to participate in such distribution, the identity of the holders of the Senior Indebtedness and other Indebtedness of the Credit Parties, the amount thereof or payable thereon (excluding interest, fees, expenses and other charges accruing or incurred after the filing of any Proceeding relating to any Credit Party, included within Senior Indebtedness but not allowed in such Proceeding), the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Agreement.

Section 7. Priorities Regarding Collateral.

(i) Notwithstanding (a) the date, time, method, manner or order of grant, attachment or perfection of any Liens securing the Junior Debt granted on the Collateral or of any Liens securing the Senior Indebtedness granted on the Collateral, or any failure of any Senior Agent to adequately perfect any Liens on the Collateral, and notwithstanding any provision of the UCC, or

any applicable Law, (b) the order or time of filing or recordation of any document or instrument for perfecting the Liens in favor of Junior Creditor in any Collateral, (c) the date or dates on which any Junior Debt or any Senior Indebtedness are advanced or made available to any Credit Party, (d) the fact that any such Liens in favor of any Junior Creditor securing any of the Junior Debt are subordinated to any Lien securing any obligation of any Credit Party other than the Senior Indebtedness or otherwise subordinated, (e) the fact that any such Liens in favor of any Senior Agent or any Senior Creditor securing any of the Senior Indebtedness are subordinated to any Lien securing any obligation of any Credit Party or otherwise subordinated, (f) the avoidance, invalidation, unenforceability or lapse of any Lien on the Collateral securing any Senior Indebtedness, or (g) any other circumstances of any kind or nature whatsoever, the Junior Creditor and the Senior Agent, on behalf of itself and each applicable Senior Creditor, hereby agrees that: (A) any Lien in respect of all or any portion of the Collateral held by or on behalf of any Junior Creditor, regardless of how acquired, that secures all or any portion of the Junior Debt, shall in all respects be junior and subordinate to the Liens in favor of any Senior Agent and any Senior Creditor in all or such portion of the Collateral securing all or any portion of the Senior Indebtedness in an amount up to the Senior Debt Cap, unless and until the Senior Indebtedness has been Paid-in-Full, (B) any Lien in respect of all or any portion of the Collateral held by or on behalf of any Senior Agent or any Senior Creditor, regardless of how acquired, that secures all or any portion of the Senior Indebtedness in an amount up to the Senior Debt Cap shall in all respects be senior and prior to any Liens in favor of any Junior Creditor in all or such portion of the Collateral securing all or any portion of the Junior Debt, unless and until Senior Indebtedness has been Paid-in-Full, and (C) any Lien in respect of all or any portion of the Collateral held by or on behalf of any Senior Agent or any Senior Creditor, regardless of how acquired, to the extent that it secures all or any portion of Excess Senior Obligations, shall to such extent be junior and subordinate to the Liens in favor of any Junior Creditor in all or such portion of the Collateral securing all or any portion of the Junior Debt, unless and until the Junior Debt has been Paid-in-Full. In the event that any Junior Creditor or any Senior Agent or any Senior Creditor receives Proceeds of Collateral to which it is not entitled under this Agreement, such Junior Creditor or such Senior Agent or Senior Creditor, as the case may be, shall be deemed to hold all of such Proceeds in trust for the benefit of each party entitled thereto.

(ii) The Junior Creditor agrees that it shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Proceeding), (i) the validity, priority, enforceability, or perfection of any Liens held or purported to be held by or on behalf of any Senior Agent or any Creditor in any Collateral securing all or any portion of the Senior Indebtedness, or (ii) the provisions of this Agreement. The Junior Creditor agrees that it shall not take any action that would interfere with any exercise of any secured creditor remedies undertaken by any Senior Creditor with respect to the Collateral in respect of any Senior Indebtedness. The Junior Creditor waives any and all rights it may have as a junior lien creditor or otherwise to contest, protest, object to, or interfere with the manner in which any Senior Agent or any Senior Creditor seeks to enforce its Liens in any Collateral in respect of any Senior Indebtedness. The Junior Creditor confirms and agrees that the Junior Creditor has no right to compel action by any Senior Creditor in respect of the Collateral, and that the Senior Creditors have full authority to deal with the Collateral in accordance with applicable Law and in accordance with this Agreement until the Payment-in-Full of the Senior Indebtedness. The foregoing shall not be construed to prohibit the Junior Creditor from enforcing the provisions of this Agreement.

(iii) The Senior Agent, for and on behalf of itself and each applicable Senior Creditor, agrees that it shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Proceeding), (i) the validity, priority, enforceability, or perfection of any Liens held or purported to be held by or on behalf of the Junior Creditor in any Collateral securing all or any portion of the Junior Debt or (ii) the provisions of this Agreement. The foregoing will not be construed to prohibit any Senior Agent or any Senior Creditor from enforcing the provisions of this Agreement or the priority of its Liens on the Collateral securing any Senior Indebtedness.

(iv) The Junior Creditor confirms and agrees that promptly upon, and in any event with five (5) Business Days of, the written request by the Senior Agent, the Junior Creditor shall execute and deliver (or shall direct any agent acting on its behalf to execute and deliver) such consents, termination statements and releases as the Senior Agent (or any other agent acting on its behalf) shall reasonably request to consent to the disposition, if necessary, and release the Lien or security interest of the Junior Creditor in the Collateral, in connection with a disposition of such Collateral (including a disposition by strict foreclosure) or sale of such Credit Party by any Senior Lender (or by a Credit Party with the consent of the Senior Lenders) provided that (y) the Junior Creditor has a Lien on the proceeds of any such Collateral disposed of or sold to the same extent and priority of its Lien prior to such disposition or sale and (z) one of the following clauses is satisfied:

(a) the Senior Agent (or an agent acting on its behalf) has caused such disposition in connection with its Exercise of Secured Creditor Remedies against such Collateral;

(b) (1) such disposition or sale is permitted under the Senior Loan Documents and (2) the Senior Agent and the other Senior Creditors also shall release all of their Liens on such Collateral; or

(c) the Required Senior Lenders have consented to the release of their and the Senior Agent's Liens on the subject Collateral in connection with a disposition or sale thereof and such Liens are actually released.

If in connection with a disposition of such Collateral constituting Equity Interests of a Credit Party (other than the Borrower) that satisfies the applicable conditions in this Section 7(iv), the Senior Agent (or an agent acting on its behalf, in each case at the instruction of the Required Senior Lenders) releases the obligations of such Credit Party under its guaranty of the Senior Indebtedness, then the Junior Creditor shall release such Credit Party of any obligations it has to the Junior Creditor in respect of its guaranty of the Junior Debt shall be automatically, unconditionally and simultaneously released. The Junior Creditor hereby appoints the Senior Agent and any officer or duly authorized Person of the Senior Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney in the place and stead of the Junior Creditor or in the Senior Agent's own name, from time to time, in the Senior Agent's sole discretion, for the purposes of carrying out the terms of this Section 7(iv), to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this Section 7(iv), including, without limitation, any financing statements, endorsements, assignments, releases or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable).

(v) The Junior Creditor acknowledges that (a) all or a portion of the Senior Indebtedness may be revolving in nature, (b) the amount thereof that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and (c) the Senior Indebtedness may be increased, extended, renewed, replaced, restated, supplemented, restructured, repaid, refunded, refinanced or otherwise amended or modified from time to time, without notice to or consent by the Junior Creditor and without affecting the provisions hereof. The lien priorities provided herein shall not be altered or otherwise affected by any increase, extension, renewal, replacement, restatement, supplement, restructuring, repayment, refund, refinancing or other amendment or modification of either the Senior Indebtedness or the Junior Debt, or any portion thereof, by the release of any Collateral or of any guarantees securing any Senior Indebtedness or Junior Debt or by any action that any Senior Creditor or the Junior Creditor may take or fail to take in respect of any Collateral.

(vi) Until the Senior Indebtedness has been Paid-in-Full, the Junior Creditor agrees not to assert or enforce any right of marshalling accorded to a junior lienholder, as against the Senior Creditors.

(vii) Except as expressly set forth in this Agreement, none of the Senior Agents nor any of the other Senior Creditors shall be responsible for perfecting and maintaining the perfection of Liens with respect to the Collateral for the benefit of the Junior Creditor. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the Senior Creditors and the Junior Creditors and shall not impose on any of the Senior Creditors or Junior Creditor or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any Collateral which would conflict with prior perfected claims therein in favor of any other Person or any order or decree of any court or governmental authority or any applicable law.

(viii) Until the Payment-in-Full of the Senior Indebtedness shall have occurred, (A) the Junior Creditor agrees that it shall not hold any Lien on any assets of any Credit Party or any of their respective Subsidiaries securing any Junior Debt which assets are not also subject to the Lien of the Senior Agent under the Senior Loan Documents, and (B) each Credit Party agrees not to grant any Lien on any of its assets, or permit any of its Subsidiaries to grant a Lien on any of its assets, in favor of the Junior Creditor (or any agent therefor) unless it, or such Subsidiary, has granted (or offered to grant with a reasonable opportunity for such Lien to be accepted) a corresponding Lien on such assets in favor of the Senior Agent for the benefit of the Senior Creditors under the Senior Loan Documents. If the Junior Creditor shall (nonetheless and in breach hereof) acquire any Lien on any assets of any Credit Party or any of their respective Subsidiaries securing any Junior Debt which assets are not also subject to the Lien of the Senior Agent, then the Junior Creditor (or any agent therefor), shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any other Junior Debt Document either (x) hold and be deemed to have held such Lien and security interest also for the benefit of the Senior Agent as security for the Senior Indebtedness, or (y) release such Lien.

Section 8. Payments of Collateral Proceeds.

(i) All Collateral and all Proceeds thereof received by any Senior Creditor or any Junior Creditor in connection with a sale or disposition of such Collateral upon the exercise of any secured creditor remedies in respect thereof or upon the occurrence of an "Event of Default" under and as defined in any of the Senior Loan Documents shall be remitted as follows: *first*, to the Senior Agent, to be applied to the Senior Indebtedness (including all costs and expenses of the Senior Agents in connection with the exercise of any secured creditor remedies) in accordance with the applicable Senior Loan Documents; *second*, if and to the extent Payment-in-Full of the Senior Indebtedness shall have occurred, to the Junior Creditor to be applied to the Junior Debt (including all costs and expenses of the Junior Creditor in connection with the exercise of any secured creditor remedies) in accordance with the applicable Junior Loan Documents; and *third*, after the Senior Indebtedness shall have been Paid-in-Full and the Junior Debt shall have been Paid-in-Full, the remainder, if any, shall be remitted to the Credit Parties or as a court of competent jurisdiction may direct.

(ii) After the Senior Indebtedness has been Paid-in-Full, the Senior Agent shall deliver to the Junior Creditor or shall execute such documents as the Junior Creditor may reasonably request to enable the Junior Creditor to have control over any Collateral still in any Senior Agent's possession, custody, or control in the same form as received with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct.

(iii) So long as Payment-in-Full of the Senior Indebtedness has not occurred, any Collateral or Proceeds thereof received by the Junior Creditor in connection with the exercise of any right or remedy (including set off or recoupment) relating to any Collateral shall be segregated and held in trust and forthwith paid over to the Senior Agent for the benefit of the Senior Creditors. In the event that any payment or distribution of assets on account of the Junior Debt (other than Permitted Non-Cash Payments) shall be made by any Credit Party and received by the Junior Creditor, at a time when such payment or distribution was prohibited by the terms of this Agreement then, unless such payment or distribution is no longer prohibited by this Agreement, such payment or distribution shall be received and held in trust by such Junior

Creditor for the benefit of the Senior Creditors, and shall be paid over or delivered by such Junior Creditor to the Senior Agent in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Senior Agents are each hereby individually authorized to make any such endorsements as agent for the Junior Creditor. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with the terms hereof.

(iv) To the extent of any amounts paid over by the Junior Creditor to the Senior Creditors (or the Senior Agent on behalf thereof) and retained by such Persons and subject to the Payment-in-Full of the Senior Indebtedness, the Junior Creditor shall be subrogated to the rights of the Senior Creditors to receive payments or distributions of assets of the Credit Parties applicable to the Senior Indebtedness (and no other rights) until all amounts owing on the Junior Debt shall have been Paid-in-Full, and for the purpose of such subrogation no payments made by the Junior Creditor to the Senior Agent by virtue of this Agreement (or payment by any Credit Party directly to the Senior Agent by virtue of this Agreement of any amounts which otherwise would have been payable to the Junior Creditor) shall, as between any Credit Party and the Junior Creditor, be deemed to be payment by such Credit Party to or on account of the Senior Indebtedness, it being understood that the provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the Junior Creditor, on the one hand, and the Senior Creditors, on the other hand. If any payment or distribution to which the Junior Creditor would otherwise have been entitled but for the provisions of this Agreement shall have been applied, pursuant to the provisions of this Agreement, to the payment of the Senior Indebtedness, then the Junior Creditor shall be entitled to receive from the Senior Creditors any payments or distributions received by such Senior Creditors in excess of the amount required for the Payment-in-Full of the Senior Indebtedness. The subrogation rights in this Section 8(iv) shall not grant the Junior Creditor any right to vote, control or participate in the administration of the Senior Indebtedness until such time as the Senior Indebtedness has been Paid-in-Full.

Section 9. Insolvency Proceedings.

(i) In connection with any Proceeding, the agreements contained in this Agreement shall remain in full force and effect and enforceable pursuant to their terms in accordance with section 510(a) of the Bankruptcy Code and such other applicable Laws of similar effect, and all references herein to any Credit Party shall be deemed to apply to such Credit Party as debtor-in-possession and to any trustee or receiver for the estate of such Credit Party.

(ii) In the event and during the continuance of any Proceeding, the Senior Indebtedness shall have been Paid-in-Full before any payment or distribution of any character, whether in cash, securities or other property shall be made, received or accepted for or on account of any Junior Debt (in each case, other than Permitted Non-Cash Payments). In the event of any Proceeding, any payment or distribution in any such Proceeding of any kind or character (other than Permitted Non-Cash Payments), whether in cash, securities or other property that would otherwise (but for this Agreement) be payable or deliverable in respect of the Junior Debt shall be paid or delivered by the Person making such distribution or payment, whether a trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent, or otherwise, directly to the Senior Agent for application to payment of the Senior Indebtedness.

(iii) The Junior Creditor agrees that: (A) it will raise no objection (including any objection based on lack of adequate protection) to, nor support any other Person objecting to, and will be deemed to have consented to (I) the use of any Collateral or cash collateral under section 363 of the Bankruptcy Code, or any comparable provision of any other Debtor Relief Law, and (II) any postpetition or post-filing financing provided by any Senior Creditor (or provided by any other party and consented to by the Senior Agent) under section 364 of the Bankruptcy Code, or any comparable provision of any other Debtor Relief Law, or pursuant to an order entered in any Proceeding granting a motion for interim or final authority for debtor in possession financing ("DIP Financing"); (B) adequate notice to it shall have been provided for DIP Financing if it receives written notice three (3) Business Days prior to the hearing seeking approval of such financing; and (C) to the extent the Liens securing the Senior Indebtedness are subordinated or

pari passu with the Liens securing a DIP Financing, the Junior Creditor will subordinate (and will be deemed hereunder to have subordinated) its Liens in the Collateral to (x) the Liens securing such DIP Financing (and all obligations relating thereto), (y) any adequate protection provided to the Senior Creditors in connection therewith or with the use of Collateral or cash collateral and (z) any "carve-out" for professional expenses, United States Trustee fees and other expenses agreed to by the Senior Agent. Notwithstanding anything contained in this subparagraph (iii) and subparagraph (v) hereof, in any Proceeding, in the event the Junior Creditor seeks or requests adequate protection and such adequate protection is granted in the form of additional collateral, then the Junior Creditor agrees that the Senior Creditors may also be granted a senior Lien on such additional collateral as security for the Senior Indebtedness and any such DIP Financing provided by any Senior Creditor and as adequate protection for the Liens of the Senior Creditor provided that any Lien on such additional collateral securing the Junior Debt shall be subordinated to (I) the Liens on such collateral securing the Senior Indebtedness and any such DIP Financing (and all obligations relating thereto) and (II) any other Liens granted to any Senior Creditor as adequate protection on the same basis as the other Liens securing the Junior Debt are subordinated, in accordance with the terms of this Agreement, to the Liens securing the Senior Indebtedness. The Junior Creditor shall not, directly or indirectly, provide (or offer or seek to provide) a DIP Financing to any Credit Party or any of its Subsidiaries, unless such DIP Financing will result in the Payment-in-Full of the Senior Indebtedness simultaneously with the closing thereof.

(iv) Without limiting the generality of the foregoing, the Junior Creditor agrees that: (a) the Senior Agent (or any agent acting on its behalf), on behalf of the Senior Creditors, may consent to the sale or disposition of any or all of the Collateral (including any Collateral subject to the adequate protection Liens of the Senior Creditors) in a Proceeding (whether such sale or disposition is to be made pursuant to section 363 of the Bankruptcy Code or pursuant to a plan of reorganization); (b) the Junior Creditor, in its capacity as a secured creditor, shall be deemed to have consented to any such sale or disposition of such Collateral and all of the terms applicable thereto so long as (i) the interests of the Junior Creditor in the Collateral (including any Collateral subject to the adequate protection Liens of the Junior Creditor) attach to the Proceeds thereof, subject to the terms of this Agreement, (ii) such motion does not impair, subject to the priorities set forth in this Agreement, the rights of the Junior Creditor under section 363(k) of the Bankruptcy Code or similar Debtor Relief Law to credit bid at such sale so long as such bid includes a cash component that results in the Payment-in-Full of the Senior Indebtedness contemporaneously with the consummation of such sale, and (iii) either (A) pursuant to court order, the Liens of the Junior Creditor attach to the net proceeds of the sale or disposition of Collateral with the same priority and validity as the Liens held by the Junior Creditor on such Collateral and the Liens remain subject to the terms of this Agreement, or (B) the net proceeds of the disposition are completely applied to the DIP Financing, any "carve-out" established as contemplated in Section 9(iii)(z) or the Senior Indebtedness to permanently reduce such obligations; (c) upon written request of the Senior Agent, the Junior Creditor shall provide affirmative consent to such sale or disposition; and (d) if requested to do so by the Senior Agent in connection with any such sale or disposition and the release of the Senior Agent's Liens on the Collateral, the Junior Creditor shall promptly execute and deliver to the Senior Agent a release of such Person's Liens with respect to the Collateral (but not on the proceeds thereof) to be sold or disposed.

(v) In connection with any Proceeding, the Junior Creditor shall not contest (or support any other Person contesting) (a) any request by the Senior Agent (or an agent acting on its behalf) or any other Senior Creditor for adequate protection or (b) any objection by the Senior Agent (or an agent acting on its behalf) or any other Senior Creditor to any motion, relief, action or proceeding based on the Senior Agent or such Senior Creditor claiming a lack of adequate protection in the Proceeding of its interest in the Collateral. Notwithstanding the foregoing provisions in this Section 9, in any Proceeding, the Junior Creditor may seek adequate protection in respect of its interest in the Collateral, solely in the form of a replacement Lien or additional collateral, subject in such case to the provisions of this Agreement. If the Senior Agent or any other Senior Creditor is granted adequate protection in the form of additional collateral, then the Senior Creditors shall not object to the Junior Creditor being granted adequate protection in the

form of a Lien on such additional collateral, which Lien, will be subordinated to the Liens securing the Senior Indebtedness on the same basis as the other Liens securing the Junior Debt are so subordinated to the Liens securing the Senior Indebtedness under this Agreement. If the Junior Creditor seeks or requests adequate protection in respect of the Junior Debt and such adequate protection is granted in the form of additional collateral, then the Junior Creditor shall not object to the Senior Creditors also being granted a senior Lien on such additional collateral as security for the Senior Indebtedness and that any Lien on such additional collateral securing the Junior Debt shall be subordinated to the Liens on such collateral securing the Senior Indebtedness on the same basis as the other Liens securing the Junior Debt are so subordinated to the Liens securing the Senior Indebtedness under this Agreement. Similarly, if the Senior Agent or any other Senior Creditor is granted adequate protection in the form of a superpriority claim, then the Senior Creditors shall not object to the Junior Creditor being granted adequate protection in the form of a superpriority claim, which superpriority claim will be junior in all respects to the superpriority claim granted to the Senior Agent or any other Senior Creditor and, in the event that the Junior Creditor seeks or requests adequate protection in respect of the Junior Debt and such adequate protection is granted in the form of a superpriority claim, then the Junior Creditor shall not object to the Senior Creditors also being granted a superpriority claim, which superpriority claim will be senior in all respects to the superpriority claim granted to the Junior Creditor. Any claim by the Junior Creditor under section 507(b) of the Bankruptcy Code will be subordinate in right of payment to any claim of any Senior Creditor under section 507(b) of the Bankruptcy Code and any payment thereof will be deemed to be proceeds of Collateral. The Junior Creditor agrees, pursuant to section 1129(a)(9) of the Bankruptcy Code, that such junior superpriority claims (including any claim arising under section 507(b) of the Bankruptcy Code) may be paid under any plan of reorganization in any combination of cash, debt, equity or other property having a value on the effective date of such plan equal to the allowed amount of such claims. In addition, the Junior Creditor agrees that upon the request of the Senior Agent, it shall waive a right to distribution of proceeds of (or other interest in) Avoidance Actions in respect of any claim granted to the Junior Creditor in connection with DIP Financing or cash collateral usage or otherwise arising under section 507(b) of the Bankruptcy Code.

(vi) If any Senior Creditor or the Junior Creditor is required in any Proceeding or otherwise to disgorge, turnover or otherwise pay any amount to the estate of any Credit Party, because such amount was avoided or ordered to be paid or disgorged for any reason, including without limitation because it was found to be a fraudulent or preferential transfer (a "Recovery"), whether received as proceeds of security, enforcement of any right of set-off or otherwise, then the Senior Indebtedness or the Junior Debt shall be reinstated to the extent of such Recovery and deemed to be outstanding as if such payment had not occurred and the Senior Indebtedness or the Junior Debt, as applicable, shall be deemed not to have been paid. If this Agreement shall have been terminated prior to such Recovery, then this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto. The Junior Creditor agrees that it shall not be entitled to benefit from any Avoidance Action affecting or otherwise related to any distribution or allocation made in accordance with this Agreement, whether by preference or otherwise, it being understood and agreed that the benefit of such Avoidance Action otherwise allocable to it shall instead be allocated and turned over for application in accordance with the priorities set forth in this Agreement.

(vii) If, while any Senior Indebtedness is outstanding, any Credit Party is the subject of a Proceeding, then the Junior Creditor shall file appropriate claims or proofs of claim in respect of the Junior Debt. Upon the failure of the Junior Creditor to take any such action as of the 15th day preceding the bar date therefore, the Senior Agent is hereby irrevocably authorized and empowered, but shall have no obligation, to demand, sue for, collect and receive every payment or distribution referred to in respect the Junior Debt and to file proofs of claim with respect to the Junior Debt. Notwithstanding the foregoing, neither the Senior Agent nor any other Senior Creditor shall have any right whatsoever to vote any claim that the Junior Creditor may have in such proceeding to accept or reject any plan or partial or complete liquidation, reorganization, arrangement, composition or extension; provided, that the Junior Creditor shall not propose,

support or vote in favor of any plan of reorganization except to the extent constituting a permitted Debt Action.

(viii) If, in any Proceeding, debt obligations of the reorganized Credit Party secured by Liens upon any property of the such Credit Party are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of Senior Indebtedness and on account of Junior Debt, then, to the extent the debt obligations distributed on account of the Senior Indebtedness and on account of the Junior Debt are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the debt obligations and the Liens securing such debt obligations (and such provisions of this Agreement will apply with respect to any amounts and Indebtedness under the Senior Loan Documents that do not constitute Senior Indebtedness).

(ix) The Junior Creditor waives: (a) any claim they may now or hereafter have arising out of the Senior Creditors' election in any Proceeding the application of section 1111(b)(2) of the Bankruptcy Code, out of any cash collateral or financing arrangement or out of any grant of security interest in the Collateral in any Proceeding; (b) any claim arising under sections 506(c) or 552 of the Bankruptcy Code; and (c) the right to, and agrees that it shall not, make an election to apply section 1111(b)(2) of the Bankruptcy Code in respect of its interest in the Collateral without the consent of the Senior Agent.

Section 10. Insurance. Unless and until the Senior Indebtedness shall have been Paid-in-Full, the Senior Agent shall have the sole and exclusive right, subject to the rights of the Credit Parties under the Senior Loan Documents, to (i) adjust settlement of any claim for the Collateral in the event of a loss under a property insurance policy on the Collateral in which the Senior Agent has been named a lender's loss payee or a loss payee (subject to any right of the Credit Parties to adjust or settle claims as set forth in the Senior Loan Documents) and (ii) to approve any award granted in any condemnation or similar proceeding affecting the Collateral. Unless and until the Senior Indebtedness shall have been Paid-in-Full, all proceeds of such insurance on the Collateral shall inure to the benefit of the Senior Creditors, and the Junior Creditor shall cooperate, upon the Senior Agent's written request, in a reasonable manner in effecting the payment of insurance proceeds on the Collateral to the Senior Agent for the benefit of the Senior Creditors. The Senior Agent shall have the exclusive right, without the consent of or notice to the Junior Creditor, but subject to the terms of the Senior Credit Agreement, to determine whether such proceeds will be applied to the Senior Indebtedness or used to rebuild, replace or repair the affected Collateral.

Section 11. Benefit of Agreement; Amendments to Junior Loan Documents.

(i) This Agreement shall constitute a continuing offer to all Persons who, in reliance upon such provisions, become a Senior Creditor or a Junior Creditor, and such provisions are made for the benefit of each subsequent Senior Creditor and Junior Creditor and each of them may enforce such provisions.

(ii) Without the prior written consent of the Senior Agent at the direction of the Required Senior Lenders, the provisions of the Junior Loan Documents may not be amended or modified in any manner that:

(a) increases the aggregate principal amount of indebtedness outstanding under the Junior Loan Documents to an amount in excess of $15,100,000 (excluding Junior PIK Payments or any other paid-in-kind interest);

(b) requires a cash pay component to the interest rate, fee or any other yield provisions applicable to the Junior Loan Documents;

(c) increases or adds any recurring cash fees, cash prepayment premiums or similar cash amounts above those required in the Junior Loan Documents as of the Closing Date;

(d) prohibits or restricts (i) the making of any payments in respect of Senior Indebtedness that are permitted in the Junior Loan Documents as of the Closing Date or (ii) the making of any amendments, restatements, supplements, modifications, waivers, consents or changes to the Senior Loan Documents that are permitted by this Agreement;

(e) changes (to earlier dates) the dates on which any payment of principal on the Junior Debt is due (other than with respect to the compounding of any Junior PIK Payments or any other paid-in-kind interest); or

(f) adds or modifies in a manner adverse in any respect to any Credit Party any covenant, agreement or event of default under the Junior Loan Documents.

Section 12. Obligations Unconditional. All rights, interests, agreements and obligations of the Senior Agent and the Senior Creditors, on the one hand, and the Junior Creditor, on the other hand, hereunder shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of any Senior Loan Documents or any Junior Loan Documents or the setting aside or avoidance of any Lien;

(ii) any change in the time, manner or place of payment of, or in any other terms of, all or any of the Senior Indebtedness or Junior Debt, or any amendment or waiver or other modification, including any increase in the amount thereof, whether in writing or by course of conduct or otherwise, of the terms of the Senior Loan Documents or any Junior Loan Documents;

(iii) any exchange of any Lien in any Collateral or any other collateral;

(iv) the commencement of any Proceeding in respect of any Credit Party; or

(v) any other circumstances that otherwise might constitute a defense available to, or a discharge of, any Credit Party in respect of the Senior Indebtedness or the Junior Debt.

Section 13. Representations and Warranties. Each of the parties hereto hereby represents and warrants as of the date hereof that (i) it has full power, authority and legal right to make and perform this Agreement, and (ii) this Agreement is its legal, valid and binding obligation, enforceable against it in accordance with its terms.

Section 14. Non-Reliance.

(i) The consent by the Senior Creditors to the execution and delivery of the Junior Loan Documents and the grant to the Junior Creditor (or any agent therefor) of a Lien on the Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Senior Creditors to the Credit Parties shall be deemed to have been given and made in reliance upon this Agreement. Each Creditor acknowledges that such Creditors have, independently and without reliance on any other Creditor, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the Junior Credit Agreement, the other Junior Loan Documents, the Senior Loan Documents, this Agreement and the transactions contemplated hereby and thereby (in each case, as applicable) and they will continue to make their own credit decision in taking or not taking any action under the Junior Credit Agreement, the other Junior Loan Documents, the Senior Loan Documents or this Agreement (in each case, as applicable).

(ii) Each Creditor, acknowledges and agrees that the other Creditors have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Senior Loan Documents, the Junior Loan Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. The Senior Creditors will be entitled to manage and supervise their respective loans and extensions of credit under their respective Senior Loan Documents in accordance with Law and

as they may otherwise, in their sole discretion, deem appropriate, in each case, in a manner consistent with the terms of this Agreement. The Junior Creditor will be entitled to manage and supervise its loans and extensions of credit under their respective Junior Loan Documents in accordance with Law and as they may otherwise, in its sole discretion, deems appropriate, in each case, in a manner consistent with the terms of this Agreement. The Junior Creditor shall have no duty to the Senior Agent or any of the Senior Creditors, and the Senior Agent and the Senior Creditors shall have no duty to the Junior Creditor, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Credit Party (including the Senior Loan Documents and the Junior Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

(iii) Without in any way limiting the generality of the foregoing paragraphs, the Senior Creditors, the Senior Agent and any of them may, at any time and from time to time, in each case, in accordance with the Senior Loan Documents, this Agreement and applicable Law, without the consent of, or notice to the Junior Creditor, without incurring any liabilities to the Junior Creditor and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the Junior Creditor is affected, impaired or extinguished thereby) do any one or more of the following:

(a) make loans and advances to any Credit Party or issue, guaranty or obtain letters of credit for the account of any Credit Party or otherwise extend credit to any Credit Party, in any amount and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any default or event of default or failure of condition is then continuing;

(b) subject to Section 11, change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the Senior Indebtedness or any Lien on any Collateral or guaranty thereof or any liability of any Credit Party, or any liability incurred directly or indirectly in respect thereof or, subject to the provisions of this Agreement, otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the Senior Agent or any of the Senior Creditors or any of the Senior Loan Documents;

(c) subject to Section 7(iv), sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Collateral or any liability of any Credit Party to the Senior Creditors or the Senior Agent, or any liability incurred directly or indirectly in respect thereof;

(d) settle or compromise any of the Senior Indebtedness or any other liability of any Credit Party or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability in any manner or order;

(e) exercise or delay in or refrain from exercising any right or remedy against any Credit Party or any security or any other Person, elect any remedy and otherwise deal freely with any Credit Party or any Collateral and any security and any guarantor or any liability of a borrower or any other Credit Party to the Senior Creditors or any liability incurred directly or indirectly in respect thereof;

(f) take or fail to take any Lien securing the Senior Indebtedness or any other collateral security for any Senior Indebtedness or take or fail to take any action which may be necessary or appropriate to ensure that any Lien securing Senior Indebtedness or any other Lien upon any property is duly enforceable or perfected or entitled to priority as against any other Lien or to ensure that any proceeds of any property subject to any Lien are applied to the payment of any Senior Indebtedness or any other obligation secured thereby; or

(g) otherwise release, discharge or permit the lapse of any or all Liens securing the Senior Indebtedness.

Section 15. Amendment. Neither this Agreement nor any of the terms hereof may be amended, waived, discharged or terminated unless such amendment, waiver, discharge or termination is in writing signed by the Senior Agent (at the direction of the Required Senior Lenders) and the Junior Creditor. Notwithstanding anything to the contrary in this Agreement or otherwise, no Credit Party shall be bound by any such amendment or modification to, or waiver of, this Agreement that in any material way adversely affects such Credit Party (including any rights and/or duties of such Credit Party), without the prior written consent of such Credit Party.

Section 16. Restrictive Legend. The Junior Credit Agreement and any note or instrument that at any time evidences the Junior Debt or any part thereof or any Collateral therefore shall be marked with a legend in substantially the following form:

"This Secured Promissory Note is subject to the terms of that certain Intercreditor and Subordination Agreement, dated as of February 24, 2023, by and among Regions Bank, CP7 Warming Bag, L.P., BURGERFI INTERNATIONAL, INC., PLASTIC TRIPOD, INC. and the other parties thereto (as the same may be amended, modified, restated or supplemented from time to time, the "Subordination Agreement"), and is subordinated to the prior Payment-In-Full of the Senior Indebtedness, with any Liens securing the Secured Promissory Note subordinated to the Liens securing the Senior Indebtedness, all to the extent, and in the manner provided in the Subordination Agreement."

Section 17. Successors and Assigns. This Agreement and the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Senior Agent, Senior Creditors and the Junior Creditors, and their respective successors and assigns, and neither the Senior Indebtedness nor the Junior Debt shall be sold, assigned or transferred unless the assignee or transferee thereof takes such obligations subject to the terms and conditions of this Agreement. The Senior Agent, on behalf of the Senior Creditors, and the Junior Creditor each further agree between themselves and solely for their own collective benefit, that if any Credit Party is in the process of refinancing a portion of the Senior Indebtedness or the Junior Debt with a new lender (such refinancing to be in accordance with the provisions of the Senior Loan Documents, the Junior Loan Documents and this Agreement) that this Agreement shall apply to such refinanced obligations and the related Liens and documents, and if the party who wishes to be refinanced makes a request of the other parties hereto, the Junior Creditor or the Senior Agent, as the case may be, shall agree to enter into a new, substitute agreement with the new lender; provided, however, that the failure of such other party to execute such an agreement shall not affect or impair such new lender's right to rely on and enforce the terms of this Agreement; and provided, further, that any such new, substitute agreement shall be in a form, and contain such terms and conditions substantially the same as in this Agreement or at least no less favorable to the party whom the request is being made.

Section 18. Relationship Among Parties; Associated Estoppels . Each Senior Creditor shall be prohibited and estopped from taking any actions or asserting any claims with respect to the Senior Indebtedness contrary to the undertakings, restrictions, covenants and other agreements made by Senior Agent hereunder on behalf of the Senior Creditors, and each and every benefit accruing hereunder to the Senior Agent shall be deemed to also accrue to each Senior Creditor. The Junior Creditor shall be prohibited and estopped from taking any actions or asserting any claims with respect to the Junior Debt contrary to the undertakings, restrictions, covenants and other agreements made by it hereunder.

Section 19. Governing Law; Jurisdiction; Etc.

(i) **GOVERNING LAW. THIS AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK**.

(ii) **SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY OTHER PARTY HERETO, OR ANY RELATED PARTY OF THE FOREGOING, IN ANY WAY RELATING TO THIS AGREEMENT OR THE TRANSACTIONS RELATING HERETO, IN ANY FORUM OTHER THAN 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, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION 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, LITIGATION 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.**

(iii) **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 IN ANY COURT REFERRED TO IN PARAGRAPH (ii) OF THIS SECTION 19. 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.**

(iv) **SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 20. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.**

Section 20. Notices. Whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by another, or whenever any of the parties desires to give or serve upon another any such communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration, or other communication shall be in writing (including by telecopier or electronic mail) and shall be deemed to have been duly given and received, for purposes hereof, (i) when delivered by hand, (ii) one (1) Business Day after being deposited for overnight delivery with a recognized overnight courier for next Business Day (morning) delivery, (iii) three (3) Business Days after being deposited in the mail, postage prepaid and (iv) in the case of telecopy notice or electronic mail, when sent to the appropriate numbers or electronic mail addresses set forth on Annex I or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure to deliver, or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person designated on Annex I to receive a copy of the same shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

Section 21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 22. Final Agreement. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES.

Section 23. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SENIOR AGENT, THE SENIOR CREDITORS, THE JUNIOR CREDITOR AND THE CREDIT PARTIES HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF THE SENIOR AGENT, THE SENIOR CREDITORS, THE CREDITOR AND THE CREDIT PARTIES IN THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT HEREOF.

Section 24. Bailee for Perfection.

(i) Senior Agent and Junior Creditor each agree to hold that part of the Control Collateral that is in its possession (or in the possession of its agents or bailees) to the extent that possession thereof is taken to perfect a Lien thereon under the UCC or other applicable law, as bailee and as a non-fiduciary representative for Junior Creditor or Senior Agent, as applicable, solely for the purpose of perfecting the Lien granted under the Senior Loan Documents or the Junior Loan Documents, as applicable, subject to the terms and conditions of this Section 24. Unless and until the Payment-in-Full of Senior Indebtedness, Junior Creditor agrees to promptly notify Senior Agent of any Control Collateral held by it, and, promptly upon the request of Senior Agent at any time prior to the Payment-in-Full of the Senior Indebtedness, Junior Creditor agrees to deliver to Senior Agent any such Control Collateral held by it, together with any necessary endorsements (or otherwise allow Senior Agent to obtain possession of such Control Collateral). Upon Payment-in-Full of the Senior Indebtedness, promptly upon the request of Junior Creditor at Junior Creditor's cost and expense, Senior Agent agrees to deliver to Junior Creditor any such Control Collateral held by it, together with any necessary endorsements (or otherwise allow Junior Creditor to obtain possession of such Control Collateral); provided that the Credit Parties shall not be required to deliver control agreements for the benefit of the Junior Creditor.

(ii) Senior Agent shall have no obligation whatsoever to Junior Creditor to ensure that the Control Collateral is genuine or owned by any of the Credit Parties or to preserve rights or benefits of any Person. Junior Creditor shall have no obligation whatsoever to Senior Agent or any other Senior Creditor to ensure that the Control Collateral is genuine or owned by any of Credit Parties or to preserve rights or benefits of any Person. The duties or responsibilities of Senior Agent under this Section 24 shall be limited solely to possession of the Control Collateral as bailee and non-fiduciary representative in accordance with this Section 24 and delivering the Control Collateral upon a Payment-in-Full of the Senior Indebtedness. The duties or responsibilities of Junior Creditor under this Section 24 shall be limited solely to possession of the Control Collateral as bailee and non-fiduciary representative in accordance with this Section 24 and delivering the Control Collateral to the Senior Agent as required by Section 24(i).

(iii) Senior Agent acting pursuant to this Section 24 shall not have by reason of the Senior Loan Documents, the Junior Loan Documents, or this Agreement, a fiduciary relationship in respect of Junior Creditor. Junior Creditor acting pursuant to this Section 24 shall not have by reason of the Senior Loan Documents, the Junior Loan Documents, or this Agreement, a fiduciary relationship in respect of Senior Agent or any other Senior Creditor.

(iv) Senior Agent agrees to hold control over such deposit and securities accounts as gratuitous agent for the Junior Creditor, subject to the other terms and conditions of this Section 24 pertaining to Control Collateral.

Section 25. Purchase Option.

(i) Following the occurrence of a Trigger Event, Junior Creditor may at any time following the occurrence of any such Trigger Event, purchase all, but not less than all, of the

Senior Indebtedness (the "Purchase Obligations") for the Purchase Price. Notwithstanding anything in the Senior Loan Documents to the contrary, no consent of any Loan Party to such purchase shall be required. Such purchase will (a) include all principal of, and all accrued and unpaid interest, fees, and expenses in respect of, all Senior Indebtedness, outstanding at the time of purchase, (2) be made pursuant to an "Assignment and Assumption" (as such term is defined in the Senior Credit Agreement, but including only those representations and warranties of the assignor thereunder as are specified in Section 25(vi), collectively, an "Assignment"), whereby Junior Creditor will assume all funding commitments and Senior Indebtedness of the Senior Creditors under the Senior Loan Documents, and (3) otherwise be subject to the terms and conditions of this Section 25. Each Senior Creditor will retain all rights to indemnification provided in the relevant Senior Loan Documents for all claims and other amounts relating to facts and circumstances relating to such Senior Creditor's holdings of the Senior Indebtedness (except to the extent such claims and other amounts were included in the Purchase Price), and such rights shall be secured by the Liens securing the Senior Indebtedness. No amendment, modification or waiver following any purchase under this Section 25 of any indemnification provisions under the Senior Loan Documents shall be effective as to any Senior Creditor or any Related Parties or other related indemnified person of such Senior Creditor ("Indemnified Senior Person") without the prior written consent of such Indemnified Senior Person, and, subject to any limitations contained in the Senior Loan Documents, such indemnification provisions shall continue in full force and effect for the benefit of the Indemnified Senior Persons whether or not any Senior Loan Documents otherwise remain in effect.

(ii) Junior Creditor, if it desires to purchase all of the Purchase Obligations, will deliver a written notice (the " Purchase Notice") to Senior Administrative Agent that (a) is signed by the Junior Creditor, (b) states that it is a Purchase Notice under this Section 25, (c) states that Junior Creditor is irrevocably (subject to agreement on the calculation of the Purchase Price) electing to purchase, in accordance with this Section 25, 100% of all of the Purchase Obligations, and (d) designates a purchase date (the " Purchase Date") on which the purchase will occur, that is (A) at least three (3) but not more than twenty (20) calendar days after Senior Administrative Agent's receipt of the Purchase Notice, and (B) not more than twenty-five (25) calendar days after the Trigger Event. A Purchase Notice will be ineffective if it is received by Senior Administrative Agent after the occurrence giving rise to the Trigger Event is waived, cured, or otherwise ceases to exist. At all times after the Trigger Event until the Senior Administrative Agent shall have received the Purchase Notice, the Senior Administrative Agent and the Senior Creditors may exercise any and all rights and remedies arising under any Senior Loan Documents or applicable law.

(iii) On the Purchase Date, Junior Creditor shall, as the purchase price (the "Purchase Price") for the Purchase Obligations (a) pay to the Senior Administrative Agent in cash an amount equal to all outstanding Senior Indebtedness as of the Purchase Date, (b) with respect to each then outstanding letter of credit, each unterminated Secured Swap Agreement and any other contingent obligations other than contingent obligations to the extent that no claim giving rise thereto has been asserted (each, a "Contingent Obligation"), deliver to Senior Administrative Agent an amount of cash or cash equivalents necessary (as determined by Senior Administrative Agent in its sole discretion but not to exceed in any event 103% of the undrawn amount of such Contingent Obligation (in the case of any Secured Swap Agreement to be the termination value for such Secured Swap Agreement as of the most recent Business Day for which such amount can be determined) to cash collateralize such Contingent Obligations (or make such other arrangements as are reasonably acceptable to Senior Administrative Agent in its sole discretion to assume any reimbursement obligations relating to such Contingent Obligations), and (c) without duplication of the amounts set forth in clause (a), pay to Senior Administrative Agent in cash an amount equal to all outstanding obligations and liabilities in respect of Secured Swap Agreements and Secured Treasury Management Agreements, respectively, (d) without duplication of the amounts set forth in clause (a), pay to Senior Administrative Agent in cash an amount equal to all other asserted valid and enforceable indemnity obligations, and (e) without duplication of the amounts set forth in clause (a), shall agree to reimburse the Senior Creditors for any loss, cost, damage or expense resulting from the granting of provisional credit for checks or other payments

credited against the Senior Indebtedness for which final payment has not yet been received by the Senior Creditors.

(iv) On the Purchase Date, (a) Junior Creditor will execute and deliver the Assignment, and (b) Junior Creditor will pay the Purchase Price to Senior Administrative Agent by wire transfer of immediately available funds to such bank account as determined by Senior Administrative Agent.

(v) Promptly after the closing of the purchase of all Purchase Obligations, Senior Administrative Agent will distribute the Purchase Price to the Senior Creditors in accordance with the terms of the Senior Loan Documents. Senior Administrative Agent will apply cash collateral to reimburse the Senior Creditors for Contingent Obligations to the extent such obligations cease being contingent. When all Contingent Obligations have been satisfied or terminated (with the consent of each applicable Senior Creditor), any remaining cash collateral will be returned to the Junior Creditor.

(vi) The Senior Creditors will be entitled to rely on the statements, representations, and warranties in the Purchase Notice without investigation, even if the Senior Creditors are notified that any such statement, representation, or warranty is not or may not be true. The purchase and sale of the Purchase Obligations under this Section 25 will be without recourse and without any representation or warranty whatsoever by the Senior Creditors, except that each Senior Creditor shall represent and warrant that, on the Purchase Date, immediately before giving effect to the purchase, (a) the amount quoted in writing by the Senior Administrative Agent and such Creditor as its portion of Purchase Obligations represents the amount thereof owing to such Creditor on its books and records, (b) it owns, or has the right to transfer to the Junior Creditor its respective portion of the Purchase Obligations, and (c) such transfer shall be free and clear of Liens.

(vii) The obligations of the Senior Creditors to sell their respective Purchase Obligations under this Section 25 are several and not joint and several. If a Senior Creditor breaches its obligation to sell its Purchase Obligations under this Section 25 (a "Defaulting Creditor"), then no other Senior Creditor will be obligated to purchase the Defaulting Creditor's Purchase Obligations for resale to Junior Creditor. A Senior Creditor that complies with this Section 25 will not be in default of this Agreement or otherwise be deemed liable for any action or inaction of any Defaulting Creditor; provided that nothing in this subsection (vii) will affect the Junior Creditor's obligation to purchase all of the Purchase Obligations.

(viii) Each Credit Party hereby consents to any assignment effected to the Junior Creditor pursuant to this Section 25.

(ix) Upon consummation of the purchase contemplated by this Section 25, each Issuing Bank (under and as defined in the Senior Credit Agreement) shall have no obligation to issue, renew or extend any letter of credit.

[Remainder of Page Left Blank Intentionally; Signatures Pages Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Intercreditor and Subordination Agreement to be duly executed by their proper and duly authorized officers as of the day and year first above written.

SENIOR AGENT: REGIONS BANK

By:/s/ J. Richard Baker
Name: J. Richard Baker
Title: Senior Vice President

JUNIOR CREDITOR: CP7 WARMING BAG, L.P.

By:/s/ Andrew C. Taub
Name: Andrew C. Taub
Title: Authorized Officer

Acknowledgement of Intercreditor and Subordination Agreement

Each of the undersigned Credit Parties acknowledges that it has received a copy of the foregoing Intercreditor and Subordination Agreement. Nothing in such Intercreditor and Subordination Agreement (as amended or otherwise modified from time to time) will or will be deemed to alter any Credit Party's obligations set forth in the Senior Credit Agreement, the Junior Credit Agreement, the respective related documents, or otherwise be deemed to amend or modify the Senior Credit Agreement, the Junior Credit Agreement, or the respective related documents.

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

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 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 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 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*.]

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 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 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.*]

ANNEX I

Addresses for Notices

If to a Credit Party:

BurgerFi International, Inc.
105 U.S. Highway 1
North Palm Beach, FL 33408

with a copy to:
Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, FL 33131

If to Senior Agent or any Senior Creditor:

Regions Bank
4790 Poplar Avenue
Memphis, TN 38117

with a copy to:
Moore & Van Allen PLLC
Suite 4700
100 North Tryon Street
Charlotte, NC 28202

If Junior Creditor:

CP7 Warming Bag, L.P.
599 W. Putnam Avenue
Greenwich, CT 06830

with a copy to:
Otterbourg P.C.
230 Park Avenue
New York, New York 10169

Exhibit 21.1

BurgerFi International, Inc.
Subsidiaries of BurgerFi International, Inc.
January 2, 2023

BurgerFi International, LLC, a Delaware limited liability company
BF Restaurant Management LLC, a Florida limited liability company
BF Altamonte Springs, LLC, a Florida limited liability company
BF Babcock, LLC, a Florida limited liability company
BF Commissary, LLC, a Florida limited liability company
BF Commack, LLC, a New York 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 Commack, LLC, a Florida limited liability company
BF Food Truck, 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
BGM Pembroke Pines, LLC, a Florida 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 Dania Beach, LLC, a Florida limited liability company
BF Ft 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
BF Wellington, LLC, a Florida limited liability company
BF Neptune Beach, LLC, a Florida limited liability company
BF Orlando-Dr. Phillips, LLC, a Florida limited liability company
BF Miami Beach - Meridian, LLC, a Florida limited liability company
BF Miami Lakes, LLC, a Florida limited liability company
BF Miramar, LLC, a Florida limited liability company
BF Odessa, LLC, a Florida limited liability company
BF Tampa-Channelside, LLC, a Florida limited liability company
BF Tampa-Westchase, LLC, a Florida limited liability company
BF Tallahassee, LLC, a Florida limited liability company
BF Tallahassee Varsity, LLC, a Florida limited liability company
BurgerFi Enterprises, LLC, a Florida limited liability company
BurgerFi Management Services, LLC, a Florida limited liability company
BurgerFi IP, LLC, a Florida limited liability company
BF Atlanta – Perimeter MarketPlace, LLC, a Georgia limited liability company
BF Hendersonville, LLC, a Tennessee limited liability company
BF Hermitage, LLC, a Tennessee limited liability company
Restaurant Development Group, LLC, a Delaware limited liability company
Hot Air, Inc., a Delaware corporation company
Plastic Tripod, Inc., a Delaware corporation company
ACFP Management, Inc., a Delaware corporation company
Anthony's Pizza Holding Company, LLC, a Delaware limited liability company
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
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
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
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 Springfield, 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
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 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

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

BurgerFi International, Inc.
North Palm Beach, Florida

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-257877, 333-260727, 333-261983 and 333-269136) of BurgerFi International, Inc. of our report dated April 14, 2022, relating to the consolidated financial statements, which appears in this Form 10-K.

/s/ BDO USA, LLP

West Palm Beach, Florida
April 3, 2023

Exhibit 23.2

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the registration statements (Nos. 333-269136, 333-261983, 333-260727, and 333-257877) on Form S-8 and the registration statements (Nos. 333-268585 and 333-262008) on Form S-3 of our report dated April 3, 2023, with respect to the consolidated financial statements of BurgerFi International, Inc. and subsidiaries.

/s/ KPMG LLP

Miami, Florida

April 3, 2023

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULE 13a-14(a)

I, Ian Baines, certify that:

1) I have reviewed this annual report on Form 10-K of BurgerFi International, Inc.;

2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 3, 2023

/s/ Ian Baines

Ian Baines, Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO RULE 13a-14(a)

I, Michael Rabinovitch, certify that:

1) I have reviewed this annual report on Form 10-K of BurgerFi International, Inc.;

2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 3, 2023

/s/ Michael Rabinovitch

Michael Rabinovitch, Chief Financial Officer

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350

In connection with the Annual Report of BurgerFi International, Inc. (the "Company") on Form 10-K for the year ended January 2, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ian Baines, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 3, 2023

/s/ Ian Baines

Ian Baines, Chief Executive Officer

The certification set forth above is being furnished as an exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and is not being filed as part of the Annual Report on Form 10-K for the period ended January 2, 2023, or as a separate disclosure document of the Company or the certifying officers.

EXHIBIT 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350

In connection with the Annual Report of BurgerFi International, Inc. (the "Company") on Form 10-K for the year ended January 2, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Rabinovitch, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 3, 2023

/s/ Michael Rabinovitch

Michael Rabinovitch, Chief Financial Officer

The certification set forth above is being furnished as an exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and is not being filed as part of the Annual Report on Form 10-K for the period ended January 2, 2023, or as a separate disclosure document of the Company or the certifying officers.