

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

FORM 10-Q

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

FOR THE QUARTERLY PERIOD ENDED **September 26, 2021**

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: 001-40951

Portillo's

PORTILLO'S INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

87-1104304

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

2001 Spring Road, Suite 400, Oak Brook, Illinois 60523

(Address of principal executive offices)

(630)-954-3773

(Registrant's telephone number, including area code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

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

| Title of each class | Trading Symbol | Name of each exchange on which registered |
|--|----------------|---|
| Class A common stock, \$0.01 par value per share | PTLO | Nasdaq Global Select Market |

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 or a smaller reporting company. (See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act). (Check one)

| | | | |
|-------------------------|-------------------------------------|---------------------------|-------------------------------------|
| Large accelerated filer | <input type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input checked="" type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |
| | | Emerging growth company | <input checked="" type="checkbox"/> |

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 is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

As of November 11, 2021, there were 35,807,171 shares of the registrant's Class A common stock, par value \$0.01 per share, issued and outstanding.

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Cautionary Note Regarding Forward-Looking Information



This Quarterly Report on Form 10-Q ("Form 10-Q") contains forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which are subject to known and unknown risks, uncertainties and other important factors that may cause actual results to be materially different from the statements made herein. All statements other than statements of historical fact are forward-looking statements. Many of the forward-looking statements are located in Part I, Item 2 of this Form 10-Q under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations." Forward-looking statements discuss our current expectations and projections relating to our financial position, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as "aim," "anticipate," "believe," "estimate," "expect," "forecast," "future," "outlook," "potential," "project," "projection," "plan," "intend," "seek," "may," "could," "would," "will," "should," "can," "can have," "likely," the negatives thereof and other similar expressions.

All forward-looking statements are expressly qualified in their entirety by these cautionary statements. You should evaluate all forward-looking statements made in this Form 10-Q in the context of the risks and uncertainties disclosed under the heading "Risk Factors" included in our prospectus, dated October 20, 2021, filed pursuant to Rule 424(b)(4) with the Securities and Exchange Commission (the "SEC") on October 22, 2021, relating to our initial public offering ("IPO"), which is available on the SEC's website at www.sec.gov.

The forward-looking statements included in this Form 10-Q are made only as of the date hereof. The Company undertakes no obligation to publicly update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.

Portillo's Inc. was formed as a Delaware corporation on June 8, 2021 and has not, to date, conducted any activities other than those incidental to its formation and those in preparation for the IPO. Separate statements of operations, changes in stockholder's equity, and cash flows have not been presented because Portillo's Inc. is a newly incorporated entity and has had no business transactions or activities to date other than the issuance of shares of Class A common stock in the IPO.

PART I – FINANCIAL INFORMATION



Item 1. Financial Statements (Unaudited)

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PORTILLO'S INC.
CONDENSED BALANCE SHEET
(UNAUDITED)

(In thousands, except common stock and per common share data)

September 26, 2021

| | | |
|---|-----------|----------|
| Cash and cash equivalents | \$ | 1 |
| ASSETS | \$ | 1 |
| COMMITMENTS AND CONTINGENCIES | | |
| STOCKHOLDERS' EQUITY | | |
| Class A common stock, par value 0.01 per share, 100 shares authorized, 100 issued and outstanding | | — |
| Additional paid-in-capital | | 1 |
| TOTAL STOCKHOLDERS' EQUITY | \$ | 1 |

NOTE 1. DESCRIPTION OF BUSINESS

Portillo's Inc. (the "Company") was formed and incorporated as a Delaware corporation on June 8, 2021. The Company was formed for the purpose of completing a public offering and related reorganization transactions (collectively, the "Transactions") in order to carry on the business of PHD Group Holdings LLC and its subsidiaries ("Portillo's OpCo"). Following the consummation of the Transactions on October 20, 2021, the Company became the sole managing member of Portillo's OpCo and has the sole voting interest in, and controls the management of, Portillo's OpCo. See Note 4 for more information. As of September 26, 2021, the Company had not yet commenced operations. All activities for the period from June 8, 2021 through September 26, 2021 relates to the Company's formation and the preparation for the initial public offering ("IPO"), which is described below.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying condensed balance sheet is presented in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The preparation of the financial statement in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statement. Separate statements of operations, changes in stockholders' equity, and cash flows have not been presented because the Company has not engaged in any business or other activities other than the initial issuance of Class A common stock, par value \$0.01 per share ("Class A common stock").

Fiscal Year

The Company uses a 52- or 53-week fiscal year ending on the Sunday prior to December 31. In a 52-week fiscal year, each quarterly period is comprised of 13 weeks. The additional week in a 53-week fiscal year is added to the fourth quarter.

Offering Costs

In connection with the IPO, Portillo's OpCo incurred certain legal, accounting, and other IPO-related costs, which were reimbursed by the Company upon the consummation of the IPO. Such costs are deferred and recorded in stockholders' equity as reduction from the proceeds of the offer. As of September 26, 2021, \$4.6 million of deferred offering costs had been recorded.

NOTE 3. STOCKHOLDERS' EQUITY

On August 11, 2021, the Company issued 100 shares of common stock to Portillo's OpCo for \$1,000. The excess paid over par value of \$0.01 per share was recorded to additional paid-in capital.

NOTE 4. SUBSEQUENT EVENTS

The Company's registration statement on Form S-1, as amended (Registration No. 333-259810) (the "Registration Statement"), related to its IPO was declared effective October 20, 2021, and the Company's Class A common stock began trading on the Nasdaq Global Select Market on October 21, 2021. On October 25, 2021, the Company completed its IPO of 23,310,810 shares of the Company's Class A common stock (including 3,040,540 shares sold to the underwriters pursuant to their over-allotment option), \$0.01 par value per share, at an offering price of \$20.00 per share. The Company received aggregate net proceeds of approximately \$429.9 million after deducting underwriting discounts and commissions of \$29.1 million and other offering expenses of approximately \$7.2 million.

In connection with the IPO, we completed the following:

- We amended and restated the limited liability company agreement of Portillo's OpCo to, among other things, convert all outstanding equity interests (except for those redeemable preferred units which were redeemed in connection with this offering) into LLC Units.

- We became the sole managing member of Portillo's OpCo. Because we manage and operate the business and control the strategic decisions and day-to-day operations of Portillo's OpCo and because we also have a substantial financial interest in Portillo's OpCo, we will consolidate the financial results of Portillo's OpCo, and a portion of our net income will be allocated to non-controlling interests to reflect the entitlement of the pre-IPO LLC members who retained their equity ownership in Portillo's OpCo. In addition, because Portillo's OpCo will be under the common control of the pre-IPO LLC members before and after the reorganization, we will initially measure the assets and liabilities of Portillo's OpCo at their carrying amounts as of the date of the completion of the reorganization.
- We amended and restated our certificate of incorporation to authorize the issuance of two classes of common stock: Class A common stock and Class B common stock. Each share of Class A common stock and Class B common stock will entitle its holder to one vote per share on all matters submitted to a vote of our stockholders. The Class B common stock is not entitled to economic interests in Portillo's Inc.

The Company received net proceeds from the offering of approximately \$429.9 million (after deducting underwriting fees and commissions and offering expenses). The net proceeds and cash on hand were used as follows:

- to repay the redeemable preferred units in full (including the redemption premium) of \$221.7 million;
- to repay all of the borrowings outstanding under the Second Lien Credit Agreement (including any prepayment penalties) of \$158.1 million; and
- to purchase LLC Units or shares of Class A common stock from certain pre-IPO LLC members of \$57.0 million.

In connection with the IPO, the Company entered into a Tax Receivable Agreement (the "Tax Receivable Agreement") with certain pre-IPO LLC Members, pursuant to which Portillo's Inc. is obligated to pay 85% of the amount of applicable cash tax savings, if any, in U.S. federal, state, and local income tax or franchise tax that Portillo's Inc. actually realizes as a result of (a) the increases in tax basis attributable to exchanges of LLC Units by pre-IPO LLC Members and (b) tax benefits related to imputed interest deemed to be paid by Portillo's Inc. as a result of the Tax Receivable Agreement. We will retain the benefit of the remaining 15% of these tax savings.

In connection with the IPO, each option under the 2014 Equity Incentive Plan (the "2014 Plan") that was outstanding, whether vested or unvested, was substituted for an option to purchase a number of shares of Class A common stock under the Company's 2021 Equity Incentive Plan (the "2021 Plan") adopted in connection with the IPO, and the option holders received a cash payment in respect of their options (whether vested or unvested) in an aggregate amount of approximately \$6.3 million, which we expect to make in the fourth quarter of fiscal 2021.

In addition, as a result of the waiver and the resultant modification in the terms of certain performance-vesting awards, we will record compensation expense based on the fair value of the modified awards in the fourth quarter of fiscal 2021. We would expect to recognize a cash compensation expense of approximately \$1.3 million and a non-cash compensation expense of approximately \$23.3 million, each in the fourth quarter of fiscal 2021, as well as, an additional non-cash compensation expense of approximately \$12.7 million ratably over the next 4.5 years.

In connection with the IPO, the Company granted options to purchase shares of Class A common stock under the 2021 Plan. The 2021 Plan permits the granting of awards to any employee, officer, non-employee director, consultant or other personal service provider of the Company in the form of stock options, stock appreciation rights, restricted stock awards, restricted stock units and stock-based awards. All awards granted to participants under the 2021 Plan generally will be represented by an award agreement. 7,148,049 shares of Class A common stock are available for awards under the 2021 Plan (excluding options previously awarded under the 2014 Plan that were assumed by the 2021 Plan). The 2021 Plan gives broad powers to the Company's Board of Directors (the "Board") to administer and interpret the 2021 Plan, including the authority to select the individuals to be granted awards and rights to prescribe the particular form and conditions of each award to be granted.

The Company is a holding company and its sole material asset is an ownership interest in Portillo's OpCo.

PHD GROUP HOLDINGS LLC
CONDENSED CONSOLIDATED BALANCE SHEETS
(UNAUDITED)
(In thousands, except common unit and per common unit data)

| | <u>September 26, 2021</u> | <u>December 27, 2020</u> |
|--|---------------------------|--------------------------|
| ASSETS | | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents | \$ 49,367 | \$ 41,211 |
| Restricted cash | 190 | 221 |
| Accounts receivable | 5,727 | 5,204 |
| Inventory | 4,399 | 5,075 |
| Other current assets | 7,445 | 2,915 |
| Total current assets | 67,128 | 54,626 |
| Property and equipment, net | 186,621 | 174,769 |
| OTHER ASSETS: | | |
| Goodwill | 394,298 | 394,298 |
| Intangible assets-net of accumulated amortization | 260,541 | 266,180 |
| Equity method investment | 16,278 | 16,015 |
| Other assets | 4,596 | 4,334 |
| Total other assets | 675,713 | 680,827 |
| TOTAL ASSETS | \$ 929,462 | \$ 910,222 |
| LIABILITIES, REDEEMABLE PREFERRED UNITS AND COMMON EQUITY | | |
| CURRENT LIABILITIES: | | |
| Accounts payable | \$ 21,531 | \$ 21,427 |
| Current portion of long-term debt | 3,324 | 3,324 |
| Current deferred revenue | 3,929 | 6,774 |
| Accrued expenses | 33,482 | 34,827 |
| Total current liabilities | 62,266 | 66,352 |
| LONG-TERM LIABILITIES: | | |
| Long-term debt, net of current portion | 466,764 | 466,380 |
| Deferred rent | 30,844 | 26,694 |
| Other long-term liabilities | 6,862 | 9,516 |
| Total long-term liabilities | 504,470 | 502,590 |
| Total liabilities | 566,736 | 568,942 |
| COMMITMENTS AND CONTINGENCIES (NOTE 12) | | |
| REDEEMABLE PREFERRED UNITS | 217,549 | 200,571 |
| COMMON EQUITY: | | |
| Common units—51,210,222 and 51,192,434 units authorized, 51,210,222 and 51,192,434 units issued and outstanding as of September 26, 2021 and December 27, 2020 | — | — |
| Stock subscription receivable | — | (499) |
| Additional paid-in-capital | 141,751 | 141,208 |
| Retained earnings | 3,426 | — |
| Total common equity | 145,177 | 140,709 |
| TOTAL LIABILITIES, REDEEMABLE PREFERRED UNITS AND COMMON EQUITY | \$ 929,462 | \$ 910,222 |

See accompanying notes to unaudited condensed consolidated financial statements.

PHD GROUP HOLDINGS LLC
CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS
(UNAUDITED)
(In thousands)

| | Quarter Ended | | Three Quarters Ended | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| | September 26, 2021 | September 27, 2020 | September 26, 2021 | September 27, 2020 |
| REVENUES | \$ 138,003 | \$ 119,700 | \$ 396,044 | \$ 336,960 |
| COST AND EXPENSES: | | | | |
| Restaurant operating expenses: | | | | |
| Cost of goods sold, excluding depreciation and amortization | 44,285 | 36,572 | 121,465 | 106,095 |
| Labor | 36,921 | 29,125 | 102,433 | 87,205 |
| Occupancy | 7,000 | 6,368 | 20,890 | 18,717 |
| Other operating expenses | 15,554 | 13,012 | 44,187 | 37,559 |
| Total restaurant operating expenses | 103,760 | 85,077 | 288,975 | 249,576 |
| General and administrative expenses | 11,750 | 9,706 | 35,755 | 27,918 |
| Pre-opening expenses | 347 | 544 | 2,307 | 838 |
| Depreciation and amortization | 5,516 | 6,138 | 18,225 | 18,404 |
| Net income attributable to equity method investment | (292) | (121) | (651) | (353) |
| Other income, net | (292) | (514) | (1,095) | (1,092) |
| OPERATING INCOME | 17,214 | 18,870 | 52,528 | 41,669 |
| Interest expense | 10,683 | 10,766 | 32,124 | 34,298 |
| NET INCOME | 6,531 | 8,104 | 20,404 | 7,371 |
| Less: Redeemable preferred units accretion | (5,886) | (5,282) | (16,978) | (15,240) |
| NET INCOME (LOSS) ATTRIBUTABLE TO COMMON UNIT HOLDERS | \$ 645 | \$ 2,822 | \$ 3,426 | \$ (7,869) |
| Earnings/(loss) per common unit: | | | | |
| Basic | \$ 0.01 | \$ 0.06 | \$ 0.07 | \$ (0.15) |
| Diluted | \$ 0.01 | \$ 0.05 | \$ 0.07 | \$ (0.15) |
| Weighted-average common units outstanding: | | | | |
| Basic | 51,210,222 | 51,192,285 | 51,201,100 | 51,187,878 |
| Diluted | 51,581,685 | 51,410,002 | 51,569,034 | 51,187,878 |

See accompanying notes to unaudited condensed consolidated financial statements.

PHD GROUP HOLDINGS LLC
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN REDEEMABLE PREFERRED UNITS AND EQUITY
(UNAUDITED)

(In thousands, except unit data)

Quarter Ended September 26, 2021 and September 27, 2020

| | <u>Preferred Units</u> | | <u>Common Units</u> | | | | | <u>Total Common Equity</u> |
|--|------------------------|----------------|---------------------|----------------|--------------------------------------|-----------------------------------|--------------------------|----------------------------|
| | <u>Units</u> | <u>Amounts</u> | <u>Units</u> | <u>Amounts</u> | <u>Stock Subscription Receivable</u> | <u>Additional Paid-In Capital</u> | <u>Retained Earnings</u> | |
| Balance, as of June 28, 2020 | 100,000 | \$ 190,005 | 51,185,674 | \$ — | \$ (499) | \$ 138,902 | \$ (733) | \$ 137,670 |
| Net income | — | — | — | — | — | — | 8,104 | 8,104 |
| Unit-based compensation | — | — | — | — | — | 187 | — | 187 |
| Repayment of subscription receivable | — | — | — | — | — | — | — | — |
| Issuance of common units | — | — | 6,760 | — | — | 25 | — | 25 |
| Redeemable preferred units accretion | — | 5,282 | — | — | — | — | (5,282) | (5,282) |
| Balance, as of September 27, 2020 | 100,000 | 195,287 | 51,192,434 | — | (499) | 139,114 | 2,089 | 140,704 |
| Balance, as of June 27, 2021 | 100,000 | 211,663 | 51,210,223 | — | (249) | 141,581 | 2,781 | 144,113 |
| Net income | — | — | — | — | — | — | 6,531 | 6,531 |
| Unit-based compensation | — | — | — | — | — | 170 | — | 170 |
| Repayment of subscription receivable | — | — | — | — | 249 | — | — | 249 |
| Issuance of common units | — | — | — | — | — | — | — | — |
| Redeemable preferred units accretion | — | 5,886 | — | — | — | — | (5,886) | (5,886) |
| Balance, as of September 26, 2021 | 100,000 | \$ 217,549 | 51,210,223 | — | — | \$ 141,751 | \$ 3,426 | \$ 145,177 |

See accompanying notes to unaudited condensed consolidated financial statements.

PHD GROUP HOLDINGS LLC
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN REDEEMABLE PREFERRED UNITS AND EQUITY
(UNAUDITED)

(In thousands, except unit data)

Three Quarters Ended September 26, 2021 and September 27, 2020

| | <u>Preferred Units</u> | | <u>Common Units</u> | | | | | <u>Total Common Equity</u> |
|--|------------------------|----------------|---------------------|----------------|--------------------------------------|-----------------------------------|--------------------------|----------------------------|
| | <u>Units</u> | <u>Amounts</u> | <u>Units</u> | <u>Amounts</u> | <u>Stock Subscription Receivable</u> | <u>Additional Paid-In Capital</u> | <u>Retained Earnings</u> | |
| Balance, as of December 29, 2019 | 100,000 | \$ 180,047 | 51,185,674 | \$ — | \$ (749) | \$ 148,483 | \$ — | \$ 147,734 |
| Net income | — | — | — | — | — | — | 7,371 | 7,371 |
| Unit-based compensation | — | — | — | — | — | 564 | — | 564 |
| Repayment of subscription receivable | — | — | — | — | 250 | — | — | 250 |
| Issuance of common units | — | — | 6,760 | — | — | 25 | — | 25 |
| Redeemable preferred units accretion | — | 15,240 | — | — | — | (9,958) | (5,282) | (15,240) |
| Balance, as of September 27, 2020 | 100,000 | \$ 195,287 | 51,192,434 | — | (499) | 139,114 | 2,089 | 140,704 |
| Balance, as of December 27, 2020 | 100,000 | \$ 200,571 | 51,192,434 | — | (499) | 141,208 | — | 140,709 |
| Net income | — | — | — | — | — | — | 20,404 | 20,404 |
| Unit-based compensation | — | — | — | — | — | 443 | — | 443 |
| Repayment of subscription receivable | — | — | — | — | 499 | — | — | 499 |
| Issuance of common units | — | — | 17,789 | — | — | 100 | — | 100 |
| Redeemable preferred units accretion | — | 16,978 | — | — | — | — | (16,978) | (16,978) |
| Balance, as of September 26, 2021 | 100,000 | \$ 217,549 | 51,210,223 | \$ — | \$ — | \$ 141,751 | \$ 3,426 | \$ 145,177 |

See accompanying notes to unaudited condensed consolidated financial statements.

PHD GROUP HOLDINGS LLC
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)
(In thousands)

| | Three Quarters Ended | |
|---|-----------------------|-----------------------|
| | September 26, 2021 | September 27, 2020 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net income | \$ 20,404 | \$ 7,371 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation and amortization | 18,225 | 18,404 |
| Amortization of debt issuance costs and discount | 2,877 | 2,901 |
| Loss on sales of assets | 130 | 19 |
| Unit-based compensation | 443 | 564 |
| Deferred rent and tenant allowance | 3,099 | 2,726 |
| Amortization of deferred lease incentives | (289) | (241) |
| Gift card breakage | (554) | (556) |
| Changes in operating assets and liabilities: | | |
| Accounts receivables | (89) | 804 |
| Receivables from related parties | (144) | 204 |
| Inventory | 676 | 83 |
| Other current assets | 807 | 572 |
| Accounts payable | (2,511) | (881) |
| Accrued expenses and other liabilities | (3,634) | 583 |
| Deferred lease incentives | 690 | 1,976 |
| Other assets and liabilities | (239) | 3,576 |
| NET CASH PROVIDED BY OPERATING ACTIVITIES | 39,891 | 38,105 |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Purchase of property and equipment | (27,687) | (10,138) |
| Purchase of investment securities | (200) | — |
| Proceeds from the sale of property and equipment | 123 | 30 |
| NET CASH USED IN INVESTING ACTIVITIES | (27,764) | (10,108) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Repayments of short-term debt | — | (15,000) |
| Payments of long-term debt | (2,493) | (12,493) |
| Proceeds from Paycheck Protection Program loan | — | 10,000 |
| Proceeds from issuance of common units | 100 | 25 |
| Repayment of stock subscription receivable | 499 | 250 |
| Payments for in-process equity financings (offering costs) | (2,108) | — |
| NET CASH USED IN FINANCING ACTIVITIES | (4,002) | (17,218) |
| NET INCREASE IN CASH AND CASH EQUIVALENTS AND RESTRICTED CASH | 8,125 | 10,779 |
| CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT BEGINNING OF THE PERIOD | 41,432 | 22,629 |
| CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT END OF THE PERIOD | \$ 49,557 | \$ 33,408 |
| SUPPLEMENTAL CASH FLOW INFORMATION | | |
| Interest paid | 29,043 | 24,468 |
| NON-CASH INVESTING AND FINANCING ACTIVITIES: | | |
| Accrued capital expenditures | 2,041 | 3,411 |
| Proceeds from the sale of property and equipment | 41 | 61 |
| Redeemable preferred units accretion | (16,978) | (15,240) |
| Deferred offering costs in accounts payable | 2,446 | — |

See accompanying notes to unaudited condensed consolidated financial statements.

NOTE 1. DESCRIPTION OF BUSINESS

Portillo's Inc. was formed and incorporated as a Delaware corporation on June 8, 2021. The Company was formed for the purpose of completing a public offering and related reorganization transactions in order to carry on the business of PHD Group Holdings LLC and its subsidiaries. Unless the context otherwise requires, references to "we," "us," "our," "Portillo's," and the "Company" refer to Portillo's Inc. and its subsidiaries, including PHD Group Holdings LLC, which we refer to as "Portillo's OpCo".

We operate fast-casual restaurants in Illinois, Indiana, California, Arizona, Florida, Wisconsin, Minnesota, Iowa and Michigan, along with two food production commissaries in Illinois. As of September 26, 2021 and December 27, 2020, the Company had 66 and 63 restaurants in operation, respectively. The Company also had 3 and 4 non-traditional locations in operation as of September 26, 2021 and September 27, 2020, respectively. These non-traditional locations include a food truck, ghost kitchen (small kitchen with no store-front presence, used to fill online orders), and concessions. Portillo's Hot Dogs, LLC additionally has a 50% interest in a single restaurant in Chicago, IL, that is referred to in Note 8. There were no restaurant closings during any period presented in the financial statements. The Company's principal corporate offices are located in Oak Brook, IL.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

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

The Company has prepared the accompanying unaudited condensed consolidated financial statements in accordance with GAAP for interim financial statements and pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"). In the opinion of management, the accompanying unaudited condensed consolidated financial statements reflect all adjustments consisting of normal recurring adjustments necessary for a fair presentation of our financial position and results of operations. Interim results of operations are not necessarily indicative of the results that may be achieved for the full year. The financial statements and related notes do not include all information and footnotes required by GAAP for annual reports. The unaudited condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto for the fiscal year ended December 27, 2020 included in our Registration Statement, which was declared effective on October 20, 2021.

All intercompany balances and transactions have been eliminated in consolidation.

The Company does not have any components of other comprehensive income (loss) recorded within its condensed consolidated financial statements, and therefore, does not separately present a statement of comprehensive income (loss).

The Company's chief operating decision maker (the "CODM") is its Chief Executive Officer. The CODM reviews financial performance and allocates resources at a consolidated level on a recurring basis. The Company has aggregated its operations into one operating segment and one reportable segment.

Fiscal Year

We use a 52- or 53-week fiscal year ending on the Sunday prior to December 31, effective beginning with the first quarter of 2019. In a 52-week fiscal year, each quarterly period is comprised of 13 weeks. The additional week in a 53-week fiscal year is added to the fourth quarter. Fiscal 2021 and 2020 each consist of 52 weeks. The fiscal periods presented in this report are the quarter and three quarters ended September 26, 2021 and September 27, 2020, respectively.

Use of Estimates

The preparation of these condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of sales and expenses during the period. Actual results could differ from those estimates.

Reverse Common Unit Split

On October 20, 2021, the members of Portillo's OpCo executed the Second Amended and Restated Limited Liability Company Agreement for Portillo's OpCo, effecting a 7.4-for-1 reverse common unit split. All applicable unit data, per unit amounts and related information in the condensed consolidated financial statements and notes thereto have been adjusted retroactively to give effect to the 7.4-for-1 reverse common unit split.

Leases

In April 2020, the Financial Accounting Standards Board ("FASB") issued guidance related to rent concessions resulting from the COVID-19 pandemic. This guidance allows entities an election to account for eligible concessions, regardless of their form, either by (1) applying the modification framework for these concessions in accordance with FASB Accounting Standards Codification ("ASC") Topic 840, Leases or (2) accounting for the concessions as if they were made under the enforceable rights included in the original agreement. The election applies to any lessor-provided lease concession related to the impact of the COVID-19 pandemic, provided the concession does not result in a substantial increase in the rights of the lessor or in the obligations of the lessee. During the three quarters ended September 27, 2020, the Company received non-substantial concessions from certain landlords in the form of rent deferrals and abatements. The Company has elected to account for these rent concessions as if they were made under the enforceable rights included in the original agreements. The recognition of rent concessions resulting from the COVID-19 pandemic did not have a material impact on the Company's condensed consolidated financial statements as of September 26, 2021 or September 27, 2020.

Deferred Offering Costs

Deferred offering costs consist of costs incurred in connection with the sale of the Company's Class A common stock in an IPO including certain legal, accounting, and other IPO related costs. At the completion of the IPO, deferred offering costs were recorded in stockholders' equity as reduction from the proceeds of the offering. No deferred offering costs were recorded as of December 27, 2020. As of September 26, 2021, \$4.6 million of deferred offering costs had been recorded in other current assets on the Company's condensed consolidated balance sheets.

Recently Issued Accounting Standards

In February 2016, the FASB issued Accounting Standards Update ("ASU") No. 2016-02, Leases (Topic 842) ("ASC 842"). The pronouncement requires lessees to recognize a liability for lease obligations, which represents the discounted obligation to make future minimum lease payments, and a corresponding right-of-use asset on the balance sheet. The guidance requires disclosure of key information about leasing arrangements that is intended to give financial statement users the ability to assess the amount, timing, and potential uncertainty of cash flows related to leases. The update is effective for fiscal years beginning after December 15, 2021, with early adoption permitted. The Company is in the process of implementing ASC 842 and expects this guidance to materially impact the Company's consolidated financial statements by significantly increasing assets and liabilities on the consolidated balance sheet in order to record the right-of-use assets and related lease liabilities. However, the Company does not expect this guidance to have a significant impact on its consolidated statements of operations or consolidated statements of cash flows.

In March 2020, the FASB issued ASU No. 2020-04, Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting. The pronouncement provides temporary optional expedients and exceptions to the current guidance on contract modifications and hedge accounting to ease the financial reporting burden related to the expected market transition from the London Interbank Offered Rate ("LIBOR") and other interbank offered rates to alternative reference rates. The guidance was effective upon issuance and generally can be applied to applicable contract modifications through December 31, 2022. The Company is currently evaluating the impact of the transition from LIBOR to alternative reference rates but do not expect a significant impact on its consolidated financial statements.

Recently Adopted Accounting Standards

In August 2018, the FASB issued ASU 2018-13, "Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement," which amends the disclosure requirements for fair value measurements by removing, modifying and adding certain disclosures. This guidance is effective for years beginning after December 15, 2020, with early adoption permitted. The adoption of ASU 2018-13 did not result in a material change to its consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-15, Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract, which clarifies the accounting for implementation costs in cloud computing arrangements that is a service contract. The update is effective for fiscal years beginning after December 15, 2020, with early adoption permitted. The Company adopted this standard effective December 28, 2020. Subsequent to the adoption of ASU 2018-15, the Company will capitalize such costs within other current assets or other assets on its condensed consolidated balance sheets. The Company will amortize the implementation costs once the system is ready for its intended use, on a straight-line basis, over the term of the related service agreements, including all reasonably certain renewals. The amortization expense related to cloud computing arrangements that are service contracts will be recorded within general and administrative expenses or other operating expenses on the Company's condensed consolidated statements of operations. The adoption of ASU 2018-15 did not result in a material change to its consolidated financial statements.

The Company reviewed all other recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact to its consolidated financial statements.

NOTE 3. REVENUE RECOGNITION

Revenues from retail restaurants are presented net of discounts and recognized when food and beverage products are sold to the end customer. Sales taxes collected from customers are excluded from revenues and the obligation is included in accrued liabilities until the taxes are remitted to the appropriate taxing authorities.

The Company offers delivery services to its customers. Delivery services are fulfilled by the Company and third-party service providers. In some cases, the Company makes delivery sales through Portillos.com or the Portillo's App ("Dispatch Sales"). In other cases, the Company makes delivery sales through a non-Company owned channel, such as the delivery partner's website or app ("Marketplace Sales").

With respect to Dispatch Sales, delivery may be performed by the Company or through a third-party service provider. The Company generally recognizes revenue, including delivery fees, when the performance obligation is complete and the food is transferred to the customer. For these sales, the Company receives payment directly from the customer at the time of sale.

With respect to Marketplace Sales, the Company generally recognizes revenue, excluding delivery fees collected by the delivery partner, when the performance obligation is complete, and control of the food is transferred to the delivery partner. The Company receives payment subsequent to the transfer of food. The payment terms with respect to Marketplace Sales are short-term in nature and are generally paid one week in arrears.

The Company sells gift cards which do not have expiration dates. The Company records the sale of the gift card as a contract liability and recognizes revenue from gift cards when: (i) the gift card is redeemed by the customer; or (ii) in the event a gift card is not expected to be redeemed, in proportion to the pattern of rights exercised by the customer (gift card breakage). The Company has determined that 11% of gift card sales will not be redeemed and will be retained by us based on a portfolio assessment of historical data on gift card redemption patterns. Gift card breakage is recorded within revenues in the condensed consolidated statements of operations. The Company recognized gift card breakage of \$0.1 million and \$0.6 million for the quarter and three quarters ended September 26, 2021, respectively, and \$0.1 million and \$0.6 million for the quarter and three quarters ended September 27, 2020, respectively.

The Company's only revenue related to performance obligations not yet satisfied is revenue from gift cards sold but not yet redeemed. The gift card liability included in current deferred revenue on the condensed consolidated balance sheets is as follows (in thousands):

| | September 26, 2021 | December 27, 2020 |
|---------------------|---------------------------|--------------------------|
| Gift card liability | \$ 3,852 | \$ 6,216 |

Revenue recognized in the condensed consolidated statement of operations for the redemption of gift cards that were included in their respective liability balances at the beginning of the year is as follows (in thousands):

| | Quarter Ended | | Three Quarters Ended | |
|--|--------------------|--------------------|----------------------|--------------------|
| | September 26, 2021 | September 27, 2020 | September 26, 2021 | September 27, 2020 |
| Revenue recognized from gift card liability balance at the beginning of the year | \$ 446 | \$ 443 | \$ 2,923 | \$ 2,890 |

NOTE 4. FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company discloses and recognizes the fair value of its assets and liabilities using a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the measurement date. The guidance establishes three levels of the fair value hierarchy as follows:

Level 1—Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date;

Level 2—Inputs are observable, unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities; and

Level 3—Unobservable inputs that are significant to the measurement of the fair value of the assets or liabilities that are supported by little or no market data

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The carrying value of the Company's cash and cash equivalents, restricted cash, accounts receivable, accounts payable and all other current assets and liabilities approximate fair values due to the short-term nature of these financial instruments.

Other assets consist of a deferred compensation plan with related assets held in a rabbi trust.

Deferred Compensation Plan - The Company maintains a rabbi trust to fund obligations under a deferred compensation plan. Amounts in the rabbi trust are invested in mutual funds, which are designated as trading securities carried at fair value. The fair value measurement of these trading securities is considered Level 1 of the fair value hierarchy as they are measured using quoted market prices. As of September 26, 2021 and December 27, 2020, the fair value of the mutual fund investments and deferred compensation obligations were as follows:

| | September 26, 2021 | | | December 27, 2020 | | |
|---|--------------------|-------------|-------------|-------------------|-------------|-------------|
| | Level 1 | Level 2 | Level 3 | Level 1 | Level 2 | Level 3 |
| Assets - Investments designated for deferred compensation plan | | | | | | |
| Cash/money accounts | \$ 1,447 | \$ — | \$ — | \$ 481 | \$ — | \$ — |
| Mutual Funds | 2,776 | — | — | 3,643 | — | — |
| Total assets | \$ 4,223 | \$ — | \$ — | \$ 4,124 | \$ — | \$ — |

The mutual fund investments and deferred compensation obligations are included in other assets, accrued expenses and other long-term liabilities in the condensed consolidated balance sheets. Changes in the fair value of securities held in the rabbi trust are recognized as trading gains and losses and included in other income in the condensed consolidated statements of operations and offsetting increases or decreases in the deferred compensation obligation are recorded in other long-term liabilities in the condensed consolidated balance sheets.

Refer to "Note 9 – Debt" for additional information relating to the fair value of the Company's outstanding debt instruments.

Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis

Assets and liabilities that are measured at fair value on a non-recurring basis include property and equipment, net, equity-method investment, goodwill and indefinite-lived intangible assets. These assets are measured at fair value whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. There were no impairment charges recognized during the quarter and three quarters ended September 26, 2021 and September 27, 2020.

NOTE 5. INVENTORIES

Inventories consisted of the following (in thousands):

| | September 26, 2021 | December 27, 2020 |
|---------------------|--------------------|-------------------|
| Raw materials | \$ 2,705 | \$ 3,999 |
| Work in progress | 99 | 112 |
| Finished goods | 1,168 | 715 |
| Consigned inventory | 427 | 249 |
| | <u>\$ 4,399</u> | <u>\$ 5,075</u> |

NOTE 6. PROPERTY & EQUIPMENT, NET

Property and equipment, net consisted of the following (in thousands):

| | September 26, 2021 | December 27, 2020 |
|------------------------------------|--------------------|-------------------|
| Land improvements | \$ 15,347 | \$ 15,039 |
| Furniture, fixtures, and equipment | 112,930 | 105,059 |
| Leasehold improvements | 130,093 | 115,695 |
| Transportation equipment | 2,203 | 2,285 |
| Construction-in-progress | 12,206 | 10,711 |
| | <u>272,779</u> | <u>248,789</u> |
| Less accumulated depreciation | <u>(86,158)</u> | <u>(74,020)</u> |
| | <u>\$ 186,621</u> | <u>\$ 174,769</u> |

Depreciation expense was \$4.3 million and \$12.6 million for the quarter and three quarters ended September 26, 2021, respectively, and \$3.9 million and \$11.8 million for the quarter and three quarters ended September 27, 2020, respectively, and is included in depreciation and amortization in the condensed consolidated statements of operations.

NOTE 7. GOODWILL & INTANGIBLE ASSETS

The Company has one reporting unit for goodwill which is evaluated for impairment annually in the fourth quarter of each fiscal year. The Company used the income approach and market approach to test goodwill. Under the income approach, fair value is based on the present value of estimated future cash flows. The market approach utilized both the price-earnings multiples of comparable public companies, as well as transactional data from similar companies that were recently sold. Adjustments are then made for any dissimilarities, to appropriately compare and correlate the market transactions used in this method. In estimating the fair value of the Company under the market approach, the most significant assumptions include the selection of the guideline public companies used in the analysis and the selection of EBITDA multiples. The most significant assumptions utilized in the fair value estimate of the income approach include projected annual revenue, earnings before interest, taxes, depreciation and amortization ("EBITDA"), capital expenditures and the discount rate. Growth assumptions were primarily based on a combination of historical performance, expected comparable store sales growth, the number of new restaurant additions, and performance of new restaurants.

For indefinite-lived intangibles, the relief-from-royalty method estimates the fair value of an intangible asset based on what a third party would pay for the right to use that asset. The most significant assumptions utilized in the relief-from-royalty method are projected revenues and the royalty rate.

No impairment charges were recognized for goodwill or indefinite-lived intangible assets for the quarter and three quarters ended September 26, 2021 and September 27, 2020.

Intangibles, net consisted of the following (in thousands):

| | As of September 26, 2021 | | |
|---|---------------------------------|---------------------------------|----------------------------|
| | Gross Carrying Amount | Accumulated Amortization | Net Carrying Amount |
| Indefinite-lived intangible assets: | | | |
| Trade names | \$ 223,925 | \$ — | \$ 223,925 |
| Intangibles subject to amortization: | | | |
| Recipes | 56,117 | (20,705) | 35,412 |
| Covenants not-to-compete | 40,799 | (40,799) | — |
| Favorable rental contracts | 2,991 | (1,787) | 1,204 |
| | <u>\$ 323,832</u> | <u>\$ (63,291)</u> | <u>\$ 260,541</u> |

| | As of December 27, 2020 | | |
|---|--------------------------------|---------------------------------|----------------------------|
| | Gross Carrying Amount | Accumulated Amortization | Net Carrying Amount |
| Indefinite-lived intangible assets: | | | |
| Trade names | \$ 223,925 | \$ — | \$ 223,925 |
| Intangibles subject to amortization: | | | |
| Recipes | 56,117 | (18,538) | 37,579 |
| Covenants not-to-compete | 40,799 | (37,515) | 3,284 |
| Favorable rental contracts | 2,991 | (1,599) | 1,392 |
| | <u>\$ 323,832</u> | <u>\$ (57,652)</u> | <u>\$ 266,180</u> |

Amortization expense was \$1.2 million and \$5.6 million for the quarter and three quarters ended September 26, 2021, respectively, and \$2.2 million and \$6.6 million for the quarter and three quarters ended September 27, 2020, respectively, and is included in depreciation and amortization in the condensed consolidated statements of operations.

The estimated aggregate amortization expense for the intangibles for the remainder of this year and the succeeding five years and thereafter are \$0.8 million, \$3.1 million, \$3.1 million, \$3.0 million, \$3.0 million, \$2.9 million and \$20.7 million, respectively.

NOTE 8. EQUITY METHOD INVESTMENT

The Company has a 50% interest in C&O Chicago, LLC ("C&O"). The Company accounts for the investment and financial results in the condensed consolidated financial statements under the equity method of accounting as the Company has significant influence but does not have control. The investment is adjusted to reflect the Company's share of C&O's earnings and losses to date and any distributions received.

A summary of financial information for C&O is as follows (in thousands):

| | September 26, 2021 | December 27, 2020 |
|--|--------------------|-------------------|
| Assets: | | |
| Current assets | \$ 2,058 | \$ 1,349 |
| Property, plant, and equipment, net of accumulated depreciation \$5,921 and \$5,838 in 2021 and 2020, respectively | 821 | 837 |
| Total assets | 2,879 | 2,186 |
| Liabilities: | | |
| Current liabilities | 709 | 681 |
| Non-current liabilities | | |
| Deferred rent | 1,206 | 1,193 |
| Total liabilities | 1,915 | 1,874 |
| Members' equity | 964 | 312 |
| Total liabilities and members' equity | \$ 2,879 | \$ 2,186 |

| | Quarter Ended | | Three Quarters Ended | |
|---------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| | September 26, 2021 | September 27, 2020 | September 26, 2021 | September 27, 2020 |
| Results from operations: | | | | |
| Sales | \$ 3,608 | \$ 2,815 | \$ 9,205 | \$ 8,480 |
| Net income | 585 | 242 | 1,303 | 707 |

NOTE 9. DEBT

Debt consisted of the following (in thousands):

| | September 26, 2021 | December 27, 2020 |
|--|--------------------|-------------------|
| First Lien Term B-3 Loans | \$ 326,583 | \$ 329,076 |
| Revolving Loans | — | — |
| Second Lien Term B-3 Loans | 155,000 | 155,000 |
| Unamortized discount and debt issuance costs | (11,495) | (14,372) |
| Total debt, net | 470,088 | 469,704 |
| Less: current portion | (3,324) | (3,324) |
| Long-term debt, net | \$ 466,764 | \$ 466,380 |

First Lien

PHD Intermediate LLC (“Holdings”), Portillo’s Holdings LLC (the “Borrower”) and certain of its subsidiaries entered into the First Lien Credit Agreement (“First Lien Credit Agreement”), dated as of August 1, 2014 and as amended October 25, 2016, May 18, 2018 and December 6, 2019, with UBS AG, Stamford Branch, as the administrative agent and collateral agent, and other lenders from time to time party thereto (the “First Lien Lenders”). The First Lien Lenders extended credit in the form of (i) first lien initial term loans in an initial aggregate principal amount of \$335.0 million and (ii) a revolving credit facility in an original principal amount equal to \$30.0 million, including a letter of credit sub-facility with a \$7.5 million sublimit (the “Revolving Facility” and the loans thereunder, the “Revolving Loans”).

On December 6, 2019, the Borrower entered a third amendment to the First Lien Credit Agreement (the “Third Amendment to First Lien Credit Agreement”) whereby the aggregate principal amount of the term loans as of the effective date of the Third Amendment to First Lien Credit Agreement was \$332.4 million (the “First Lien Term B-3 Loans”), and the Revolving Facility was increased by \$50 million. The maturity date with respect to the First Lien Term B-3 Loans was extended to September 6, 2024 and the maturity date with respect to the Revolving Loans date was extended to June 6, 2024.

In connection with the Third Amendment to First Lien Credit Agreement, the interest rates spread for the First Lien Term B-3 Loans increased by 100 basis points to 5.50% for the adjusted London interbank offered rate (“Eurocurrency Rate”) loans. As of September 26, 2021, the interest rate on the Term Loans was 6.50%. As of September 26, 2021 and September 27, 2020, the effective interest rate on the Term Loans was 7.80% and 7.52%, respectively. Beginning with December 31, 2019, the Company is required to pay on the last business day of each calendar quarter, March 31, June 30, September 30, and December 31, an aggregate principal amount of \$0.8 million.

As of September 26, 2021 and December 27, 2020, the Company had \$0.0 million in borrowings under the Revolver outstanding, respectively. As of September 26, 2021 and September 27, 2020, the interest rate on the Revolver was 3.25% and 3.50%, respectively, subject to change based on a consolidated first lien net leverage ratio as defined in the First Lien Credit Agreement. As of September 26, 2021 and September 27, 2020, the commitment fees, pursuant to the First Lien, to maintain the Revolver were 0.250% and 0.375%, respectively. Also pursuant to the First Lien Credit Agreement, as of September 26, 2021 and September 27, 2020, letter of credit fronting fees were 0.125%. Commitment fees and letter of credit fronting fees are recorded as interest expense in the condensed consolidated statements of operations.

The Company had \$5.3 million and \$5.8 million of letters of credit issued against the Revolving Facility as of September 26, 2021 and December 27, 2020, respectively. As of September 26, 2021, the Company had \$44.7 million of availability under the Revolving Facility.

Second Lien

Holdings, the Borrower and certain of its subsidiaries entered into the Second Lien Credit Agreement (the “Second Lien Credit Agreement”) dated as of August 1, 2014 and as amended on October 25, 2016 and December 6, 2019 with UBS AG, Stamford Branch, as administrative agent and collateral agent, and other lenders from time to time party thereto (the “Second Lien Lenders”). The Second Lien Lenders extended credit in the form of initial second lien term loans in an initial aggregate principal amount of \$80.0 million.

On December 6, 2019, the Borrower entered into second amendment to the Second Lien Credit Agreement (the "Second Amendment to Second Lien Credit Agreement") whereby the aggregate principal amount of the term loans as of the effective date of the Second Amendment to the Second Lien Credit Agreement was \$155.0 million (the "Second Lien Term B-3 Loans"). The maturity date of the Second Lien Term B-3 Loans was extended to December 6, 2024 (the "Second Lien Maturity Date"). In addition to the increased principal amount, the interest rates spread for the Second Lien Term B-3 Loans increased by 150 basis points to 9.50% for Eurocurrency Rate loans. The Borrower determined interest on the Second Lien at the Eurocurrency Rate, plus 9.50%. As of September 26, 2021, the interest rate on the Term Loans was 10.75%. As of September 26, 2021 and September 27, 2020, the effective interest rate on the Second Lien was 12.22% and 11.90%, respectively. No principal payments are required. The aggregate principal is due on the Second Lien Maturity Date.

In connection with the IPO, the Company received aggregate net proceeds of approximately \$429.9 million after deducting underwriting discounts and commissions and offering expenses. Net proceeds of \$158.1 million were used to repay the Second Lien Term B-3 Loans (including prepayment penalties) in full.

Discount and Debt Issuance Costs

In connection with entering into the Third Amendment to First Lien Credit Agreement and the Second Amendment to Second Lien Credit Agreement, in each case, dated as of December 6, 2019, the Borrower paid debt issuance costs of \$14.5 million, of which \$13.3 million were capitalized and are being amortized over the term of the related debt agreements, and \$1.2 million were expensed as incurred.

The Company amortized \$0.6 million of deferred financing costs, respectively, during each of the quarters ended September 26, 2021 and September 27, 2020, and \$1.7 million of deferred financing costs, respectively, during each of the three quarters ended September 26, 2021 and September 27, 2020, which is included in interest expense in the condensed consolidated statements of operations. In addition, the Company also amortized \$0.4 million in original issue discount related to the long-term debt, which is included in interest expense in the condensed consolidated statements of operations in each of the quarters ended September 26, 2021 and September 27, 2020, respectively, and \$1.2 million in original issue discount related to long-term debt in each of the three quarters ended September 26, 2021 and September 27, 2020, which is included in interest expense in the condensed consolidated statements of operations.

Total interest costs incurred were \$10.7 million and \$10.8 million for the quarters ended September 26, 2021 and September 27, 2020, respectively and \$32.1 million and \$34.3 million for the three quarters ended September 26, 2021 and September 27, 2020.

As of September 26, 2021 and December 27, 2020, the fair value of long-term debt approximates the carrying value as it is variable rate debt. The fair value measurement of this debt is considered Level 2 of the fair value hierarchy as inputs to interest are observable, unadjusted quoted prices in active markets for similar assets or liabilities.

Borrowings under the First Lien Credit Agreement and Second Lien Credit Agreement are guaranteed by Holdings, the Borrower and certain of the Borrower's subsidiaries, and Holdings, the Borrower and certain of the Borrower's subsidiaries have pledged substantially all tangible and intangible assets as collateral, subject to certain exclusions and exceptions.

The Borrower is subject to certain financial and reporting covenants pursuant to the terms of the First Lien Credit Agreement and Second Lien Credit Agreement. These covenants are customary for these types of debt agreements. As of September 26, 2021, the Company was in compliance with all covenants.

NOTE 10. REDEEMABLE PREFERRED UNITS

Pursuant to a unit purchase agreement, dated August 1, 2014, between the Company and Broad Street Principal Investments (the "Preferred Investor"), Portillo's OpCo issued 100,000 preferred units in exchange for a capital contribution of \$97.7 million, net of discounts and fees as agreed between the parties. The Preferred Units have all the rights, privileges, and obligations as provided for in the Amended and Restated Limited Liability Company Agreement of the Company (the "LLC Agreement"), which include redemption rights and the amounts payable upon liquidation, but exclude dividend and conversion rights.

Preferred Yield

Pursuant to the LLC Agreement, each Preferred Unit accrues on a daily basis the following applicable preferred rate, subject to certain triggering events as defined in the LLC Agreement that would result in an additional 2% to the prevailing rate below:

- 11% per year until the eighth anniversary of the closing date
- 12% per year from the eighth to the tenth anniversary of the closing date
- 13% per year thereafter

The rate accrues daily and compounds semiannually on June 30 and December 31 of each year on the sum of the preferred unreturned capital contributions and the unpaid Preferred Yield outstanding that has compounded for all prior periods.

Call Rights

The Company can, on or after the first anniversary of the closing date, choose to redeem the Preferred Units in whole or in part, by giving proper written notice as required in the LLC Agreement. The redemption price is a premium percentage, as noted below, applied to the sum of the unreturned capital contributions for the Preferred Units and the unpaid Preferred Yield (together, the "Preferred Liquidation Amount"). As of September 26, 2021, the percentage of Preferred Liquidation Amount is 101%.

Put Rights

The Preferred Units holder can also require the Company to redeem the Preferred Units, in whole or in part, by delivering proper written notice (i) immediately prior to or simultaneously with a sale of the Company or (ii) at any time from and after the twelfth anniversary of the closing date. The redemption price is specified in the LLC Agreement.

As of September 26, 2021 and December 27, 2020, the Company had recorded \$217.5 million and \$200.6 million respectively, as Redeemable Preferred Units. These transactions were recorded in accordance with FASB ASC 480 *Distinguishing Between Liabilities and Equity*. As a result of the probability of the redemption by holder feature, the Preferred Units are classified outside of permanent equity within the condensed consolidated balance sheets.

In connection with the IPO, the Company received aggregate net proceeds of approximately \$429.9 million after deducting underwriting discounts and commissions and offering expenses. Net proceeds of \$221.7 million were used to repay the redeemable preferred units in full including the Preferred Liquidation Amount.

NOTE 11. COMMON UNITS AND UNIT-BASED COMPENSATION

Common Units

As of September 26, 2021 and December 27, 2020, the Company had 51,210,222 and 51,192,434 Class A Common Units outstanding, respectively. The increase of 131,578 Class A Common Units was primarily attributable to the issuance of common units to a member of the Company's Board during the three quarters ended September 26, 2021. The Company has 7,477,256 options authorized to purchase Class A Common Units as designated by the Company's 2014 Equity Incentive Plan, as amended (the "2014 Plan").

2014 Equity Incentive Plan

The Company has granted options to acquire units under its 2014 Plan. The 2014 Plan permits the granting of awards to employees, officers, directors and consultants of the Company and affiliates in the form of options, unit appreciation rights, Restricted Class A Units, Unrestricted Class A Units, Performance Awards and awards convertible into or otherwise based on Class A Units. The 2014 Plan gives broad powers to the Company's Board to administer and interpret the 2014 Plan, including the authority to select the individuals to be granted awards and rights to prescribe the particular form and conditions of each award to be granted.

As of September 26, 2021, the Company had 40,558 options available to be issued under the 2014 Plan.

Under the 2014 Plan, the number of common units and exercise price of each option were determined prior to the IPO by the board of managers (the "Board of Managers"), or a committee designated by the Board of Managers. The awards granted are generally exercisable within a 10-year period from the date of grant. As of September 26, 2021, the Company has issued options with time vesting, and other options with time and performance vesting. The Company's performance condition restricts certain option holders' ability to exercise vested options until a liquidity event and payback criteria to the Buyer are both met. Because these events, conditions or criteria were not considered probable as of September 26, 2021, no compensation expense related to these options to acquire units was recognized. For options to acquire units granted without performance conditions, the Company records compensation expense over the vesting period based on the grant-date fair value of the option, determined using the Black-Scholes option pricing valuation model. Options issued and outstanding expire on various dates through the year 2031. The exercise price on all options outstanding as of September 26, 2021, range from \$3.25 to \$5.77, and the options vest over a range of immediately to five-year periods.

No additional options will be issued under the 2014 Plan. See "Note 15 – Subsequent Events" for a description of the treatment of the options to acquire units in connection with the IPO.

Unit-Based Compensation Expense

In accordance with FASB ASC Topic 718, *Compensation-Stock Compensation*, stock-based compensation is measured at the grant date, based on the calculated fair value of the award, and is recognized as an expense over the requisite service period (generally the vesting period of the grant). The Company recognized \$0.2 million and \$0.4 million of stock-based compensation expense for the quarter and three quarters ended September 26, 2021 and \$0.2 million and \$0.6 million for the quarter and three quarters ended September 27, 2020, respectively, with a corresponding increase to additional paid-in-capital. Unit-based compensation expense is calculated based on awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates and an adjustment to unit-based compensation expense will be recognized at that time. Unit-based compensation expense is included in general and administrative expenses on the condensed consolidated statements of operations.

NOTE 12. CONTINGENCIES

The Company is party to legal proceedings and potential claims arising in the normal conduct of business, including claims related to employment matters, contractual disputes, customer injuries, and property damage. Although the ultimate outcome of these claims and lawsuits cannot be predicted with certainty, management believes that the resulting liability, if any, will not have a material effect on the Company's consolidated financial statements.

The Company is subject to unclaimed property laws by states in the ordinary course of business. These laws generally require entities to report and remit abandoned and unclaimed property to the state which includes unclaimed wages, gift card funds, vendor payments, and customer refunds. Failure to timely report and remit the property can result in assessments that could include interest and penalties, in addition to the payment of the escheat liability. The Company routinely remits payments to states in compliance with applicable unclaimed property laws. As of September 26, 2021 and December 27, 2020, the Company recorded a \$0.0 million and \$0.9 million loss contingency related to the probable loss that may arise from an obligation to report and deliver unclaimed gift card funds. This loss contingency was resolved during the quarter ended September 26, 2021 for \$0.8 million.

NOTE 13. RELATED PARTY TRANSACTIONS

As of September 26, 2021 and December 27, 2020, the related parties' receivables consisted of a receivable balance due from C&O of \$0.3 million and \$0.2 million, respectively, which is included in accounts receivable in the condensed consolidated balance sheets.

The Company previously issued 195,933 common units to the CEO and President for a unit subscription receivable of \$1.0 million. As of September 26, 2021 and December 27, 2020, the Company had \$0.0 million and \$0.5 million recorded as subscription receivable, respectively. On August 13, 2021, the remaining stock subscription receivable of \$0.2 million was fully repaid.

Also, Noah Glass, a member of the Company's Board, is the founder and CEO of Mobo Systems, Inc. (also known as "Olo"), a platform the Company uses in connection with our mobile ordering application and delivery. The Company incurred \$0.3 million and \$0.7 million in net Olo-related costs for the quarter and three quarters ended September 26, 2021. Of these expenses, \$0.2 million and \$0.4 million, respectively, were included in cost of goods sold and \$0.1 million and \$0.3 million, respectively, were included in other operating expenses in the condensed

consolidated statements of operations. The Company incurred \$0.3 million and \$0.9 million in net Olo-related costs for the quarter and three quarters ended September 27, 2020. Of these expenses, \$0.2 million and \$0.6 million, respectively, were included in cost of goods sold and \$0.1 million and \$0.3 million, respectively, were included in other operating expenses in the condensed consolidated statements of operations. As of September 26, 2021 and December 27, 2020, \$0.0 million and \$0.2 million was payable to Olo and was included in accounts payable in the consolidated balance sheets.

Additionally, the Company leases 23 real properties from entities owned and controlled by Richard Portillo. Mr. Portillo was the former President, CEO, and Owner of the Company, as comprised at the date of the merger transaction in August 2014 through which the Company was acquired by funds affiliated or managed by Berkshire Partners LLC. The Company made \$2.0 million and \$1.9 million in rental payments related to the aforementioned 23 locations, during each of the quarters ended September 26, 2021 and September 27, 2020, respectively, and \$5.9 million and \$5.6 million in rental payments, during each of the three quarters ended September 26, 2021 and September 27, 2020. Beginning in 2014 through July 31, 2021, Mr. Portillo served as a consultant, under an Agreement with Portillo's Holdings, LLC (the "Consulting Agreement"). Under the terms of the Consulting Agreement, \$2.0 million was paid annually for various consulting services, which was included in general and administrative expenses in the condensed statements of operations. The Consulting Agreement terminated on July 31, 2021 and has not been renewed.

NOTE 14. EARNINGS (LOSS) PER UNIT

Basic earnings (loss) per unit is computed by dividing net income (loss) available to common unitholders by the weighted-average number of common units outstanding during the year.

Net income (loss) applicable to common unitholders is calculated after deducting any redeemable preferred unit accretion.

Diluted earnings (loss) per unit is computed by dividing net income available to common unit holders by the weighted-average number of common units outstanding inclusive of the incentive common units, using the treasury stock method, if dilutive.

For the quarter and three quarters ended September 26, 2021 and September 27, 2020, the potential dilutive units related to the incentive common units were not included in the computation of diluted net loss per unit as the effect of including these units in the calculation would have been anti-dilutive.

The computations of basic and diluted earnings (loss) per unit for the quarter and three quarters ended September 26, 2021 and September 27, 2020 are as follows (in thousands, except per share amounts):

| | Quarter Ended | | Three Quarters Ended | |
|---|-----------------------|-----------------------|-----------------------|-----------------------|
| | September 26, 2021 | September 27, 2020 | September 26, 2021 | September 27, 2020 |
| Net income | \$ 6,531 | \$ 8,104 | \$ 20,404 | \$ 7,371 |
| Less: Redeemable Preferred Units Accretion | (5,886) | (5,282) | (16,978) | (15,240) |
| Net income (loss) attributable to common unit holders | \$ 645 | \$ 2,822 | \$ 3,426 | \$ (7,869) |
| Units: | | | | |
| Weighted-average number of common units outstanding-basic | 51,210,222 | 51,192,285 | 51,201,100 | 51,187,878 |
| Dilutive unit awards | 371,463 | 217,717 | 367,934 | — |
| Weighted-average number of common units outstanding-diluted | 51,581,685 | 51,410,002 | 51,569,034 | 51,187,878 |
| Basic net income (loss) per unit | \$ 0.01 | \$ 0.06 | \$ 0.07 | \$ (0.15) |
| Diluted net income (loss) per unit | \$ 0.01 | \$ 0.05 | \$ 0.07 | \$ (0.15) |

The following units were excluded from the calculation of diluted earnings per share because they would be anti-dilutive:

| | Quarter Ended | | Three Quarters Ended | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| | September 26, 2021 | September 27, 2020 | September 26, 2021 | September 27, 2020 |
| Units subject to performance conditions | 318,514 | 57,729 | 318,704 | 57,729 |
| Units that were antidilutive | — | — | — | 216,926 |
| Total units excluded from diluted income (loss) per unit | 318,514 | 57,729 | 318,704 | 274,655 |

NOTE 15. SUBSEQUENT EVENTS

The Company opened one new restaurant subsequent to September 26, 2021 for a total of 67 restaurants, excluding a restaurant owned by C&O, of which Portillo's owns 50% of the equity.

On October 25, 2021, Portillo's Inc. completed the IPO of its Class A common stock. Portillo's Inc. issued 23,310,810 shares, including 3,040,540 shares sold to the underwriters pursuant to their overallotment option. Portillo's Inc. received net proceeds from the offering of approximately \$429.9 million (after deducting \$29.1 million of underwriting fees and commissions and approximately \$7.2 million of offering expenses). The net proceeds and cash on hand were used to as follows:

- to repay the redeemable preferred units in full (including the redemption premium) of \$221.7 million;
- to repay all of the borrowings outstanding under the Second Lien Credit Agreement (including prepayment penalties) of \$158.1 million; and
- to purchase LLC Units or shares of Class A common stock from certain pre-IPO LLC members of \$57.0 million.

On October 20, 2021, the members of Portillo's OpCo executed the Second Amended and Restated Limited Liability Company Agreement for Portillo's OpCo, effecting a 7.4-for-1 reverse common unit split.

In connection with the IPO, Portillo's Inc. entered into a Tax Receivable Agreement (the "Tax Receivable Agreement") with certain pre-IPO LLC Members, pursuant to which Portillo's Inc. is obligated to pay 85% of the amount of applicable cash tax savings, if any, in U.S. federal, state, and local income tax or franchise tax that Portillo's Inc. actually realizes as a result of (a) the increases in tax basis attributable to exchanges of LLC Units by pre-IPO LLC Members and (b) tax benefits related to imputed interest deemed to be paid by Portillo's Inc. as a result of the Tax Receivable Agreement. We will retain the benefit of the remaining 15% of these tax savings.

In connection with the IPO, each option under the 2014 Plan that was outstanding, whether vested or unvested, was substituted for an option to purchase a number of shares of Class A common stock under the 2021 Plan, and the option holders received a cash payment in respect of their options (whether vested or unvested) in an aggregate amount of approximately \$6.3 million, which Portillo's Inc. expects to make in the fourth quarter of fiscal 2021. In addition, as a result of the waiver and the resultant modification in the terms of certain performance-vesting awards, Portillo's Inc. will record compensation expense based on the fair value of the modified awards in the fourth quarter of fiscal 2021. We would expect to recognize a cash compensation expense of approximately \$1.3 million and a non-cash compensation expense of approximately \$23.3 million, each in the fourth quarter of fiscal 2021, as well as an additional non-cash compensation expense of approximately \$12.7 million ratably over the next 4.5 years.

In connection with the IPO, Portillo's Inc. granted options to purchase shares of Class A common stock under its 2021 Plan. The 2021 Plan permits the granting of awards to any employee, officer, non-employee director, consultant or other personal service provider of the Company in the form of stock options, stock appreciation rights, restricted stock awards, restricted stock units and stock-based awards. All awards granted to participants under the 2021 Plan generally will be represented by an award agreement. 7,148,049 shares of Class A common stock are available for awards under the 2021 Plan (excluding options previously awarded under the 2014 Plan that were assumed by the 2021 Plan). The 2021 Plan gives broad powers to the Board to administer and interpret the 2021 Plan, including the authority to select the individuals to be granted awards and rights to prescribe the particular form and conditions of each award to be granted.

As of October 25, 2021, following the issuance of the stock sold in the IPO, Portillo's Inc. had a total of 35,807,171 shares of Class A common stock issued and outstanding, 35,673,321 shares of Class B common stock issued and outstanding and no preferred shares issued and outstanding.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.



The following discussion should be read in conjunction with our unaudited condensed consolidated financial statements and accompanying condensed notes. The following discussion contains, in addition to historical information, forward-looking statements that include risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including those set forth under the heading "Cautionary Statements Concerning Forward-Looking Statements" in this report and under the heading "Risk Factors" in our prospectus, dated October 20, 2021, filed pursuant to Rule 424(b)(4) with the Securities and Exchange Commission (the "SEC") on October 22, 2021, relating to our IPO, which is available on the SEC's website at www.sec.gov.

Although we believe that the expectations reflected in the forward-looking statements are reasonable based on our current knowledge of our business and operations, we cannot guarantee future results, levels of activity, performance or achievements. We assume no obligation to provide revisions to any forward-looking statements should circumstances change.

The following discussion summarizes the significant factors affecting the consolidated operating results, financial condition, liquidity and cash flows of our company as of and for the periods presented below. The following discussion and analysis should be read in conjunction with our Registration Statement and the unaudited condensed consolidated financial statements and the accompanying notes thereto included herein.

Unless the context otherwise requires, references to "we," "us," "our," "Portillo's," and the "Company" refer to PHD Group Holdings LLC and its subsidiaries, which we refer to as "Portillo's OpCo."

We have prepared the unaudited condensed consolidated financial statements in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial statements and pursuant to the rules and regulations of the SEC.

Overview

Portillo's serves iconic Chicago street food through high-energy, multichannel restaurants designed to ignite the senses and create a memorable dining experience. Since our founding in 1963 in a small trailer which Dick Portillo called "The Dog House," Portillo's has grown to become a treasured brand with a passionate (some might say obsessed) nationwide following. We create a consumer experience like no other by combining the best attributes of fast casual and quick service concepts with an exciting energy-filled atmosphere and restaurant model capable of generating tremendous volumes. Nearly all of our restaurants were built with double lane drive-thrus and have been thoughtfully designed with a layout that accommodates a variety of access modes including dine-in, carryout / curbside, delivery and catering in order to quickly and efficiently serve our guests. As of September 26, 2021, we owned and operated 67 Portillo's restaurants across nine states, including a restaurant owned by C&O Chicago, L.L.C. ("C&O") of which Portillo's owns 50% of the equity.

Financial Highlights for the Quarter Ended September 26, 2021:

- Total revenue increased 15.3% to \$138.0 million;
- Same restaurant sales increased 6.8%;
- Operating income decreased 8.8% to \$17.2 million;
- Net income decreased 19.4% to \$6.5 million;
- Restaurant-Level Adjusted EBITDA*, a non-GAAP measure, decreased 1.1% to \$34.2 million; and
- Adjusted EBITDA*, a non-GAAP measure, decreased 8.4% to \$24.2 million.

Financial Highlights for the Three Quarters Ended September 26, 2021:

- Total revenue increased 17.5% or \$59.1 million;
- Same restaurant sales increased 10.6%;
- Operating income increased 26.1% to \$52.5 million;
- Net income increased 176.8% to \$20.4 million;
- Restaurant-Level Adjusted EBITDA*, a non-GAAP measure, increased 22.5% to \$107.1 million; and
- Adjusted EBITDA*, a non-GAAP measure increased 17.1% to \$75.3 million.

* Adjusted EBITDA and Restaurant-Level Adjusted EBITDA are non-GAAP measures. Definitions and reconciliations of Adjusted EBITDA to net income (loss) and Restaurant-Level Adjusted EBITDA to operating income (loss) the most directly comparable financial measures presented in accordance with GAAP, are set forth on page 30.

Consolidated Results of Operations

The following table summarizes our results of operations for the quarter and three quarters ended September 26, 2021 and September 27, 2020 (in thousands):

| | Quarter Ended | | | | Three Quarters Ended | | | |
|---|--------------------|---------|--------------------|---------|----------------------|---------|--------------------|---------|
| | September 26, 2021 | | September 27, 2020 | | September 26, 2021 | | September 27, 2020 | |
| REVENUE | \$ 138,003 | 100.0 % | \$ 119,700 | 100.0 % | \$ 396,044 | 100.0 % | \$ 336,960 | 100.0 % |
| Restaurant operating expenses: | | | | | | | | |
| Cost of goods sold, excluding depreciation and amortization | 44,285 | 32.1 % | 36,572 | 30.6 % | 121,465 | 30.7 % | 106,095 | 31.5 % |
| Labor | 36,921 | 26.8 % | 29,125 | 24.3 % | 102,433 | 25.9 % | 87,205 | 25.9 % |
| Occupancy | 7,000 | 5.1 % | 6,368 | 5.3 % | 20,890 | 5.3 % | 18,717 | 5.6 % |
| Other operating expenses | 15,554 | 11.3 % | 13,012 | 10.9 % | 44,187 | 11.2 % | 37,559 | 11.1 % |
| Total operating expenses | 103,760 | 75.2 % | 85,077 | 71.1 % | 288,975 | 73.0 % | 249,576 | 74.1 % |
| General and administrative expenses | 11,750 | 8.5 % | 9,706 | 8.1 % | 35,755 | 9.0 % | 27,918 | 8.3 % |
| Pre-opening expenses | 347 | 0.3 % | 544 | 0.5 % | 2,307 | 0.6 % | 838 | 0.2 % |
| Depreciation and amortization | 5,516 | 4.0 % | 6,138 | 5.1 % | 18,225 | 4.6 % | 18,404 | 5.5 % |
| Net income attributable to equity method investment | (292) | (0.2)% | (121) | (0.1)% | (651) | (0.2)% | (353) | (0.1)% |
| Other income, net | (292) | (0.2)% | (514) | (0.4)% | (1,095) | (0.3)% | (1,092) | (0.3)% |
| OPERATING INCOME | 17,214 | 12.5 % | 18,870 | 15.8 % | 52,528 | 13.3 % | 41,669 | 12.4 % |
| Interest expense | 10,683 | 7.7 % | 10,766 | 9.0 % | 32,124 | 8.1 % | 34,298 | 10.2 % |
| NET INCOME | \$ 6,531 | 4.7 % | \$ 8,104 | 6.8 % | \$ 20,404 | 5.2 % | \$ 7,371 | 2.2 % |

Revenues

Revenues primarily represent the aggregate sales of food and beverages, net of discounts. Sales taxes collected from customers are excluded from revenues. Revenues in any period are directly influenced by the number of operating weeks in the period, the number of open restaurants, restaurant traffic, our menu prices and product mix.

Revenues for the quarter ended September 26, 2021 were \$138.0 million compared to \$119.7 million for the quarter ended September 27, 2020, an increase of \$18.3 million or 15.3%. The increase in revenues was primarily attributed to an increase in our average check and the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants during the three quarters ended September 26, 2021. Same-restaurant sales increased 6.8% during the third quarter ended September 26, 2021, which was attributable to an increase in average check of 7.9%, partially offset by a decline in traffic. The higher average check was driven by an increase in menu prices, mix of items sold, and more items per order. Although we did not increase prices in the quarter ended September 27, 2021, we benefited from price increases earlier in the year and expect to increase prices in the fourth quarter. For the purpose of calculating same-restaurant sales for September 26, 2021, sales for 60 restaurants were included in the Comparable Restaurant Base (as defined in "Selected Operating Data" below) versus 55 as of the end of the third quarter of 2020.

Revenues for the three quarters ended September 26, 2021 were \$396.0 million compared to \$337.0 million for the three quarters ended September 27, 2020, an increase of \$59.1 million or 17.5%. The increase in revenues was primarily attributed to an increase in guest traffic as a result of the recovery from the COVID-19 pandemic, an increase in our average check of 7.9% and the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants during the quarter ended September 26, 2021. The five new restaurants opened in the fourth quarter of 2020 and the three quarters ended September 26, 2021 positively impacted revenues in the three quarters ended September 26, 2021 by approximately \$24.3 million. We operated on an off-premise and drive-thru only operating model beginning in the second half of March 2020. Since May 2020, we reopened and operated in-restaurant dining in varying degrees of capacity. Same-restaurant sales increased 10.6% during the three quarters ended September 26, 2021, which was attributable to a 3.3% increase in guest traffic and a 7.3% increase in average check. The higher average check was driven by an increase in menu prices, mix of items sold, and more items per order. For the purpose of calculating same-restaurant sales for September 26, 2021, sales for 60 restaurants were included in the Comparable Restaurant Base versus 55 as of the end of the third quarter of 2020.

Cost of Goods Sold, Excluding Depreciation and Amortization

Cost of goods sold, excluding depreciation and amortization includes the direct costs associated with food and beverages, including paper products. The components of cost of goods sold, excluding depreciation and amortization are variable by nature, change with sales volume, are impacted by product mix and are subject to increases or decreases in commodity costs.

Cost of goods sold, excluding depreciation and amortization for the quarter ended September 26, 2021 was \$44.3 million compared to \$36.6 million for the quarter ended September 27, 2020, an increase of \$7.7 million or 21.1%. This increase was primarily driven by the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened during the three quarters ended September 26, 2021, an increase in commodity prices, primarily ground beef and beef flats used in our Italian beef sandwiches, and an increase in items per order. As a percentage of revenues, cost of goods sold, excluding depreciation and amortization increased 1.5% during the quarter ended September 26, 2021. The increase was primarily due to an increase in commodity prices, primarily ground beef and beef flats used to make our Italian beef sandwiches, partially offset by an increase in our average check.

Cost of goods sold, excluding depreciation and amortization for the three quarters ended September 26, 2021 was \$121.5 million compared to \$106.1 million for the three quarters ended September 27, 2020, an increase of \$15.4 million or 14.5%. This increase was primarily driven by the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened during the three quarters ended September 26, 2021 and an increase in items per order, partially offset by lower commodity prices earlier in the year, primarily for ground beef and beef flats used in our Italian beef sandwiches. As a percentage of revenues, cost of goods sold, excluding depreciation and amortization, decreased 0.8% during the three quarters ended September 26, 2021. This decrease was primarily due to an increase in our average check.

Labor Expenses

Labor expenses include hourly and management wages, bonuses, payroll taxes, workers' compensation expense and team member benefits. Factors that influence labor costs include minimum wage and payroll tax legislation, health care costs and the performance of our restaurants.

Labor expenses for the quarter ended September 26, 2021 were \$36.9 million compared to \$29.1 million for the quarter ended September 27, 2020, an increase of \$7.8 million or 26.8%. This increase was primarily driven by several incremental investments to support our team members, including hourly rate increases, training costs and discretionary bonuses, and the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened during the three quarters ended September 26, 2021, partially offset by lower staffing levels and increased productivity in our restaurants. As a percentage of revenues, labor increased 2.5% due primarily to the aforementioned incremental investments to support our team members, including hourly rate increases, training costs and discretionary bonuses, partially offset by an increase in our average check and lower staffing levels and increased productivity in our restaurants.

Labor expenses for the three quarters ended September 26, 2021 were \$102.4 million compared to \$87.2 million for the three quarters ended September 27, 2020, an increase of \$15.2 million or 17.5%. This increase was primarily driven by the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened during the three quarters ended September 26, 2021 and several incremental investments to support our team members, including hourly rate increases, training costs and discretionary bonuses, partially offset by lower staffing levels and increased productivity in our restaurants. As a percentage of revenues, labor was flat primarily due to the deployment of a leaner labor model due to COVID-19 related dining room capacity limitations and the reduction of restaurant hours combined with an increase in our average check, offset by hourly rate increases and discretionary bonuses.

Occupancy Expenses

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

Occupancy expenses for the quarter ended September 26, 2021 were \$7.0 million compared to \$6.4 million for the quarter ended September 27, 2020, an increase of \$0.6 million or 9.9%, primarily driven by the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened during the three quarters ended September 26, 2021.

Occupancy expenses for the three quarters ended September 26, 2021 were \$20.9 million compared to \$18.7 million for the three quarters ended September 27, 2020, an increase of \$2.2 million or 11.6%, primarily driven by the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened during the three quarters ended September 26, 2021.

Other Operating Expenses

Other operating expenses consist of direct marketing expenses, utilities and other operating expenses incidental to operating our restaurants, such as credit card fees and repairs and maintenance.

Other operating expenses for the quarter ended September 26, 2021 were \$15.6 million compared to \$13.0 million for the quarter ended September 27, 2020, an increase of \$2.5 million or 19.5%, primarily driven by the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened during the three quarters ended September 26, 2021 and incremental costs associated with cleaning and utilities as a result of continued expansion of our dine in capacity due to the recovery from the COVID-19 pandemic, as well as an increase in direct marketing expenses and repair and maintenance.

Other operating expenses for the three quarters ended September 26, 2021 were \$44.2 million compared to \$37.6 million for the three quarters ended September 27, 2020, an increase of \$6.6 million or 17.6%, primarily driven by the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened during the three quarters ended September 26, 2021 and incremental costs associated with cleaning and utilities as a result of continued expansion of our dine in capacity due to the recovery from the COVID-19 pandemic, as well as an increase in repair and maintenance, variable credit card fees and operating supplies.

General and Administrative Expenses

General and administrative expenses primarily consist of costs associated with our corporate and administrative functions that support restaurant development and operations, including marketing and advertising costs incurred as well as legal and professional fees. General and administrative expenses also include unit-based compensation expense. General and administrative expenses are impacted by changes in our team member count and costs related to strategic and growth initiatives.

General and administrative expenses for the quarter ended September 26, 2021 were \$11.8 million compared to \$9.7 million for the quarter ended September 27, 2020, an increase of \$2.0 million or 21.1%. This increase was primarily driven by an increase in salaries and wages attributable to annual rate increases, filling open positions, and training program costs for future restaurant managers as well as an increase in costs associated with being a public company, including costs related to preparation for compliance with Sarbanes-Oxley and other transaction-related fees and expenses. In 2020, the lower costs were driven by a disciplined cost reduction strategy across the majority of discretionary spend categories including travel and advertising.

General and administrative expenses for the three quarters ended September 26, 2021 were \$35.8 million compared to \$27.9 million for the three quarters ended September 27, 2020, an increase of \$7.8 million or 28.1%. This increase was primarily driven by an increase in salaries and wages attributable to annual rate increases, filling open positions, and training program costs for future restaurant managers, as well as an increase in costs associated with being a public company, including costs related preparation for compliance with Sarbanes-Oxley and other transaction-related fees and expenses. In 2020, the lower costs were driven by a disciplined cost reduction strategy across the majority of discretionary spend categories including travel and advertising.

Pre-Opening Expenses

Pre-opening expenses consist primarily of occupancy expenses, which represent rent expense recognized during the period between the date of possession of the restaurant facility and the restaurant opening date, wages, travel for the opening team and other supporting team members, food, beverage, and the initial stocking of operating supplies. All such costs incurred prior to the opening are expensed in the period in which the expense was incurred. Pre-opening expenses can fluctuate significantly from period to period, based on the number and timing of openings and the specific pre-opening expenses incurred for each restaurant. Additionally, restaurant openings in new geographic market areas will initially experience higher pre-opening expenses than our established geographic market areas, such as the Chicagoland area, where we have greater economies of scale and incur lower travel and lodging costs for our training team.

Pre-opening expenses for the quarter ended September 26, 2021 were \$0.3 million compared to \$0.5 million for the quarter ended September 27, 2020, a decrease of \$0.2 million or 36.2%. This decrease was due to the timing and geographic location of expected restaurant openings in the fourth quarter of 2021 versus 2020.

Pre-opening expenses for the three quarters ended September 26, 2021 were \$2.3 million compared to \$0.8 million for the three quarters ended September 27, 2020. The increase of \$1.5 million or 175.3%. This increase was due to three new restaurants opened in the three quarters ended September 26, 2021 compared to no new restaurants opened in the three quarters ended September 27, 2020.

Depreciation and Amortization

Depreciation and amortization expenses consist of the depreciation of fixed assets, including leasehold improvements, fixtures and equipment and the amortization of definite-lived intangible assets, which are primarily comprised of recipes, non-compete agreements and favorable leasehold positions.

Depreciation and amortization expense for the quarter ended September 26, 2021 was \$5.5 million compared to \$6.1 million for the quarter ended September 27, 2020, a decrease of \$0.6 million or 10.1%. This decrease was primarily attributable to an expiring non-compete intangible asset, partially offset by incremental depreciation of capital expenditures related to the opening of two new restaurants in the fourth quarter of 2020 and three new restaurants opened in the three quarters ended September 26, 2021.

Depreciation and amortization expense for the three quarters ended September 26, 2021 was \$18.2 million compared to \$18.4 million for the three quarters ended September 27, 2020, a decrease of \$1.3 million or 1.0%. This decrease was as primarily attributable to an expiring non-compete intangible asset, partially offset by incremental depreciation of capital expenditures related to the opening of five new restaurants in the fourth quarter of 2020 and during the three quarters ended September 26, 2021.

Net Income Attributable to Equity Method Investment

Net income attributable to equity method investment consists of a 50% interest in C&O, which runs a single restaurant located within the Chicagoland market. We account for the investment and financial results in the consolidated financial statements under the equity method of accounting as we have significant influence but do not have control.

Net income attributable to equity method investment for the quarter ended September 26, 2021 was \$0.3 million compared to \$0.1 million for the quarter September 27, 2020. This increase was primarily driven by increased revenues due to an increase in guest traffic as a result of the recovery from the COVID-19 pandemic.

Net income attributable to equity method investment for the three quarters ended September 26, 2021 was \$0.7 million compared to \$0.4 million for the three quarters ended September 27, 2020. This increase was primarily driven by increased revenues due to an increase in guest traffic as a result of the recovery from the COVID-19 pandemic.

Other Income, Net

Other income, net includes among other items, income resulting from discounts received for timely filing of sales tax returns, management fee income associated with our investment in C&O, trading gains or losses on our deferred compensation plan and gains or losses on asset disposals.

Other income, net for the quarter ended September 26, 2021 was \$0.3 million compared to \$0.5 million for the quarter ended September 27, 2020 an increase of \$0.2 million or 43.2%. This decrease was primarily due to a decrease in trading gains in our deferred compensation plan.

Other income, net for three quarters ended September 26, 2021 was \$1.1 million compared to \$1.1 million for the three quarters ended September 27, 2020, a decrease of \$0.0 million or 0.3%. Other income, net was flat primarily due to an increase in trading gains in our deferred compensation plan, offset by an increase in losses on asset disposals.

Interest Expense

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

Interest expense for quarter ended September 26, 2021 was \$10.7 million compared to \$10.8 million for quarter ended September 27, 2020, a decrease of \$0.1 million or 0.8%. This decrease was primarily driven by decreased borrowings on the First Lien Term B-3 Loans during the quarter ended September 26, 2021. There were no outstanding borrowings or repayments under the Revolving Facility during the quarter ended September 26, 2021 or the quarter ended September 27, 2020.

Interest expense for three quarters ended September 26, 2021 was \$32.1 million compared to \$34.3 million for three quarters ended September 27, 2020, a decrease of \$2.2 million or 6.3%. This decrease was primarily driven by decreased borrowings under the Revolving Facility during the three quarters ended September 26, 2021. There were no outstanding borrowings or repayments under the Revolving Facility during the quarter ended September 26, 2021.

Key Performance Indicators and Selected Operating Data

In addition to the GAAP measures presented in our financial statements, we use the following key performance indicators to evaluate our business, measure our performance, develop financial forecasts and make strategic decisions. These key measures include same-restaurant sales, new restaurant openings, average unit volume (AUV), Adjusted EBITDA, Adjusted EBITDA Margin, Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin. The Company includes these measures, including certain non-GAAP measures, because management believes that they are important to day-to-day operations and overall strategy and are useful to investors in that they provide for greater transparency with respect to supplemental information used by management in its financial and operational decision-making.

| | Quarter Ended | | Three Quarters Ended | |
|---|--------------------|--------------------|----------------------|--------------------|
| | September 26, 2021 | September 27, 2020 | September 26, 2021 | September 27, 2020 |
| Total Restaurants(a) | 67 | 62 | 67 | 62 |
| AUV (in millions) (a) | N/A | N/A | \$ 8.0 | \$ 8.0 |
| Change in same-restaurant sales (b) | 6.8 % | (2.1)% | 10.6 % | (7.2)% |
| Adjusted EBITDA (in thousands) | \$ 24,202 | \$ 26,434 | \$ 75,276 | \$ 64,297 |
| Adjusted EBITDA Margin | 17.5 % | 22.1 % | 19.0 % | 19.1 % |
| Restaurant-Level Adjusted EBITDA (in thousands) | \$ 34,243 | \$ 34,623 | \$ 107,069 | \$ 87,384 |
| Restaurant-Level Adjusted EBITDA Margin | 24.8 % | 28.9 % | 27.0 % | 25.9 % |

(a) Includes a restaurant that is owned by C&O Chicago, L.L.C. ("C&O") of which Portillo's owns 50% of the equity, as described in "Note 8 – Equity Method Investment" in the notes to the audited consolidated financial statements. In the table above, AUVs for the three quarters ended September 26, 2021 and September 27, 2020 represent AUVs for the Twelve Months Ended September 26, 2021 and September 27, 2020, respectively.

(b) Excludes a restaurant that is owned by C&O of which Portillo's owns 50% of the equity.

Change in Same-Restaurant Sales

The change in same-restaurant sales is the percentage change in year-over-year revenue (excluding gift card breakage) for the comparable restaurant base, which is defined as the number of restaurants open for at least 24 full fiscal periods (the "Comparable Restaurant Base"). For the three quarters ended September 26, 2021 and September 27, 2020, there were 60 and 55 restaurants in our Comparable Restaurant Base, respectively. The Comparable Restaurant Base excludes a restaurant that is owned by C&O, of which Portillo's owns 50% of the equity, as described in "Note 8 – Equity Method Investment" in the notes to the unaudited condensed consolidated financial statements.

Average Unit Volume ("AUV")

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

NON-GAAP FINANCIAL MEASURES

To supplement the consolidated financial statements, which are prepared and presented in accordance with GAAP, we use the following non-GAAP financial measures: Adjusted EBITDA and Adjusted EBITDA Margin, Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin.

Adjusted EBITDA and Adjusted EBITDA Margin

Adjusted EBITDA represents net income (loss) before depreciation and amortization, interest expense and income taxes, adjusted for the impact of certain non-cash and other items that we do not consider in our evaluation of ongoing core operating performance as identified in the reconciliation of net income (loss), the most directly comparable GAAP measure, to Adjusted EBITDA, included in "Non-GAAP Measures". Adjusted EBITDA Margin represents Adjusted EBITDA as a percentage of total revenues.

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

We believe that Adjusted EBITDA and Adjusted EBITDA Margin are important measures of operating performance because they eliminate the impact of expenses that do not relate to our core operating performance. Adjusted EBITDA and Adjusted EBITDA Margin are supplemental measures of operating performance and our calculations thereof may not be comparable to similar measures reported by other companies. Adjusted EBITDA and Adjusted EBITDA Margin have important limitations as analytical tools and should not be considered in isolation as substitutes for analysis of our results as reported under GAAP.

The following table reconciles net income to Adjusted EBITDA and Adjusted EBITDA margin (in thousands):

| | Quarter Ended | | Three Quarters Ended | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| | September 26, 2021 | September 27, 2020 | September 26, 2021 | September 27, 2020 |
| Net income | \$ 6,531 | \$ 8,104 | \$ 20,404 | \$ 7,371 |
| Depreciation and amortization | 5,516 | 6,138 | 18,225 | 18,404 |
| Interest expense | 10,683 | 10,766 | 32,124 | 34,298 |
| EBITDA | 22,730 | 25,008 | 70,753 | 60,073 |
| Deferred rent(1) | 781 | 738 | 2,375 | 2,050 |
| Unit-based compensation and consulting fees(2) | 337 | 687 | 1,611 | 2,064 |
| Other income(3) | 25 | (7) | 157 | 45 |
| Transaction-related fees & expenses(4) | 329 | 8 | 380 | 65 |
| Adjusted EBITDA | \$ 24,202 | \$ 26,434 | \$ 75,276 | \$ 64,297 |
| Adjusted EBITDA Margin | 17.5 % | 22.1 % | 19.0 % | 19.1 % |

(1) Represents the difference between cash rent payments and the recognition of straight-line rent expense recognized over the lease term.

(2) Represents unit-based compensation and consulting fees related to our former owner.

(3) Represents loss on disposal of property and equipment.

(4) Represents fees and expenses associated with public company readiness.

Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin

Restaurant-Level Adjusted EBITDA is defined as revenue, less restaurant operating expenses, which include cost of goods sold, excluding depreciation and amortization, labor expenses, occupancy expenses and other operating expenses. Restaurant-Level Adjusted EBITDA excludes corporate level expenses and depreciation and amortization on restaurant property and equipment. Restaurant-Level Adjusted EBITDA Margin represents Restaurant-Level Adjusted EBITDA as a percentage of revenue. Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are not required by, nor presented in accordance with GAAP. Rather, Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are supplemental measures of operating performance of our restaurants. You should be aware that Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are not indicative of overall results for the Company, and Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin do not accrue directly to the benefit of stockholders because of corporate-level expenses excluded from such measures. In addition, our calculations thereof may not be comparable to similar measures reported by other companies.

We believe that Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin are important measures to evaluate the performance and profitability of our restaurants, individually and in the aggregate. Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin have limitations as analytical tools and should not be considered as a substitute for analysis of our results as reported under GAAP.

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The following table reconciles operating income to Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin (in thousands):

| | Quarter Ended | | Three Quarters Ended | |
|---|-----------------------|--------------------|-----------------------|--------------------|
| | September 26, 2021 | September 27, 2020 | September 26, 2021 | September 27, 2020 |
| Operating income | \$ 17,214 | \$ 18,870 | \$ 52,528 | \$ 41,669 |
| Plus: | | | | |
| General and administrative expenses | 11,750 | 9,706 | 35,755 | 27,918 |
| Pre-Opening expenses | 347 | 544 | 2,307 | 838 |
| Depreciation and amortization | 5,516 | 6,138 | 18,225 | 18,404 |
| Net income attributable to equity method investment | (292) | (121) | (651) | (353) |
| Other income, net | (292) | (514) | (1,095) | (1,092) |
| Restaurant-Level Adjusted EBITDA | \$ 34,243 | \$ 34,623 | \$ 107,069 | \$ 87,384 |
| Restaurant-Level Adjusted EBITDA Margin | 24.8 % | 28.9 % | 27.0 % | 25.9 % |

Liquidity and Capital Resources

Our primary sources of liquidity are cash from operations, cash and cash equivalents on hand, and availability under our Revolving Facility. As of September 26, 2021, we maintained a cash and cash equivalents balance of \$49.6 million and had \$44.7 million of availability under our Revolver.

Our primary requirements for liquidity are to fund our working capital needs, operating lease obligations, capital expenditures, and general restaurant support center needs. Our requirements for working capital are 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 opening of new restaurants, existing capital investments (both for remodels and maintenance), as well as investments in our restaurant support center infrastructure.

Liquidity Upon IPO

On October 25, 2021, Portillo's Inc. completed the IPO of 23,310,810 shares of the Class A common stock (including 3,040,540 shares sold to the underwriters pursuant to their overallotment option). Portillo's Inc. received net proceeds from the offering of approximately \$429.9 million (after deducting underwriting fees and commissions and offering expenses). The net proceeds and cash on hand were used as follows:

- to repay the redeemable preferred units in full (including the redemption premium) of \$221.7 million;
- to repay all of the borrowings outstanding under the Second Lien Credit Agreement (including any prepayment penalties) of \$158.1 million; and
- to purchase LLC Units or shares of Class A common stock from certain pre-IPO LLC members of \$57.0 million.

In connection with the IPO, Portillo's Inc. entered into the Tax Receivable Agreement with the pre-IPO LLC Members, pursuant to which Portillo's Inc. is obligated to pay 85% of the amount of applicable cash tax savings, if any, in U.S. federal, state, and local income tax or franchise tax that Portillo's Inc. actually realizes as a result of (a) the increases in tax basis attributable to exchanges of LLC Units by pre-IPO LLC Members and (b) tax benefits related to imputed interest deemed to be paid by Portillo's Inc. as a result of the Tax Receivable Agreement. We will retain the benefit of the remaining 15% of these tax savings.

Summary of Cash Flows

The following table presents a summary of our cash flows from operating, investing and financing activities:

(in thousands)

| | Three Quarters Ended | |
|--|----------------------|--------------------|
| | September 26, 2021 | September 27, 2020 |
| Net cash provided by operating activities | \$ 39,891 | \$ 38,105 |
| Net cash used in investing activities | (27,764) | (10,108) |
| Net cash used in financing activities | (4,002) | (17,218) |
| Net increase in cash and cash equivalents and restricted cash | 8,125 | 10,779 |
| Cash and cash equivalents and restricted cash at beginning of period | 41,432 | 22,629 |
| Cash and cash equivalents and restricted cash at end of period | \$ 49,557 | \$ 33,408 |

Operating Activities

Net cash provided by operating activities for the three quarters ended September 26, 2021 was \$39.9 million compared to net cash provided by operating activities of \$38.1 million for the three quarters ended September 27, 2020, an increase of \$1.8 million or 4.7%. This increase was primarily driven by an increase in net income of \$13.0 million, and a change in operating assets and liabilities of \$11.4 million, partially offset by the impact of non-cash charges of \$0.1 million.

The \$11.4 million change in our operating asset and liability balances was primarily driven by operating assets and liabilities being a use of net cash of \$4.4 million in three quarters ended September 27, 2020, compared to a source of net cash of \$6.9 million in three quarters ended September 27, 2020 driven by an increase in the receipt of deferred lease incentives and the deferral of employer social security taxes of \$3.4 million pursuant to the CARES Act in the three quarters ended September 27, 2020. The CARES Act also allowed eligible employers to defer the remittance of certain FICA taxes otherwise payable during calendar year 2020 and remit half of such deferred amounts on or before December 31, 2021 and half on or before December 31, 2022.

Investing Activities

Net cash used in investing activities was \$27.8 million for the three quarters ended September 26, 2021 compared to net cash used in investing activities of \$10.1 million for the three quarters ended September 27, 2020, an increase of \$17.7 million or 174.7%. This increase was primarily due to the opening of three new restaurants in 2021 and the deferral of restaurant openings in 2020 to the fourth quarter.

Financing Activities

Net cash used in financing activities was \$4.0 million for the three quarters ended September 26, 2021 compared to net cash used in financing activities of \$17.2 million for the three quarters ended September 27, 2020, a decrease of \$13.2 million. This decrease is primarily due to no repayments on our Revolving Facility during the three quarters ended September 26, 2021 compared to repayments on borrowings of \$17.5 million during the three quarters ended September 27, 2020.

Revolving Facility and Liens

We maintain a Revolving Facility that provides for a revolving total commitment amount of \$50.0 million. The Revolving Facility will mature and all amounts outstanding will be due and payable in June 2024. The Revolving Facility permits the issuance of letters of credit upon our request.

In March 2020, we borrowed \$40.0 million under the Revolving Facility to enhance liquidity and provide financial flexibility given the uncertain market conditions created by the COVID-19 pandemic. We repaid this amount in full, plus interest, in June 2020.

As of September 26, 2021, there were no borrowings outstanding under the Revolver. We had \$44.7 million of availability, as of September 26, 2021, after giving effect to \$5.3 million in outstanding letters of credit.

In connection with the IPO, the Company received aggregate net proceeds of approximately \$429.9 million after deducting underwriting discounts and commissions and offering expenses. Net proceeds of \$158.1 million were used to repay the Second Lien Term B-3 Loans (including prepayment penalties) in full.

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Borrowings under the First Lien Credit Agreement and Second Lien Credit Agreement are guaranteed by PHD Intermediate LLC ("Holdings"), Portillo's Holdings LLC (the "Borrower") and certain of the Borrower's subsidiaries, and Holdings, the Borrower and certain of the Borrower's subsidiaries have pledged substantially all tangible and intangible assets as collateral, subject to certain exclusions and exceptions.

The Borrower is subject to certain financial and reporting covenants pursuant to the terms of the First Lien Credit Agreement and Second Lien Credit Agreement. These covenants are customary for these types of debt agreements. As of September 26, 2021, the Company was in compliance with all covenants.

Contractual Obligations

There have been no material changes to the contractual obligations as disclosed in our Registration Statement, other than those made in the ordinary course of business.

Off-Balance Sheet Arrangements

There have been no other material changes to our off-balance sheet arrangements as disclosed in our Registration Statement.

Critical Accounting Policies and Estimates

Our discussion and analysis of our condensed consolidated financial condition and results of operations is based upon the accompanying condensed consolidated financial statements and notes thereto, which have been prepared in accordance with GAAP. The preparation of the condensed consolidated financial statements requires us to make estimates, judgments and assumptions, which we believe to be reasonable, based on the information available. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. Variances in the estimates or assumptions used to actual experience could yield materially different accounting results. On an ongoing basis, we evaluate the continued appropriateness of our accounting policies and resulting estimates to make adjustments we consider appropriate under the facts and circumstances. There have been no significant changes to our critical accounting policies as disclosed in our Registration Statement.

See "Note 2 – Summary of Significant Accounting Policies-Recently Issued Accounting Standards" under Part I, Item 1 of this Form 10-Q.

JOBS Act

We qualify as an "emerging growth company" pursuant to the provisions of the Jumpstart our Business Startups ("JOBS") Act. For as long as we are an "emerging growth company," we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies," including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, exemptions from the requirements of holding advisory "say-on-pay" votes on executive compensation and shareholder advisory votes on golden parachute compensation.

In addition, Section 107 of the JOBS Act also provides that an "emerging growth company" can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. An "emerging growth company" can therefore delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We intend to take advantage of the extended transition period.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

There have been no material changes to our exposure to market risks as previously disclosed in our Registration Statement.

Item 4. Controls and Procedures.

EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES

Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of such date. Our disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

There were no changes to our internal control over financial reporting that occurred during the quarter ended September 26, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION



Item 1. Legal Proceedings.

Information regarding certain legal proceedings to which the Company is a party are discussed in "Note 12 – Contingencies" in the notes to the unaudited condensed consolidated financial statements and is incorporated herein by reference.

Item 1A. Risk Factors

There have been no material changes from the risk factors previously disclosed in the prospectus, dated October 20, 2021, filed pursuant to Rule 424(b)(4) with the SEC on October 22, 2021, relating to our IPO, which is available on the SEC's website at www.sec.gov.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

On October 20, 2021, our Registration Statement was declared effective by the SEC for our IPO of our Class A common stock. We registered the offering and sale of 23,310,810 shares of the Class A common stock (including 3,040,540 shares sold to the underwriters pursuant to their over-allotment option). On October 25, 2021, the Company completed its IPO of 23,310,810 shares of Class A common stock, for an aggregate offering price of \$466.2 million. The underwriters were Jefferies LLC, Morgan Stanley & Co. LLC, BofA Securities, Inc., Piper Sandler & Co., Robert W. Baird & Co. Incorporated, UBS Securities LLC, William Blair & Company, L.L.C, Guggenheim Securities, LLC, Stifel, Nicolaus & Company, Incorporated, Loop Capital Markets LLC and Samuel A. Ramirez & Company Inc..

At the closing, we received net proceeds of approximately \$429.9 million, after deducting the underwriting discount of approximately \$29.1 million and related fees and expense of approximately \$7.2 million. The net proceeds and cash on hand were used as follows:

- to repay the redeemable preferred units in full (including the redemption premium) of \$221.7 million;
- to repay all of the borrowings outstanding under the Second Lien Credit Agreement (including any prepayment penalties) of \$158.1 million; and
- to purchase LLC Units or shares of Class A common stock from certain pre-IPO LLC members of \$57.0 million.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

| Exhibit Number | Description | Filed Herewith |
|-------------------|---|-------------------|
| <u>3.1</u> | <u>Amended and Restated Certificate of Incorporation of Portillo's Inc.</u> | * |
| <u>3.2</u> | <u>Amended and Restated Bylaws of Portillo's Inc.</u> | * |
| <u>10.1(a)</u> | <u>First Lien Credit Agreement, dated as of August 1, 2014, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent and ledgers from time to time party thereto (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |
| <u>10.1(b)</u> | <u>First Amendment to First Lien Credit Agreement, dated as of October 25, 2016, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |
| <u>10.1(c)</u> | <u>Second Amendment to First Lien Credit Agreement, dated as of May 18, 2018, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |
| <u>10.1(d)</u> | <u>Third Amendment to First Lien Credit Agreement, dated as of December 6, 2019, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |
| <u>10.2(a)</u> | <u>Second Lien Credit Agreement, dated as of August 1, 2014, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent and the lenders from time to time party thereto (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |
| <u>10.2(b)</u> | <u>First Amendment to Second Lien Credit Agreement, dated as of October 25, 2014, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent and the lenders from time to time party thereto (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |
| <u>10.2(c)</u> | <u>Second Amendment to Second Lien Credit Agreement, dated as of December 6, 2019, among Portillo's Holdings, LLC, as Borrower, PHD Intermediate LLC, UBS AG, Stamford Branch, as administrative agent and collateral agent, and the lenders from time to time party thereto (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |
| <u>10.4</u> | <u>Portillo's Inc. 2021 Equity Incentive Plan</u> | * |
| <u>10.5</u> | <u>Form of Registration Rights Agreement</u> | * |
| <u>10.6(a)</u> | <u>Form of Restricted Stock Unit Award Agreement under Portillo's Inc. 2021 Equity Incentive Plan</u> | * |
| <u>10.6(b)</u> | <u>Form of Option Award Agreement under Portillo's Inc. 2021 Equity Incentive Plan</u> | * |
| <u>10.7</u> | <u>Form of 2021 Executive Officer and Director Indemnification Agreement for Portillo's Inc. (incorporated by reference to the Company's Registration Statement on Form S-1 filed on October 6, 2021).</u> | |
| <u>10.8</u> | <u>Employment Agreement between PHD Group Holdings LLC and Michael Osanloo, entered into as of August 3, 2018 (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |
| <u>10.9</u> | <u>Employment Agreement between PHD Group Holdings LLC and Sherri Abruscato, entered into as of August 1, 2014 (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |
| <u>10.10</u> | <u>Letter Agreement between PHD Group Holdings LLC and Michelle Hook entered into as of November 14, 2020 (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |
| <u>10.11</u> | <u>Letter Agreement between PHD Group Holdings LLC and Jill Waite entered into as of May 22, 2019 (incorporated by reference to the Company's Registration Statement on Form S-1 filed on September 27, 2021).</u> | |

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| | | |
|--------------|---|---|
| <u>10.12</u> | <u>Tax Receivable Agreement among Portillo's Inc. and the Parties named therein</u> | * |
| <u>10.13</u> | <u>Second Amended and Restated LLC Agreement of PHD Group Holdings LLC</u> | * |
| <u>31.1</u> | <u>Certification of the Principal Executive Officer pursuant to Securities Exchange Act Rules 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u> | * |
| <u>31.2</u> | <u>Certification of the Principal Financial Officer pursuant to Securities Exchange Act Rules 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u> | * |
| <u>32.1</u> | <u>Certifications of the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u> | # |
| 101.INS | 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 | XBRL Taxonomy Extension Schema Document | * |
| 101.CAL | XBRL Taxonomy Extension Calculation Linkbase Document | * |
| 101.DEF | XBRL Taxonomy Extension Definition Linkbase Document | * |
| 101.LAB | XBRL Taxonomy Extension Label Linkbase Document | * |
| 101.PRE | XBRL Taxonomy Extension Presentation Linkbase Document | * |
| 104 | Cover page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document | * |

* Filed Herewith

Furnished Herewith

SIGNATURE

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

Portillo's Inc.
(Registrant)

Date: November 18, 2021

By: /s/ Michael Osanloo
Michael Osanloo
President, Chief Executive Officer and Director
(Principal Executive Officer)

Date: November 18, 2021

By: /s/ Michelle Hook
Michelle Hook
Chief Financial Officer and Treasurer
(Principal Financial Officer)

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
of
PORTILLO'S INC.

(Pursuant to Section 242 and 245 of
the General Corporation Law of the State of Delaware)

Portillo's Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

FIRST: The name of the Corporation is Portillo's Inc. The date of filing of its original certificate of incorporation with the Secretary of State of the State of Delaware was June 8, 2021 (the "Previous Certificate of Incorporation") under the name Portillo's Inc.

SECOND: The Board of Directors of the Corporation (the "Board") adopted resolutions proposing to amend and restate the Previous Certificate of Incorporation, and the sole stockholder of the Corporation has duly approved the amendment and restatement by written consent pursuant to and in accordance with Section 228 of the DGCL.

THIRD: This Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation") has been duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (as from time to time in effect, the "DGCL").

FOURTH: This Certificate of Incorporation restated, integrates and further amends in its entirety the Previous Certificate of Incorporation to read as follows:

1. Name. The name of the Corporation is Portillo's Inc.
2. Address; Registered Office and Agent. The address of the Corporation's registered office in the State of Delaware is c/o the Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle and the name of its registered agent at such address is the Corporation Trust Company.
3. Purposes. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.
4. Number of Shares.

4.1 The total number of shares of all classes of stock that the Corporation shall have authority to issue is 440,000,000 shares, consisting of three classes as follows: (i) 380,000,000 shares of Class A common stock, with the par value of \$0.01 per share (the "Class A Common Stock"); (ii) 50,000,000 shares of Class B common stock, with the par value of \$0.00001 per share (the "Class B Common Stock" and, together with Class A Common Stock, the "Common Stock"); and (iii) 10,000,000 shares of preferred stock, with the par value of \$0.01 per share (the

“Preferred Stock”). Effective upon the effectiveness of the filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware (the “Reclassification Effective Time”), each share of common stock, par value \$0.01 per share (the “Old Common Stock”), issued and outstanding immediately prior to the Reclassification Effective Time, shall automatically, without further action on the part of the Corporation or any holder of such Old Common Stock, be reclassified as and become one (1) validly issued, fully paid and non-assessable share of Class A Common Stock.

4.2 Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, the number of authorized shares of any class of the Common Stock or the Preferred Stock may be increased or decreased, in each case by the affirmative vote of the holders of a majority of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL, and no vote of the holders of any class of the Common Stock or the Preferred Stock voting separately as a class will be required therefor. Notwithstanding the immediately preceding sentence, the number of authorized shares of any particular class may not be decreased below the number of shares of such class then outstanding, plus:

(i) in the case of Class A Common Stock, the number of shares of Class A Common Stock issuable in connection with (x) the redemption or exchange of all outstanding LLC Units corresponding to shares of Class B Common Stock, pursuant to Article 10 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC and (y) the exercise of outstanding options, warrants, exchange rights, conversion rights or similar rights for Class A Common Stock;

(ii) in the case of Class B Common Stock, the number of shares of Class B Common Stock issuable in connection with the exercise of outstanding options, warrants, exchange rights, conversion rights or similar rights for Class B Common Stock.

5. Classes of Shares. The designation, relative rights, preferences and limitations of the shares of each class of stock are as follows:

5.1 Common Stock.

(i) Voting Rights.

(1) Each holder of Class A Common Stock will be entitled to one vote for each share of Class A Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, and each holder of Class B Common Stock will be entitled to one vote for each share of Class B Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, except that, (x) in each case, to the fullest extent permitted by law and subject to Section 5.1(i)(2), holders of shares of each class of Common Stock, as such, will have no voting power with respect to, and will not be entitled to vote on, any amendment to this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of any outstanding Preferred Stock if the holders of such Preferred Stock are entitled to vote as a separate class thereon under this Certificate of Incorporation (including any certificate of

designations relating to any series of Preferred Stock) or under DGCL and (y) holders of shares of Class B Common Stock shall have no vote per share of Class B Common Stock issued to such holder with respect to LLC Units and Corresponding Management Holdings Units that are unvested until such time as such LLC Units or Corresponding Management Holdings Units have vested.

(2) (a) The holders of the outstanding shares of Class A Common Stock shall be entitled to vote separately upon any amendment to this Certificate of Incorporation (including by merger, consolidation, reorganization or similar event) that would alter or change the powers, preferences or special rights of such class of Common Stock in a manner that is disproportionately adverse as compared to the Class B Common Stock and (b) the holders of the outstanding shares of Class B Common Stock shall be entitled to vote separately upon any amendment to this Certificate of Incorporation (including by merger, consolidation, reorganization or similar event) that would alter or change the powers, preferences or special rights of such class of Common Stock in a manner that is disproportionately adverse as compared to the Class A Common Stock, it being understood that any merger, consolidation or other combination transaction shall not be deemed an amendment hereof if such merger, consolidation or other combination transaction (x) constitutes a Disposition Event in which holders of Paired Interests are required to exchange LLC Units pursuant to Section 10.04(b) of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC in such Disposition Event and receive consideration in such Disposition Event in accordance with the terms of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC as in effect prior to such Disposition Event and (y) provides for payments under or in respect of the tax receivable or similar agreement entered by the Corporation from time to time with any holder of Common Stock and/or securities of PHD Group Holdings LLC to be made in connection with any such merger, consolidation or other combination transaction in accordance with the terms of such tax receivable or similar agreement as in effect prior to such merger, consolidation or other combination transaction.

(3) Except as otherwise required in this Certificate of Incorporation or by applicable law, the holders of Common Stock will vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single class with the holders of Preferred Stock).

(4) If at any time the ratio at which LLC Units are redeemable or exchangeable for shares of Class A Common Stock pursuant to Article 10 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC is amended, the number of votes per corresponding share of Class B Common Stock to which holders of shares of Class B Common Stock are entitled pursuant to Section 5.1(i)(1) shall be automatically adjusted accordingly so that from and after such time, the aggregate number of votes that a holder of Class B Common Stock is entitled to vote with respect to all shares of Class B Common Stock held by such holder is equal to the number of share of Class A Common Stock subject to be redeemed or exchanged for all LLC Units held by such holder.

(ii) Dividends; Stock Splits or Combinations.

(1) Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference senior to or the right to participate with the Class A Common Stock with respect to the payment of dividends, dividends of cash, stock or property may be declared and paid on the Class A Common Stock out of the assets of the Corporation that are by law available therefor, at the times and in the amounts as the Board in its discretion may determine.

(2) Except as provided in Section 5.1(ii)(3) with respect to stock dividends, dividends of cash, stock or property may not be declared or paid on shares of Class B Common Stock.

(3) In no event will any stock dividend, stock split, reverse stock split, combination of stock, reclassification or recapitalization be declared or made on any class of Common Stock (each, a "Stock Adjustment") unless (a) a corresponding Stock Adjustment for all other classes of Common Stock not so adjusted at the time outstanding is made in the same proportion and the same manner and (b) the Stock Adjustment has been reflected in the same economically equivalent manner on all LLC Units. Stock dividends with respect to each class of Common Stock may only be paid with shares of stock of the same class of Common Stock.

(iii) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock are entitled, if any, the holders of all outstanding shares of Class A Common Stock will be entitled to receive the assets of the Corporation available for distribution ratably in proportion to the number of shares of Class A Common Stock. Without limiting the rights of the holders of Class B Common Stock to exchange their LLC Units for shares of Class A Common Stock in accordance with Section 10.01 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC (or for the consideration payable in respect of shares of Class A Common Stock in such voluntary or involuntary liquidation, dissolution or winding-up), the holders of shares of Class B Common Stock, as such, will not be entitled to receive, with respect to such shares, any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

5.2 Preferred Stock. Shares of Preferred Stock may be issued from time to time in one or more series of any number of shares, provided that the aggregate number of shares issued of any and all such series shall not exceed the total number of shares of Preferred Stock hereinabove authorized, and with such powers, including voting powers, if any, and the designations, preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, all as shall hereafter be stated and expressed in the resolution or resolutions providing for the designation and issue of such shares of Preferred Stock from time to time adopted by the Board pursuant to authority so to do which is hereby expressly vested in the Board. The powers, including voting powers, if any, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all

other series at any time outstanding. Each series of shares of Preferred Stock: (i) may have such voting rights or powers, full or limited, if any; (ii) may be subject to redemption at such time or times and at such prices, if any; (iii) may be entitled to receive dividends (which may be cumulative or noncumulative) at such rate or rates, on such conditions and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or series of stock, if any; (iv) may have such rights upon the voluntary or involuntary liquidation, winding-up or dissolution of, upon any distribution of the assets of, or in the event of any merger, sale or consolidation of, the Corporation, if any; (v) may be made convertible into or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of stock of the Corporation (or any other securities of the Corporation or any other Person) at such price or prices or at such rates of exchange and with such adjustments, if any; (vi) may be entitled to the benefit of a sinking fund to be applied to the purchase or redemption of shares of such series in such amount or amounts, if any; (vii) may be entitled to the benefit of conditions and restrictions upon the creation of indebtedness of the Corporation or any subsidiary, upon the issue of any additional shares (including additional shares of such series or of any other series) and upon the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by the Corporation or any subsidiary of, any outstanding shares of the Corporation, if any; (viii) may be subject to restrictions on transfer or registration of transfer, or on the amount of shares that may be owned by any Person or group of Persons; and (ix) may have such other relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof, if any; all as shall be stated in said resolution or resolutions of the Board providing for the designation and issue of such shares of Preferred Stock.

6. Class B Common Stock.

6.1 Retirement of Class B Shares. No holder of Class B Common Stock may Transfer shares of Class B Common Stock to any Person unless such holder transfers a corresponding number of LLC Units to the same Person in accordance with the provisions of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC, as such agreement may be amended from time to time in accordance with the terms thereof. If any outstanding share of Class B Common Stock ceases to be held by a holder of an LLC Unit, such share shall automatically and without further action on the part of the Corporation or such holder be transferred to the Corporation for no consideration and retired and cancelled.

6.2 Reservation of Shares of Class A Common Stock. The Corporation will at all times reserve and keep available out of its authorized and unissued shares of Class A Common Stock, solely for the purpose of the issuance upon the redemption or exchange of LLC Units, the number of shares of Class A Common Stock that are issuable upon the redemption or exchange of all outstanding LLC Units held by holders of Paired Interests, pursuant to Article 10 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC. The Corporation covenants that all the shares of Class A Common Stock that are issued upon the redemption or exchange of such Paired Interests will, upon issuance, be validly issued, fully paid and non-assessable.

6.3 Taxes. The issuance of shares of Class A Common Stock upon the exercise by holders of Paired Interests of their right under Section 10.01 of the Second Amended and

Restated LLC Agreement of PHD Group Holdings LLC to exchange their LLC Units or have their LLC Units redeemed will be made without charge to such holders for any transfer taxes, stamp taxes or duties or other similar tax in respect of the issuance; provided, however, that if any such shares of Class A Common Stock are to be issued in a name other than that of the then record holder of the LLC Units being redeemed or exchanged (or The Depository Trust Company or its nominee for the account of a participant of The Depository Trust Company that will hold the shares for the account of such holder), then such holder and/or the Person in whose name such shares are to be delivered, shall pay to the Corporation the amount of any tax that may be payable in respect of any transfer involved in the issuance or shall establish to the reasonable satisfaction of the Corporation that the tax has been paid or is not payable.

6.4 Preemptive Rights. To the extent LLC Units are issued pursuant to the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC to anyone other than the Corporation or a wholly owned subsidiary of the Corporation (including pursuant to Section 9.02 (or any equivalent successor provision) of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC), an equivalent number of shares of Class B Common Stock (subject to adjustment as set forth herein) shall concurrently be issued to the same Person to which such LLC Units are issued.

7. Board of Directors.

7.1 Powers of the Board. Except as otherwise provided by the DGCL or this Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board. In addition to the powers and authority expressly conferred upon them by applicable law or by this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock) or the By-laws of the Corporation (the "By-laws"), the Board is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, except as otherwise specifically required by law or as otherwise provided in this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock).

7.2 Number of Directors. The total number of directors of the Corporation (the "Directors") constituting the Board shall be at least one, and subject to any rights of the holders of any series of Preferred Stock then outstanding to elect additional directors under specified circumstances or otherwise, the total number of directors constituting the whole Board of Directors shall be determined from time to time exclusively by resolutions adopted by the Board of Directors.

7.3 Elections of Directors. Directors shall be elected annually at the annual meeting of stockholders which need not be by written ballot except to the extent provided in the By-laws.

7.4 Advance Notice. Advance notice of nominations for the election of Directors or proposals of other business to be considered by stockholders, made other than by the Board or a duly authorized committee thereof or any authorized officer of the Corporation to whom the Board or such committee shall have delegated such authority, shall be given in the manner provided in the By-laws. Without limiting the generality of the foregoing, the By-laws may

require that such advance notice include such information as the Board may deem appropriate or useful.

7.5 Removal of Directors. Subject to the terms of any one or more series or classes of Preferred Stock, any Director who is elected to serve may be removed from office during such term, at any time by the affirmative vote of the holders of at least a majority of the voting power of the Corporation's outstanding shares of stock entitled to vote generally in the election of Directors, voting together as a single class, with or without cause.

7.6 Term. Directors shall hold office until the first annual meeting following their election and until the election and qualification of their respective successors in office or until such Director's earlier death, resignation or removal.

7.7 Director Elections by Holders of Preferred Stock. Notwithstanding the foregoing, whenever the holders of any one or more series or classes of Preferred Stock shall have the right, voting separately by series or class, to elect one or more Directors at an annual or special meeting of stockholders, the election, filling of vacancies, removal of Directors and other features of such one or more directorships shall be governed by the terms of such one or more series or classes of Preferred Stock to the extent permitted by law. During any period when the holders of any series of Preferred Stock, voting separately as a series or together with one or more series, have the right to elect additional directors, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, resignation, disqualification or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

8. Stockholder Action by Written Consent. Subject to the terms of any one or more series or classes of Preferred Stock, from and prior to the time that the Berkshire Sponsor and its Affiliates collectively beneficially own (as shall be determined in accordance with Rules 13d-3 and 13d-5 of the Exchange Act) less than 50% of the voting power of then outstanding shares of capital stock of the Corporation, any action required or permitted to be taken by the stockholders of the Corporation may, except as otherwise required by law or the Certificate of Incorporation, be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of record of the issued and outstanding capital stock of the Corporation having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled

to vote thereon were present and voted, and the writing or writings are filed with the permanent records of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. For purposes of this Section, "Affiliates" shall have the meaning set forth in Section 18(b) below; provided, however, that for the purposes of this definition none of (i) the Corporation, its subsidiaries and any entities (including corporations, partnerships, limited liability companies or other Persons) in which the Corporation or its subsidiaries hold, directly or indirectly, an ownership interest, on the one hand, or (ii) the Berkshire Sponsor and its affiliates (excluding the Corporation, its subsidiaries or other entities described in clause (i)), on the other hand, shall be deemed to be "Affiliates" of one another.

9. Meetings of Stockholders.

9.1 An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting shall be held at such place, on such date, and at such time as shall be fixed exclusively by resolution of the Board or duly authorized committee thereof.

9.2 Subject to the terms of any one or more series or classes of Preferred Stock, special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called at any time, but only by or at the direction of a majority of the Board, the Chairperson or the chief executive officer of the Corporation.

9.3 There shall be no cumulative voting in the election of directors. Unless and except to the extent that the By-laws shall so require, the election of the Directors need not be by written ballot.

9.4 Any meeting of stockholders may be postponed, rescheduled or canceled by action of the Board at any time in advance of such meeting. The Board shall have the power to adopt such rules and regulations for the conduct of the meetings and management of the affairs of the Corporation as they may deem proper and the power to adjourn or recess any meeting of stockholders without a vote of the stockholders, which powers may be delegated by the Board to the Chairperson in either such rules and regulations or pursuant to the By-laws.

9.5 Meetings of stockholders may be held within or without the State of Delaware, as the By-laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the By-laws of the Corporation.

10. Business Combinations.

10.1 Section 203 of the DGCL. The Corporation shall not be governed by Section 203 of the DGCL, and the restrictions contained therein shall not apply to the Corporation.

10.2 Limitations on Business Combinations. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in

time at which the Class A Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:

(i) prior to such time, the Board approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder; or

(ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least eighty-five percent (85%) of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (1) persons who are directors and also officers of the Corporation and (2) employee stock plans of the Corporation in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

(iii) at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 $\frac{2}{3}$ % of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

10.3 Exceptions to Prohibition on Interested Stockholder Transactions. The restrictions contained in this Section 10 shall not apply if:

(i) a stockholder becomes an interested stockholder inadvertently and (A) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an interested stockholder; and (B) would not, at any time within the three- year period immediately prior to a business combination between the Corporation and such stockholder, have been an interested stockholder but for the inadvertent acquisition of ownership; or

(ii) the business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (A) constitutes one of the transactions described in the second sentence of this Section 10.3(ii); (B) is with or by a person who either was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of the Board; and (C) is approved or not opposed by a majority of the directors then in office (but not less than one) who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Corporation (except for a merger in respect of which, pursuant to Section 251(f) of the DGCL, no vote of the stockholders of the Corporation is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation (other than to any direct or indirect wholly-owned subsidiary or to the Corporation) having an aggregate market value equal to fifty percent (50%) or more of either that aggregate market value of all of the assets of the Corporation determined

on a consolidated basis or the aggregate market value of all the outstanding stock (as defined hereinafter) of the Corporation; or (z) a proposed tender or exchange offer for fifty percent (50%) or more of the outstanding voting stock of the Corporation. The Corporation shall give not less than 20 days' notice to all interested stockholders prior to the consummation of any of the transactions described in clause (x) or (y) of the second sentence of this Section 10.3(ii).

10.4 Section 10 Definitions. As used in this Section 10 only, and unless otherwise provided by the express terms of this Section 10, the following terms shall have the meanings ascribed to them as set forth in this Section 10.4 and, to the extent such terms are defined elsewhere in this Certificate of Incorporation, such definition shall not apply to this Section 10:

(i) "associate" when used to indicate a relationship with any Person, means: (1) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of twenty percent (20%) or more of any class of voting stock; (2) any trust or other estate in which such Person has at least a twenty percent (20%) beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity; and (3) any relative or spouse of such Person, or any relative of such spouse, who has the same residence as such Person.

(ii) "business combination" when used in reference to the Corporation and any interested stockholder of the Corporation, means:

(1) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (i) with the interested stockholder, or (ii) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation, Section 10.2 is not applicable to the surviving entity;

(2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

(3) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (a) pursuant to the exercise, exchange or conversion of the securities exercisable for, exchangeable for or convertible into stock of the Corporation or any subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (b) pursuant to a merger under Section 251(g) of the DGCL; (c) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested

stockholder became such; (d) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (e) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (c)-(e) of this Section 10.4(ii)(3) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(4) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

(5) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in Sections 10.4(ii)(1) or 10.4(ii)(4) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(iii) "control," including the terms "controlling," "controlled by" and "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting stock, by contract, or otherwise. A Person who is the owner of twenty percent (20%) or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such Person holds voting stock, in good faith and not for the purpose of circumventing this Section 10, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group (as such term is used in Rule 13d-5 under the Exchange Act, as such Rule is in effect as of the date of this Certificate of Incorporation) have control of such entity.

(iv) "interested stockholder" means any Person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of fifteen percent (15%) or more of the outstanding voting stock of the Corporation, or (ii) is an affiliate or associate of the Corporation and was the owner of fifteen percent (15%) or more of the outstanding voting stock of the Corporation at any time within the three (3) year period immediately prior to the date on which it is sought to be determined whether such Person is an interested stockholder, and the affiliates and associates of such Person; provided, however, that the term "interested stockholder" shall in no case include or be deemed to include (1) the Investors or their direct and indirect transferees, or (2) any Person whose ownership of share in excess of the fifteen percent (15%) limitation set forth herein is the result of any action taken solely by the Corporation; provided that such Person specified in this clause (2) shall be an interested stockholder if thereafter such Person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by

such Person. For the purpose of determining whether a Person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include voting stock deemed to be owned by the Person through application of the definition of “owner” below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(v) “Investors” means the Berkshire Sponsor and any of its affiliates or successors or any group, or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, for so long as they collectively own, directly or indirectly, 5% or more of the voting power of the Corporation’s then outstanding shares of voting stock and of the Corporation, for so long as they collectively own, directly or indirectly, 5% or more of the voting power of the Corporation’s then outstanding shares of voting stock of the Corporation.

(vi) “owner,” including the terms “own” and “owned,” when used with respect to any stock, means a Person that individually or with or through any of its affiliates or associates:

(1) beneficially owns such stock, directly or indirectly; or

(2) has (a) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants, options, or otherwise; provided, however, that a Person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such Person or any of such Person’s affiliates or associates until such tendered stock is accepted for purchase or exchange; or (b) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a Person shall not be deemed the owner of any stock because of such Person’s right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more Persons; or

(3) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in clause (b) of Section 10.4(vi)(2)), or disposing of such stock with any other Person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

(vii) “stock” means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(viii) “voting stock” means, with respect to any corporation, stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock in this Section 10 shall refer to such percentage of the votes of such voting stock.

11. Limitation of Liability of Directors. To the fullest extent permitted by the DGCL, as the same exists or as may hereafter be amended, no director of the Corporation shall have any personal liability to the Corporation or any of its stockholders for monetary damages for any breach of fiduciary duty as a director. If the DGCL is amended hereafter to permit the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended, without further action by the Corporation. Any alteration, amendment, addition to or repeal of this Section 11, or adoption of any provision of this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock) inconsistent with this Section 11, shall not reduce, eliminate or adversely affect any right or protection of a director of the Corporation existing at the time of such alteration, amendment, addition to, repeal or adoption with respect to acts or omissions occurring prior to such alteration, amendment, addition to, repeal or adoption.

12. Indemnification and Advancement. The Corporation shall indemnify, advance expenses to and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any current or former director or officer of the Corporation (“Indemnitee”) who was or is made or is threatened to be made a party or is otherwise involved in any “Proceeding,” which shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Corporation or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative (formal or informal) nature, including appeal therefrom, in which Indemnitee was, is, will or might be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Corporation, by reason of any action (or failure to act) taken by him or her of any action (or failure to act) on his or her part while acting as a director or officer of the Corporation, or by reason of the fact that Indemnitee is or was serving at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Section 12. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this Section 12. Neither any amendment nor repeal of this Section 12, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Section 12, shall eliminate or reduce the effect of this Section 12 in respect of any acts or omissions occurring prior to such alteration, amendment, addition to, repeal or adoption. This provision should be read in conjunction with Article VI of the Bylaws.

13. Amendment to the By-Laws. In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board is expressly authorized and empowered to make, alter, amend, add to or repeal any and all By-laws by resolution of the Board of Directors. In addition to any vote required by this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock) or applicable law, the affirmative vote of the holders of at least a majority of the voting power of the Corporation’s then outstanding shares entitled to vote generally in the election of directors, voting together as a

single class, shall be required for the stockholders to make, alter, amend, add to or repeal any or all By-laws of the Corporation or to adopt any provision inconsistent therewith.

14. Amendment. The Corporation reserves the right, at any time and from time to time, to alter, amend, add to or repeal any provision contained in this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock) in any manner now or hereafter prescribed by the laws of the State of Delaware, and all rights, preferences, privileges and powers of any nature conferred upon stockholders, directors or any other Persons herein are granted subject to this reservation.

15. Exclusive Forum.

15.1 Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery lacks jurisdiction, a state court located within the State of Delaware or the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for: any (a) derivative action or proceeding brought on behalf of the Corporation; (b) action asserting a claim of breach of a fiduciary duty owed by or other wrongdoing by any current or former director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders; (c) action asserting a claim arising under any provision of the DGCL or this Certificate of Incorporation or the By-laws (as either may be amended from time to time), or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; or (d) action asserting a claim governed by the internal affairs doctrine. This Section 15.1 shall not apply in any respect to claims or causes of action brought to enforce a duty or liability created by the Securities Act of 1933, as amended (the "Securities Act"), or the Securities Exchange Act of 1934, as amended, or the rules and regulations promulgated thereunder or any other claim or cause of action for which the federal courts have exclusive jurisdiction.

15.2 Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any action asserting a claim arising under the Securities Act or the rules and regulations promulgated thereunder.

16. Severability. If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its Directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

17. Corporate Opportunity. To the fullest extent permitted by Section 122(17) of the DGCL and except as may be otherwise expressly agreed in writing by the Corporation, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, business opportunities, which are from time to time presented to the Berkshire Sponsor or any of their respective managers, officers, directors, agents, stockholders, members, partners, affiliates and subsidiaries (other than the Corporation and its subsidiaries), even if the opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and, to the fullest extent permitted by law, no such person or entity shall be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such person or entity pursues or acquires such business opportunity, directs such business opportunity to another person or entity or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or its subsidiaries unless, in the case of any such person who is a director or officer of the Corporation, such business opportunity is expressly offered to such director or officer in writing solely in his or her capacity as a director or officer of the Corporation. Neither the alteration, amendment, addition to or repeal of this Section 17, nor the adoption of any provision of this Certificate of Incorporation (including any certificate of designations relating to any series or class of Preferred Stock) inconsistent with this Section 17, shall eliminate or reduce the effect of this Section 17 in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Section 17, would accrue or arise, prior to such alteration, amendment, addition, repeal or adoption.

18. Definitions. As used in this Certificate of Incorporation, unless the context otherwise requires or as set forth in another Section of this Certificate of Incorporation, the term:

(a) “PHD Group Holdings LLC” means PHD Group Holdings LLC, a Delaware limited liability company or any successor thereto.

(b) “Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person; provided, that (i) neither the Corporation nor any of its subsidiaries will be deemed an Affiliate of any stockholder of the Corporation or any of such stockholders’ Affiliates and (ii) no stockholder of the Corporation will be deemed an Affiliate of any other stockholder of the Corporation, in each case, solely by reason of any investment in the Corporation.

(c) “Berkshire Sponsor” means Berkshire Partners LLC.

(d) “control” (including the terms “controlling” and “controlled”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of such subject Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise.

(e) “Director” is defined in Section 7.2.

(f) “Disposition Event” means any merger, consolidation or other business combination of the Corporation, whether effectuated through one transaction or series of related transactions (including a tender offer followed by a merger in which holders of Class A Common Stock receive the same consideration per share paid in the tender offer), unless, following such transaction, all or substantially all of the holders of the voting power of all outstanding classes of Common Stock and series of Preferred Stock that are generally entitled to vote in the election of Directors prior to such transaction or series of transactions, continue to hold a majority of the voting power of the surviving entity (or its direct or indirect parent) resulting from such transaction or series of transactions in substantially the same proportions as immediately prior to such transaction or series of transactions.

(g) “Enterprise” means the Corporation and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Corporation (or any of their wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, of which Indemnitee is or was serving at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary or employee.

(h) “Exchange Act” means the Securities Exchange Act of 1934, as amended, and any successor law or statute, together with the rules and regulations promulgated thereunder.

(i) “LLC Unit” means a nonvoting interest unit of PHD Group Holdings LLC.

(j) “Paired Interest” means one LLC Unit together with one share of Class B Common Stock, subject to adjustment pursuant to Article 10 of the Second Amended and Restated LLC Agreement of PHD Group Holdings LLC.

(k) “Permitted Transferee” means (i) in the case of any transferor that is not a natural person, any Person that is an Affiliate of such transferor and (ii) in the case of any transferor that is a natural person, (A) any Person to whom Common Stock is transferred from such transferor (1) by will or the laws of descent and distribution or (2) by gift without consideration of any kind; provided that, in the case of clause (2), such transferee is the spouse, the lineal descendant, sibling, parent, heir, executor, administrator, testamentary trustee, legatee or beneficiary of such transferor, (B) a trust that is for the exclusive benefit of such transferor or its Permitted Transferees under (A) above or (C) any institution qualified as tax-exempt under Section 501(c)(3) of the Code.

(l) “Person” means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity.

(m) “Second Amended and Restated LLC Agreement of PHD Group Holdings LLC” means the Second Amended and Restated Limited Liability Company Agreement, dated as of October 20, 2021, by and among the Corporation, the other members of PHD Group Holdings LLC and the other Persons that may become parties thereto from time to time, as the same may be amended, restated, supplemented and/or otherwise modified, from time to time.

(n) “Transfer” of a share of Class B Common Stock means, directly or indirectly, any sale, assignment, transfer, exchange, gift, bequest, pledge, hypothecation or other disposition or encumbrance of such share or any legal or beneficial interest in such share, in whole or in part, whether or not for value and whether voluntary or involuntary or by operation of law; provided, however, that the following shall not be considered a “Transfer”: (i) entering into a voting trust, agreement or arrangement (with or without granting a proxy) solely with the Corporation and/or its stockholders that (x) is disclosed either in a Schedule 13D filed with the Securities and Exchange Commission or in writing to the Secretary of the Corporation, (y) either has a term not exceeding one (1) year or is terminable by the holder of the shares subject thereto at any time and (z) does not involve any payment of cash, securities, property or other consideration to the holder of the shares subject thereto other than the mutual promise to vote shares in a designated manner; (ii) entering into a customary voting or support agreement (with or without granting a proxy) in connection with any merger, consolidation or other combination transaction of the Corporation, whether effectuated through one transaction or series of related transactions (including a tender offer followed by a merger in which holders of Class A Common Stock receive the same consideration per share paid in the tender offer); (iii) the pledge of shares of capital stock of the Corporation by a stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction so long as such stockholder continues to exercise sole voting control over such pledged shares; provided, however, that a foreclosure on such shares or other similar action by the pledgee shall constitute a “Transfer”; or (iv) the fact that the spouse of any holder of Class B Common Stock possesses or obtains an interest in such holder’s shares of Class B Common Stock arising solely by reason of the application of the community property laws of any jurisdiction, so long as no other event or circumstance shall exist or have occurred that constitutes a “Transfer” of such shares of Class B Common Stock.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation of Portillo's Inc. has been duly executed by the officer below this 20th day of October, 2021.

By: /s/ Michael Osanloo
Name: Michael Osanloo
Title: Chief Executive Officer

[Signature Page to Amended and Restated Certificate of Incorporation]

WEIL:198095539\11\68083.0004

AMENDED AND RESTATED BYLAWS**OF****PORTILLO'S, INC.
(a Delaware corporation)****Effective October 20, 2021****ARTICLE I****STOCKHOLDERS**

Section I.01. Annual Meetings. The annual meeting of the stockholders of Portillo's, Inc. (the "Corporation") for the election of directors and for the transaction of such other business as properly may come before such meeting shall be held at such place, either within or without the State of Delaware, or, within the sole discretion of the Board of Directors of the Corporation (the "Board of Directors" or "Board"), and subject to such guidelines and procedures as the Board of Directors may adopt, by means of remote communication as authorized by the General Corporation Law of the State of Delaware (the "DGCL"), and at such date and at such time as may be fixed from time to time by resolution of the Board of Directors and set forth in the notice of the meeting.

Section I.02. Special Meetings. Special meetings of the stockholders of the Corporation may be called as set forth in the Certificate of Incorporation of the Corporation. Any such special meetings of the stockholders shall be held at such places, within or without the State of Delaware, or, within the sole discretion of the Board of Directors, and subject to such guidelines and procedures as the Board of Directors may adopt, by means of remote communication as authorized by the DGCL, as shall be specified in the respective notice thereof.

Section I.03. Stockholder Action by Consent. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote only to the extent permitted by and in the manner provided in the Certificate of Incorporation of the Corporation (as it may be amended from time to time, the "Certificate of Incorporation") and in accordance with applicable law.

Section I.04. Notice of Meetings; Waiver.

(a) Unless otherwise prescribed by statute or the Certificate of Incorporation of the Corporation, the Secretary of the Corporation or any Assistant Secretary shall cause notice of the place, if any, date and hour of each meeting of the stockholders, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, to be given personally by mail or by electronic transmission, or as otherwise provided in these Bylaws, not fewer than ten (10) nor more than sixty (60) days prior to the meeting, except as otherwise required by applicable law, the Certificate of Incorporation or these Bylaws.

(b) All such notices shall be delivered in writing or in any other manner permitted by the DGCL. If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the Corporation. If delivered by courier service, notice shall be deemed given at the earlier of when the notice is received or left at such stockholder's address as the same appears on the records of the Corporation. If given by electronic mail, notice shall be deemed given when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by the DGCL. Notice to stockholders may also be given by other forms of electronic transmission consented to by the stockholder. If given by facsimile telecommunication, such notice shall be deemed given when directed to a number at which the stockholder has consented to receive notice by facsimile. If given by a posting on an electronic network together with separate notice to the stockholder of such specific posting, such notice shall be deemed given upon the later of (x) such posting and (y) the giving of such separate notice. If notice is given by any other form of electronic transmission, such notice shall be deemed given when directed to the stockholder.

(c) Notwithstanding Section 1.04(b) of this Article I, a notice may not be given by electronic transmission (including email) from and after the time: (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation; and (ii) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent or other person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. For purposes of these Bylaws, except as otherwise limited by applicable law, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such recipient through an automated process. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation. A notice by electronic mail will include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files or information.

(d) A written waiver of any notice of any annual or special meeting signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders need be specified in a written waiver of notice. Attendance of a stockholder at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(e) If a stockholder meeting is to be held by means of remote communication and stockholders will take action at such meeting, the notice of such meeting must: (i) specify the means of remote communication, if any, by which stockholders and proxyholders may be

deemed to be present and vote at such meeting; and (ii) provide, or be accompanied by, the information required to access the stockholder list. A waiver of notice may be given by electronic transmission.

Section I.05. Quorum. Except as otherwise required by law or by the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of record of a majority in voting power of the shares entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business at such meeting. Where a separate vote by one or more classes or series is required, the presence in person or by proxy of the holders of record of a majority in voting power of the shares entitled to vote shall constitute a quorum entitled to take action with respect to that vote on that matter. Shares of the Corporation's capital stock shall neither be entitled to vote nor counted for quorum purposes if such shares belong to (i) the Corporation, (ii) another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation or (iii) any other entity, if a majority of the voting power of such other entity is otherwise controlled, directly or indirectly, by the Corporation; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section I.06. Voting.

(a) Except as otherwise provided by or pursuant to the provisions of the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question.

(b) Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, directors shall be elected as set forth in Section 2.02 of these Bylaws. All other matters presented to the stockholders at a meeting at which a quorum is present shall, unless a different or minimum vote is required by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the Corporation which are present in person or by proxy and entitled to vote thereon.

Section I.07. Voting by Ballot. No vote of the stockholders on an election of directors or any other matter need be taken by written ballot or by electronic transmission unless otherwise provided in the Certificate of Incorporation or required by law.

Section I.08. Postponement and Adjournment. Any meeting of stockholders may be postponed, rescheduled or cancelled by action of the Board of Directors at any time in advance of such meeting. If a quorum is not present at any meeting of the stockholders, the Chairperson of such meeting shall have the power to adjourn the meeting without a vote of the stockholders. In the absence of a quorum, the stockholders so present may, by the affirmative vote of the holders of a majority in voting power of the shares of the Corporation which are

present in person or by proxy and entitled to vote thereon, adjourn the meeting from time to time until a quorum shall attend. Notice of any adjourned meeting of the stockholders of the Corporation need not be given if the place, if any, date and hour thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section I.09. Proxies. Any stockholder entitled to vote at any meeting of the stockholders may authorize another person or persons to vote at any such meeting and express such vote on behalf of such stockholder by proxy. A stockholder may authorize a valid proxy by executing a written instrument signed by such stockholder, or by causing such stockholder's signature to be affixed to such writing by any reasonable means including, but not limited to, by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person designated as the holder of the proxy, a proxy solicitation firm or a like authorized agent. Such proxy must be filed with the Secretary of the Corporation before or at the time of the meeting at which such proxy will be voted. No such proxy shall be voted or acted upon after the expiration of three (3) years from the date of such proxy, unless such proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing with the Secretary of the Corporation either an instrument in writing revoking the proxy or another duly executed proxy bearing a later date. Proxies by telegram, cablegram, or other electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the stockholder. Any copy or other reliable reproduction of a writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section I.10. Organization; Procedure. At every meeting of stockholders, the Chairperson of such meeting shall be the Chairperson of the Board or, if no Chairperson of the Board has been elected or in the event of his or her absence or disability, a Chairperson chosen by the Board of Directors. The Secretary of the Corporation, or in the event of his or her absence or disability, an Assistant Secretary, if any, or if there be no Assistant Secretary, in the absence of the Secretary of the Corporation, an appointee of the Chairperson of the meeting, shall act as Secretary of the meeting. The order of business and all other matters of procedure at every meeting of stockholders may be determined by the Chairperson of such meeting.

Section I.11. Business at Annual and Special Meetings. No business may be transacted at an annual or special meeting of stockholders other than business that is:

(a) specified in a notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or a duly authorized committee thereof,

(b) otherwise brought before the meeting by or at the direction of the Board of Directors or a duly authorized committee thereof or any authorized officer of the Corporation to whom the Board of Directors or such committee shall have delegated such authority, or

(c) otherwise brought before the meeting by a "Record Holder" who complies with the notice procedures set forth in Section 1.12 of these Bylaws.

A "Record Holder" is a stockholder that holds of record stock of the Corporation entitled to vote at the meeting on the business (including any election of a director) to be appropriately conducted at the meeting. Clause (c) of this Section 1.11 shall be the exclusive means for a Record Holder to make director nominations or submit other business before a meeting of stockholders (other than proposals brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of meeting, which proposals are not governed by these Bylaws). Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at a stockholders' meeting except in accordance with the procedures set forth in Section 1.11 and Section 1.12 of these Bylaws.

Section I.12. Notice of Stockholder Business and Nominations. In order for a Record Holder to properly bring any item of business before a meeting of stockholders, the Record Holder must give timely notice thereof in writing to the Secretary of the Corporation in compliance with the requirements of this Section 1.12. This Section 1.12 shall constitute an "advance notice provision" for annual meetings for purposes of Rule 14a-4(c)(1) under the Exchange Act.

(a) To be timely, a Record Holder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation:

(i) in the case of an annual meeting of stockholders, not earlier than the open of business on the one-hundred twentieth (120th) day and not later than the close of business on the ninetieth (90th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the open of business on the one-hundred twentieth (120th) day prior to the date of such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to the date of such annual meeting or, if the first public announcement by the Corporation of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation;

(ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not earlier than the open of business on the one-hundred

twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the date on which notice of the date of the special meeting was made by the Corporation, mailed or public disclosure of the date of the special meeting was made, whichever first occurs; and

(iii) in no event shall any adjournment or postponement of an annual or special meeting, or the announcement thereof, commence a new time period (or extend the time period) for the giving of a stockholder's notice as described above.

(b) To be in proper form, whether in regard to a nominee for election to the Board of Directors or other business, a Record Holder's notice to the Secretary must:

(i) set forth, as to the Record Holder, the following information together with a representation as to the accuracy of the information:

(A) the name and address of the Record Holder as they appear on the Corporation's books (the "Holder");

(B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by the Holder or any Stockholder Associated Person of the Record Holder (except that such Holder or Stockholder Associated Person of the Record Holder shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Holder or Stockholder Associated Person of the Record Holder has a right to acquire beneficial ownership at any time in the future) and the date such ownership was acquired;

(C) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the price, value or volatility of any class or series of shares of the Corporation, whether or not the instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") that is directly or indirectly owned beneficially by the Holder or any Stockholder Associated Person of the Record Holder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the price, value or volatility of shares of the Corporation;

(D) any proxy, contract, arrangement, understanding or relationship pursuant to which the Holder or Stockholder Associated Person of the Record Holder has a right to vote or has granted a right to vote any shares of any security of the Corporation;

(E) any short interest in any security of the Corporation (for purposes of these Bylaws a person shall be deemed to have a short interest in a security if the Holder or any Stockholder Associated Person of the Record Holder directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise,

has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security);

(F) any rights to dividends on the shares of any security of the Corporation owned beneficially by the Holder or any Stockholder Associated Person of the Record Holder that are separated or separable from the underlying shares of the Corporation;

(G) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or limited liability company or similar entity in which the Holder or any Stockholder Associated Person of the Record Holder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, is the manager, managing member or directly or indirectly beneficially owns an interest in the manager or managing member of a limited liability company or similar entity;

(H) any performance-related fees (other than an asset-based fee) that the Holder or any Stockholder Associated Person of the Record Holder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments or short interests, if any;

(I) any arrangements, rights, or other interests described in Sections 1.12(b)(i)(C)-(H) held by members of such Holder's immediate family sharing the same household;

(J) a representation that the Record Holder intends to appear in person or by proxy at the meeting to nominate the person(s) named or propose the business specified in the notice and whether or not such stockholder intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding shares required to approve the nomination(s) or the business proposed and/or otherwise to solicit proxies from stockholders in support of the nomination(s) or the business proposed;

(K) a certification regarding whether or not such Holder and any Stockholder Associated Person of the Record Holder have complied with all applicable federal, state and other legal requirements in connection with such Holder's and/or Stockholder Associated Persons' acquisition of shares or other securities of the Corporation and/or such Holder's and/or Stockholder Associated Persons' acts or omissions as a stockholder of the Corporation;

(L) any other information relating to the Holder and/or Stockholder Associated Person of the Record Holder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder; and

(M) any other information as reasonably requested by the Corporation.

Such information shall be provided as of the date of the notice and shall be supplemented by the Holder not later than ten (10) days after the record date for the meeting to disclose such ownership as of the record date.

(ii) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, the notice must set forth:

(A) a reasonably detailed description of the business desired to be brought before the meeting (including the text of any resolutions proposed for consideration), the reasons for conducting such business at the meeting, and any material direct or indirect interest of the Holder or any Stockholder Associated Persons in such business; and

(B) a reasonably detailed description of all agreements, arrangements and understandings, direct and indirect, between the Holder, and any other person or persons (including their names) in connection with the proposal of such business by the Holder.

(iii) set forth, as to each person, if any, whom the Holder proposes to nominate for election or reelection to the Board of Directors:

(A) all information with respect to such proposed nominee that would be required to be set forth in a Record Holder's notice pursuant to this Section 1.12 if such proposed nominee were a Record Holder;

(B) all information relating to the nominee (including, without limitation, the nominee's name, age, business and residence address and principal occupation or employment and the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the nominee) that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

(C) a description of any agreements, arrangements and understandings between or among such stockholder or any Stockholder Associated Person, on the one hand, and any other persons (including any Stockholder Associated Person), on the other hand, in connection with the nomination of such person for election as a director; and

(D) a description of all direct and indirect compensation and other material monetary agreements, arrangements, and understandings during the past three years, and any other material relationships, between or among the Holder and

respective affiliates and associates, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K if the Holder making the nomination or on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the “registrant” for purposes of Item 404 and the nominee were a director or executive officer of such registrant.

(iv) with respect to each nominee for election or reelection to the Board of Directors, the Record Holder shall include a completed and signed questionnaire, representation, and agreement required by Section 1.13 of these Bylaws. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of the proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder’s understanding of the independence, or lack thereof, of the nominee. The number of nominees a Record Holder may nominate for election at an annual or special meeting (or in the case of Record Holder giving the notice on behalf of a beneficial owner, the number of nominees a Record Holder may nominate for election at the annual or special meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual or special meeting.

(c) For purposes of these Bylaws:

(i) “public announcement” shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Exchange Act and the rules and regulations thereunder;

(ii) “Stockholder Associated Person” means, with respect to any stockholder, (A) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depository) and (B) any person controlling, controlled by or under common control with any stockholder, or any Stockholder Associated Person identified in clause (A) above; and

(iii) “Affiliate” and “Associate” are defined by reference to Rule 12b-2 under the Exchange Act. An “affiliate” is any “person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.” “Control” is defined as the “possession, direct or indirect, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract, or otherwise.” The term “associate” of a person means: (i) any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of ten (10) percent or more of any class of equity securities, (ii) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (iii) any relative or spouse of such person, or any relative

of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(d) Only those persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible to serve as directors. Only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these Bylaws, provided, however, that, once business has been properly brought before the meeting in accordance with Section 1.12, nothing in this Section 1.12(d) shall be deemed to preclude discussion by any stockholder of such business. If any information submitted pursuant to this Section 1.12 by any stockholder proposing a nominee(s) for election as a director at a meeting of stockholders is inaccurate in any material respect, such information shall be deemed not to have been provided in accordance with Section 1.12. Except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws, the Chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in compliance with the procedures set forth in these Bylaws and, if he or she should determine that any proposed nomination or business is not in compliance with these Bylaws, he or she shall so declare to the meeting and any such nomination or business not properly brought before the meeting shall be disregarded or not be transacted.

(e) Notwithstanding the foregoing provisions of these Bylaws, a Record Holder also shall comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in these Bylaws; provided, however, that any references in these Bylaws to the Exchange Act or the rules thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 1.11 or Section 1.12 of these Bylaws.

(f) Nothing in these Bylaws shall be deemed to (i) affect any rights of (A) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (B) the holders of any series of preferred stock, if any, if so provided under any applicable certificate of designation for such preferred stock or in the Certificate of Incorporation, or (ii) affect any rights of any holders of common stock pursuant to a stockholders' agreement with the Corporation existing on the date on which these Bylaws were adopted or impose any requirements, restrictions or limitations under Sections 1.11, 1.12 or 1.13 of these Bylaws unless expressly imposed by any such stockholders' agreement.

Section I.13. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation by a Holder, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Section 1.12 of these Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire providing the information requested about the background and qualifications of such person and the background of any other person or entity on whose behalf the nomination is being made and a written representation and agreement (the questionnaire, representation, and agreement to be in the form provided by the Secretary upon written request) that such person:

(a) is not and will not become a party to:

(i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the person, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation, or

(ii) any Voting Commitment that could limit or interfere with the person’s ability to comply, if elected as a director of the Corporation, with the person’s fiduciary duties under applicable law,

(b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, and

(c) in the person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

Section I.14. Inspectors of Elections. Preceding any meeting of the stockholders, if required by law, the Board of Directors shall appoint one (1) or more persons to act as “inspectors” of elections, and may designate one (1) or more alternate inspectors. In the event no inspector or alternate is able to act, the Chairperson of such meeting shall appoint one (1) or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the duties of an inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector shall:

(a) ascertain the number of shares outstanding and the voting power of each;

(b) determine the shares represented at a meeting, the authenticity, validity, and effect of proxies and ballots, and the existence of a quorum;

(c) specify the information relied upon to determine the validity of electronic transmissions in accordance with Section 1.09 of these Bylaws;

(d) count all votes and ballots;

(e) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors;

(f) certify his or her determination of the number of shares represented at the meeting, and his or her count of all votes and ballots;

(g) appoint or retain other persons or entities to assist in the performance of the duties of inspector;

(h) when determining the shares represented and the validity of proxies and ballots, be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Section 1.09 of these Bylaws, ballots and the regular books and records of the Corporation. The inspector may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers or their nominees or a similar person which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspector considers other reliable information as outlined in this section, the inspector, at the time of his or her certification pursuant to paragraph (f) of this section, shall specify the precise information considered, the person or persons from whom the information was obtained, when this information was obtained, the means by which the information was obtained, and the basis for the inspector's belief that such information is accurate and reliable; and

(i) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

Section I.15. Opening and Closing of Polls. The date and time for the opening and the closing of the polls for each matter to be voted upon at a stockholder meeting shall be fixed by the Chairperson of the meeting and announced at the meeting. The inspector shall be prohibited from accepting any ballots, proxies or votes or any revocations thereof or changes thereto after the closing of the polls, unless the Delaware Court of Chancery upon application by a stockholder shall determine otherwise.

Section I.16. List of Stockholders Entitled to Vote. The Corporation shall prepare, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting either (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, such list shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.16 or to vote in person or by proxy at any meeting of the stockholders. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list.

ARTICLE II

BOARD OF DIRECTORS

Section II.01. General Powers. Except as may otherwise be provided by the DGCL or the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon it by applicable law, the Certificate of Incorporation (including any certificate of designations relating to any series of preferred stock) or these Bylaws, the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, except as otherwise specifically required by law or as otherwise provided in the Certificate of Incorporation (including any certificate of designations relating to any series of preferred stock).

Section II.02. Number, Election and Qualification. Subject to the terms of any one or more series of preferred stock, the total number of directors constituting the Board of Directors shall be at least one, or such larger number as may be fixed from time to time exclusively by resolution adopted by the Board of Directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires. At any meeting of stockholders at which directors are to be elected, directors shall be elected by the plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote thereon. Directors need not be stockholders of the Corporation. To the extent set forth in the Certificate of Incorporation, the directors of the Corporation shall be divided into classes with terms set forth therein.

Section II.03. The Chairperson of the Board. The Board of Directors may elect a Chairperson of the Board from among its members. If elected, the Board of Directors shall designate the Chairperson of the Board as either a non-executive Chairperson of the Board or an executive Chairperson of the Board. The Chairperson of the Board shall not be deemed an officer of the Corporation, unless the Board shall determine otherwise. Subject to the control vested in the Board by statute, by the Certificate of Incorporation, or by these Bylaws, the Chairperson of the Board shall, if present, preside over all meetings of the stockholders and of the Board and shall have such other duties and powers as from time to time may be assigned to him or her by the Board, the Certificate of Incorporation or these Bylaws. References in these Bylaws to the "Chairperson of the Board" shall mean the non-executive Chairperson of the Board or executive Chairperson of the Board, as designated by the Board of Directors from time to time. In the absence (or inability or refusal to act) of the Chairperson of the Board, the Chief Executive Officer (if such person shall be a director) or such other director or officer of the Corporation designated by the Chairperson of the Board shall preside when present at all meetings of the stockholders and the Board.

Section II.04. Annual and Regular Meetings. The annual meeting of the Board of Directors for the purpose of electing officers and for the transaction of such other business as may come before the meeting shall be held after the annual meeting of the stockholders and may be held at such places within or without the State of Delaware and at such times as the Board may from time to time determine, and if so determined notice thereof need not be given. Notice of such annual meeting of the Board of Directors need not be given. The Board of Directors

from time to time may by resolution provide for the holding of regular meetings and fix the place (which may be within or without the State of Delaware) and the date and hour of such meetings. Notice of regular meetings need not be given, provided, however, that if the Board of Directors shall fix or change the time or place of any regular meeting, notice of such action shall be mailed promptly, or sent by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, electronic mail or other electronic means, to each director who shall not have been present at the meeting at which such action was taken, addressed to him or her at his or her usual place of business, or shall be delivered to him or her personally. Notice of such action need not be given to any director who attends the first regular meeting after such action is taken, except when the director attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section II.05. Special Meetings; Notice. Special meetings of the Board of Directors for any purpose or purposes shall be held whenever called by the Chairperson of the Board, Chief Executive Officer or by the Board of Directors pursuant to the following sentence, at such place (within or without the State of Delaware), date and hour as may be specified in the notices of such meetings. Special meetings of the Board of Directors also may be held whenever called pursuant to a resolution approved by the Board of Directors. Notice shall be duly given to each director (a) in person or by telephone at least twenty-four (24) hours in advance of the meeting, (b) by sending written notice by reputable overnight courier, telecopy, or other means of electronic transmission, or delivering written notice by hand, to such director's last known business, home or means of electronic transmission address at least twenty-four (24) hours in advance of the meeting, or (c) by sending written notice by first-class mail to such director's last known business or to such other address as any director may request by notice to the Secretary at least seventy-two (72) hours in advance of the meeting. Notice of any special meeting need not be given to any director who attends such meeting except when the director attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section II.06. Quorum; Voting. At all meetings of the Board of Directors, the presence of at least a majority of the total number of directors shall constitute a quorum for the transaction of business. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, the vote of at least a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors.

Section II.07. Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting of the Board of Directors to another time or place.

Section II.08. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission. After the action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board of Directors or committee.

Section II.09. Regulations; Manner of Acting. To the extent consistent with applicable law, the Certificate of Incorporation and these Bylaws, the Board of Directors may adopt by resolution such rules and regulations for the conduct of meetings of the Board of Directors and for the management of the property, affairs and business of the Corporation as the Board of Directors may deem appropriate. The directors shall act only as a Board of Directors and the individual directors shall have no power in their individual capacities unless expressly authorized by the Board of Directors.

Section II.10. Action by Telephonic Communications. Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear and communicate with each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section II.11. Resignations. Any director may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such director, to the Corporation. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section II.12. Removal of Directors. Directors may be removed from office as provided in the Certificate of Incorporation.

Section II.13. Vacancies and Newly Created Directorships. Subject to the terms of any one or more series of preferred stock, any vacancies in the Board of Directors for any reason and any newly created directorships resulting by reason of any increase in the number of directors shall be filled only by the Board of Directors acting by a majority of the Board of Directors, even if less than a quorum, or by a sole remaining director, and any directors so appointed shall hold office until the next election of the class of directors to which such directors have been appointed and until their successors are duly elected and qualified, except that, for so long as holders of common stock may act by written consent, such vacancies may also be filled by a majority of the voting power of the Corporation's outstanding shares of common stock entitled to vote generally in the election of directors, voting together as a single class.

Section II.14. Compensation. The amount, if any, which each director shall be entitled to receive as compensation for such director's services, shall be fixed from time to time by resolution of the Board of Directors or any committee thereof or as an agreement between the Corporation and any director. The directors may be reimbursed their out-of-pocket expenses, if any, of attendance at each meeting of the Board of Directors in accordance with the Corporation's policies in effect from time to time and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation and reimbursement for service as committee members.

Section II.15. Reliance on Accounts and Reports, Etc. A director, or a member of any committee designated by the Board of Directors, shall, in the performance of such director's or member's duties, be fully protected in relying in good faith upon the records of the

Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees designated by the Board of Directors, or by any other person as to the matters the director or the member reasonably believes are within such other person's professional or expert competence and who the director or member reasonably believes or determines has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE III

COMMITTEES

Section III.01. Committees. The Board of Directors, by resolution, may designate from among its members one (1) or more committees of the Board of Directors, each consisting of one or more directors as from time to time may be fixed by the Board of Directors. Any such committee shall serve at the pleasure of the Board of Directors. The Board of Directors may appoint a Chairperson of any committee, who shall preside at meetings of any such committee. The Board of Directors may elect one (1) or more of its members as alternate members of any such committee who may take the place of any absent or disqualified member or members at any meeting of such committee, upon request of the Chairperson of the Board or the Chairperson of such committee.

Section III.02. Powers. Subject to any limitation imposed by applicable law, each committee shall have and may exercise such powers of the Board of Directors as may be provided by resolution or resolutions of the Board of Directors or provided in charters or other organization documents of such committee approved by the Board of Directors. No committee shall have the power or authority: to approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted by the Board of Directors to the stockholders for approval; or to adopt, amend or repeal the Bylaws of the Corporation.

Section III.03. Proceedings. Except as otherwise provided herein or required by law, each committee may fix its own rules of procedure and may meet at such place (within or without the State of Delaware), at such time and upon such notice, if any, as it shall determine from time to time. Each committee shall keep minutes of its proceedings and shall report such proceedings to the Board of Directors at the meeting of the Board next following any such proceedings.

Section III.04. Quorum and Manner of Acting. Except as may be otherwise provided in the resolution creating such committee or in the rules of such committee, at all meetings of any committee, the presence of members (or alternate members) constituting a majority of the total number of committee members serving shall constitute a quorum for the transaction of business, except that, in the case of one-member committees, the presence of one member shall constitute a quorum and in the case of two-member committees, the presence of two members shall constitute a quorum. The act of the majority of the members present at any meeting at which a quorum is present shall be the act of such committee. Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting, in accordance with Section 2.08 of Article II of these Bylaws. The members of any committee

shall act only as a committee, and the individual members of such committee shall have no power in their individual capacities unless expressly authorized by the Board of Directors or the committee.

Section III.05. Action by Telephonic Communications. Unless otherwise provided by the Board of Directors, members of any committee may participate in a meeting of such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear and communicate with each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section III.06. Absent or Disqualified Members. In the absence or disqualification of a member of any committee, if no alternate member is present to act in his or her stead, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Section III.07. Resignations. Any member (and any alternate member) of any committee may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such member, to the Board of Directors or the Chairperson of the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery.

Section III.08. Removal. Any member (and any alternate member) of any committee may be removed at any time, either for or without cause, by resolution adopted by the Board of Directors.

Section III.09. Vacancies. If any vacancy shall occur in any committee, by reason of disqualification, death, resignation, removal or otherwise, the remaining members (and any alternate members) shall continue to act, and any such vacancy may be filled by the Board of Directors.

ARTICLE IV

OFFICERS

Section IV.01. Chief Executive Officer. The Board of Directors may elect a Chief Executive Officer to serve at the pleasure of the Board of Directors. The Chief Executive Officer shall (a) supervise the implementation of policies adopted or approved by the Board of Directors, (b) exercise a general supervision and superintendence over all the business and affairs of the Corporation subject to the authority of the Board of Directors, (c) appoint and remove subordinate officers, agents and employees, except those appointed by the Board of Directors, and (d) possess such other powers and perform such other duties as may be assigned to him or her by these Bylaws, as may from time to time be assigned by the Board of Directors and as may be incident to the office of Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general authority to execute bonds, deeds and contracts in the name of the Corporation, except where required or permitted by law to be otherwise signed and executed and

except that the other officers of the Corporation may sign and execute documents when so authorized by these Bylaws, the Board of Directors or the Chief Executive Officer.

Section IV.02. Chief Financial Officer of the Corporation. The Board of Directors may elect a Chief Financial Officer of the Corporation to serve at the pleasure of the Board of Directors. The Chief Financial Officer of the Corporation shall (a) have the custody of the corporate funds and securities, except as otherwise provided by the Board of Directors, (b) keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, (c) deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors, (d) disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and (e) render to the Chief Executive Officer and the Board of Directors, whenever they may require it, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Corporation.

Section IV.03. Treasurer and Assistant Treasurers. The Board of Directors may elect a Treasurer of the Corporation and any number of Assistant Treasurers to serve at the pleasure of the Board of Directors. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board or the Chief Executive Officer or the Chief Financial Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these Bylaws, to disburse such funds as authorized by the Board or the Chief Executive Officer, to make proper accounts of such funds, and to render as required by the Board statements of all such transactions and of the financial condition of the Corporation. The Assistant Treasurers shall perform such duties and possess such powers as the Board, the Chief Executive Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board) shall perform the duties and exercise the powers of the Treasurer.

Section IV.04. Secretary of the Corporation. The Board of Directors shall elect a Secretary of the Corporation to serve at the pleasure of the Board of Directors. The Secretary of the Corporation shall (a) keep minutes of all meetings of the stockholders and of the Board of Directors, (b) authenticate records of the Corporation, (c) give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and (d) in general, have such powers and perform such other duties as may be assigned to him or her by these Bylaws, as may from time to time be assigned to him or her by the Board of Directors or the Chief Executive Officer and as may be incident to the office of Secretary of the Corporation. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then the Board of Directors may choose another officer to cause such notice to be given. The Secretary shall see that all books, reports, statements certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be, which may be kept or filed (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors.

Section IV.05. Other Officers Elected by Board of Directors. At any meeting of the Board of Directors, the Board of Directors may elect a President (who may or may not be the Chief Executive Officer), a Chief Operations Officer, Vice Presidents, Assistant Secretaries or such other officers of the Corporation as the Board of Directors may deem necessary, to serve at the pleasure of the Board of Directors. Other officers elected by the Board of Directors shall have such powers and perform such duties as may be assigned to such officers by or pursuant to authorization of the Board of Directors or by the Chief Executive Officer. Any number of offices may be held by the same person.

Section IV.06. Term of Office. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign, but, subject to the requirements of the Certificate of Incorporation, any officer may be removed pursuant to the provisions set forth in Section 4.07.

Section IV.07. Removal and Resignation; Vacancies. Any officer may be removed for or without cause at any time by the Board of Directors. Any officer may resign at any time by delivering a resignation in writing or by electronic transmission, signed or given by such officer, to the Board of Directors, the Chief Executive Officer or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise, shall be filled by or pursuant to authorization of the Board of Directors.

Section IV.08. Authority and Duties of Officers. The officers of the Corporation shall have such authority and shall exercise such powers and perform such duties as may be specified in these Bylaws or pursuant to authorization of the Board of Directors, or which generally pertain to such officer's title and each officer shall exercise such powers and perform such duties as may be required by law.

ARTICLE V

CAPITAL STOCK

Section V.01. Certificates of Stock. The Board of Directors may authorize that some or all of the shares of any or all of the Corporation's classes or series of stock be evidenced by a certificate or certificates of stock. The Board of Directors may also authorize the issue of some or all of the shares of any or all of the Corporation's classes or series of stock without certificates. The rights and obligations of stockholders with the same class and/or series of stock shall be identical whether or not their shares are represented by certificates.

(a) Shares with Certificates. If the Board of Directors chooses to issue shares of stock evidenced by a certificate or certificates, each individual certificate shall include the following on its face: (i) the Corporation's name, (ii) the fact that the Corporation is organized under the laws of Delaware, (iii) the name of the person to whom the certificate is issued, (iv) the number of shares represented thereby, (v) the class of shares and the designation of the series, if any, which the certificate represents, and (vi) such other information as applicable law may require or as may be lawful. If the Corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations

determined for each class or series (and the authority of the Board of Directors to determine variations for future series) shall be summarized on the front or back of each certificate. Alternatively, each certificate shall state on its front or back that the Corporation will furnish the stockholder this information in writing, without charge, upon request. Each certificate of stock issued by the Corporation shall be signed by any two officers of the Corporation. If the person who signed a certificate no longer holds office when the certificate is issued, the certificate is nonetheless valid.

(b) Shares without Certificates. If the Board of Directors chooses to issue shares of stock without certificates, the Corporation, shall, within a reasonable time after the issue or transfer of shares without certificates, send the stockholder a written notice containing the information required to be set forth or stated on certificates pursuant to the laws of the DGCL. The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

Section V.02. Signatures. All signatures on the certificate referred to in Section 5.01 of these Bylaws may be in engraved or printed form, to the extent permitted by law. In case any officer, transfer agent or registrar who has signed, or whose engraved or printed signature has been placed upon a certificate, shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section V.03. Lost, Stolen or Destroyed Certificates. Except as provided in this Section 5.03, no new share certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may direct that a new certificate be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon delivery to the Corporation of an affidavit (or other document acceptable to the Corporation) of the owner or owners of such certificate, setting forth such allegation. The Corporation may require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond (or other security, including an indemnification agreement) sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

Section V.04. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, the Corporation shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Within a reasonable time after the transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the laws of the DGCL. Subject to the provisions of the Certificate of Incorporation and these Bylaws, the Board of Directors may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, transfer and registration of shares of the Corporation. Except as otherwise required by law, no transfer of stock shall be valid against the Corporation for any purpose until it shall have been

entered in the stock records of the Corporation by an entry showing the names of the persons from and to whom it was transferred.

Section V.05. Record Date.

(a) In order to determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty (60) nor fewer than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, provided, however, that the Board of Directors may fix a new record date for the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights of the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section V.06. Registered Stockholders. The Corporation may treat the registered owner as the person exclusively entitled to receive dividends and other distributions, to vote, to receive notice and otherwise to exercise all the rights and powers of the owner of the shares represented by such certificate.

Section V.07. Transfer Agent and Registrar. The Board of Directors may appoint one (1) or more transfer agents and one (1) or more registrars, and may require all certificates representing shares to bear the signature of any such transfer agents or registrars.

ARTICLE VI

INDEMNIFICATION

Section VI.01. Indemnification and Advancement of Expenses. The Corporation shall indemnify and provide advancement to any Indemnitee (as defined below) to the fullest extent permitted by law, as such may be amended from time to time. The rights to indemnification and advancement conferred in this Section shall be contract rights. In furtherance of the foregoing indemnification and advancement obligations, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Corporation. Any Indemnitee shall be entitled to the rights of indemnification and advancement provided in this Section 6.01(a) if, by reason of his or her Corporate Status (as defined below), Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding other than a Proceeding by or in the right of the Corporation. Pursuant to this Section 6.01(a), any Indemnitee shall be indemnified against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her, or on his or her behalf, in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal Proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Corporation. Any Indemnitee shall be entitled to the rights of indemnification and advancement provided in this Section 6.01(b) if, by reason of his or her Corporate Status, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Corporation. Pursuant to this Section 6.01(b), any Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been finally adjudged to be

liable to the Corporation unless and to the extent that the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine that such indemnification may be made.

(c) Other Sources. The Corporation hereby acknowledges that Indemnitees may have certain rights to indemnification, advancement of expenses and/or insurance provided by sources other than the Corporation (“Third Party Indemnitors”). The Corporation hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to the Indemnitees are primary and any obligation of the Third Party Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by the Indemnitees are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by the Indemnitees and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement by reason of such Indemnitee’s Corporate Status to the extent legally permitted and as required by the terms of this paragraph and the Bylaws of the Corporation from time to time (or any other agreement between the Corporation and the Indemnitees), without regard to any rights the Indemnitees may have against the Third Party Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Third Party Indemnitors from any and all claims against the Third Party Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Third Party Indemnitors on behalf of the Indemnitees with respect to any claim for which the Indemnitees have sought indemnification from the Corporation shall affect the foregoing and the Third Party Indemnitors shall have a right of contribution and/or to be subrogated to the extent of such advancement or payment to all of the rights of recovery of the Indemnitees against the Corporation. The Corporation and the Indemnitees agree that the Third Party Indemnitors are express third party beneficiaries of the terms of this paragraph.

Section VI.02. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Article VI, to the extent that any Indemnitee is, by reason of his or her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If such Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 6.02 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section VI.03. Employees and Agents. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Indemnitees when and as authorized by appropriate corporate action. Without limiting the generality of the foregoing, the Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and advancement of expenses to employees and agents of the Corporation.

Section VI.04. Advancement of Expenses. Notwithstanding any other provision of this Article VI, the Corporation shall advance all Expenses incurred by or on behalf of any Indemnatee in connection with any Proceeding by reason of Indemnatee's Corporate Status within thirty (30) days after the receipt by the Corporation of a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding, and regardless of such Indemnatee's ability to repay any such amounts in the event of an ultimate determination that Indemnatee is not entitled thereto. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnatee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnatee to repay any Expenses advanced if it shall ultimately be determined that Indemnatee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 6.04 shall be unsecured and interest free.

Section VI.05. Non-Exclusivity. The rights to indemnification and to the payment of Expenses incurred in defending a Proceeding in advance of the final disposition of such Proceeding conferred in this Article VI shall not be exclusive of any other rights which any person may have or hereafter acquire under applicable law, the Certificate of Incorporation, these Bylaws, any agreement, vote of stockholders, resolution of directors or otherwise. The assertion or employment of any right or remedy in this Article VI, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

Section VI.06. Insurance. The Corporation shall have the power to purchase and maintain insurance, at its expense, to the fullest extent permitted by law, as such may be amended from time to time. Without limiting the generality of the foregoing, the Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director, officer, employee or agent of the Corporation, or who is serving, was serving, or has agreed to serve at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, against any liability asserted against him or her and incurred by him or her or on his or her behalf in such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability.

Section VI.07. Indemnification and Advancement. The Corporation shall indemnify, advance expenses to and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (Indemnatee) who was or is made or is threatened to be made a party or is otherwise involved in any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Corporation or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative (formal or informal) nature, including appeal therefrom, in which Indemnatee was, is, will or might be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnatee is or was a director, officer, employee or agent of the Corporation, by reason of any action (or failure to act) taken by him or her of any action (or failure to act) on his or her part while acting as a director or officer of the Corporation, or by reason of the fact that Indemnatee is or was serving at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or

not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Section 6.07.

Section VI.08. Exception to Rights of Indemnification and Advancement. Notwithstanding any provision in this Article VI, the Corporation shall not be obligated by this Article VI to make any indemnity or advancement in connection with any claim made against an Indemnitee:

(a) subject to Section 6.01(c), for which payment has actually been made to or on behalf of such Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by such Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law;

(c) for reimbursement to the Corporation of any bonus or other incentive-based or equity based compensation or of any profits realized by Indemnitee from the sale of securities of the Corporation in each case as required under the Exchange Act; or

(d) in connection with any Proceeding (or any part of any Proceeding) initiated by such Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by such Indemnitee against the Corporation or its directors, officers, employees or other Indemnitees, unless (i) the Corporation has joined in or, prior to such Proceeding's initiation, the Board of Directors authorized such Proceeding (or any part of such Proceeding), (ii) the Corporation provides the indemnification or advancement, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law, or (iii) the Proceeding is one to enforce such Indemnitee's rights under this Article VI, Section 12 of the Certificate of Incorporation, or any other indemnification, advancement or exculpation rights to which Indemnitee may at any time be entitled under applicable law or any agreement.

Section VI.09. Definitions. For purposes of this Article VI:

(a) "Corporate Status" describes the status of an individual who is or was or has agreed to become a director or officer of the Corporation or while an officer or director of the Corporation who is serving, was serving, or has agreed to serve at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise.

(b) "Enterprise" shall mean the Corporation and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Corporation (or any of their wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, of which Indemnitee is or was serving at the request of the Corporation as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.

(c) “Expenses” shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all attorneys’ fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services, any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Article VI, ERISA excise taxes and penalties, and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding, including, without limitation, reasonable compensation for time spent by the Indemnitee for which he or she is not otherwise compensated by the Corporation or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the principal, premium, security for, and other costs relating to any cost bond, supersedes bond, or other appeal bond or its equivalent.

(d) “Indemnitee” means any current or former director or officer of the Corporation; and

(e) “Proceeding” shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Corporation or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative (formal or informal) nature, including appeal therefrom, in which Indemnitee was, is, will or might be involved as a party, potential party, non-party witness or otherwise by reason of the fact of Indemnitee’s Corporate Status, by reason of any action (or failure to act) taken by him or of any action (or failure to act) on his part while acting pursuant to his Corporate Status, whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Article VI. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a Proceeding, this shall be considered a Proceeding under this Article VI.

Section VI.10. Right of Indemnitee to Bring Suit. If a claim under this Article VI is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, Indemnitee may at any time thereafter bring suit against the Corporation in the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware to recover the unpaid amount of the claim. In any such action, the Corporation shall have the burden of proving that Indemnitee was not entitled to the requested indemnification, advancement or payment of Expenses. It shall be a defense to any such action (other than an action brought to enforce a claim for Expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that Indemnitee has not met the standards of conduct which make it permissible under these Bylaws, the Certificate of Incorporation or the DGCL for the Corporation to indemnify Indemnitee for the amount claimed. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that

indemnification or advancement is proper in the circumstances because Indemnitee has met the applicable standard of conduct set forth in these Bylaws, the Certificate of Incorporation or the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met any applicable standard of conduct. If successful, in whole or in part, Indemnitee shall also be entitled to be paid the Expenses of prosecuting such action to the fullest extent permitted by law.

Section VI.11. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section VI.12. Change in Rights. Neither any amendment nor repeal of this Article VI, nor the adoption of any provision in these Bylaws inconsistent with this Article VI, shall eliminate or reduce the effect of this Article VI in respect of any acts or omissions occurring prior to such alteration, amendment, addition to, repeal or adoption.

ARTICLE VII

GENERAL PROVISIONS

Section VII.01. Dividends. Subject to any applicable provisions of law or the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting of the Board of Directors and any such dividend may be paid in cash, property or shares of the Corporation's capital stock. A member of the Board of Directors, or a member of any committee designated by the Board of Directors, shall be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who the director or member reasonably believes or determines has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities and/or net profits of the Corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

Section VII.02. Execution of Instruments. The Board of Directors may authorize, or provide for the authorization of, officers, employees or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. Any such authorization must be in writing or by electronic transmission and may be general or limited to specific contracts or instruments. The officers of the Corporation may also execute and deliver such contracts or instruments which generally pertain to the duties associated with such officer's title. Any person who is authorized to execute a contract, instrument or other document on behalf of the Corporation may execute a power of attorney allowing another person to execute such document on behalf of the Corporation.

Section VII.03. Voting as Stockholder. Unless otherwise determined by resolution of the Board of Directors, the Chief Executive Officer, the President, if any, the Chief Financial Officer, any Executive Vice President or any other person authorized by the Board of Directors shall have full power and authority on behalf of the Corporation to attend any meeting of stockholders or equity holders of any corporation or other entity in which the Corporation may hold stock or equity interests, and to act, vote (or execute proxies to vote) and exercise in person or by proxy all other rights, powers and privileges incident to the ownership of such stock or equity interests. Such officers acting on behalf of the Corporation shall have full power and authority to execute any instrument expressing consent to or dissent from any action of any such corporation or entity without a meeting. The Board of Directors may by resolution from time to time confer such power and authority upon any other person or persons.

Section VII.04. Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

Section VII.05. Notices. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given in writing or by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

Section VII.06. Form of Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on or by means of, or be in the form of, any information storage device or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in the DGCL, (ii) record the information specified in the DGCL, and record transfers as specified in the DGCL. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

Section VII.07. Severability. If any provision (or any part thereof) of these Bylaws shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of these Bylaws (including, without limitation, each portion of any section of these Bylaws containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of these Bylaws (including, without limitation, each such containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service or for the benefit of the Corporation to the fullest extent permitted by law.

ARTICLE VIII

AMENDMENT OF BYLAWS

Section VIII.01. By the Board. Subject to the provisions of the Certificate of Incorporation, the Board of Directors may make, alter, amend, add to or repeal any and all of these Bylaws.

Section VIII.02. By the Stockholders. Subject to the provisions of the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of the Corporation's then outstanding shares entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to make, alter, amend, add to or repeal any or all Bylaws of the Corporation or to adopt any provision inconsistent therewith.

ARTICLE IX

CONSTRUCTION

In the event of any conflict between the provisions of these Bylaws as in effect from time to time and the provisions of the Certificate of Incorporation of the Corporation as in effect from time to time, the provisions of such Certificate of Incorporation shall be controlling. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes corporations, other business entities, and natural persons.

PORTILLO'S INC.

2021 EQUITY INCENTIVE PLAN

1. Purpose. The purpose of the Portillo's Inc. 2021 Equity Incentive Plan is to further align the interests of eligible participants with those of the Company's stockholders by providing incentive compensation opportunities tied to the performance of the Company and its Common Stock. The Plan is intended to advance the interests of the Company and increase stockholder value by attracting, retaining and motivating key personnel upon whose judgment, initiative and effort the successful conduct of the Company's business is largely dependent.

2. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth below:

"*2014 Plan*" means the PHD Group Holdings LLC 2014 Equity Incentive Plan.

"*2014 Plan Option Award*" means an option award outstanding under the 2014 Plan as of immediately prior to the Effective Date.

"*Affiliate*" means, with respect to a Person, any other Person directly or indirectly controlling, controlled by, or under common control with such first Person.

"*Award*" means a Stock Option, Stock Appreciation Right, Restricted Stock Award, Restricted Stock Unit, or Stock-Based Award granted under the Plan, or any 2014 Plan Option Award.

"*Award Agreement*" means a notice or an agreement entered into between the Company and a Participant or provided by the Company to a Participant setting forth the terms and conditions of an Award granted to a Participant as provided in Section 14.2 hereof, or an agreement governing the grant of a 2014 Plan Option Award.

"*Board*" means the Board of Directors of the Company.

"*Cause*" has the meaning set forth in Section 12.2 hereof.

"*Change in Control*" has the meaning set forth in Section 11.3 hereof.

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

"*Committee*" means (i) the Compensation Committee of the Board, (ii) such other committee of no fewer than two members of the Board who are appointed by the Board to administer the Plan or (iii) the Board, as determined by the Board.

"*Common Stock*" means the Class A common shares of the Company, par value \$0.01 per share (and any shares or other securities into which such Common Stock may be converted or into which it may be exchanged).

"*Company*" means Portillo's Inc., a corporation organized and existing under the laws of the State of Delaware, or any successor thereto.

“*Date of Grant*” means the date on which an Award under the Plan is granted by the Committee or such later date as the Committee may specify to be the effective date of an Award.

“*Disability*” means, unless otherwise defined in an Award Agreement, a disability described in Treasury Regulations Section 1.409A-3(i)(4)(i)(A). A Disability shall be deemed to occur at the time of the determination by the Committee of the Disability.

“*Effective Date*” means the day immediately prior to the date on which the Company’s registration statement on Form S-1 in connection with its initial public offering of Common Stock is declared effective by the Securities and Exchange Commission under the Securities Act, subject to approval of the Plan by the stockholders of the Company.

“*Eligible Person*” means any Person who is an officer, employee, Non-Employee Director, or any natural person who is a consultant or other personal service provider of the Company or any of its Subsidiaries.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

“*Fair Market Value*” means, as applied to a specific date, the price of a share of Common Stock that is based on the opening, closing, actual, high, low or average selling prices of a share of Common Stock reported on any established stock exchange or national market system including without limitation the National Association of Securities Dealers, Inc. Automated Quotation System (“*NASDAQ*”), the New York Stock Exchange and the National Market System on the applicable date, the preceding trading day, the next succeeding trading day, or an average of trading days, as determined by the Committee in its discretion. Unless the Committee determines otherwise or unless otherwise specified in an Award Agreement, Fair Market Value shall be deemed to be equal to the closing price of a share of Common Stock on the date as of which Fair Market Value is to be determined, or if shares of Common Stock are not publicly traded on such date, as of the most recent date on which shares of Common Stock were publicly traded. Notwithstanding the foregoing, if the Common Stock is not traded on any established stock exchange or national market system, the Fair Market Value means the price of a share of Common Stock as established by the Committee.

“*Incentive Stock Option*” means a Stock Option granted under Section 6 hereof that is intended to meet the requirements of Section 422 of the Code and the regulations thereunder.

“*Non-Employee Director*” means a member of the Board who is not an employee of the Company or any of its Subsidiaries.

“*Nonqualified Stock Option*” means a Stock Option granted under Section 6 hereof that is not an Incentive Stock Option, or any 2014 Plan Option Award.

“*Participant*” means any Eligible Person who holds an outstanding Award under the Plan.

“*Person*” means an individual, corporation, partnership, association, trust, unincorporated organization, limited liability company or other legal entity. All references to Person shall include an individual Person or a group (as defined in Rule 13d-5 under the Exchange Act) of Persons.

“*Plan*” means the Portillo’s Inc. 2021 Equity Incentive Plan as set forth herein, effective as of the Effective Date and as may be amended from time to time, as provided herein, and includes any sub-plan or appendix that may be created and approved by the Board to allow Eligible Persons of Subsidiaries to participate in the Plan.

“*Restricted Stock Award*” means a grant of shares of Common Stock to an Eligible Person under Section 8 hereof that are issued subject to such vesting and transfer restrictions as the Committee shall determine, and such other conditions, as are set forth in the Plan and the applicable Award Agreement.

“*Restricted Stock Unit*” means a contractual right granted to an Eligible Person under Section 9 hereof representing notional unit interests equal in value to a share of Common Stock to be paid or distributed at such times, and subject to such conditions, as set forth in the Plan and the applicable Award Agreement.

“*Securities Act*” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

“*Service*” means a Participant’s employment with the Company or any Subsidiary or a Participant’s service as a Non-Employee Director, consultant or other service provider with the Company or any Subsidiary, as applicable.

“*Stock Appreciation Right*” means a contractual right granted to an Eligible Person under Section 7 hereof entitling such Eligible Person to receive a payment, representing the excess of the Fair Market Value of a share of Common Stock over the base price per share of the right, at such time, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.

“*Stock-Based Award*” means a grant of shares of Common Stock or any award that is valued by reference to shares of Common Stock to an Eligible Person under Section 10 hereof.

“*Stock Option*” means a contractual right granted to an Eligible Person under Section 6 hereof to purchase shares of Common Stock at such time and price, and subject to such conditions, as are set forth in the Plan and the applicable Award Agreement.

“*Subsidiary*” means an entity (whether or not a corporation) that is wholly or majority owned or controlled, directly or indirectly, by the Company or any other Affiliate of the Company that is so designated, from time to time, by the Committee, during the period of such Affiliated status; provided, however, that with respect to Incentive Stock Options, the term “Subsidiary” shall include only an entity that qualifies under Section 424(f) of the Code as a “subsidiary corporation” with respect to the Company.

“*Treasury Regulations*” means regulations promulgated by the United States Treasury Department.

3. Administration.

3.1 *Committee Members.* The Plan shall be administered by the Committee. To the extent deemed necessary by the Board, each Committee member shall satisfy the requirements for (i) an “independent director” under rules adopted by the NASDAQ or other principal exchange on which the Common Stock is then listed and (ii) a “non-employee director” within

the meaning of Rule 16b-3 under the Exchange Act. Notwithstanding the foregoing, the mere fact that a Committee member shall fail to qualify under any of the foregoing requirements shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan. The Board may exercise all powers of the Committee hereunder and may directly administer the Plan. Neither the Company nor any member of the Board or Committee shall be liable for any action or determination made in good faith by the Board or Committee with respect to the Plan or any Award thereunder.

3.2 *Committee Authority.* The Committee shall have all powers and discretion necessary or appropriate to administer the Plan and to control its operation, including, but not limited to, the power to (i) determine the Eligible Persons to whom Awards shall be granted under the Plan, (ii) prescribe the restrictions, terms and conditions of all Awards, (iii) interpret the Plan and terms of the Awards, (iv) adopt rules for the administration, interpretation and application of the Plan as are consistent therewith, and interpret, amend or revoke any such rules, (v) make all determinations with respect to a Participant's Service and the termination of such Service for purposes of any Award, (vi) correct any defect(s) or omission(s) or reconcile any ambiguity(ies) or inconsistency(ies) in the Plan or any Award thereunder, (vii) make all determinations it deems advisable for the administration of the Plan, (viii) decide all disputes arising in connection with the Plan and to otherwise supervise the administration of the Plan, (ix) subject to the terms of the Plan, amend the terms of an Award in any manner that is not inconsistent with the Plan, (x) accelerate the vesting or, to the extent applicable, exercisability of any Award at any time (including, but not limited to, upon a Change in Control or upon termination of Service of a Participant under certain circumstances (including, without limitation, upon retirement)) and (xi) adopt such procedures, modifications or subplans as are necessary or appropriate to permit participation in the Plan by Eligible Persons who are foreign nationals or provide services outside of the United States. The Committee's determinations under the Plan need not be uniform and may be made by the Committee selectively among Participants and Eligible Persons, whether or not such Persons are similarly situated. The Committee shall, in its discretion, consider such factors as it deems relevant in making its interpretations, determinations and actions under the Plan including, without limitation, the recommendations or advice of any officer or employee of the Company or board of directors of a Subsidiary or such attorneys, consultants, accountants or other advisors as it may select. All interpretations, determinations, and actions by the Committee shall be final, conclusive, and binding upon all parties.

3.3 *Delegation of Authority.* The Committee shall have the right, from time to time, to delegate in writing to one or more officers of the Company the authority of the Committee to grant and determine the terms and conditions of Awards granted under the Plan, subject to the requirements of Section 157(c) of the Delaware General Corporation Law (or any successor provision) or such other limitations as the Committee shall determine. In no event shall any such delegation of authority be permitted with respect to Awards granted to any member of the Board or to any Eligible Person who is subject to Rule 16b-3 under the Exchange Act. The Committee shall also be permitted to delegate, to any appropriate officer or employee of the Company, responsibility for performing certain ministerial functions under the Plan. In the event that the Committee's authority is delegated to officers or employees in accordance with the foregoing, all provisions of the Plan relating to the Committee shall be interpreted in a manner consistent with the foregoing by treating any such reference as a reference to such officer or employee for such purpose. Any action undertaken in accordance with the Committee's delegation of authority hereunder shall have the same force and effect as if such action was undertaken directly by the Committee and shall be deemed for all purposes of the Plan to have been taken by the Committee.

4. Shares Subject to the Plan.

4.1 *Number of Shares Reserved.* Subject to adjustment as provided in Section 4.3 and Section 4.5 hereof, the total number of shares of Common Stock that are available for issuance under the Plan (the “*Share Reserve*”) shall equal 7,148,049. Within the Share Reserve, the total number of shares of Common Stock available for issuance as Incentive Stock Options shall equal the maximum number of shares available for issuance under the Plan. Each share of Common Stock subject to an Award shall reduce the Share Reserve by one share. Any shares of Common Stock delivered under the Plan shall consist of authorized and unissued shares or treasury shares. For the avoidance of doubt, except as may be required by reason of Section 422 of the Code, the number of shares of Common Stock available for issuance under the Plan shall not be reduced by shares of Common Stock issued pursuant to 2014 Plan Option Awards.

4.2 *Share Replenishment.* Following the Effective Date, to the extent that an Award granted under this Plan (excluding, for the avoidance of doubt, a 2014 Plan Option Award) is canceled, expired, forfeited or surrendered without consideration or otherwise terminated without delivery of the shares of Common Stock to the Participant under the Plan, the shares of Common Stock retained by or returned to the Company will (i) not be deemed to have been delivered under the Plan, (ii) be available for future Awards under the Plan, and (iii) increase the Share Reserve by one share for each share that is retained by or returned to the Company. Notwithstanding the foregoing, shares of Common Stock that are (x) withheld from any Award granted under this Plan in payment of the exercise, base or purchase price or taxes relating to such an Award, (y) not issued or delivered as a result of the net settlement of any Award, or (z) repurchased by the Company on the open market with the proceeds of a Stock Option, will be deemed to have been delivered under the Plan and will not be available for future Awards under the Plan. The payment of dividend equivalents in cash in conjunction with any outstanding Award shall not count against the Share Reserve.

4.3 *Awards Granted to Non-Employee Directors.* No Non-Employee Director may be granted, during any calendar year, Awards having a fair value (determined on the date of grant) that, when added to all cash compensation paid to the Non-Employee Director in respect of the Non-Employee Director’s service as a member of the Board for such calendar year, exceeds (i) \$1,000,000 in the year that such Non-Employee Director is first elected to serve as a director on the Board; and (ii) \$500,000 in each subsequent year.

4.4 *Adjustments.* If there shall occur any change with respect to the outstanding shares of Common Stock by reason of any recapitalization, reclassification, stock dividend, extraordinary cash dividend, stock split, reverse stock split or other distribution with respect to the shares of Common Stock or any merger, reorganization, consolidation, combination, spin-off or other corporate event or transaction or any other change affecting the Common Stock (other than regular cash dividends to stockholders of the Company), the Committee shall, in the manner and to the extent it considers appropriate and equitable to the Participants and consistent with the terms of the Plan, cause an adjustment to be made to (i) the maximum number and kind of shares of Common Stock or other securities provided in Sections 4.1 hereof, (ii) the number and kind of shares of Common Stock, units or other securities or rights subject to then outstanding Awards, (iii) the exercise, base or purchase price for each share or unit or other security or right subject to then outstanding Awards, (iv) other value determinations applicable to the Plan and/or outstanding Awards, and/or (v) any other terms of an Award that are affected by the event. Notwithstanding the foregoing, (a) any such adjustments shall, to the extent necessary to avoid additional taxes, be made in a manner consistent with the requirements of Section 409A of the Code and (b) in the case of Incentive Stock Options, any such adjustments shall, to the extent

practicable, be made in a manner consistent with the requirements of Section 424(a) of the Code, unless otherwise determined by the Committee.

4.5 *2014 Plan Option Awards.* All 2014 Plan Option Awards are hereby assumed under the Plan as of the Effective Date. On and after the Effective Date, all 2014 Plan Option Awards shall be governed by the terms of this Plan; provided, that in the event the terms of any Award Agreement evidencing a 2014 Plan Option Award conflict with the terms of this Plan, the terms of such 2014 Plan Option Award shall control.

5. Eligibility and Awards.

5.1 *Designation of Participants.* Any Eligible Person may be selected by the Committee to receive an Award and become a Participant. The Committee has the authority, in its discretion, to determine and designate from time to time those Eligible Persons who are to be granted Awards, the types of Awards to be granted, the number of shares of Common Stock or units subject to Awards to be granted and the terms and conditions of such Awards consistent with the terms of the Plan. In selecting Eligible Persons to be Participants, and in determining the type and amount of Awards to be granted under the Plan, the Committee shall consider any and all factors that it deems relevant or appropriate. Designation of a Participant in any year shall not require the Committee to designate such Person to receive an Award in any other year or, once designated, to receive the same type or amount of Award as granted to such Participant in any other year.

5.2 *Determination of Awards.* The Committee shall determine the terms and conditions of all Awards granted to Participants in accordance with its authority under Section 3.2 hereof. An Award may consist of one type of right or benefit hereunder or of two or more such rights or benefits granted in tandem.

5.3 *Award Agreements.* Each Award granted to an Eligible Person shall be represented by an Award Agreement. The terms of the Award, as determined by the Committee, will be set forth in the applicable Award Agreements as described in Section 14.2 hereof.

6. Stock Options.

6.1 *Grant of Stock Options.* A Stock Option may be granted to any Eligible Person selected by the Committee, except that an Incentive Stock Option may be granted only to an Eligible Person satisfying the conditions of Section 6.7(a) hereof. Each Stock Option shall be designated on the Date of Grant, in the discretion of the Committee, as an Incentive Stock Option or as a Nonqualified Stock Option. All Stock Options granted under the Plan are intended to comply with or be exempt from the requirements of Section 409A of the Code, to the extent applicable.

6.2 *Exercise Price.* Unless otherwise determined by the Committee, the exercise price per share of a Stock Option (other than a Stock Option substituted or assumed under Section 14.10) shall not be less than one hundred percent (100%) of the Fair Market Value of a share of Common Stock on the Date of Grant. The Committee may in its discretion specify an exercise price per share that is higher than the Fair Market Value of a share of Common Stock on the Date of Grant.

6.3 *Vesting of Stock Options.* The Committee shall, in its discretion, prescribe in an award agreement the time or times at which or the conditions upon which, a Stock Option or portion thereof shall become vested and/or exercisable. The requirements for vesting and

exercisability of a Stock Option may be based on the continued Service of the Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified performance goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Stock Option are not satisfied, the Award shall be forfeited.

6.4 *Term of Stock Options.* The Committee shall in its discretion prescribe in an Award Agreement the period during which a vested Stock Option may be exercised; provided, however, that the maximum term of a Stock Option shall be ten (10) years from the Date of Grant. The Committee may provide that a Stock Option will cease to be exercisable upon or at the end of a specified time period following a termination of Service for any reason as set forth in the Award Agreement or otherwise. A Stock Option may be earlier terminated as specified by the Committee and set forth in an Award Agreement upon or following the termination of a Participant's Service with the Company or any Subsidiary, including by reason of voluntary resignation, death, Disability, termination for Cause or any other reason. Subject to compliance with Section 409A of the Code, as applicable, and the provisions of this Section 6, the Committee may extend at any time the period in which a Stock Option may be exercised, but not beyond ten (10) years from the Date of Grant.

6.5 *Stock Option Exercise; Tax Withholding.* Subject to such terms and conditions as specified in an Award Agreement (including applicable vesting requirements), a Stock Option may be exercised in whole or in part at any time during the term thereof by notice in the form required by the Company, together with payment of the aggregate exercise price and applicable withholding tax. Payment of the exercise price may be made: (i) in cash or by cash equivalent acceptable to the Committee, or, (ii) to the extent permitted by the Committee in its sole discretion in an Award Agreement or otherwise (A) in shares of Common Stock valued at the Fair Market Value of such shares on the date of exercise, (B) through an open-market, broker-assisted sales transaction pursuant to which the Company is promptly delivered the amount of proceeds necessary to satisfy the exercise price, (C) by reducing the number of shares of Common Stock otherwise deliverable upon the exercise of the Stock Option by the number of shares of Common Stock having a Fair Market Value on the date of exercise equal to the exercise price, (D) by a combination of the methods described above or (E) by such other method as may be approved by the Committee. In accordance with Section 14.11 hereof, and in addition to and at the time of payment of the exercise price, the Participant shall pay to the Company the full amount of any and all applicable income tax, employment tax and other amounts required to be withheld in connection with such exercise, payable under such of the methods described above for the payment of the exercise price as may be approved by the Committee and set forth in the Award Agreement.

6.6 *Limited Transferability of Nonqualified Stock Options.* All Stock Options shall be nontransferable except (i) upon the Participant's death, in accordance with Section 14.3 hereof or (ii) in the case of Nonqualified Stock Options only, for the transfer of all or part of the Stock Option to a Participant's "family member" (as defined for purposes of the Form S-8 registration statement under the Securities Act), or as otherwise permitted by the Committee to the extent also permitted by the general instructions of the Form S-8 registration statement, as may be amended from time to time, in each case as may be approved by the Committee in its discretion at the time of proposed transfer; provided, in each case, that any permitted transfer shall be for no consideration. The transfer of a Nonqualified Stock Option may be subject to such terms and conditions as the Committee may in its discretion impose from time to time. Subsequent transfers of a Nonqualified Stock Option shall be prohibited other than in accordance with Section 14.3 hereof.

6.7 *Additional Rules for Incentive Stock Options.*

(a) *Eligibility.* An Incentive Stock Option may be granted only to an Eligible Person who is considered an employee for purposes of Treasury Regulation Section 1.421-1(h) with respect to the Company or any Subsidiary that qualifies as a “subsidiary corporation” with respect to the Company for purposes of Section 424(f) of the Code.

(b) *Annual Limits.* No Incentive Stock Option shall be granted to a Participant as a result of which the aggregate Fair Market Value (determined as of the Date of Grant) of the Common Stock with respect to which incentive stock options under Section 422 of the Code are exercisable for the first time in any calendar year under the Plan and any other stock option plans of the Company or any Subsidiary or parent corporation, would exceed \$100,000, determined in accordance with Section 422(d) of the Code. This limitation shall be applied by taking Stock Options into account in the order in which granted. Any Stock Option grant that exceeds such limit shall be treated as a Nonqualified Stock Option.

(c) *Additional Limitations.* In the case of any Incentive Stock Option granted to an Eligible Person who owns, either directly or indirectly (taking into account the attribution rules contained in Section 424(d) of the Code), stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Subsidiary, the exercise price shall not be less than one hundred ten percent (110%) of the Fair Market Value of a share of Common Stock on the Date of Grant and the maximum term shall be five (5) years.

(d) *Termination of Service.* An Award of an Incentive Stock Option may provide that such Stock Option may be exercised not later than (i) three (3) months following termination of Service of the Participant with the Company and all Subsidiaries (other than as set forth in clause (ii) of this Section 6.7(d)) or (ii) one year following termination of Service of the Participant with the Company and all Subsidiaries due to death or permanent and total disability within the meaning of Section 22(e)(3) of the Code, in each case as and to the extent determined by the Committee to comply with the requirements of Section 422 of the Code.

(e) *Other Terms and Conditions; Nontransferability.* Any Incentive Stock Option granted hereunder shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as are deemed necessary or desirable by the Committee, which terms, together with the terms of the Plan, shall be intended and interpreted to cause such Incentive Stock Option to qualify as an “incentive stock option” under Section 422 of the Code. A Stock Option that is granted as an Incentive Stock Option shall, to the extent it fails to qualify as an “incentive stock option” under the Code, be treated as a Nonqualified Stock Option. An Incentive Stock Option shall by its terms be nontransferable other than by will or by the laws of descent and distribution, and shall be exercisable during the lifetime of a Participant only by such Participant.

(f) *Disqualifying Dispositions.* If shares of Common Stock acquired by exercise of an Incentive Stock Option are disposed of within two years following the Date of Grant or one year following the transfer of such shares to the Participant upon exercise, the Participant shall, promptly following such disposition, notify the Company in writing of the date and terms of such disposition and provide such other information regarding the disposition as the Company may reasonably require.

6.8 *Repricing Prohibited.* Subject to the adjustment provisions contained in Section 4.5 hereof and other than in connection with a Change in Control, without the prior approval of the Company’s stockholders, neither the Committee nor the Board shall cancel a

Stock Option when the exercise price per share exceeds the Fair Market Value of one share of Common Stock in exchange for cash or another Award or cause the cancellation, substitution or amendment of a Stock Option that would have the effect of reducing the exercise price of such a Stock Option previously granted under the Plan or otherwise approve any modification to such a Stock Option, that would be treated as a “repricing” under the then applicable rules, regulations or listing requirements adopted by the NASDAQ or other principal exchange on which the Common Stock is then listed.

6.9 *No Rights as Stockholder.* The Participant shall not have any rights as a stockholder with respect to the shares underlying a Stock Option until such time as shares of Common Stock are delivered to the Participant pursuant to the terms of the Award Agreement.

7. Stock Appreciation Rights.

7.1 *Grant of Stock Appreciation Rights.* Stock Appreciation Rights may be granted to any Eligible Person selected by the Committee. Stock Appreciation Rights may be granted on a basis that allows for the exercise of the right by the Participant, or that provides for the automatic exercise or payment of the right upon a specified date or event. Stock Appreciation Rights shall be non-transferable, except as provided in Section 14.3 hereof. All Stock Appreciation Rights granted under the Plan are intended to comply with or otherwise be exempt from the requirements of Section 409A of the Code, to the extent applicable.

7.2 *Terms of Stock Appreciation Rights.* The Committee shall in its discretion provide in an Award Agreement the time or times at which or the conditions upon which, a Stock Appreciation Right or portion thereof shall become vested and/or exercisable. The requirements for vesting and exercisability of a Stock Appreciation Right may be based on the continued Service of a Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified performance goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Stock Appreciation Right are not satisfied, the Award shall be forfeited. A Stock Appreciation Right will be exercisable or payable at such time or times as determined by the Committee; provided, however, that the maximum term of a Stock Appreciation Right shall be ten (10) years from the Date of Grant. Subject to compliance with Section 409A of the Code, as applicable, and the provisions of this Section 7.2, the Committee may extend at any time the period in which a Stock Appreciation Right may be exercised, but not beyond ten (10) years from the Date of Grant. The Committee may provide that a Stock Appreciation Right will cease to be exercisable upon or at the end of a period following a termination of Service for any reason. The base price of a Stock Appreciation Right shall be determined by the Committee in its discretion; provided, however, that the base price per share shall not be less than one hundred percent (100%) of the Fair Market Value of a share of Common Stock on the Date of Grant (other than with respect to a Stock Appreciation Right substituted or assumed under Section 14.10).

7.3 *Payment of Stock Appreciation Rights.* A Stock Appreciation Right will entitle the holder, upon exercise or other payment of the Stock Appreciation Right, as applicable, to receive an amount determined by multiplying: (i) the excess of the Fair Market Value of a share of Common Stock on the date of exercise or payment of the Stock Appreciation Right over the base price of such Stock Appreciation Right, by (ii) the number of shares as to which such Stock Appreciation Right is exercised or paid. Payment of the amount determined under the foregoing may be made, as approved by the Committee and set forth in the Award Agreement, in shares of Common Stock valued at their Fair Market Value on the date of exercise or payment, in cash or in a combination of shares of Common Stock and cash, subject to applicable tax withholding requirements.

7.4 *Repricing Prohibited.* Subject to the adjustment provisions contained in Section 4.5 hereof and other than in connection with a Change in Control, without the prior approval of the Company's stockholders, neither the Committee nor the Board shall cancel a Stock Appreciation Right when the base price per share exceeds the Fair Market Value of one share of Common Stock in exchange for cash or another Award or cause the cancellation, substitution or amendment of a Stock Appreciation Right that would have the effect of reducing the base price of such a Stock Appreciation Right previously granted under the Plan or otherwise approve any modification to such Stock Appreciation Right that would be treated as a "repricing" under the then applicable rules, regulations or listing requirements adopted by the NASDAQ or other principal exchange on which the Common Stock is then listed.

7.5 *No Rights as Stockholder.* The Participant shall not have any rights as a stockholder with respect to the shares underlying a Stock Appreciation Right unless and until such time as shares or Common Stock are delivered to the Participant pursuant to the terms of the Award Agreement.

8. Restricted Stock Awards.

8.1 *Grant of Restricted Stock Awards.* A Restricted Stock Award may be granted to any Eligible Person selected by the Committee. The Committee may require the payment by the Participant of a specified purchase price in connection with any Restricted Stock Award.

8.2 *Vesting Requirements.* The restrictions imposed on shares granted under a Restricted Stock Award shall lapse in accordance with the vesting requirements specified by the Committee in the Award Agreement. The requirements for vesting of a Restricted Stock Award may be based on the continued Service of the Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified performance goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Restricted Stock Award are not satisfied, the Award shall be forfeited and the shares of Common Stock subject to the Award shall be returned to the Company.

8.3 *Transfer Restrictions.* Shares granted under any Restricted Stock Award may not be transferred, assigned or subject to any encumbrance, pledge or charge until all applicable restrictions are removed or have expired, except as provided in Section 14.3 hereof. Failure to satisfy any applicable restrictions shall result in the subject shares of the Restricted Stock Award being forfeited and returned to the Company. The Committee may require in an Award Agreement that certificates (if any) representing the shares granted under a Restricted Stock Award bear a legend making appropriate reference to the restrictions imposed, and that certificates (if any) representing the shares granted or sold under a Restricted Stock Award will remain in the physical custody of an escrow holder until all restrictions are removed or have expired.

8.4 *Rights as Stockholder.* Subject to the foregoing provisions of this Section 8 and the applicable Award Agreement, the Participant shall have all rights of a stockholder with respect to the shares granted to the Participant under a Restricted Stock Award, including the right to vote the shares and receive all dividends and other distributions paid or made with respect thereto, unless the Committee determines otherwise at the time the Restricted Stock Award is granted. The Committee shall determine and set forth in a Participant's Award Agreement whether or not a Participant holding a Restricted Stock Award granted hereunder shall have the right to exercise voting rights with respect to the period during which the Restricted Stock Award is subject to forfeiture (the "*Restriction Period*"), and have the right to receive dividends on the Restricted Stock Award during the Restriction Period (and, if so, on

what terms) *provided* that if a Participant has the right to receive dividends paid with respect to the Restricted Stock Award, such dividends shall be subject to the same vesting terms as the related Restricted Stock Award.

8.5 *Section 83(b) Election.* If a Participant makes an election pursuant to Section 83(b) of the Code with respect to a Restricted Stock Award, the Participant shall file, within thirty (30) days following the Date of Grant, a copy of such election with the Company and with the Internal Revenue Service, in accordance with the regulations under Section 83 of the Code. The Committee may provide in an Award Agreement that the Restricted Stock Award is conditioned upon the Participant's making or refraining from making an election with respect to the Award under Section 83(b) of the Code.

9. Restricted Stock Units.

9.1 *Grant of Restricted Stock Units.* A Restricted Stock Unit may be granted to any Eligible Person selected by the Committee. The value of each Restricted Stock Unit is equal to the Fair Market Value of a share of Common Stock on the applicable date or time period of determination, as specified by the Committee. Restricted Stock Units shall be subject to such restrictions and conditions as the Committee shall determine. Restricted Stock Units shall be non-transferable, except as provided in Section 14.3 hereof.

9.2 *Vesting of Restricted Stock Units.* The Committee shall, in its discretion, determine any vesting requirements with respect to Restricted Stock Units, which shall be set forth in the Award Agreement. The requirements for vesting of a Restricted Stock Unit may be based on the continued Service of the Participant with the Company or a Subsidiary for a specified time period (or periods), on the attainment of a specified performance goal(s) and/or on such other terms and conditions as approved by the Committee in its discretion. If the vesting requirements of a Restricted Stock Unit Award are not satisfied, the Award shall be forfeited.

9.3 *Payment of Restricted Stock Units.* Restricted Stock Units shall become payable to a Participant at the time or times determined by the Committee and set forth in the Award Agreement, which may be upon or following the vesting of the Award. Payment of a Restricted Stock Unit may be made, as approved by the Committee and set forth in the Award Agreement, in cash or in shares of Common Stock or in a combination thereof, subject to applicable tax withholding requirements. Any cash payment of a Restricted Stock Unit shall be made based upon the Fair Market Value of a share of Common Stock, determined on such date or over such time period as determined by the Committee.

9.4 *Dividend Equivalent Rights.* Dividends shall not be paid with respect to Restricted Stock Units. Dividend equivalent rights may be granted with respect to the Shares subject to Restricted Stock Units to the extent permitted by the Committee and set forth in the applicable Award Agreement; provided that any dividend equivalent rights granted shall be subject to the same vesting terms as the related Restricted Stock Units.

9.5 *No Rights as Stockholder.* The Participant shall not have any rights as a stockholder with respect to the shares subject to a Restricted Stock Unit until such time as shares of Common Stock are delivered to the Participant pursuant to the terms of the Award Agreement.

10. Stock-Based Awards.

10.1 *Grant of Stock-Based Awards.* A Stock-Based Award may be granted to any Eligible Person selected by the Committee. A Stock-Based Award may be granted for past

Services, in lieu of bonus or other cash compensation, as directors' compensation or for any other valid purpose as determined by the Committee, and shall be based upon or calculated by reference to the Common Stock. The Committee shall determine the terms and conditions of such Awards, and such Awards may be made without vesting requirements. In addition, the Committee may, in connection with any Stock-Based Award, require the payment of a specified purchase price.

10.2 *Rights as Stockholder.* The Participant shall not have any rights as a stockholder with respect to the shares of Common Stock, including the right to vote the shares and receive all dividends and other distributions paid or made with respect thereto, until such time as shares of Common Stock, if any, are issued to the Participant pursuant to the terms of the Award Agreement. If a Participant has the right to receive dividends paid with respect to the Stock-Based Award, such dividends shall be subject to the same vesting terms as the related Stock-Based Award, if applicable.

11. Change in Control.

11.1 *Effect on Awards.* Upon the occurrence of a Change in Control, all outstanding Awards shall either be (a) continued or assumed by the Company (if it is the surviving company or corporation) or by the surviving company or corporation or its parent (with such continuation or assumption including conversion into the right to receive securities, cash or a combination of both), or (b) substituted by the surviving company or corporation or its parent for awards (with such substitution including conversion into the right to receive securities, cash or a combination of both), with substantially similar terms for outstanding Awards (with appropriate adjustments to the type of consideration payable upon settlement of the Awards or other relevant factors, and with any applicable performance conditions deemed achieved (i) for any completed performance period, based on actual performance, or (ii) for any partial or future performance period, at the greater of the target level or actual performance, in each case as determined by the Committee (with the Award remaining subject only to time vesting), unless otherwise provided in an Award Agreement).

11.2 *Certain Adjustments.* Notwithstanding Section 11.1, to the extent that outstanding Awards are not continued, assumed or substituted pursuant to Section 11.1 upon the occurrence of a Change in Control, the Committee is authorized (but not obligated) to make adjustments in the terms and conditions of outstanding Awards, including without limitation the following (or any combination thereof):

(a) acceleration of exercisability, vesting and/or payment of outstanding Awards immediately prior to the occurrence of such event or upon or following such event;

(b) upon written notice, providing that any outstanding Stock Options and Stock Appreciation Rights are exercisable during a period of time immediately prior to the scheduled consummation of the event or such other period as determined by the Committee (contingent upon the consummation of the event), and at the end of such period, such Stock Options and Stock Appreciation Rights shall terminate to the extent not so exercised within the relevant period; and

(c) cancellation of all or any portion of outstanding Awards for fair value (in the form of cash, Common Shares, other property or any combination thereof) as determined in the sole discretion of the Committee; provided, however, that, in the case of Stock Options and Stock Appreciation Rights or similar Awards, the fair value may equal the excess, if any, of the value or amount of the consideration to be paid in the Change in Control transaction to holders of

shares of Common Stock (or, if no such consideration is paid, Fair Market Value of the shares of Common Stock) over the aggregate exercise or base price, as applicable, with respect to such Awards or portion thereof being canceled, or if there is no such excess, zero; provided, further, that if any payments or other consideration are deferred and/or contingent as a result of escrows, earn outs, holdbacks or any other contingencies, payments under this provision may be made on substantially the same terms and conditions applicable to, and only to the extent actually paid to, the holders of Common Shares in connection with the Change in Control.

11.3 *Definition of Change in Control.* Unless otherwise defined in an Award Agreement or other written agreement approved by the Committee, “Change in Control” means, and shall occur, if:

(a) any Person (other than the Company, any trustee or other fiduciary holding securities under any employee benefit plan of the Company, or any company owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of shares of Common Stock) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding securities;

(b) during any period of two consecutive years (the “*Board Measurement Period*”) individuals who at the beginning of such period constitute the Board and any new director (other than a director designated by a Person who has entered into an agreement with the Company to effect a transaction described in paragraph (a), (c), or (d) of this section, or a director initially elected or nominated as a result of an actual or threatened election contest with respect to directors or as a result of any other actual or threatened solicitation of proxies by or on behalf of any Person other than the Board) whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the Board Measurement Period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the Board;

(c) a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; provided, however, that a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than those covered by the exceptions in (i) above) acquires more than 50% of the combined voting power of the Company’s then outstanding securities shall not constitute a Change in Control of the Company; or

(d) the consummation of a sale or disposition by the Company of all or substantially all of the Company’s assets other than (i) the sale or disposition of all or substantially all of the assets of the Company to a Person or Persons who beneficially own, directly or indirectly, more than 50% of the combined voting power of the outstanding voting securities of the Company at the time of the sale or disposition or (ii) pursuant to a spinoff type transaction, directly or indirectly, of such assets to the stockholders of the Company.

Notwithstanding the foregoing, to the extent necessary to comply with Section 409A of the Code with respect to the payment of “nonqualified deferred compensation,” “Change in Control” shall be limited to a “change in control event” as defined under Section 409A of the Code.

12. Forfeiture Events.

12.1 *General.* The Committee may specify in an Award Agreement that the Participant’s rights, payments and benefits with respect to an Award are subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, without limitation, termination of Service for Cause, violation of laws, regulations or material Company policies, breach of noncompetition, non-solicitation, confidentiality or other restrictive covenants that may apply to the Participant, application of a Company clawback policy relating to financial restatement, or other conduct by the Participant that is detrimental to the business or reputation of the Company.

12.2 *Termination for Cause.*

(a) *Treatment of Awards.* Unless otherwise provided by the Committee and set forth in an Award Agreement, if (i) a Participant’s Service with the Company or any Subsidiary shall be terminated for Cause or (ii) after termination of Service for any other reason, the Committee determines in its discretion either that, (1) during the Participant’s period of Service, the Participant engaged in an act or omission which would have warranted termination of Service for Cause or (2) after termination, the Participant engages in conduct that violates any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary, such Participant’s rights, payments and benefits with respect to an Award shall be subject to cancellation, forfeiture and/or recoupment, as provided in Section 12.3 below. The Company shall have the power to determine whether the Participant has been terminated for Cause, the date upon which such termination for Cause occurs, whether the Participant engaged in an act or omission which would have warranted termination of Service for Cause or engaged in conduct that violated any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary. Any such determination shall be final, conclusive and binding upon all Persons. In addition, if the Company shall reasonably determine that a Participant has committed or may have committed any act which could constitute the basis for a termination of such Participant’s Service for Cause or violates any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary, the Company may suspend the Participant’s rights to exercise any Stock Option or Stock Appreciation Right, receive any payment or vest in any right with respect to any Award pending a determination by the Company of whether an act or omission could constitute the basis for a termination for Cause as provided in this Section 12.2.

(b) *Definition of Cause.* “Cause” means with respect to a Participant’s termination of Service, the following: (a) in the case where there is no employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant (or where there is such an agreement but it does not define “cause” (or words of like import, which shall include but not be limited to “gross misconduct”)), termination due to a Participant’s (1) failure to substantially perform Participant’s duties or obey lawful directives that continues after receipt of written notice from the Company and a ten (10)-day opportunity to cure; (2) gross misconduct or gross negligence in the performance of Participant’s duties; (3) fraud, embezzlement, theft, or any other act of material dishonesty or misconduct; (4) conviction of, indictment for, or plea of guilty or nolo contendere to, a felony or any crime involving moral turpitude; (5) (x) material breach or violation of any agreement with the Company or its Affiliates, including any restrictive covenant agreement

applicable to Participant, or (y) significant violation of the code of conduct or similar written policy, including, without limitation, any sexual harassment policy, of the Company or its Affiliates; or (6) other conduct, acts or omissions that, in the good faith judgment of the Company, are likely to significantly injure the reputation, business or a business relationship of the Company or any of its Affiliates; or (b) in the case where there is an employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant that defines “cause” (or words of like import, which shall include but not be limited to “gross misconduct”), “cause” as defined under such agreement. With respect to a termination of Service for a non-employee director, Cause means an act or failure to act that constitutes cause for removal of a director under applicable Delaware law. Any voluntary termination of Service by the Participant in anticipation of an involuntary termination of the Participant’s Service for Cause shall be deemed to be a termination for Cause.

12.3 *Right of Recapture.*

(a) *General.* If at any time within one year (or such longer time specified in an Award Agreement or other agreement with a Participant or policy applicable to the Participant) after the date on which a Participant exercises a Stock Option or Stock Appreciation Right or on which a Stock-Based Award, Restricted Stock Award or Restricted Stock Unit vests, is settled in shares or otherwise becomes payable, or on which income otherwise is realized or property is received by a Participant in connection with an Award, (i) a Participant’s Service is terminated for Cause, (ii) the Committee determines in its discretion that the Participant is subject to any recoupment of benefits pursuant to the Company’s compensation recovery, “clawback” or similar policy, as may be in effect from time to time, or (iii) after a Participant’s Service terminates for any other reason, the Committee determines in its discretion either that, (1) during the Participant’s period of Service, the Participant engaged in an act or omission which would have warranted termination of the Participant’s Service for Cause or (2) after a Participant’s termination of Service, the Participant engaged in conduct that violated any continuing obligation or duty of the Participant in respect of the Company or any Subsidiary, then, at the sole discretion of the Committee, any gain realized by the Participant from the exercise, vesting, payment, settlement or other realization of income or receipt of property by the Participant in connection with an Award, shall be repaid by the Participant to the Company upon notice from the Company, subject to applicable law. Such gain shall be determined as of the date or dates on which the gain is realized by the Participant, without regard to any subsequent change in the Fair Market Value of a share of Common Stock. To the extent not otherwise prohibited by law, the Company shall have the right to offset the amount of such repayment obligation against any amounts otherwise owed to the Participant by the Company (whether as wages, vacation pay or pursuant to any benefit plan or other compensatory arrangement).

(b) *Accounting Restatement.* If a Participant receives compensation pursuant to an Award under the Plan based on financial statements that are subsequently restated in a way that would decrease the value of such compensation, the Participant will, to the extent not otherwise prohibited by law, upon the written request of the Company, forfeit and repay to the Company the difference between what the Participant received and what the Participant should have received based on the accounting restatement, in accordance with (i) any compensation recovery, “clawback” or similar policy, as may be in effect from time to time to which such Participant is subject and (ii) any compensation recovery, “clawback” or similar policy made applicable by law including the provisions of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules, regulations and requirements adopted thereunder by the Securities and Exchange Commission and/or any national securities exchange on which the Company’s equity securities may be listed (the “*Policy*”). By accepting an Award hereunder, the Participant acknowledges and agrees that the Policy, whenever adopted, shall apply to such

Award, and all incentive-based compensation payable pursuant to such Award shall be subject to forfeiture and repayment pursuant to the terms of the Policy.

13. Transfer, Leave of Absence, Etc. For purposes of the Plan, except as otherwise determined by the Committee, the following events shall not be deemed a termination of Service: (a) a transfer to the service of the Company from a Subsidiary or from the Company to a Subsidiary, or from one Subsidiary to another; or (b) an approved leave of absence for military service or sickness, a leave of absence where the employee's right to re-employment is protected either by a statute or by contract or under the policy pursuant to which the leave of absence was granted, a leave of absence for any other purpose approved by the Company or if the Committee otherwise so provides in writing.

14. General Provisions.

14.1 *Status of Plan.* The Committee may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver shares of Common Stock or make payments with respect to Awards.

14.2 *Award Agreement.* An Award under the Plan shall be evidenced by an Award Agreement in a written or electronic form approved by the Committee setting forth the number of shares of Common Stock or other amounts or securities subject to the Award, the exercise price, base price or purchase price of the Award, the time or times at which an Award will become vested, exercisable or payable and the term of the Award. The Award Agreement also may set forth the effect on an Award of a Change in Control and/or a termination of Service under certain circumstances. The Award Agreement shall be subject to and incorporate, by reference or otherwise, all of the applicable terms and conditions of the Plan, and also may set forth other terms and conditions applicable to the Award as determined by the Committee consistent with the limitations of the Plan. The grant of an Award under the Plan shall not confer any rights upon the Participant holding such Award other than such terms, and subject to such conditions, as are specified in the Plan as being applicable to such type of Award (or to all Awards) or as are expressly set forth in the Award Agreement. The Committee need not require the execution of an Award Agreement by a Participant, in which case, acceptance of the Award by the Participant shall constitute agreement by the Participant to the terms, conditions, restrictions and limitations set forth in the Plan and the Award Agreement as well as the administrative guidelines of the Company in effect from time to time. In the event of any conflict between the provisions of the Plan and any Award Agreement, the provisions of the Plan shall prevail.

14.3 *No Assignment or Transfer; Beneficiaries.* Except as provided in Section 6.6 hereof or as otherwise provided by the Committee to the extent not prohibited under Section A.1.(5) of the general instructions of Form S-8, as may be amended from time to time, Awards under the Plan shall not be assignable or transferable by the Participant, and shall not be subject in any manner to assignment, alienation, pledge, encumbrance or charge. Notwithstanding the foregoing, in the event of the death of a Participant, except as otherwise provided by the Committee, an outstanding Award may be exercised by or shall become payable to the Participant's beneficiary as determined under the Company 401(k) retirement plan or other applicable retirement or pension plan. In lieu of such determination, a Participant may, from time to time, name any beneficiary or beneficiaries to receive any benefit in case of the Participant's death before the Participant receives any or all of such benefit. Each such designation shall revoke all prior designations by the same Participant and will be effective only when filed by the Participant in writing (in such form or manner as may be prescribed by the Committee) with the Company during the Participant's lifetime. In the absence of a valid

designation as provided above, if no validly designated beneficiary survives the Participant or if each surviving validly designated beneficiary is legally impaired or prohibited from receiving the benefits under an Award, the Participant's beneficiary shall be the legatee or legatees of such Award designated under the Participant's last will or by such Participant's executors, personal representatives or distributees of such Award in accordance with the Participant's will or the laws of descent and distribution. The Committee may provide in the terms of an Award Agreement or in any other manner prescribed by the Committee that the Participant shall have the right to designate a beneficiary or beneficiaries who shall be entitled to any rights, payments or other benefits specified under an Award following the Participant's death. Any transfer permitted under this Section 14.3 shall be for no consideration.

14.4 *No Right to Employment or Continued Service.* Nothing in the Plan, in the grant of any Award or in any Award Agreement shall confer upon any Eligible Person or any Participant any right to continue in the Service of the Company or any of its Subsidiaries or interfere in any way with the right of the Company or any of its Subsidiaries to terminate the employment or other service relationship of an Eligible Person or a Participant for any reason or no reason at any time.

14.5 *Rights as Stockholder.* A Participant shall have no rights as a holder of shares of Common Stock with respect to any unissued securities covered by an Award until the date the Participant becomes the holder of record of such securities. Except as provided in Section 4.5 hereof, no adjustment or other provision shall be made for dividends or other stockholder rights, except to the extent that the Award Agreement provides for dividend payments or dividend equivalent rights. The Committee may determine in its discretion the manner of delivery of Common Stock to be issued under the Plan, which may be by delivery of stock certificates, electronic account entry into new or existing accounts or any other means as the Committee, in its discretion, deems appropriate. The Committee may require that the stock certificates (if any) be held in escrow by the Company for any shares of Common Stock or cause the shares to be legended in order to comply with the securities laws or other applicable restrictions. Should the shares of Common Stock be represented by book or electronic account entry rather than a certificate, the Committee may take such steps to restrict transfer of the shares of Common Stock as the Committee considers necessary or advisable.

14.6 *Trading Policy and Other Restrictions.* Transactions involving Awards under the Plan shall be subject to the Company's insider trading policy and other restrictions, terms, conditions and policies established by the Board or Committee from time to time or by applicable law.

14.7 *Section 409A Compliance.* To the extent applicable, it is intended that the Plan and all Awards hereunder comply with, or be exempt from, the requirements of Section 409A of the Code and the Treasury Regulations and other guidance issued thereunder, and that the Plan and all Award Agreements shall be interpreted and applied by the Committee in a manner consistent with this intent in order to avoid the imposition of any additional tax under Section 409A of the Code. In the event that any (i) provision of the Plan or an Award Agreement, (ii) Award, payment, transaction or (iii) other action or arrangement contemplated by the provisions of the Plan is determined by the Committee to not comply with the applicable requirements of Section 409A of the Code and the Treasury Regulations and other guidance issued thereunder, the Committee shall have the authority to take such actions and to make such changes to the Plan or an Award Agreement as the Committee deems necessary to comply with such requirements. No payment that constitutes deferred compensation under Section 409A of the Code that would otherwise be made under the Plan or an Award Agreement upon a termination of Service will be made or provided unless and until such termination is also a

“separation from service,” as determined in accordance with Section 409A of the Code. Notwithstanding the foregoing or anything elsewhere in the Plan or an Award Agreement to the contrary, if a Participant is a “specified employee” as defined in Section 409A of the Code at the time of termination of Service with respect to an Award, then solely to the extent necessary to avoid the imposition of any additional tax under Section 409A of the Code, the commencement of any payments or benefits under the Award shall be deferred until the date that is six (6) months plus one (1) day following the date of the Participant’s termination of Service or, if earlier, the Participant’s death (or such other period as required to comply with Section 409A). For purposes of Section 409A of the Code, a Participant’s right to receive any installment payments pursuant to this Plan or any Award granted hereunder shall be treated as a right to receive a series of separate and distinct payments. For the avoidance of doubt, each applicable tranche of Common Shares subject to vesting under any Award shall be considered a right to receive a series of separate and distinct payments. In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on a Participant by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code.

14.8 *Section 457A Compliance.* In the event any Award is subject to Section 457A of the Code (“*Section 457A*”), the Committee may, in its sole discretion and without a Participant’s prior consent, amend the Plan and/or Awards, adopt policies and procedures, or take any other actions (including amendments, policies, procedures and actions with retroactive effect) as are necessary or appropriate to (i) exempt the Plan and/or any Award from the application of Section 457A, (ii) preserve the intended tax treatment of any such Award, or (iii) comply with the requirements of Section 457A, including without limitation any such regulations, guidance, compliance programs and other interpretative authority that may be issued after the date of the grant. To the extent that an Award constitutes deferred compensation subject to Section 457A, such Award will be subject to taxation in accordance with Section 457A. In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on a Participant by Section 457A of the Code or any damages for failing to comply with Section 457A of the Code.

14.9 *Securities Law Compliance.* No shares of Common Stock will be issued or transferred pursuant to an Award unless and until all then applicable requirements imposed by Federal and state securities and other laws, rules and regulations and by any regulatory agencies having jurisdiction, and by any exchanges upon which the shares of Common Stock may be listed, have been fully met. As a condition precedent to the issuance of shares of Common Stock pursuant to the grant or exercise of an Award, the Company may require the Participant to take any action that the Company determines is necessary or advisable to meet such requirements. The Committee may impose such conditions on any shares of Common Stock issuable under the Plan as it may deem advisable, including, without limitation, restrictions under the Securities Act, under the requirements of any exchange upon which such shares of the same class are then listed, and under any blue sky or other securities laws applicable to such shares. The Committee may also require the Participant to represent and warrant at the time of issuance or transfer that the shares of Common Stock are being acquired solely for investment purposes and without any current intention to sell or distribute such shares.

14.10 *Substitution or Assumption of Awards in Corporate Transactions.* The Committee may grant Awards under the Plan in connection with the acquisition, whether by purchase, merger, consolidation or other corporate transaction, of the business or assets of any corporation or other entity, in substitution for awards previously granted by such corporation or other entity or otherwise. The Committee may also assume any previously granted awards of a former employee or a current employee, director, consultant or other service provider of another corporation or entity that becomes an Eligible Person by reason of such corporation transaction.

The terms and conditions of the substituted or assumed awards may vary from the terms and conditions that would otherwise be required by the Plan solely to the extent the Committee deems necessary for such purpose. To the extent permitted by applicable law and the listing requirements of the NASDAQ or other exchange or securities market on which the Common Shares are listed, any such substituted or assumed awards shall not reduce the Share Reserve.

14.11 *Tax Withholding.* The Participant shall be responsible for payment of any taxes or similar charges required by law to be paid or withheld from an Award or an amount paid in satisfaction of an Award. Any required withholdings shall be paid by the Participant on or prior to the payment or other event that results in taxable income in respect of an Award. The Award Agreement may specify the manner in which the withholding obligation shall be satisfied with respect to the particular type of Award, which may include permitting the Participant to elect to satisfy the withholding obligation by tendering shares of Common Stock to the Company or having the Company withhold a number of shares of Common Stock having a value in each case up to the maximum statutory tax rates in the applicable jurisdiction or as the Committee may approve in its discretion (provided that such withholding does not result in adverse tax or accounting consequences to the Company), or similar charge required to be paid or withheld. In addition, to the extent permitted by the Committee in its sole discretion in an Award Agreement or otherwise, and subject to Section 16 of the Exchange Act, withholding may be satisfied through an open-market, broker-assisted sales transaction pursuant to which the Company is promptly delivered the amount of proceeds necessary to satisfy the withholding amount, which shall be subject to any terms and conditions imposed by the Committee. The Company shall have the power and the right to require a Participant to remit to the Company the amount necessary to satisfy federal, state, provincial and local taxes, domestic or foreign, required by law or regulation to be withheld, and to deduct or withhold from any shares of Common Stock deliverable under an Award to satisfy such withholding obligation.

14.12 *Unfunded Plan.* The adoption of the Plan and any reservation of shares of Common Stock or cash amounts by the Company to discharge its obligations hereunder shall not be deemed to create a trust or other funded arrangement. Except upon the issuance of shares of Common Stock pursuant to an Award, any rights of a Participant under the Plan shall be those of a general unsecured creditor of the Company, and neither a Participant nor the Participant's permitted transferees or estate shall have any other interest in any assets of the Company by virtue of the Plan. Notwithstanding the foregoing, the Company shall have the right to implement or set aside funds in a grantor trust, subject to the claims of the Company's creditors or otherwise, to discharge its obligations under the Plan.

14.13 *Other Compensation and Benefit Plans.* The adoption of the Plan shall not affect any other share incentive or other compensation plans in effect for the Company or any Subsidiary, nor shall the Plan preclude the Company from establishing any other forms of share incentive or other compensation or benefit program for employees of the Company or any Subsidiary. The amount of any compensation deemed to be received by a Participant pursuant to an Award shall not constitute includable compensation for purposes of determining the amount of benefits to which a Participant is entitled under any other compensation or benefit plan or program of the Company or a Subsidiary, including, without limitation, under any pension or severance benefits plan, except to the extent specifically provided by the terms of any such plan.

14.14 *Plan Binding on Transferees.* The Plan shall be binding upon the Company, its transferees and assigns, and the Participant, the Participant's executor, administrator and permitted transferees and beneficiaries.

14.15 *Severability*. If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

14.16 *Governing Law*. The Plan, all Awards and all Award Agreements, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to the Plan, any Award or Award Agreement, or the negotiation, execution or performance of any such documents or matter related thereto (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with the Plan, any Award or Award Agreement, or as an inducement to enter into any Award Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Delaware, including its statutes of limitations and repose, but without regard to any borrowing statute that would result in the application of the statute of limitations or repose of any other jurisdiction.

14.17 *No Fractional Shares*. No fractional shares of Common Stock shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional shares of Common Stock or whether such fractional shares or any rights thereto shall be canceled, terminated or otherwise eliminated.

14.18 *No Guarantees Regarding Tax Treatment*. Neither the Company nor the Committee make any guarantees to any Person regarding the tax treatment of Awards or payments made under the Plan. Neither the Company nor the Committee has any obligation to take any action to prevent the assessment of any tax on any Person with respect to any Award under Section 409A of the Code, Section 4999 of the Code or otherwise and neither the Company nor the Committee shall have any liability to a Person with respect thereto.

14.19 *Data Protection*. By participating in the Plan, each Participant consents to the collection, processing, transmission and storage by the Company, its Subsidiaries and any third party administrators of any data of a professional or personal nature for the purposes of administering the Plan and in connection with a Participant's status as a stockholder of the Company upon the issuance of any shares of Common Stock pursuant to an Award.

14.20 *Awards to Non-U.S. Participants*. To comply with the laws in countries other than the United States in which the Company or any of its Subsidiaries or Affiliates operates or has employees, Non-Employee Directors or consultants, the Committee, in its sole discretion, shall have the power and authority to (i) modify the terms and conditions of any Award granted to Participants outside the United States to comply with applicable foreign laws, (ii) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local government regulatory exemptions or approvals and (iii) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable. Any subplans and modifications to Plan terms and procedures established under this Section 14.20 by the Committee shall be attached to this Plan document as appendices.

15. Term; Amendment and Termination; Stockholder Approval.

15.1 *Term*. The Plan shall be effective as of the Effective Date. Subject to Section 15.2 hereof, the Plan shall terminate on the tenth anniversary of the Effective Date.

15.2 *Amendment and Termination.* The Board may from time to time and in any respect, amend, modify, suspend or terminate the Plan; provided, however, that no amendment, modification, suspension or termination of the Plan shall materially and adversely affect any Award theretofore granted without the consent of the Participant or the permitted transferee of the Award. The Board may seek the approval of any amendment, modification, suspension or termination by the Company's stockholders to the extent it deems necessary in its discretion for purposes of compliance with Section 422 of the Code or for any other purpose, and shall seek such approval to the extent it deems necessary in its discretion to comply with applicable law or listing requirements of NASDAQ or other exchange or securities market. Notwithstanding the foregoing, the Board shall have broad authority to amend the Plan or any Award under the Plan without the consent of a Participant to the extent it deems necessary or desirable in its discretion to comply with, take into account changes in, or interpretations of, applicable tax laws, securities laws, employment laws, accounting rules and other applicable laws, rules and regulations.

REGISTRATION RIGHTS AGREEMENT

by and among

Portillo's Inc.

and

the other parties hereto

October 20, 2021

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This REGISTRATION RIGHTS AGREEMENT (as may be amended, modified, supplemented or restated from time to time after the date hereof, this “Agreement”), is made as of October 20, 2021, by and among (i) Portillo’s Inc., a Delaware corporation (the “Company”) and (ii) each of the Persons listed on the signature pages hereto.

W I T N E S S E T H:

WHEREAS, the Board of Directors of the Company (the “Board”) has determined to effect an underwritten initial public offering (the “IPO”) of the Company’s Class A Common Stock (as defined below); and

WHEREAS, in connection with the IPO, the parties desire to set forth certain registration rights applicable to the Registrable Securities.

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

Section 1. Certain Definitions. As used herein, the following terms shall have the following meanings:

“Affiliate” means with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise. For the avoidance of doubt, neither the Company nor any Person controlled by the Company shall be deemed to be an Affiliate of any Holder.

“Agreement” has the meaning ascribed to such term in the Preamble.

“Beneficial Ownership” shall mean, with respect to a specified Person, the ownership of securities as determined in accordance with Rule 13d-3 of the Exchange Act, as such Rule is in effect from time to time. The terms “Beneficially Own” and “Beneficial Owner” shall have a correlative meaning.

“Berkshire” means collectively, the Persons set forth on Schedule II and any of their Permitted Transferees.

“Board” has the meaning ascribed to such term in the Preamble.

“Business Day” shall mean a day other than a Saturday, Sunday, or federal holiday or other day on which commercial banks in the City of New York are authorized or required by law or other governmental action to close.

“Claims” has the meaning ascribed to such term in Section 2.7(a).

“Class A Common Stock” shall mean the shares of Class A Common Stock, \$0.001 par value per share, of the Company, and any and all securities of any kind whatsoever which may be issued after the date hereof in respect of, or in exchange for, such shares of common stock of the Company pursuant to a merger, consolidation, stock split, stock dividend or recapitalization of the Company or otherwise.

“Common Stock Equivalents” means all options, warrants, LLC Units and other securities convertible into, or exchangeable or exercisable for (at any time or upon the

occurrence of any event or contingency and without regard to any vesting or other conditions to which such securities may be subject) shares of capital stock or other equity securities of such Person (including, without limitation, any note or debt security convertible into or exchangeable for shares of capital stock or other equity securities of such Person).

“Company” has the meaning ascribed to such term in the Preamble.

“Demand Exercise Notice” has the meaning ascribed to such term in Section 2.1(a).

“Demand Registration” has the meaning ascribed to such term in Section 2.1(a).

“Demand Registration Request” has the meaning ascribed to such term in Section 2.1(a).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC issued under such Act, as they may from time to time be in effect.

“Expenses” means any and all fees and expenses incident to the Company’s performance of or compliance with Article 2, including, without limitation: (i) SEC, stock exchange or FINRA, and all other registration and filing fees and all listing fees and fees with respect to the inclusion of securities on the Nasdaq Global Select Market or on any other securities market on which the Class A Common Stock is listed or quoted, (ii) fees and expenses of compliance with state securities or “blue sky” laws of any state or jurisdiction of the United States or compliance with the securities laws of foreign jurisdictions and in connection with the preparation of a “blue sky” survey, including, without limitation, reasonable fees and expenses of outside “blue sky” counsel and securities counsel in foreign jurisdictions, (iii) word processing, printing and copying expenses, (iv) messenger and delivery expenses, (v) expenses incurred in connection with any road show, (vi) fees and disbursements of counsel for the Company, (vii) with respect to each registration or underwritten offering, the reasonable fees and disbursements of counsel for the Participating Holder(s); provided that, such fees of Berkshire and each other Participating Holder shall not exceed \$75,000 per registration or underwritten offering, (viii) fees and disbursements of all independent public accountants (including the expenses of any audit and/or comfort letter and updates thereof) and fees and expenses of other Persons, including special experts, retained by the Company, (ix) fees and expenses payable to any Qualified Independent Underwriter, (x) any other fees and disbursements of underwriters, if any, customarily paid by issuers or sellers of securities, including reasonable fees and expenses of counsel for the underwriters in connection with any filing with or review by FINRA (excluding, for the avoidance of doubt, any underwriting discount, commissions, or spread), (xi) fees and expenses of any transfer agent or custodian and (xii) expenses for securities law liability insurance and any rating agency fees.

“Family Member” means, with respect to any Person who is an individual, any spouse, parent, siblings or lineal descendants of such Person (including adoptive relationships) and any trust or other estate planning vehicle over which such Person has “control” (as defined in the definition of “Affiliate”) established for the benefit of such Person and/or such Person’s spouse and/or such Person’s descendants (by birth or adoption), parents, siblings or dependents.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“Goldman Sachs” means collectively, Stone Street 2014 Offshore, L.P., 2014 Employee Offshore Aggregator, L.P., Broad Street Principal Investments, L.L.C., Stone Street 2014, L.P., Bridge Street 2014, L.P., MBD 2014, L.P. and their Permitted Transferees.

“Holder(s)” means (1) any Person who is a signatory to this Agreement (other than the Company), or (2) any Permitted Transferee to whom any such Person who is a signatory to this

Agreement shall assign or transfer any rights hereunder; provided that in the case of clause (2), such Person or such transferee, as applicable, has executed and delivered to the Company a joinder agreement in the form of Exhibit A hereto, and has thereby agreed in writing to be bound by this Agreement in respect of such Registrable Securities.

“Incidental Registration Notice” has the meaning ascribed to such term in Section 2.2(a).

“IPO” has the meaning ascribed to such term in the Preamble.

“Key Holders” means the parties set forth on Schedule I hereto and any of their respective Permitted Transferees.

“Law” means any law (including common law), statute, code, ordinance rule or regulation of any governmental entity.

“Litigation” means any action, proceeding or investigation in any court or before any governmental authority.

“LLC Agreement” means the Second Amended and Restated Limited Liability Company Agreement of PHD Group Holdings LLC, a Delaware limited liability company.

“LLC Unit” means a limited liability interest in PHD Group Holdings LLC or any other class of limited liability interests in PHD Group Holdings LLC.

“Lock-Up Agreement” means any agreement entered into by a Holder that provides for restrictions on the transfer of Registrable Securities held by such Holder.

“Long Form Registrations” has the meaning ascribed to such term in Section 2.1(a).

“Majority Participating Holders” means Participating Holders holding more than 50% of the Registrable Securities proposed to be included in any offering of Registrable Securities by such Participating Holders pursuant to Section 2.1 or Section 2.2.

“Opt-Out Request” has the meaning ascribed to such term in Section 3.13(c).

“Participating Holders” means all Holders of Registrable Securities which are proposed to be included in any offering of Registrable Securities pursuant to Section 2.1 or Section 2.2.

“Permitted Transferee” (a) in the case of a Holder who is an individual, (i) any executor, administrator or testamentary trustee of such Holder’s estate if such Holder dies, (ii) any Person receiving Registrable Securities of such Holder by will, intestacy laws or the laws of descent or survivorship, (iii) any trustee of a trust (including an inter vivos trust) of which there are no principal beneficiaries other than such Holder or one or more Family Members of such Holder over which such Holder has “control” (as defined in the definition of “Affiliate”), or (iv) any private foundation or similar charitable organization over which such Holder has “control” (as defined in the definition of “Affiliate”) and (b) in the case of a Holder that is not an individual, its Affiliates.

“Person” means any individual, corporation (including not for profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, joint-stock company, unincorporated organization, governmental entity or agency or other entity of any kind or nature.

“Piggyback Registration” has the meaning ascribed to such term in Section 2.2(a).

“Policies” has the meaning ascribed to such term in [Section 3.13\(b\)](#).

“Qualified Independent Underwriter” means a “qualified independent underwriter” within the meaning of FINRA Rule 5121.

“Registrable Securities” means (a) any shares of Class A Common Stock held by the Holders at any time (including those held as a result of, or issuable upon, the Exchange, conversion or exercise of Common Stock Equivalents), whether now owned or acquired by the Holders at a later time, (b) any shares of Class A Common Stock issued or issuable, directly or indirectly, in exchange for or with respect to the Class A Common Stock referenced in clause (a) above by way of stock dividend, stock split or combination of shares in connection with a reclassification, recapitalization, merger, share exchange, consolidation or other reorganization and (c) any securities issued in replacement of or exchange for any securities described in clause (a) or (b) above. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (A) a registration statement with respect to the sale of such securities shall have been declared effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (B) such securities are able to be immediately sold pursuant to Rule 144 without restrictions as to volume limitations and (C) such securities are otherwise transferred or sold, the Company has delivered a new certificate or other evidence of ownership for such securities not bearing a legend and such securities may be resold without subsequent registration under the Securities Act.

“Rule 144” and “Rule 144A” have the meaning ascribed to such term in [Section 3.1](#).

“SEC” means the Securities and Exchange Commission or such other federal agency which at such time administers the Securities Act.

“Section 3.13 Representatives” has the meaning ascribed to such term in [Section 3.13\(b\)](#).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC issued under such Act, as they may from time to time be in effect.

“Shelf Offering” has the meaning ascribed to such term in [Section 2.1\(c\)\(ii\)](#).

“Shelf Registration Statement” means a shelf registration statement filed under Rule 415 of the Securities Act.

“Short Form Registration” has the meaning ascribed to such term in [Section 2.1\(a\)](#).

“Subsidiary” means any direct or indirect subsidiary of the Company on the date hereof and any direct or indirect subsidiary of the Company organized or acquired after the date hereof.

“Take-Down Notice” has the meaning ascribed to such term in [Section 2.1\(c\)\(ii\)](#).

“Underwritten Block Trade” means an offering and/or sale of Registrable Securities by one or more of Berkshire and Goldman Sachs on an underwritten block trade basis (whether firm commitment or otherwise) without substantial marketing efforts prior to pricing, including, without limitation, a same day trade, overnight trade or similar transaction.

“Valid Business Reason” has the meaning ascribed to such term in [Section 2.1\(e\)](#).

Section 2. Registration Rights.

1.1. Demand Registrations.

(a) Demand Registrations Generally. This Section 2.1 sets forth the terms pursuant to which Berkshire may request registration under the Securities Act of all or any portion of the Registrable Securities held by such Holders on Form S-1 or similar long form registration (“Long Form Registration”) and Berkshire may request registration under the Securities Act of all or any portion of the Registrable Securities held by Berkshire on Form S-3 or any similar short form registration (“Short Form Registration”), if available. All registrations requested pursuant to this Section 2.1 are referred to herein as “Demand Registrations.” If the Company shall receive a written request that the Company file a Long Form Registration or with respect to all or a portion of the Registrable Securities (a “Demand Registration Request”), then the Company shall, within ten (10) Business Days of the receipt thereof, give written notice (the “Demand Exercise Notice”) of such request to all other Holders, and, subject to the limitations of this Section 2.1, use its reasonable best efforts to effect, as soon as practicable, the registration under the Securities Act (including, without limitation, by means of a Shelf Registration Statement thereunder if so requested and if the Company is then eligible to use such a registration) of all Registrable Securities that the Holders request to be registered. Each request for a Demand Registration shall specify the approximate number of Registrable Securities requested to be registered.

(b) Long Form Registrations. At any time that the Company is not legally eligible to file a registration statement with the SEC on Form S-3 or any similar short form registration statement, Berkshire shall be entitled to request three (3) Long Form Registrations subject to Section 2.1(e), and the Company shall effect such Long Form Registrations pursuant to Section 2.4 and the Company shall pay all Expenses in connection with such Long Form Registrations.

(c) Short Form Registrations.

(i) In addition to the Long Form Registrations provided pursuant to Section 2.1(b), Berkshire shall be entitled to request an unlimited number of Short Form Registrations, the Company shall effect such Short Form Registrations pursuant to Section 2.4 and the Company shall pay all Expenses in connection with any such Short Form Registration. The Company shall use its best efforts to make Short Form Registrations on Form S-3 available for the sale of Registrable Securities and if Short Form Registrations on Form S-3 are available for the sale of Registrable Securities, Berkshire may only request registration on Form S-3 and not on Form S-1.

(ii) At any time that any Short Form Registration is effective, if any Holder or group of Holders holding Registrable Securities delivers a notice to the Company (a “Take-Down Notice”) stating that it intends to effect an underwritten offering or distribution of all or part of its Registrable Securities included by it on any Short Form Registration (a “Shelf Offering”) and stating the number of the Registrable Securities to be included in the Shelf Offering, then the Company shall amend or supplement the Short Form Registration as may be necessary in order to enable such Registrable Securities to be distributed pursuant to the Shelf Offering (taking into account the inclusion of Registrable Securities by any other Holders thereof pursuant to this Section 2.1(c)(ii)). In connection with any Shelf Offering, the Company shall, promptly after receipt of a Take-Down Notice, deliver such notice to all other Holders of Registrable Securities included in any Short Form Registration and permit each Holder to include its Registrable Securities included on a Short Form Registration in the Shelf Offering if such Holder notifies the proposing Holders and the Company within two (2) Business Days after delivery of the Take-Down Notice to such Holder, and in the event that the managing

underwriter advises the Holders of such securities in writing that in its or their view the total number or dollar amount of Registrable Securities proposed to be sold in such offering is such as to adversely affect the success of such offering (including, without limitation, securities proposed to be included by other Holders of securities entitled to include securities in such offering pursuant to piggyback registration rights described in Section 2.2 hereof), the managing underwriter may limit the number of shares which would otherwise be included in such Shelf Offering in the same manner as is described in Section 2.1(d).

(iii) Notwithstanding the foregoing, if Berkshire wishes to engage in an Underwritten Block Trade off of a Shelf Registration Statement on Form S-3 (either through filing an automatic shelf registration statement or through a take-down from an already existing Shelf Registration Statement), then notwithstanding the foregoing time periods, Berkshire only needs to notify the Company of the Underwritten Block Trade not less than (i) five (5) Business Days prior to the day such offering is first anticipated to commence, in the case of a take-down from an already existing Shelf Registration Statement on Form S-3, or (ii) twenty (20) Business Days prior to the day such offering is first anticipated to commence, in the case of filing a new Shelf Registration Statement on Form S-3. Goldman Sachs must elect whether or not to participate in such Underwritten Block Trade on the day such offering is to commence, and the Company shall as expeditiously as possible use its reasonable best efforts (including co-operating with Berkshire and Goldman Sachs with respect to the provision of necessary information) to facilitate such Underwritten Block Trade (which may close as early as two (2) Business Days after the date it commences); provided that Berkshire and Goldman Sachs shall use commercially reasonable efforts to work with the Company and the underwriters prior to making such request in order to facilitate preparation of offering documents related to the Underwritten Block Trade. For the avoidance of doubt, Holders other than Berkshire and Goldman Sachs shall not be entitled to demand, receive notice of, or to elect to participate in, a Underwritten Block Trade or any Shelf Registration Statement or prospectus to be used in connection with such Underwritten Block Trade.

(d) Demand Registration Priority. The Company shall not include in any Demand Registration any securities which are not Registrable Securities without the prior written consent of the Majority Participating Holders included in such registration. If a Demand Registration is an underwritten offering and the managing underwriters advise the Company in writing that, in their opinion, the number of Registrable Securities and, if permitted hereunder, other securities requested to be included in such offering exceeds the number of Registrable Securities and other securities, if any, which can be sold in an orderly manner in such offering within a price range acceptable to the Majority Participating Holders to be included in such registration therein, without adversely affecting the marketability of the offering, the Company shall include in such registration prior to the inclusion of any securities which are not Registrable Securities (i) first, the number of Registrable Securities requested to be included which in the opinion of such underwriters can be sold in an orderly manner within the price range of such offering, pro rata among the respective Holders thereof on the basis of the number of Registrable Securities beneficially owned by each such Holder, and (ii) second, any other securities with respect to which the Company has granted registration rights in accordance with Section 2.1(g) hereof requested to be included in such registration, pro rata among the respective Holders thereof on the basis of the amount of such securities requested to be included therein by each such Holder. Without the consent of the Company and the Majority Participating Holders included in such registration, any Persons other than Holders of Registrable Securities who participate in Demand Registrations which are not at the Company's expense must pay their share of the Expenses as provided in Section 2.5 hereof.

(e) Restrictions on Demand Registrations. The Company shall not be obligated to effect any Demand Registration (i) within thirty (30) days after a Demand Registration pursuant to this Section 2.1 that has been declared or ordered effective, (ii) during the period any applicable restrictions are still in effect pursuant to any Lock-Up Agreement that has not been waived (or is not reasonably expected to be waived) by the underwriters party thereto, (iii) if the Company shall furnish to such Holders a certificate signed by the Chief Executive Officer of the Company stating that in the good faith judgment of the Board (after consultation with external legal counsel), any registration of Registrable Securities should not be made or continued (or sales under a Shelf Registration Statement should be suspended) because (i) such registration (or continued sales under a Shelf Registration Statement) would materially and adversely interfere with any existing or potential material financing, acquisition, corporate reorganization or merger or other material transaction or event involving the Company or any of its subsidiaries; (ii) the Company is in possession of material non-public information, the premature disclosure of which has been determined by the Board to not be in the Company's best interests or (iii) to comply with the Securities Act, the Exchange Act, or the respective rules and regulations promulgated thereunder (in any case, a "Valid Business Reason") then (x) the Company may postpone filing a registration statement relating to a Demand Registration Request or suspend sales under an existing Shelf Registration Statement until five (5) Business Days after such Valid Business Reason no longer exists, but in no event for more than 60 days after the date the Board determines a Valid Business Reason exists and (y) in the case where a registration statement has been filed relating to a Demand Registration Request, if the Valid Business Reason has not resulted from actions taken by the Company, the Company may cause such registration statement to be withdrawn and its effectiveness terminated or may postpone amending or supplementing such registration statement until five (5) Business Days after such Valid Business Reason no longer exists, but in no event for more than 60 days after the date the Board determines a Valid Business Reason exists; and the Company shall give written notice to the Participating Holders of its determination to postpone or withdraw a registration statement or suspend sales under a Shelf Registration Statement and of the fact that the Valid Business Reason for such postponement, withdrawal or suspension no longer exists, in each case, promptly after the occurrence thereof; provided, however, that the Company shall not defer its obligation in this manner for more than (A) 60 days in any 90-day period or (B) for periods exceeding, in the aggregate, 90 days in any twelve-month period, or (z) in the case of a Demand Registration, consisting of a Long Form Registration, within 180 days after the effective date of a previous Long Form Registration or a previous registration in which the Holders of Registrable Securities were given piggyback rights pursuant to Section 2.2 and in which at least 75% of the number of Registrable Securities requested to be included by the Holders were included in such registration. In the event the Company gives written notice of a Valid Business Reason, the Holders of Registrable Securities initially requesting such Demand Registration shall be entitled to withdraw such request and, if such request is withdrawn, such Demand Registration shall not be treated as one of the permitted Demand Registrations hereunder and the Company shall pay all Expenses in connection with such registration. Notwithstanding the foregoing, the Company may postpone a Demand Registration hereunder only twice in any twelve-month period.

If the Company shall give any notice of postponement, withdrawal or suspension of any registration statement pursuant to clause (iv) of this Section 2.1(e), the Company shall not, during the period of postponement, withdrawal or suspension, register any Class A Common Stock, other than pursuant to a registration statement on Form S-4 or S-8 (or an equivalent registration form then in effect). Each Holder of Registrable Securities agrees that, upon receipt of any notice from the Company that the Company has determined to withdraw any registration statement pursuant to clause (iv) of this Section 2.1(e), such Holder will discontinue its disposition of Registrable Securities pursuant to such registration statement and, if so directed by the Company, will deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in such Holder's possession of the prospectus covering such Registrable Securities that was in effect at the time of receipt of such notice. If the Company

shall have withdrawn or prematurely terminated a registration statement filed pursuant to a Demand Registration (whether pursuant to clause (iv) of this Section 2.1(e) or as a result of any stop order, injunction or other order or requirement of the SEC or any other governmental agency or court), the Company shall not be considered to have effected an effective registration for the purposes of this Agreement until the Company shall have filed a new registration statement covering the Registrable Securities covered by the withdrawn registration statement and such registration statement shall have been declared effective and shall not have been withdrawn. If the Company shall give any notice of withdrawal or postponement of a registration statement, the Company shall, not later than five (5) Business Days after the Valid Business Reason that caused such withdrawal or postponement no longer exists (but in no event later than 60 days after the date of the postponement or withdrawal), use its reasonable best efforts to effect the registration under the Securities Act of the Registrable Securities covered by the withdrawn or postponed registration statement in accordance with Section 2.1 (unless Berkshire shall have withdrawn such request, in which case the Company shall not be considered to have effected an effective registration for the purposes of this Agreement), and such registration shall not be withdrawn or postponed pursuant to clause (iv) of this Section 2.1(c).

(f) Selection of Underwriters. Berkshire shall have the right to select the managing underwriters for such registration, provided that, each such managing underwriter is reasonably satisfactory to the Company, which approval shall not be unreasonably withheld or delayed.

(g) Other Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of Holders that hold or Beneficially Own more than 50% of the Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder any registration rights the terms of which are more favorable taken as a whole than the registration rights granted to the Holders hereunder unless the Company shall also give such rights to such Holders.

2.2. Piggyback Registrations.

(a) Piggyback Rights. If the Company at any time proposes to file a registration statement with respect to any offering of its securities for its own account or for the account of any Person who holds its securities (other than (i) a registration on Form S-4 or S-8 or any successor form to such forms, (ii) a registration of securities solely relating to an offering and sale to employees, directors or consultants of the Company pursuant to any employee stock plan or other employee benefit plan arrangement, (iii) a registration of non-convertible debt securities or (iv) an Underwritten Block Trade) (a "Piggyback Registration") then, as expeditiously as reasonably possible (but in no event less than ten (10) days following the date of filing such registration statement), the Company shall give written notice (the "Incidental Registration Notice") of such proposed filing to all Holders of Registrable Securities, and such notice shall offer the Holder the opportunity to register such number of Registrable Securities as each such Holder may request in writing. Subject to Section 2.2(c) and Section 2.2(d), the Company shall include in such registration statement all such Registrable Securities which are requested to be included therein within fifteen (15) days after the Incidental Registration Notice is given to such Holders.

(b) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the Board and managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the Company, the Company shall include, after including all of the primary securities the Company desires to include in such registration, (i) first, the number of Registrable Securities requested to be included which in the opinion of such underwriters can be

sold in an orderly manner within the price range acceptable to the Holder(s), pro rata among the respective Holders thereof on the basis of the number of Registrable Securities beneficially owned by each such Holder, and (ii) second, other securities with respect to which the Company has granted registration rights in accordance with Section 2.1(g) hereof requested to be included in such registration, pro rata among the respective Holders thereof on the basis of the amount of such securities beneficially owned by each such Holder. No employee stockholder of the Company will be entitled to include Registrable Securities in an underwritten offering requested by Berkshire pursuant to Section 2.1 to the extent that the managing underwriters and the Board of such underwritten offering shall determine in good faith that the participation of such employee stockholder, in whole or in part, would adversely affect the marketability of the securities being sold by Berkshire in such underwritten offering.

(c) Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of Holders of the Company's securities, and the managing underwriters and the Board advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the consent of the Majority Participating Holders to be included in such registration, the Company shall include in such registration (i) first, the securities requested to be included therein by the Holders requesting such registration and the Registrable Securities requested to be included in such registration, pro rata among the Holders of such securities and such Registrable Securities on the basis of the number of shares beneficially owned by each such Holder, and (ii) second, other securities with respect to which the Company has granted registration rights in accordance with Section 2.1(g) hereof requested to be included in such registration, pro rata among the respective Holders thereof on the basis of the amount of such securities requested to be included therein by each such Holder. No Holder who is an employee stockholder of the Company will be entitled to include Registrable Securities in an underwritten offering requested by Berkshire pursuant to Section 2.1 to the extent that the managing underwriters and the Board of such underwritten offering shall determine in good faith that the participation of such employee stockholder, in whole or in part, would adversely affect the marketability of the securities being sold by Berkshire in such underwritten offering.

(d) Selection of Underwriters. If any Piggyback Registration is an underwritten secondary offering on behalf of the Holders of the Company's securities, Berkshire's selection of investment banker(s) and manager(s) for the offering must be approved in writing by the Company.

(e) Other Registrations. If the Company has previously filed a registration statement with respect to Registrable Securities pursuant to Section 2.1 or pursuant to this Section 2.2, and if such previous registration has not been withdrawn or abandoned or all shares offered thereunder have not been sold, the Company shall not file or cause to be effected any other registration of any of its equity securities or securities convertible or exchangeable into or exercisable for its equity securities under the Securities Act (except on Form S-8 or any successor form), whether on its own behalf or at the request of any Holder or Holders of such securities, until a period of at least 180 days has elapsed from the effective date of such previous registration.

2.3. Holdback Agreements.

(a) Each Holder agrees not to offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such securities, enter into a transaction which would have the same effect or would otherwise effect a public sale or distribution (including sales pursuant to Rule 144), or enter into any swap, hedge or other arrangement that transfers, in whole or in part,

any of the economic consequences of ownership of such securities, whether any such aforementioned transaction is to be settled by delivery of such securities or other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge or disposition, or to enter into any such transaction, swap, hedge or other arrangement, in each case during the period beginning seven (7) days before and ending up to 180 days in connection with an initial public offering and up to 90 days in connection with a subsequent underwritten public offering, as requested by Berkshire or the underwriters of such initial public offering or subsequent underwritten public offering, as applicable; provided that no Participating Holders shall be required to agree to any lock-up restrictions to which Berkshire is not subject and shall be released from any restrictions to which Berkshire is not subject and shall be released from any such restrictions simultaneous with and to the same extent as any other Participating Holder. In addition, each Holder of Registrable Securities agrees to execute any further letters, agreements and/or other documents reasonably requested by the Company or its underwriters which are consistent with the terms of this Section 2.3(a). The Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of such restricted period.

(b) The Company (i) shall not effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such equity securities, during the period beginning seven (7) days before and ending 180 days after the effective date of any underwritten public offering of the Company's equity securities (including Demand Registrations and Piggyback Registrations) (except as part of such underwritten registration or pursuant to registrations on Form S-4 or S-8 or any successor form), unless the underwriters managing the registered public offering otherwise agree, and (ii) shall cause each Holder of its equity securities, or any securities convertible into or exchangeable or exercisable for equity securities, purchased or otherwise acquired from the Company at any time after the date of this Agreement (other than in a registered public offering) to agree not to effect any public sale or distribution (including sales pursuant to Rule 144) of any such securities during any such period (except as part of such underwritten registration, if otherwise permitted), unless the underwriters managing the registered public offering otherwise agree and such agreement permits all Holders of Registrable Securities to sell such securities on a pro rata basis.

2.4. Registration Procedures. If and whenever the Company is required by the provisions of this Agreement to effect or cause the registration of any Registrable Securities under the Securities Act as provided in this Agreement, the Company shall use its reasonable best efforts to effect the registration and the widely disseminated sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company shall, as expeditiously as possible:

(a) prepare and file with the SEC and FINRA all filings required for the consummation of the offering, including preparing and filing with the SEC a registration statement on the appropriate form of the SEC for the disposition of such Registrable Securities in accordance with the intended method of disposition thereof, which registration form (i) shall be selected by the Company and (ii) shall, in the case of a shelf registration, be available for the sale of the Registrable Securities by the selling Holders thereof and such registration statement shall comply as to form in all material respects with the requirements of the applicable registration form and include all financial statements required by the SEC to be filed therewith, and the Company shall use its reasonable best efforts to cause such registration statement to become effective and remain continuously effective from the date such registration statement is declared effective until the earliest to occur of (A) the first date as of which all of the Registrable Securities included in the registration statement have been sold or (B) a period of 90 days in the case of an underwritten offering effected pursuant to a registration statement other than a Shelf Registration Statement and a period of three (3) years in the case of a Shelf Registration Statement (provided that before filing a registration statement or prospectus or any amendments

or supplements thereto, the Company shall furnish to the counsel selected by the Majority Participating Holders covered by such registration statement copies of all such documents proposed to be filed, which documents shall be subject to the review and comment of such counsel);

(b) notify each Holder of Registrable Securities of the effectiveness of each registration statement filed hereunder and prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith and such free writing prospectuses and Exchange Act reports as may be necessary to keep such registration statement continuously effective for the period set forth in Section 2.4(a) and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all Registrable Securities covered by such registration statement in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such registration statement (and, in connection with any Shelf Registration Statement, file one or more prospectus supplements pursuant to Rule 424 under the Securities Act covering Registrable Securities upon the request of one or more Holders wishing to offer or sell Registrable Securities whether in an underwritten offering or otherwise);

(c) furnish to each seller of Registrable Securities such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller;

(d) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller (provided that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction);

(e) promptly notify each seller of such Registrable Securities, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such registration statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, at the request of any such seller, the Company shall prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading;

(f) promptly notify each Participating Holder and each managing underwriter, if any: (i) when the registration statement, any pre-effective amendment, the prospectus or any prospectus supplement related thereto, any post-effective amendment to the registration statement or any free writing prospectus has been filed and, with respect to the registration statement or any post-effective amendment, when the same has become effective; (ii) of any request by the SEC or state securities authority for amendments or supplements to the registration statement or the prospectus related thereto or for additional information; (iii) of the issuance by the SEC of any stop order suspending the effectiveness of the registration statement or the initiation of any proceedings for that purpose; (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the securities or state "blue sky" laws of any jurisdiction or the initiation of any proceeding for such purpose; (v) of the existence of any fact of which the Company becomes

aware which results in the registration statement or any amendment thereto, the prospectus related thereto or any supplement thereto, any document incorporated therein by reference, any free writing prospectus or the information conveyed to any purchaser at the time of sale to such purchaser containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make any statement therein not misleading; and (vi) if at any time the representations and warranties contemplated by any underwriting agreement, securities sale agreement, or other similar agreement, relating to the offering shall cease to be true and correct in all material respects prior to closing of such offering; and, if the notification relates to an event described in clause (v), the Company shall promptly prepare and furnish to each such seller and each underwriter, if any, a reasonable number of copies of a prospectus supplemented or amended so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein in the light of the circumstances under which they were made not misleading;

(g) cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed and, if not so listed, cause all such Registrable Securities to be listed on a national securities exchange and, without limiting the generality of the foregoing, to arrange for at least two (2) market makers to register as such with respect to such Registrable Securities with FINRA, if necessary;

(h) cause its senior management, officers and employees to participate in, and to otherwise facilitate and cooperate with the preparation of the registration statement and prospectus and any amendments or supplements thereto (including participating in meetings, drafting sessions, due diligence sessions and rating agency presentations) taking into account the Company's reasonable business needs;

(i) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(j) enter into such customary agreements (including underwriting agreements in customary form) and take all such other actions as the Majority Participating Holders being sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including effecting a stock split or a combination of shares);

(k) in any transaction involving the use of an underwriter or underwriters, use its reasonable best efforts (i) to obtain an opinion from the Company's counsel, including local and/or regulatory counsel, and a comfort letter and updates thereof from the Company's independent public accountants who have certified the Company's financial statements included or incorporated by reference in such registration statement, in each case, in customary form and covering such matters as are customarily covered by such opinions and comfort letters (including, in the case of such comfort letter, events subsequent to the date of such financial statements) delivered to underwriters in underwritten public offerings, which opinion and letter shall be dated the dates such opinions and comfort letters are customarily dated and otherwise reasonably satisfactory to the underwriters, if any, and (ii) furnish to each Holder participating in the offering and to each underwriter, if any, a copy of such opinion and letter addressed to such underwriter;

(l) make available for inspection by any seller of Registrable Securities, any underwriter participating in any disposition pursuant to such registration statement and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors, employees and independent accountants to supply all information

reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(m) deliver promptly to counsel for each Participating Holder and to each managing underwriter, if any, copies of all correspondence between the SEC and the Company, its counsel or auditors and all memoranda relating to discussions with the SEC or its staff with respect to the registration statement, and, upon receipt of such confidentiality agreements as the Company may reasonably request, make reasonably available for inspection by counsel for each Participating Holder, by counsel for any underwriter, participating in any disposition to be effected pursuant to such registration statement and by any accountant or other agent retained by any Participating Holder or any such underwriter, all pertinent financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees to supply all information reasonably requested by any such counsel for a Participating Holder, counsel for an underwriter, accountant or agent in connection with such registration statement;

(n) use its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness of the registration statement, or the prompt lifting of any suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction, in each case, as promptly as reasonably practicable;

(o) provide a CUSIP number for all Registrable Securities, not later than the effective date of the registration statement;

(p) use its best efforts to make available its senior management, employees and personnel for participation in "road shows" and other marketing efforts and otherwise provide reasonable assistance to the underwriters (taking into account the needs of the Company's businesses and the requirements of the marketing process) in marketing the Registrable Securities in any underwritten offering;

(q) promptly prior to the filing of any document which is to be incorporated by reference into the registration statement or the prospectus (after the initial filing of such registration statement), and prior to the filing of any free writing prospectus, provide copies of such document to counsel for each Participating Holder and to each managing underwriter, if any, and make the Company's representatives reasonably available for discussion of such document and make such changes in such document concerning the Participating Holders prior to the filing thereof as counsel for the Participating Holders or underwriters may reasonably request;

(r) furnish to counsel for each Participating Holder and to each managing underwriter, without charge, at least one (1) signed copy of the registration statement and any post-effective amendments or supplements thereto, including financial statements and schedules, all documents incorporated therein by reference, the prospectus contained in such registration statement (including each preliminary prospectus and any summary prospectus), any other prospectus filed under Rule 424 under the Securities Act and all exhibits (including those incorporated by reference) and any free writing prospectus utilized in connection therewith;

(s) cooperate with the Participating Holders and the managing underwriter, if any, to facilitate the timely preparation and delivery of certificates not bearing any restrictive legends representing the Registrable Securities to be sold, and cause such Registrable Securities to be issued in such denominations and registered in such names in accordance with the underwriting agreement at least two (2) Business Days prior to any sale of Registrable Securities to the underwriters or, if not an underwritten offering, in accordance with the instructions of the Participating Holders at least two (2) Business Days prior to any sale of Registrable Securities

and instruct any transfer agent and registrar of Registrable Securities to release any stop transfer orders in respect thereof;

(t) cooperate with any due diligence investigation by any manager, underwriter or Participating Holder and make available such documents and records of the Company and its Subsidiaries that they reasonably request (which, in the case of the Participating Holder, may be subject to the execution by the Participating Holder of a customary confidentiality agreement in a form which is reasonably satisfactory to the Company);

(u) take no direct or indirect action prohibited by Regulation M under the Exchange Act;

(v) use its best efforts to comply with all applicable rules and regulations of the SEC, and make available to its securityholders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months beginning with the first day of the Company's first full calendar quarter after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder;

(w) permit any Holder of Registrable Securities which Holder, in its sole and exclusive judgment, might be deemed to be an underwriter or a controlling person of the Company, to participate in the preparation of such registration or comparable statement and to require the insertion therein of material, furnished to the Company in writing, which in the reasonable judgment of such Holder and its counsel should be included;

(x) in the event of the issuance of any stop order suspending the effectiveness of a registration statement, or of any order suspending or preventing the use of any related prospectus or suspending the qualification of any of the Company's equity securities included in such registration statement for sale in any jurisdiction, the Company shall use its best efforts promptly to obtain the withdrawal of such order;

(y) use its best efforts to cause such Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the sellers thereof to consummate the disposition of such Registrable Securities;

(z) in any transaction involving the use of an underwriter or underwriters, use its reasonable best efforts to obtain a cold comfort letter from the Company's independent public accountants in customary form and covering such matters of the type customarily covered by cold comfort letters as the Majority Participating Holders reasonably request; provided that such Registrable Securities constitute at least 10% of the securities covered by such registration statement;

(aa) take all such other commercially reasonable actions as are necessary or advisable in order to expedite or facilitate the disposition of such Registrable Securities;

(ab) take all reasonable action to ensure that any free writing prospectus utilized in connection with any registration covered by Section 2.1 or Section 2.2 complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related prospectus, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(ac) in connection with any underwritten offering, if at any time the information conveyed to a purchaser at the time of sale includes any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, promptly file with the SEC such amendments or supplements to such information as may be necessary so that the statements as so amended or supplemented will not, in the light of the circumstances, be misleading.

2.5. Registration Expenses. All Expenses incurred in connection with any registration, filing, qualification or compliance pursuant to Article 2 shall be borne by the Company, whether or not a registration statement becomes effective. All underwriting discounts and all selling commissions relating to securities registered by the Holders shall be borne by the Holders of such securities pro rata in accordance with the number of shares sold in the offering by such Participating Holder.

2.6. No Required Sale. Nothing in this Agreement shall be deemed to create an independent obligation on the part of any Holder to sell any Registrable Securities pursuant to any effective registration statement.

2.7. Indemnification.

(a) In the event of any registration or offering of any securities of the Company under the Securities Act pursuant to this Article 2, the Company will, and hereby agrees to, and hereby does, indemnify and hold harmless, to the fullest extent permitted by law, each Holder, its directors, officers, fiduciaries, trustees, employees, shareholders, members or general and limited partners (and the directors, officers, fiduciaries, employees, shareholders, members, beneficiaries or general and limited partners thereof), any underwriter (as defined in the Securities Act) for such Holder and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or Exchange Act, from and against any and all losses, claims, damages or liabilities, joint or several, actions or proceedings (whether commenced or threatened) and expenses (including reasonable fees of counsel and any amounts paid in any settlement effected with the Company's consent, which consent shall not be unreasonably withheld or delayed) to which each such indemnified party may become subject under the Securities Act or otherwise in respect thereof (collectively, "Claims"), insofar as such Claims arise out of or are based upon (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement under which such securities were registered under the Securities Act or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary or final prospectus or any amendment or supplement thereto, together with the documents incorporated by reference therein, or any free writing prospectus utilized in connection therewith, or the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (iii) any untrue statement or alleged untrue statement of a material fact in the information conveyed by the Company to any purchaser at the time of the sale to such purchaser, or the omission or alleged omission to state therein a material fact required to be stated therein, or (iv) any violation by the Company of any federal, state or common law rule or regulation applicable to the Company and relating to action required of or inaction by the Company in connection with any such registration, and the Company will reimburse any such indemnified party for any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such Claim as such expenses are incurred; provided, however, that the Company shall not be liable to any such indemnified party in any such case to the extent such Claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact or omission or alleged omission of a material fact made in such registration statement or amendment thereof or supplement thereto

or in any such prospectus or any preliminary or final prospectus or free writing prospectus in reliance upon and in conformity with written information furnished to the Company by or on behalf of such indemnified party specifically for use therein. Such indemnity and reimbursement of expenses shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified party and shall survive the transfer of such securities by such seller.

(b) Each Participating Holder shall, severally and not jointly, indemnify and hold harmless (in the same manner and to the same extent as set forth in paragraph (a) of this Section 2.7) to the extent permitted by law the Company, its officers and directors, each Person controlling the Company within the meaning of the Securities Act, each underwriter (within the meaning of the Securities Act) of the Company's securities covered by such a registration statement, any Person who controls such underwriter, and any other Holder selling securities in such registration statement and each of its directors, officers, partners or agents or any Person who controls such Holder with respect to any untrue statement or alleged untrue statement of any material fact in, or omission or alleged omission of any material fact from, such registration statement, any preliminary or final prospectus contained therein, or any amendment or supplement thereto, or any free writing prospectus utilized in connection therewith, if such statement or alleged statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company or its representatives by or on behalf of such Participating Holder, specifically for use therein and reimburse such indemnified party for any legal or other expenses reasonably incurred in connection with investigating or defending any such Claim as such expenses are incurred; provided, however, that the aggregate amount which any such Participating Holder shall be required to pay pursuant to this Section 2.7(b) and Section 2.7(d) shall in no case be greater than the amount of the net proceeds actually received by such Participating Holder upon the sale of the Registrable Securities pursuant to the registration statement giving rise to such Claim. The Company and each Participating Holder hereby acknowledge and agree that, unless otherwise expressly agreed to in writing by such Participating Holders to the contrary, for all purposes of this Agreement, the only information furnished or to be furnished to the Company for use in any such registration statement, preliminary or final prospectus or amendment or supplement thereto or any free writing prospectus are statements specifically relating to (a) the Beneficial Ownership of Class A Common Stock by such Participating Holder and its Affiliates and (b) the name and address of such Participating Holder. Such indemnity and reimbursement of expenses shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified party and shall survive the transfer of such securities by such Holder.

(c) Any Person entitled to indemnification under this Agreement shall notify promptly the indemnifying party in writing of the commencement of any action or proceeding with respect to which a claim for indemnification may be made pursuant to this Section 2.9, but the failure of any indemnified party to provide such notice shall not relieve the indemnifying party of its obligations under the preceding paragraphs of this Section 2.9, except to the extent the indemnifying party is materially and actually prejudiced thereby and shall not relieve the indemnifying party from any liability which it may have to any indemnified party otherwise than under this Article 2. In case any action or proceeding is brought against an indemnified party, the indemnifying party shall be entitled to (x) participate in such action or proceeding and (y) unless, in the reasonable opinion of outside counsel to the indemnified party, a conflict of interest between such indemnified and indemnifying parties may exist in respect of such claim, assume the defense thereof jointly with any other indemnifying party similarly notified, with counsel reasonably satisfactory to such indemnified party. The indemnifying party shall promptly notify the indemnified party of its decision to assume the defense of such action or proceeding. If, and after, the indemnified party has received such notice from the indemnifying party, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense of such action or proceeding other than reasonable costs of investigation; provided, however, that (i) if the

indemnifying party fails to take reasonable steps necessary to defend diligently the action or proceeding within ten (10) days after receiving notice from such indemnified party that the indemnified party believes it has failed to do so; or (ii) if such indemnified party who is a defendant in any action or proceeding which is also brought against the indemnifying party reasonably shall have concluded that there may be one or more legal or equitable defenses available to such indemnified party which are not available to the indemnifying party or which may conflict with those available to another indemnified party with respect to such Claim; or (iii) if representation of both parties by the same counsel is otherwise inappropriate under applicable standards of professional conduct, then, in any such case, the indemnified party shall have the right to assume or continue its own defense as set forth above (but with no more than one (1) firm of counsel for all indemnified parties in each jurisdiction, except to the extent any indemnified party or parties reasonably shall have made a conclusion described in clause (ii) or (iii) above) and the indemnifying party shall be liable for any expenses therefor. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim), unless such settlement or compromise (i) includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action or claim and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party. The indemnity obligations contained in Section 2.7(a) and Section 2.7(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the indemnified party which consent shall not be unreasonably withheld.

(d) If for any reason the foregoing indemnity is held by a court of competent jurisdiction to be unavailable to an indemnified party under Section 2.7(a) or Section 2.7(b), then each applicable indemnifying party shall contribute to the amount paid or payable to such indemnified party as a result of any Claim in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and the indemnified party, on the other hand, with respect to such Claim as well as any other relevant equitable considerations. The relative fault shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. If, however, the allocation provided in the second preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative faults but also the relative benefits of the indemnifying party and the indemnified party as well as any other relevant equitable considerations. The parties hereto agree that it would not be just and equitable if any contribution pursuant to this Section 2.7(d) were to be determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the preceding sentences of this Section 2.7(d). The amount paid or payable in respect of any Claim shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such Claim. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Notwithstanding anything in this Section 2.7(d) to the contrary, no indemnifying party (other than the Company) shall be required pursuant to this Section 2.7(d) to contribute any amount greater than the amount of the net proceeds actually received by such indemnifying party upon the sale of the Registrable Securities pursuant to the registration statement giving rise to such Claim, less the amount of any indemnification payment made by such indemnifying party pursuant to Section 2.7(b).

(e) The indemnity and contribution agreements contained herein shall be in addition to any other rights to indemnification or contribution which any indemnified party may have pursuant to law or contract (except as set forth in subsection (f) below) and shall remain operative and in full force and effect regardless of any investigation made or omitted by or on behalf of any indemnified party and shall survive the transfer of the Registrable Securities by any such party and the completion of any offering of Registrable Securities in a registration statement.

(f) If a customary underwriting agreement shall be entered into in connection with any registration pursuant to Section 2.1 or Section 2.2 and certain indemnity, contribution and related provisions between the Company and the Participating Holder, the indemnity, contribution and related provisions set forth therein shall supersede the indemnification and contribution provisions set forth in this Section 2.7.

2.8. Participation in Underwritten Registrations. No Person may participate in any registration hereunder which is underwritten unless such Person (i) agrees to sell such Person's Registrable Securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements; provided that no Holder of Registrable Securities included in any underwritten registration shall be required to make any representations or warranties to the Company or the underwriters (other than representations and warranties regarding such Holder and such Holder's intended method of distribution).

2.9. No Inconsistent Agreements. The Company shall not hereafter enter into any agreement with respect to its securities that is inconsistent with or violates the rights granted to the Holders in this Agreement.

Section 3. General

3.1. Rule 144 and Rule 144A. If the Company shall have filed a registration statement pursuant to the requirements of Section 12 of the Exchange Act or a registration statement pursuant to the requirements of the Securities Act in respect of the Class A Common Stock or Common Stock Equivalents, the Company covenants that (i) so long as it remains subject to the reporting provisions of the Exchange Act, it will timely file the reports required to be filed by it under the Securities Act or the Exchange Act (including, but not limited to, the reports under Sections 13 and 15(d) of the Exchange Act referred to in subparagraph (c)(1)(i) of Rule 144 promulgated by the SEC under the Securities Act, as such Rule may be amended ("Rule 144") or, if the Company is not required to file such reports, it will, upon the request of any Holder, make publicly available other information so long as necessary to permit sales by such Holder under Rule 144, Rule 144A promulgated by the SEC under the Securities Act, as such Rule may be amended ("Rule 144A"), or any similar rules or regulations hereafter adopted by the SEC, and (ii) it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (A) Rule 144, (B) Rule 144A or (C) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Holder of Registrable Securities, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements.

3.2. Nominees for Beneficial Owners. If Registrable Securities are held by a nominee for the Beneficial Owner thereof, the Beneficial Owner thereof may, at its option, be treated as the Holder of such Registrable Securities for purposes of any request or other action by any Holder or Holders of Registrable Securities pursuant to this Agreement (or any determination of any number or percentage of shares constituting Registrable Securities held by any Holder or

Holders of Registrable Securities contemplated by this Agreement); provided that the Company shall have received assurances reasonably satisfactory to it of such Beneficial Ownership.

3.3. Amendments and Waivers. Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective against the Company or Berkshire unless such modification, amendment or waiver is approved in writing by (i) the Company and (ii) Berkshire; provided that any amendment, modification, supplement or waiver of any of the provisions of this Agreement shall not disproportionately and materially adversely affect Goldman Sachs. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar). No failure or delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof or of any other or future exercise of any such right, power or privilege.

3.4. Notices.

(a) All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by e-mail, (iii) when received or rejected by the addressee if sent by registered or certified mail, postage prepaid, return receipt requested, or (iv) one (1) Business Day following the day sent by reputable overnight courier (with written confirmation of receipt), in each case at the following addresses (or to such other address as a party may have specified by notice given to the other party pursuant to this provision):

- (i) if to the Company, to:

Portillo's Inc.
2001 Spring Road, Suite 400
Oak Brook, IL 60523
Attention: Susan B. Shelton
E-mail: sshelton@portillos.com

with a copy, which shall not constitute notice, to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Alexander D. Lynch, Merritt S. Johnson, Shayla Harlev
Email: alex.lynch@weil.com; merritt.johnson@weil.com; shayla.harlev@weil.com

- (ii) if to the Holders, to the address indicated in the records of the Company.

(b) Whenever any notice is required to be given by law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

3.5. Successors and Assigns. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and the respective successors, permitted assigns, heirs and personal representatives of the parties hereto, whether so expressed or not. This Agreement may not be assigned by the Company without the prior written consent of Berkshire. Each Holder shall have the right to assign all or part of its or their rights and obligations under this Agreement only in accordance with transfers of Registrable Securities to such Holder's Permitted Transferees. Upon any such assignment, such assignee shall have and be able to exercise and enforce all rights of the assigning Holder which

are assigned to it and, to the extent such rights are assigned, any reference to the assigning Holder shall be treated as a reference to the assignee. If any Holder shall acquire additional Registrable Securities, such Registrable Securities shall be subject to all of the terms, and entitled to all the benefits, of this Agreement.

3.6. Entire Agreement. This Agreement and the other documents referred to herein, delivered pursuant hereto or which form part hereof, constitute the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

3.7. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS AND JUDICIAL DECISIONS OF THE STATE OF DELAWARE APPLICABLE TO AGREEMENTS EXECUTED AND PERFORMED ENTIRELY WITHIN SUCH STATE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.**

(b) Jurisdiction. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of (i) the Court of Chancery of the State of Delaware and (ii) the United States District Court located in the State of Delaware for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement in (I) the Court of Chancery of the State of Delaware or (II) the United States District Court located in the State of Delaware and waives any claim that such suit or proceeding has been brought in an inconvenient forum. Each of the parties hereto agrees that a final and unappealable judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction within or outside the United States or in any other manner provided in law or in equity

(c) WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (III) IT MAKES SUCH WAIVER VOLUNTARILY AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 3.7.

3.8. Interpretation; Construction.

(a) The table of contents and headings in this Agreement are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or

otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

(b) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

3.9. Counterparts. This Agreement may be executed and delivered in any number of separate counterparts (including by facsimile, electronic mail or electronic signatures), each of which shall be an original, but all of which together shall constitute one and the same agreement.

3.10. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

3.11. Remedies. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, without the posting of any bond, and, if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

3.12. Further Assurances. Each party hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments, and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

3.13. Confidentiality.

(a) Each Holder acknowledges that the provisions of this Agreement that require communications by the Company or other Holders to such Holder may result in such Holder and its Section 3.13 Representatives acquiring material non-public information (which may include, solely by way of illustration, the fact that an offering of the Company’s securities is pending or the number of Company securities or the identity of the selling Holders).

(b) Each Holder agrees that it will maintain the confidentiality of such material non-public information and, to the extent such Holder is not a natural person, such confidential treatment shall be in accordance with procedures adopted by it in good faith to protect confidential information of third parties delivered to such Holder (“Policies”); provided that a Holder may deliver or disclose material non-public information to (i) its directors, officers,

employees, agents, attorneys, Affiliates and financial and other advisors, in each case, who reasonably need to know such information (collectively, the “Section 3.13 Representatives”), (ii) any federal or state regulatory authority having jurisdiction over such Holder, (iii) any Person if necessary to effect compliance with any law, rule, regulation or order applicable to such Holder, (iv) in response to any subpoena or other legal process, or (v) in connection with any litigation to which such Holder is a party and such Holder is advised by counsel that such information reasonably needs to be disclosed in connection with such litigation; provided further, that in the case of clause (i), the recipients of such material non-public information are subject to the Policies or are directed to hold confidential the material non-public information in a manner substantially consistent with the terms of this Section 3.13.

(c) Each Holder shall have the right, at any time and from time to time (including after receiving information regarding any potential sale or distribution to the public of Class A Common Stock of the Company pursuant to an offering registered under the Securities Act, whether by the Company, by Holders and/or by any other Holders of the Company’s Class A Common Stock), to elect to not receive any notice that the Company or any other Holders otherwise are required to deliver pursuant to this Agreement by delivering to the Company a written statement signed by such Holder that it does not want to receive any notices hereunder (an “Opt-Out Request”); in which case and notwithstanding anything to the contrary in this Agreement the Company and other Holders shall not be required to, and shall not, deliver any notice or other information required to be provided to Holders hereunder to the extent that the Company or such other Holders reasonably expect would result in a Holder acquiring material non-public information. An Opt-Out Request may state a date on which it expires or, if no such date is specified, shall remain in effect indefinitely. A Holder who previously has given the Company an Opt-Out Request may revoke such request at any time, and there shall be no limit on the ability of a Holder to issue and revoke subsequent Opt-Out Requests; provided that each Holder shall use commercially reasonable efforts to minimize the administrative burden on the Company arising in connection with any such Opt-Out Requests.

3.14. Termination and Effect of Termination. This Agreement shall terminate with respect to each Holder when such Holder no longer holds any Registrable Securities and will terminate in full when no Holder holds any Registrable Securities, except for the provisions of Sections 2.7, which shall survive any such termination. No termination under this Agreement shall relieve any Person of liability for breach or Expenses incurred prior to termination. In the event this Agreement is terminated, each Person entitled to indemnification rights pursuant to Section 2.7 shall retain such indemnification rights with respect to any matter that (i) may be an indemnified liability thereunder and (ii) occurred prior to such termination.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

COMPANY:

PORTILLO'S INC.

By: _____
Name:
Title:

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

HOLDERS:

By: _____
Name:
Title:

[SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT]

Schedule I

Key Holders

1. The Berkshire entities set forth on Schedule II and any of their permitted transferees.
2. Stone Street 2014 Offshore, L.P., 2014 Employee Offshore Aggregator, L.P., Broad Street Principal Investments, L.L.C., Stone Street 2014, L.P., Bridge Street 2014, L.P., MBD 2014, L.P. and any of their permitted transferees.

Schedule II

Berkshire Entities

1. Berkshire Fund VIII, L.P.
2. Berkshire Fund VIII-A, L.P.
3. Berkshire Investors IV LLC
4. Berkshire Investors III LLC

EXHIBIT A

**[FORM OF]
JOINDER AGREEMENT**

THIS JOINDER AGREEMENT (this “Joinder”) is made and entered into as of [•] by the undersigned (the “New Holder”) in accordance with the terms and conditions set forth in that certain Registration Rights Agreement by and among Portillo’s Inc., a Delaware corporation (including any successor, the “Company”), and the Holders party thereto, dated as of October 20, 2021 (as the same may be amended, restated or otherwise modified from time to time, the “Registration Rights Agreement”), for the benefit of, and for reliance upon by, the Company and the Holders party thereto. Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Registration Rights Agreement.

WHEREAS, the New Holder desires to exercise certain rights granted to it under the Registration Rights Agreement; and

WHEREAS, the execution and delivery to the Company of this Joinder by the New Holder is a condition precedent to the New Holder’s exercise of any of its rights under the Registration Rights Agreement.

NOW, THEREFORE, in consideration of the premises and covenants herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the New Holder hereby agrees as follows:

1. Joinder. By the execution and delivery of this Joinder, the New Holder hereby agrees to become, and to be deemed to be, and shall become and be deemed to be, for all purposes under the Registration Rights Agreement, a Holder, with the same force and effect as if the New Holder had been an original signatory thereto, and the New Holder agrees to be bound by all of the terms and conditions of, and to assume all of the obligations of, a Holder under, the Registration Rights Agreement. All of the terms, provisions, representations, warranties, covenants and agreements set forth in the Registration Rights Agreement with respect to a Holder are incorporated by reference herein and shall be legally binding upon, and inure to the benefit of, the New Holder.

2. Further Assurances. The New Holder agrees to perform any further acts and execute and deliver any additional documents and instruments that may be necessary or reasonably requested by the Company to carry out the provisions of this Joinder or the Registration Rights Agreement.

3. Binding Effect. This Joinder and the Registration Rights Agreement shall be binding upon, and shall inure to the benefit of, the New Holder and its successors and permitted assigns, subject to the terms and provisions of the Registration Rights Agreement. It shall not be necessary in connection with the New Holder’s status as a Holder to make reference to this Joinder.

IN WITNESS WHEREOF, the New Holder has executed this Joinder as of the date first above written.

[NEW HOLDER]

By:
Name:
Title:

Address:

Accepted and agreed:

Portillo's Inc.

By: _____
Name: _____
Title: _____

**Portillo's Inc.
2021 Equity Incentive Plan**

Restricted Stock Unit Award Agreement

This Restricted Stock Unit Award Agreement (this "Agreement") is made by and between Portillo's Inc., a Delaware corporation (the "Company"), and (the "Participant"), effective as of October , 2021 (the "Date of Grant").

RECITALS

WHEREAS, the Company has adopted the Portillo's Inc. 2021 Equity Incentive Plan (the "Plan"), which is incorporated herein by reference and made a part of this Agreement. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to those terms in the Plan; and

WHEREAS, the Committee has authorized and approved the grant of an Award to the Participant that will provide the Participant the opportunity to receive shares of Common Stock upon the settlement of stock units on the terms and conditions set forth in the Plan and this Agreement ("Restricted Stock Units").

NOW THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement, the parties agree as follows:

1. Grant of Award. The Company hereby grants to the Participant, effective as of the Date of Grant, Restricted Stock Units, on the terms and conditions set forth in the Plan and this Agreement.
2. Vesting and Forfeiture. Subject to the terms and conditions set forth in the Plan and this Agreement, the Restricted Stock Units shall vest as follows:
 - (a) General. One-third (1/3rd) of the Restricted Stock Units shall vest on each of the first three (3) anniversaries of the Date of Grant, subject to the Participant's continued Service through the applicable vesting date.
 - (b) Termination of Service. Except as set forth in Section 2(c), upon termination of the Participant's Service for any reason or no reason, any then unvested Restricted Stock Units will be forfeited immediately, automatically and without consideration.
 - (c) Change in Control. Upon termination of the Participant's Service by the Participant for Good Reason, by the Company without Cause or due to the Participant's death or Disability upon or following a Change in Control, all Restricted Stock Units shall vest on the date of the Participant's termination of Service. For purposes of this Agreement, "Good Reason" [and "Cause"] shall have the meaning[s] set forth in Exhibit A of this Agreement.
 - (d) Accelerated Vesting. Notwithstanding the forgoing, in the event of a Change in Control, if the acquiring, surviving or successor entity in the Change in Control does not assume, continue or substitute Participant's unvested Restricted Stock Units, whether or not Participant's employment is terminated as a result of the Change in Control, all unvested Restricted Stock Units shall become fully vested

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as of the date of such Change in Control, or if applicable, at such earlier time as may be necessary to allow the Company to settle the Restricted stock Units prior to such Change in Control.

3. Payment

- (a) Settlement. Except as otherwise provided in Section 3(c), the Company shall deliver to the Participant within sixty (60) days following the vesting date of the Restricted Stock Units, a number of shares of Common Stock equal to the aggregate number of Restricted Stock Units that have vested pursuant to Section 2. No fractional shares of Common Stock shall be delivered. The Company may deliver such shares of Common Stock either through book entry accounts held by, or in the name of, the Participant or cause to be issued a certificate or certificates representing the number of shares to be issued in respect of the Restricted Stock Units, registered in the name of the Participant.
- (b) Withholding Requirements. The Company shall have the right to deduct or withhold from any shares of Common Stock deliverable under this Agreement, or in its discretion to require the Participant to remit to the Company, amounts necessary to satisfy all federal, state and local taxes required to be withheld in connection with the settlement of the Restricted Stock Units. In addition, subject to Section 16 of the Exchange Act, withholding may be satisfied through an open-market, broker-assisted sales transaction pursuant to which the Company is promptly delivered the amount of proceeds necessary to satisfy the withholding amount, which shall be subject to any terms and conditions imposed by the Committee.

4. Section 280G. In the event that it is determined that any payments or benefits provided under the Plan and this Agreement, together with any payments or benefits to be provided under any other plan, program, arrangement or agreement, would constitute parachute payments within the meaning of Section 280G of the Code and would, but for this Section 4 be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (the "Excise Tax"), then the amounts of any such payments or benefits under the Plan, this Agreement and such other arrangements shall be either (a) paid in full or (b) reduced to the minimum extent necessary to ensure that no portion of the payments or benefits is subject to the Excise Tax, whichever of the foregoing (a) or (b) results in the Participant's receipt on an after-tax basis of the greatest amount of payments and benefits after taking into account the applicable federal, state, local and foreign income, employment and excise taxes (including the Excise Tax). The Company shall cooperate in good faith with the Participant in making such determination, including but not limited to providing the Participant with an estimate of any parachute payments as soon as reasonably practicable prior to an event constituting a change in the ownership or effective control of the Company or in the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2)(A) of the Code). Any such reduction pursuant to this Section 4 shall be made in a manner that results in the greatest economic benefit for the Participant and is consistent with the requirements of Section 409A. Any determination required under this Section 4 shall be made in writing in good faith by a nationally recognized public accounting firm selected the Company. The Company and the Participant shall provide the accounting firm with such information and documents as the accounting firm may reasonably request in order to make a determination under this Section 4.

5. Miscellaneous Provisions

- (a) Rights of a Shareholder; Dividend Equivalents. Prior to settlement of the Restricted Stock Units in shares of Common Stock, neither the Participant nor the Participant's representative will have any rights as a shareholder of the Company with respect to any shares of Common Stock underlying the Restricted Stock Units. If cash dividends or other cash distributions are paid in respect of the shares of Common Stock underlying unvested Restricted Stock Units, then a dividend equivalent equal to the amount paid in respect of one Share shall accumulate and be paid with respect to each unvested Restricted Stock Unit at time of settlement; provided that any dividend equivalent rights granted shall be subject to the same vesting terms as the related Restricted Stock Units.
- (b) Transfer Restrictions. The shares of Common Stock delivered hereunder will be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan or the rules, regulations and other requirements of the Securities and Exchange Commission, any stock exchange upon which such shares are listed, any applicable federal or state laws and any agreement with, or policy of, the Company or the Committee to which the Participant is a party or subject, and the Committee may cause orders or designations to be placed upon the books and records of the Company's transfer agent to make appropriate reference to such restrictions.
- (c) Clawback Policy. The Participant acknowledges that the Participant is subject to the provisions of Section 12 (Forfeiture Events) and Section 14.6 (Trading Policy and Other Restrictions) of the Plan and any compensation recovery, "clawback" or similar policy adopted by the Company from time to time and/or made applicable by law including the provisions of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection and Act and the rules, regulations and requirements adopted thereunder by the Securities and Exchange Commission and/or any national securities exchange on which the Company's equity securities may be listed.
- (d) Adjustments. In the event of any change with respect to the outstanding shares of Common Stock contemplated by Section 4.4 of the Plan, the Restricted Stock Units may be adjusted in accordance with Section 4.4 of the Plan.
- (e) No Right to Continued Service. Nothing in this Agreement or the Plan confers upon the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Subsidiary retaining the Participant) or of the Participant, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.
- (f) Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding upon, the Company and its successors and assigns and upon the Participant, the Participant's executor, personal representative(s), distributees, administrator, permitted transferees, permitted assignees, beneficiaries, and legatee(s), as applicable, whether or not any such person will have become a party to this Agreement and have agreed in writing to be joined herein and be bound by the terms hereof.

- (g) Severability. The provisions of this Agreement are severable, and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, then the remaining provisions will nevertheless be binding and enforceable.
- (h) Amendment. Except as otherwise provided in the Plan, this Agreement will not be amended unless the amendment is agreed to in writing by both the Participant and the Company.
- (i) Choice of Law; Jurisdiction. This Agreement and all claims, causes of action or proceedings (whether in contract, in tort, at law or otherwise) that may be based upon, arise out of or relate to this Agreement will be governed by the internal laws of the State of Delaware, excluding any conflicts or choice-of-law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.
- (j) Signature in Counterparts. This Agreement may be signed in counterparts, manually or electronically, each of which will be an original, with the same effect as if the signatures to each were upon the same instrument.
- (k) Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to any Awards granted under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.
- (l) Acceptance. The Participant hereby acknowledges receipt of a copy of the Plan and this Agreement. The Participant has read and understands the terms and provisions of the Plan and this Agreement, and accepts the Restricted Stock Units subject to all of the terms and conditions of the Plan and this Agreement. In the event of a conflict between any term or provision contained in this Agreement and a term or provision of the Plan, the applicable term and provision of the Plan will govern and prevail. The Participant understands they have a right to consult with counsel and have been afforded the opportunity to consult with an attorney to the extent they wish to do so.

[Signature page follows.]

IN WITNESS WHEREOF, the Company and the Participant have executed this Restricted Stock Unit Award Agreement as of the dates set forth below.

PARTICIPANT

PORTILLO'S INC.

_____ By: _____

Date: _____ Date: _____

[Signature Page – Restricted Stock Unit Award Agreement]

Exhibit A

Good Reason

“**Good Reason**” shall mean the occurrence of any of the following events without the consent of the Participant: (i) a material reduction in the Participant’s base salary (other than a reduction affecting all similarly situated employees, which reduction does not exceed 10% of current base salary), (ii) a material diminution in the Participant’s position and duties or (iii) a requirement that the Participant relocate his or her current office outside a radius of fifty (50) miles from the Participant’s current office location. The Participant may not resign or otherwise terminate his or her employment for any reason set forth above as Good Reason unless the Participant (x) notifies the Company in reasonable detail within sixty (60) days following his or her initial knowledge of an event that would constitute Good Reason, (y) the Company fails to remedy such event within 30 days following receipt of such notice, and (z) the Participant terminates employment within 30 days following the end of such 30-day remedy period. Notwithstanding the foregoing, if the Participant is subject to an employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate that defines Good Reason, then Good Reason shall have the meaning set forth therein, otherwise Good Reason as shall have the meaning defined in this Exhibit A.

Cause

[“**Cause**” means (a) in the case where there is no employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant (or where there is such an agreement but it does not define “cause” (or words of like import, which shall include but not be limited to “gross misconduct”)), termination due to a Participant’s (1) failure to substantially perform Participant’s duties or obey lawful directives that, in the good faith judgment of the Company, is likely to significantly injure the reputation, business or a business relationship of the Company or any of its Affiliates, that continues after receipt of written notice from the Company and a ten (10)-day opportunity to cure; (2) gross misconduct or gross negligence in the performance of Participant’s duties; (3) fraud, embezzlement, theft, or any other act of material dishonesty or misconduct; (4) conviction of, indictment for, or plea of guilty or nolo contendere to, a felony or any crime involving moral turpitude; (5) (x) material breach or violation of any agreement with the Company or its Affiliates, including any restrictive covenant agreement applicable to Participant, or (y) significant violation of the code of conduct or similar written policy, including, without limitation, any sexual harassment policy, of the Company or its Affiliates; or (6) other conduct, acts or omissions that, in the good faith judgment of the Company, are likely to significantly injure the reputation, business or a business relationship of the Company or any of its Affiliates; or (b) in the case where there is an employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant that defines “cause” (or words of like import, which shall include but not be limited to “gross misconduct”), “cause” as defined under such agreement. With respect to a termination of Service for a non-employee director, Cause means an act or failure to act that constitutes cause for removal of a director under applicable Delaware law. Any voluntary termination of Service by the Participant in anticipation of an involuntary termination of the Participant’s Service for Cause shall be deemed to be a termination for Cause.]¹

¹ NTD: Include for executive-level employees only. All other employees will be subject to standard definition of Cause in the Plan.

**Portillo's Inc.
2021 Equity Incentive Plan**

Stock Option Award Agreement

This Stock Option Award Agreement (this "Agreement") is made by and between Portillo's Inc., a Delaware corporation (the "Company"), and [●] (the "Participant"), effective as of October [●], 2021 (the "Date of Grant").

RECITALS

WHEREAS, the Company has adopted the Portillo's Inc. 2021 Equity Incentive Plan (the "Plan"), which is incorporated herein by reference and made a part of this Agreement. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to those terms in the Plan; and

WHEREAS, the Committee has authorized and approved the grant of an Award to the Participant options to purchase shares of Common Stock on the terms and conditions set forth in the Plan and this Agreement.

NOW THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement, the parties agree as follows:

1. Grant of Award. The Company hereby grants to the Participant, effective as of the Date of Grant, options to purchase [●] shares of Common Stock ("Options"), on the terms and conditions set forth in the Plan and this Agreement. The Options are intended to be Nonqualified Stock Options.
2. Exercise Price. The exercise price of each Stock Option is \$[●] per share of Common Stock, subject to adjustment as set forth in the Plan (the "Exercise Price").
3. Vesting. Subject to the terms and conditions set forth in the Plan and this Agreement, the Options shall vest or be forfeited as follows:
 - (a) Tranche 1 Performance Options. One-third (1/3rd) of the Options will vest on the third anniversary of the Date of Grant if the 20-Day VWAP for a share of Common Stock is \$[●]¹ per share measured over any twenty (20) consecutive trading day period commencing on the second anniversary of the Date of Grant and ending on the last trading day immediately preceding the third anniversary of the Date of Grant, subject to the Participant's continued Service on the third anniversary of the Date of Grant. For the avoidance of doubt, if any Options subject to this Section 3(a) fail to vest, the unvested portion of such Options shall be forfeited and shall not be eligible to vest in a subsequent year.
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 - (b) Tranche 2 Performance Options. One-third (1/3rd) of the Options will vest on the fourth anniversary of the Date of Grant if the 20-Day VWAP for a share of Common Stock is \$[●]² per share measured over any twenty (20) consecutive trading day period commencing on the third anniversary of the Date of Grant and ending on the last trading day immediately preceding the fourth anniversary of the

¹ NTD: 1.5 times the IPO Price.

² NTD: 2 times the IPO Price

Date of Grant, subject to the Participant's continued Service on the fourth anniversary of the Date of Grant. For the avoidance of doubt, if any Options subject to this Section 3(b) fail to vest, the unvested portion of such Options shall be forfeited and shall not be eligible to vest in a subsequent year.

- (c) Tranche 3 Performance Options. One-third (1/3rd) of the Options will vest on the fifth anniversary of the Date of Grant if the 20-Day VWAP for a share of Common Stock is \$[●]³ per share measured over any twenty (20) consecutive trading day period commencing on the fourth anniversary of the Date of Grant and ending on the last trading day immediately preceding the fifth anniversary of the Date of Grant, subject to the Participant's continued Service on the fifth anniversary of the Date of Grant. For the avoidance of doubt, if any Options subject to this Section 3(c) fail to vest, the unvested portion of such Options shall be forfeited and shall not be eligible to vest in a subsequent year.
- (d) "20-Day VWAP" means, in relation to the Common Stock on a specified reference date, the volume weighted average price of the Common Stock for the twenty (20) consecutive trading days immediately preceding such reference date (calculated and rounded to the fifth decimal place (i.e. the sixth decimal place rounded up if greater than or equal to five and rounded down if less than five), and as further determined and adjusted, if applicable, in accordance with Section 4.4 of the Plan.

4. Forfeiture; Acceleration; and Expiration

- (a) Termination of Service. Except as set forth in Section 4(b), upon termination of the Participant's Service for any reason or no reason, any then unvested Options will be forfeited immediately, automatically and without consideration; provided, that if the Participant's Service is terminated by the Company without Cause or due to the Participant's death or Disability, the Performance Options that are eligible to vest in the year of termination, if any, shall remain outstanding and eligible to vest in accordance with the terms of this Agreement, but without regard to the continuing Service requirement. In the event the Participant's Service is terminated for Cause, all vested Options will also be forfeited immediately, automatically and without consideration upon such termination for Cause. Without limiting the generality of the foregoing, the Options and the shares of Common Stock (and any resulting proceeds) will continue to be subject to Sections 12.2 (Termination for Cause) and 12.3 (Right of Recapture) of the Plan.
- (b) Change in Control. Except as set forth in Section 4(c), all outstanding Options (excluding, for the avoidance of doubt, any Options that were forfeited as a result of a failure to achieve the stock price target in a performance year prior to the year of such Change in Control) (the "CIC Vesting Eligible Options") shall remain outstanding and eligible to vest solely based on the time-based vesting criteria set forth in Section 3(a), Section 3(b) and/or Section 3(c), as applicable. Upon termination of the Participant's Service by the Participant for Good Reason, by the Company without Cause or due to the Participant's death or Disability upon or within twenty-four (24) months following a Change in Control, all outstanding CIC Vesting Eligible Options shall vest on the date of the Participant's termination of Service. For purposes of this Agreement, "Good Reason" [and "Cause"] shall have the meaning[s] set forth in Exhibit A of this Agreement.

³ NTD: 2.5 times the IPO Price

- (c) Accelerated Vesting. Notwithstanding the foregoing, if the acquiring, surviving or successor entity in the Change in Control does not assume, continue or substitute the Options, all outstanding Options shall fully vest as of the date of such Change in Control (excluding, for the avoidance of doubt, any Options that were forfeited as a result of a failure to achieve the stock price target in a performance year prior to the year of such Change in Control).
- (d) Expiration. Any unexercised Options will expire on the tenth (10th) anniversary of the Date of Grant (the “Expiration Date”), or earlier as provided in Section 4 of this Agreement or in the Plan.

5. Period of Exercise.

- (a) Subject to the provisions of the Plan and this Agreement, the Participant may exercise all or any part of the vested Options at any time prior to the earliest to occur of:
 - (i) the Expiration Date;
 - (ii) the date that is twelve (12) months following termination of the Participant’s Service due to death or Disability;
 - (iii) the date that is ninety (90) days following termination of the Participant’s Service other than for death, Disability or Cause; or
 - (iv) the date of termination of the Participant’s Service for Cause.
- (b) Extension of Termination Date. If following the Participant's termination of Service for any reason the exercise of the Options is prohibited because the exercise of the Options would violate the registration requirements under the Securities Act or any other state or federal securities law or the rules of any securities exchange, then the expiration of the Options shall be tolled until the earlier of (i) date that is thirty (30) days after the end of the period during which the exercise of the Options would be in violation of such registration or other securities requirements or (ii) the Expiration Date.

6. Manner of Exercise.

- (a) Election to Exercise. The Participant (or in the case of exercise after the Participant's death or incapacity, the Participant's executor, administrator, heir or legatee, as the case may be) may exercise all or any part of the vested Options by delivering to the Company an executed stock option exercise notice in such form as is approved by the Committee from time to time, which shall set forth: (i) the Participant's election to exercise the Options, (ii) the number of shares of Common Stock being purchased, (iii) any restrictions imposed on the shares, and (iv) any representations, warranties and agreements regarding the Participant's investment intent and access to information as may be required by the Company to comply with applicable securities laws. If someone other than the Participant exercises the Options, then such person must submit documentation reasonably

acceptable to the Company verifying that such person has the legal right to exercise the Options.

- (b) Withholding Requirements. The Company shall have the power and the right to require the Participant to remit to the Company the amount necessary to satisfy federal, state, provincial and local taxes, domestic or foreign, required by law or regulation to be withheld, and to deduct or withhold from any shares of Common Stock deliverable under this Agreement to satisfy such withholding obligation, or in the sole discretion of the Committee, such greater amount necessary to satisfy the Participant's maximum expected tax liability, provided that such withholding does not result in adverse tax or accounting consequences to the Company (collectively, "Withheld Taxes"); provided further, that any obligations to pay Withheld Taxes may be satisfied in the manner in which the Exercise Price is permitted to be paid under Section 6(c) or any other manner permitted by the Plan.
- (c) Payment of Exercise Price. The entire Exercise Price of the Options shall be payable in full at the time of exercise. All or part of the Exercise Price and any Withheld Taxes may be paid as follows to the extent permitted by applicable statutes and regulations:
 - (i) Cash or Check. In cash or by certified or bank check.
 - (ii) Net Exercise. Unless otherwise determined by the Committee, by reducing the number of shares of Common Stock otherwise deliverable upon the exercise of the Options by the number of shares of Common Stock having a Fair Market Value on the date of exercise equal to the amount of the Exercise Price and/or Withheld Taxes, as applicable.
 - (iii) Surrender of Stock. In each instance, at the sole discretion of the Committee, by surrendering, or attesting to the ownership of, shares of Common Stock that are already owned by the Participant free and clear of any restriction or limitation, unless the Committee specifically agrees in writing to accept such shares of Common Stock subject to such restriction or limitation. Such shares of Common Stock will be surrendered to the Company in good form for transfer and will be valued by the Company at Fair Market Value on the date of the applicable exercise of the Options, or to the extent applicable, on the date the Withheld Taxes are to be determined. The Participant will not surrender, or attest to the ownership of, shares of Common Stock in payment of the Exercise Price (or Withheld Taxes) if such action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to the Options for financial reporting purposes that otherwise would not have been recognized.
 - (iv) Brokered Cashless Exercise. To the extent permitted by the Committee, from the proceeds of a sale through a broker on the date of exercise of some or all of the shares of Common Stock to which the exercise relates. In that case, the Participant will execute a notice of exercise and provide the Company's third party Plan administrator with a copy of irrevocable instructions to a broker to deliver promptly to the Company the amount of sale proceeds to pay the aggregate Exercise Price and/or Withheld Taxes, as applicable. To facilitate the foregoing, the Company may, to the extent

permitted by applicable law, enter into agreements or coordinate procedures with one or more brokerage firms.

(v) Other Consideration. In any other form of legal consideration that may be acceptable to the Committee.

(d) Issuance of Shares. If the exercise notice and payment of the Exercise Price are in form and substance satisfactory to the Company, the Company shall deliver such shares of Common Stock either through book entry accounts held by, or in the name of, the Participant or cause to be issued a certificate or certificates representing the number of shares to be issued, registered in the name of the Participant. No fractional shares of Common Stock shall be delivered and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional shares of Common Stock or whether such fractional shares or any rights thereto shall be canceled, terminated or otherwise eliminated.

7. Section 280G. In the event that it is determined that any payments or benefits provided under the Plan and this Agreement, together with any payments or benefits to be provided under any other plan, program, arrangement or agreement, would constitute parachute payments within the meaning of Section 280G of the Code and would, but for this Section 7 be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (the "Excise Tax"), then the amounts of any such payments or benefits under the Plan, this Agreement and such other arrangements shall be either (a) paid in full or (b) reduced to the minimum extent necessary to ensure that no portion of the payments or benefits is subject to the Excise Tax, whichever of the foregoing (a) or (b) results in the Participant's receipt on an after-tax basis of the greatest amount of payments and benefits after taking into account the applicable federal, state, local and foreign income, employment and excise taxes (including the Excise Tax). The Company shall cooperate in good faith with the Participant in making such determination, including but not limited to providing the Participant with an estimate of any parachute payments as soon as reasonably practicable prior to an event constituting a change in the ownership or effective control of the Company or in the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2)(A) of the Code). Any such reduction pursuant to this Section 7 shall be made in a manner that results in the greatest economic benefit for the Participant and is consistent with the requirements of Section 409A. Any determination required under this Section 7 shall be made in writing in good faith by a nationally recognized public accounting firm selected by the Company. The Company and the Participant shall provide the accounting firm with such information and documents as the accounting firm may reasonably request in order to make a determination under this Section 7.

8. Miscellaneous Provisions

(a) Rights of a Shareholder. Prior to issuance of shares of Common Stock following the exercise of the Options, neither the Participant nor the Participant's representative will have any rights as a shareholder of the Company with respect to any shares of Common Stock subject to the Stock Option.

(b) Transfer Restrictions. The shares of Common Stock delivered pursuant to the exercise of the Options shall be subject to such stop transfer orders and other

restrictions as the Committee may deem advisable under the Plan or the rules, regulations and other requirements of the Securities and Exchange Commission, any stock exchange upon which such shares are listed, any applicable federal or state laws and any agreement with, or policy of, the Company or the Committee to which the Participant is a party or subject, and the Committee may cause orders or designations to be placed upon the books and records of the Company's transfer agent to make appropriate reference to such restrictions.

- (c) Clawback Policy. The Participant acknowledges that the Participant is subject to the provisions of Section 12 (Forfeiture Events) and Section 14.6 (Trading Policy and Other Restrictions) of the Plan and any compensation recovery, "clawback" or similar policy adopted by the Company from time to time and/or made applicable by law including the provisions of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules, regulations and requirements adopted thereunder by the Securities and Exchange Commission and/or any national securities exchange on which the Company's equity securities may be listed.
- (d) Adjustments. In the event of any change with respect to the outstanding shares of Common Stock contemplated by Section 4.4 of the Plan, the Options and the stock price targets set forth in Section 3(a) through Section 3(c) may be adjusted in accordance with Section 4.4 of the Plan.
- (e) No Right to Continued Service. Nothing in this Agreement or the Plan confers upon the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Subsidiary retaining the Participant) or of the Participant, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.
- (f) Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding upon, the Company and its successors and assigns and upon the Participant, the Participant's executor, personal representative(s), distributees, administrator, permitted transferees, permitted assignees, beneficiaries, and legatee(s), as applicable, whether or not any such person will have become a party to this Agreement and have agreed in writing to be joined herein and be bound by the terms hereof.
- (g) Severability. The provisions of this Agreement are severable, and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, then the remaining provisions will nevertheless be binding and enforceable.
- (h) Amendment. Except as otherwise provided in the Plan, this Agreement will not be amended unless the amendment is agreed to in writing by both the Participant and the Company.
- (i) Choice of Law; Jurisdiction. This Agreement and all claims, causes of action or proceedings (whether in contract, in tort, at law or otherwise) that may be based upon, arise out of or relate to this Agreement will be governed by the internal laws of the State of Delaware, excluding any conflicts or choice-of-law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.

- (j) Signature in Counterparts. This Agreement may be signed in counterparts, manually or electronically, each of which will be an original, with the same effect as if the signatures to each were upon the same instrument.
- (k) Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to any Awards granted under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.
- (l) Acceptance. The Participant hereby acknowledges receipt of a copy of the Plan and this Agreement. The Participant has read and understands the terms and provisions of the Plan and this Agreement, and accepts the Options subject to all of the terms and conditions of the Plan and this Agreement. In the event of a conflict between any term or provision contained in this Agreement and a term or provision of the Plan, the applicable term and provision of the Plan will govern and prevail. The Participant understands they have a right to consult with counsel and have been afforded the opportunity to consult with an attorney to the extent they wish to do so.

[Signature page follows.]

IN WITNESS WHEREOF, the Company and the Participant have executed this Stock Option Award Agreement as of the dates set forth below.

PARTICIPANT

PORTILLO'S INC.

By: _____

By: _____

Date: _____

Date: _____

[Signature Page – Option Award Agreement]

Exhibit A

Good Reason

“**Good Reason**” shall mean the occurrence of any of the following events without the consent of the Participant: (i) a material reduction in the Participant’s base salary (other than a reduction affecting all similarly situated employees, which reduction does not exceed 10% of current base salary), (ii) a material diminution in the Participant’s position and duties or (iii) a requirement that the Participant relocate his or her current office outside a radius of fifty (50) miles from the Participant’s current office location. The Participant may not resign or otherwise terminate his or her employment for any reason set forth above as Good Reason unless the Participant (x) notifies the Company in reasonable detail within sixty (60) days following his or her initial knowledge of an event that would constitute Good Reason, (y) the Company fails to remedy such event within 30 days following receipt of such notice, and (z) the Participant terminates employment within 30 days following the end of such 30-day remedy period. Notwithstanding the foregoing, if the Participant is subject to an employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate that defines Good Reason, then Good Reason shall have the meaning set forth therein, otherwise Good Reason as shall have the meaning defined in this Exhibit A.

Cause

[“**Cause**” means (a) in the case where there is no employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant (or where there is such an agreement but it does not define “cause” (or words of like import, which shall include but not be limited to “gross misconduct”)), termination due to a Participant’s (1) failure to substantially perform Participant’s duties or obey lawful directives that, in the good faith judgment of the Company, is likely to significantly injure the reputation, business or a business relationship of the Company or any of its Affiliates, that continues after receipt of written notice from the Company and a ten (10)-day opportunity to cure; (2) gross misconduct or gross negligence in the performance of Participant’s duties; (3) fraud, embezzlement, theft, or any other act of material dishonesty or misconduct; (4) conviction of, indictment for, or plea of guilty or nolo contendere to, a felony or any crime involving moral turpitude; (5) (x) material breach or violation of any agreement with the Company or its Affiliates, including any restrictive covenant agreement applicable to Participant, or (y) significant violation of the code of conduct or similar written policy, including, without limitation, any sexual harassment policy, of the Company or its Affiliates; or (6) other conduct, acts or omissions that, in the good faith judgment of the Company, are likely to significantly injure the reputation, business or a business relationship of the Company or any of its Affiliates; or (b) in the case where there is an employment agreement, consulting agreement, change in control agreement or similar agreement in effect between the Company or an Affiliate and the Participant that defines “cause” (or words of like import, which shall include but not be limited to “gross misconduct”), “cause” as defined under such agreement. With respect to a termination of Service for a non-employee director, Cause means an act or failure to act that constitutes cause for removal of a director under applicable Delaware law. Any voluntary termination of Service by the Participant in anticipation of an involuntary termination of the Participant’s Service for Cause shall be deemed to be a termination for Cause.]⁴

⁴ NTD: Include for executive-level employees only. All other employees will be subject to standard definition of Cause in the equity plan.

TAX RECEIVABLE AGREEMENT

between

PORTILLO'S INC.

and

THE PERSONS NAMED HEREIN

Dated as of October 20, 2021

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TAX RECEIVABLE AGREEMENT

This **TAX RECEIVABLE AGREEMENT** (this “**Agreement**”), is dated as of October 20, 2021, and is between Portillo’s Inc., a Delaware corporation (including any successor corporation, “**PubCo**”), each of the undersigned parties, and each of the other persons from time to time that becomes a party hereto (each, excluding PubCo, a “**TRA Party**” and together the “**TRA Parties**”).

RECITALS

WHEREAS, the TRA Parties directly or indirectly hold limited liability company interests in OpCo (as defined below) (the “**Units**”), which is classified as a partnership for U.S. federal income tax purposes;

WHEREAS, after the IPO (as defined below), PubCo will be the managing member of OpCo, and holds and will hold, directly and/or indirectly, Units;

WHEREAS, each of the Blockers (as defined below) is a corporation for U.S. federal income tax purposes;

WHEREAS, pursuant to the Merger Agreement dated on or about the IPO Date (as defined below), among PubCo and the parties named therein, in connection with the IPO, among other things, (i) a separate, wholly-owned, direct Subsidiary (as defined below) of PubCo will merge with and into each of the Blockers, in each case, with the respective Blocker surviving the merger and (ii) immediately thereafter, each of the Blockers, in turn, will merge with and into PubCo, with PubCo surviving each merger (such transactions together, the “**Reorganization**”);

WHEREAS, as a result of the Reorganization, the Corporate Taxpayer (as defined below) will (i) be entitled to utilize Blocker Attributes (as defined below) and (ii) obtain the benefit of the Blocker Transferred Basis (as defined below);

WHEREAS, in connection with the IPO, (i) PubCo will (a) acquire IPO Units (as defined below) for a contribution of cash to OpCo (the “**IPO Contribution**”) and (b) acquire Units and/or Class A Shares (as defined below) from certain TRA Parties (the “**Initial Sales**”), and (ii) OpCo will (a) repay in full the promissory note that was issued in connection with the Preferred Redemption (as defined below) and (b) repay outstanding borrowings under OpCo’s Credit Facilities (as defined in the S-1); provided that, notwithstanding anything to the contrary herein, the Preferred Redemption shall not constitute or be treated as part of the Initial Sales or the Exchanges (as defined below);

WHEREAS, as a result of the IPO Contribution and the Preferred Redemption, the Corporate Taxpayer will be entitled to obtain the benefit of the IPO Basis (as defined below);

WHEREAS, the Units held by the TRA Parties may be exchanged for Class A common stock of PubCo (“**Class A Shares**”), in accordance with and subject to the provisions of the OpCo Agreement (as defined below) and/or for cash or other property;

WHEREAS, OpCo and each of its direct and indirect Subsidiaries (as defined below) treated as a partnership for U.S. federal income tax purposes will have in effect an election under Section 754 of the Code, for each Taxable Year (as defined below) that includes the IPO Date and for each Taxable Year in which a taxable acquisition of Units (including a deemed taxable acquisition under Section 707(a) of the Code) by the Corporate Taxpayer (a “**Direct Exchange**”) or by OpCo (a “**Redemption**”) and together with a Direct Exchange and the Initial Sales of Units, an “**Exchange**”) from any of the TRA Parties (an “**Exchanging Holder**”) for Class A Shares, and/or for cash or other property occurs;

WHEREAS, as a result of an Exchange, the Corporate Taxpayer will be entitled to use the Exchange Basis (as defined below) and the Basis Adjustments (as defined below) relating to such Units exchanged in an Exchange;

WHEREAS, the income, gain, loss, expense and other Tax items of the Corporate Taxpayer may be affected by the (i) Blocker Attributes, (ii) Blocker Transferred Basis, (iii) IPO Basis, (iv) Exchange Basis, (v) Basis Adjustments and (vi) Imputed Interest (as defined below) (collectively, the “**Tax Attributes**”); and

WHEREAS, the parties to this Agreement desire to provide for certain payments and make certain arrangements with respect to the effect of the Tax Attributes on the liability for Taxes of the Corporate Taxpayer.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

Article I

DEFINITIONS

Section I.1 Definitions. As used in this Agreement, the terms set forth in this Article I shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

“**Acquired Units**” means the Units acquired by the Corporate Taxpayer in the Reorganization.

“**Actual Tax Liability**” means, with respect to any Taxable Year, the sum of (i) (A) the liability for U.S. federal income Taxes of the Corporate Taxpayer as reported on its IRS Form 1120 (or any successor form) for such taxable year, or, if applicable, determined in accordance with a Determination (and if applicable, in accordance with Section 2.4(b)), plus (B) without duplication, the portion of any liability for U.S. federal income Taxes imposed directly on OpCo (and OpCo’s applicable subsidiaries) under Section 6225 or any similar provision of the Code that is allocable to the Corporate Taxpayer under Section 704 of the Code, and (ii) the product of the amount of the U.S. federal taxable income (without reduction for any deduction for state and local jurisdiction Taxes) for such taxable year reported on the Corporate Taxpayer’s IRS Form 1120 (or any successor form) (or, if applicable, determined in accordance with a Determination) and the Assumed State and Local Tax Rate.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

“**Agreed Rate**” means a per annum rate of LIBOR plus 100 basis points.

“**Agreement**” has the meaning set forth in the Preamble to this Agreement.

“**Alternate Source**” has the meaning set forth in the definition of “LIBOR.”

“**Amended Schedule**” has the meaning set forth in Section 2.4(b) of this Agreement.

“**Assumed State and Local Tax Rate**” means the Tax rate equal to the sum of the products of (x) the Corporate Taxpayer’s income and franchise tax apportionment factor for each state and local jurisdiction in which the Corporate Taxpayer files income or franchise Tax Returns for the relevant Taxable Year and (y) the highest corporate income and franchise Tax rate(s) for each such state and local jurisdiction in which the Corporate Taxpayer files income or franchise Tax Returns for each relevant Taxable Year. As an illustration of the calculation of the Assumed State and Local Tax Rate for a Taxable Year, if the Corporate Taxpayer solely files Tax Returns in State 1 and State 2 in a Taxable Year, the maximum applicable corporate Tax rates in effect in such states in such Taxable Year are 6.5% and 5.5%, respectively, and the apportionment factors for such states in such Taxable Year are 55% and 45% respectively, then the Assumed State and Local Tax Rate for such Taxable Year is equal to 6.05% (i.e., 6.5% multiplied by 55% plus 5.5% multiplied by 45%).

“**Attributable**” means the portion of any Tax Attribute of the Corporate Taxpayer that is “Attributable” to the Blocker Shareholders or to any present or former Unit Holder, as the case may be, determined under the following principles:

(i) any Blocker Attributes shall be determined separately with respect to each Blocker based on the Blocker Attributes attributable to such Blocker at the time of the Reorganization and are Attributable to the Blocker Shareholders of each Blocker to which such Blocker Attributes relate in proportion to each Blocker Shareholder’s interest in such Blocker prior to the Reorganization;

(ii) any Blocker Transferred Basis shall be determined separately with respect to each Blocker based on the Blocker Transferred Basis associated with the Units that were acquired as a result of the participation of such Blocker in the Reorganization and is Attributable to the Blocker Shareholders of each Blocker to which such Blocker Transferred Basis relates in proportion to each Blocker Shareholder’s interest in such Blocker prior to the Reorganization;

(iii) any IPO Basis shall be determined separately with respect to each Blocker Shareholder and Unit Holder and is Attributable to each Blocker Shareholder or Unit Holder, as applicable, in an amount equal to the product of the total IPO Basis and the IPO Basis Percentage of such Blocker Shareholder or Unit Holder, as applicable;

(iv) any Exchange Basis shall be determined separately with respect to each Exchanging Holder and is Attributable to each Exchanging Holder in an amount equal to the Exchange Basis associated with the Units transferred upon an Exchange;

(v) the Basis Adjustments shall be determined separately with respect to each Exchanging Holder, using reasonable methods for tracking such Basis Adjustments, and are Attributable to each Exchanging Holder in an amount equal to the total Basis Adjustment relating to such Units delivered to the Corporate Taxpayer by such Exchanging Holder in the Exchange (for the avoidance of doubt, with respect to any Basis Adjustments attributable to a distribution or redemption, the Exchanging Holder shall be the Unit Holder relinquishing its interest in the Reference Asset); and

(vi) any deduction to the Corporate Taxpayer with respect to a Taxable Year in respect of Imputed Interest is Attributable to the Person that is required to include the Imputed Interest in income, determined as if it were a U.S. person generally subject to U.S. federal income tax (without regard to whether such Person is actually subject to Tax thereon).

“**Attribute Schedule**” has the meaning set forth in Section 2.2 of this Agreement.

“**Basis Adjustment**” means the adjustment to the Tax basis of a Reference Asset including under Sections 732, 734(b), 707(a), 737 and/or 1012 of the Code (in situations where, as a result of one or more Exchanges, OpCo becomes an entity that is disregarded as separate from its owner for U.S. federal income tax purposes) or under Sections 734(b), 743(b) and/or 754 of the Code (in situations where, following an Exchange, OpCo remains in existence as an entity treated as a partnership for U.S. federal income tax purposes) , as a result of an Exchange and the payments made pursuant to this Agreement in respect of such Exchange. For the avoidance of doubt, the amount of any Basis Adjustment resulting from an Exchange of one or more Units shall be determined without regard to any Pre-Exchange Transfer of such Units and as if any such Pre-Exchange Transfer had not occurred. The amount of any Basis Adjustment shall be determined using the Market Value at the time of the Exchange.

“**Beneficial Owner**” means, with respect to any security, a Person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares: (i) voting power, which includes the power to vote, or to direct the voting of, such security; and/or (ii) investment power, which includes the power to dispose of, or to direct the disposition of, such security. The term “**Beneficial Ownership**” shall have a correlative meaning.

“**Berkshire Blocker**” means PHD Berkshire Fund VIII-A Blocker Corporation, a Delaware corporation.

“**Berkshire Funds**” means, individually or collectively, any investment fund, co-investment vehicles and/or similar vehicles or accounts, in each case managed by an Affiliate of Berkshire Partners, LLC, or any of their respective successors.

“**Blockers**” means the Berkshire Blocker and Carbopia Holdings, Inc., a Delaware corporation, and each, individually, a **Blocker**.

“Blocker Attributes” means, (i) without duplication, the net operating losses, capital losses, research and development credits, excess Section 163(j) limitation carryforwards, charitable deductions, foreign Tax credits, and any Tax attributes subject to carryforward under Section 381 of the Code that the Corporate Taxpayer is entitled to utilize as a result of the Blockers’ participation in the Reorganization that relate to periods (or portions thereof) prior to the Reorganization and (ii) any adjustment to the tax basis of any Reference Asset under Section 743(b) of the Code relating to the Units acquired by the Berkshire Blocker in the GP Contribution; provided, however, that in order to determine whether any such Tax attribute is a Blocker Attribute, the Taxable Year of the Corporate Taxpayer that includes the effective date of the Reorganization shall be deemed to end as of the close of such effective date. Notwithstanding the foregoing, the term “Blocker Attribute” shall not include any Tax attribute of a Blocker that is used to offset Taxes of such Blocker, if such offset Taxes are attributable to taxable periods (or portion thereof) ending on or prior to the date of the Reorganization.

“Blocker Shareholder” means, a Person who, after the GP Contribution and immediately prior to the Reorganization, holds equity interests of a Blocker, and as a result of the Reorganization, holds Class A Shares.

“Blocker Transferred Basis” means, with respect to a Blocker Shareholder, the share of Tax basis of the Reference Assets that are amortizable under Section 197 of the Code or that are otherwise depreciable or amortizable for U.S. federal income tax purposes associated with the Acquired Units of such Blocker acquired by the Corporate Taxpayer in the Reorganization, determined as of the time of the Reorganization; provided, that any Tax basis included in IPO Basis or included in Blocker Attributes shall be excluded from the determination of the Blocker Transferred Basis.

“Board” means the Board of Directors of PubCo.

“Business Day” means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by law to close.

“Change of Control” means the occurrence of any of the following events:

(i) any Person or any group of Persons acting together that would constitute a “group” for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended or any successor provisions thereto (excluding (a) a corporation or other entity owned, directly or indirectly, by the stockholders of PubCo in substantially the same proportions as their ownership of stock of PubCo or (b) a Person or group of Persons in which one or more Affiliates of the Berkshire Funds, directly or indirectly hold Beneficial Ownership of securities representing more than 50% of the total voting power in such Person or held by such group) is or becomes the Beneficial Owner, directly or indirectly, of securities of PubCo representing more than 50% of the combined voting power of PubCo’s then outstanding voting securities; or

(ii) the following individuals cease for any reason to constitute a majority of the number of directors of PubCo then serving: individuals who, on the IPO Date, constitute the Board and any new director whose appointment or election by the Board or nomination for election by PubCo’s stockholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the IPO Date or whose

appointment, election or nomination for election was previously so approved or recommended by the directors referred to in this clause (ii); or

(iii) there is consummated a merger or consolidation of PubCo with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (x) the Board immediately prior to the merger or consolidation does not constitute at least a majority of the board of directors of the company surviving the merger or, if the surviving company is a Subsidiary, the ultimate parent thereof, or (y) the voting securities of PubCo immediately prior to such merger or consolidation do not continue to represent or are not converted into more than 50% of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof; or

(iv) the stockholders of PubCo approve a plan of complete liquidation or dissolution of PubCo or there is consummated an agreement or series of related agreements for the sale, lease or other disposition, directly or indirectly, by PubCo of all or substantially all of PubCo's assets, other than such sale or other disposition by PubCo of all or substantially all of PubCo's assets to an entity at least 50% of the combined voting power of the voting securities of which are owned by stockholders of PubCo in substantially the same proportions as their ownership of PubCo immediately prior to such sale.

Notwithstanding the foregoing, except with respect to clause (ii) and clause (iii)(x) above, a "Change of Control" shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the shares of PubCo immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in, and voting control over, and own substantially all of the shares of, an entity which owns, directly or indirectly, all or substantially all of the assets of PubCo immediately following such transaction or series of transactions.

"Class A Shares" has the meaning set forth in the Recitals of this Agreement.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Corporate Taxpayer" means PubCo and any company that is a member of any U.S. federal consolidated Tax Return of which PubCo is a member, where appropriate.

"Covered Person" has the meaning set forth in Section 7.15 of this Agreement.

"Cumulative Net Realized Tax Benefit" for a Taxable Year means the cumulative amount of Realized Tax Benefits for all Taxable Years of the Corporate Taxpayer, up to and including such Taxable Year, net of the cumulative amount of Realized Tax Detriment for the same period. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be determined based on the most recent Tax Benefit Schedules or Amended Schedules, if any, in

existence at the time of such calculation; provided, that, for the avoidance of doubt, the computation of the Cumulative Net Realized Tax Benefit shall be adjusted to reflect any applicable Determination with respect to any Realized Tax Benefits and/or Realized Tax Detriments.

“**Default Rate**” means a per annum rate of LIBOR plus 500 basis points.

“**Determination**” shall have the meaning ascribed to such term in Section 1313(a) of the Code, or any other event (including the execution of IRS Form 870-AD) that finally and conclusively establishes the amount of any liability for Tax.

“**Direct Exchange**” has the meaning set forth in the Recitals of this Agreement.

“**Early Termination Date**” means the date of an Early Termination Notice for purposes of determining the Early Termination Payment.

“**Early Termination Effective Date**” means the date on which an Early Termination Schedule becomes binding pursuant to Section 4.2.

“**Early Termination Notice**” has the meaning set forth in Section 4.2 of this Agreement.

“**Early Termination Payment**” has the meaning set forth in Section 4.3(b) of this Agreement.

“**Early Termination Rate**” means the lesser of (i) 6.5% per annum, compounded annually, and (ii) the Agreed Rate.

“**Early Termination Schedule**” has the meaning set forth in Section 4.2 of this Agreement.

“**Exchange**” has the meaning set forth in the Recitals of this Agreement.

“**Exchange Basis**” means the Tax basis of the Reference Assets that are amortizable under Section 197 of the Code or that are otherwise depreciable or amortizable for U.S. federal income tax purposes associated with the Units transferred upon an Exchange, determined as of the time of such Exchange; provided, that any Tax basis included in IPO Basis shall be excluded from the determination of the Exchange Basis.

“**Exchange Date**” means the date of any Exchange.

“**Exchanging Holder**” has the meaning set forth in the Recitals of this Agreement.

“**Expert**” has the meaning set forth in Section 7.9 of this Agreement.

“**Future TRAs**” has the meaning set forth in Section 5.1 of this Agreement.

“**GP Contribution**” means the contribution of Units by each of Eighth Berkshire Associates and Berkshire Partners, LLC to the Berkshire Blocker prior to the Reorganization.

“Hypothetical Tax Liability” means, with respect to any Taxable Year, the sum of (i) (A) the liability for U.S. federal income Taxes of the Corporate Taxpayer plus (B) without duplication, the portion of any liability for U.S. federal income Taxes imposed directly on OpCo (and OpCo’s applicable subsidiaries) under Section 6225 or any similar provision of the Code that is allocable to the Corporate Taxpayer under Section 704 of the Code, in each case using the same methods, elections, conventions and similar practices used on the relevant IRS Form 1120 (or any successor form) and (ii) the product of the U.S. federal taxable income for such taxable year (without reduction for any deduction for state and local jurisdiction Taxes) reported on the Corporate Taxpayer’s IRS Form 1120 (or any successor form) and the Assumed State and Local Tax Rate, but, in the determination of the liability in clause (i) and the amount in clause (ii), above, (a) without taking into account Blocker Attributes, if any, (b) using the Non-Blocker Transferred Basis as reflected on the Attribute Schedule including amendments thereto for the Taxable Year, (c) using the Non-IPO Basis as reflected on the Attribute Schedule including amendments thereto for the Taxable Year, (d) using the Non-Exchange Basis as reflected on the Attribute Schedule including amendments thereto for the Taxable Year, (e) using the Non-Stepped Up Tax Basis as reflected on the Attribute Schedule including amendments thereto for the Taxable Year, and (f) excluding any deduction attributable to Imputed Interest attributable to any payment made under this Agreement for the Taxable Year. For the avoidance of doubt, (i) the Hypothetical Tax Liability shall be determined without taking into account the carryover or carryback of any Tax item (or portions thereof) that is attributable to a Tax Attribute as applicable; and (ii) the calculation of the Hypothetical Tax Liability shall take into account the federal benefit received by the Corporate Taxpayer with respect to state and local jurisdiction Taxes (with such benefit taking into account the Corporate Taxpayer’s marginal U.S. federal income tax rate for the relevant Taxable Year, the Assumed State and Local Tax Rate, and the deductibility, if any, of state and local jurisdiction Taxes). For the avoidance of doubt, the basis of the Reference Assets in the aggregate for purposes of determining the Hypothetical Tax Liability can never be less than zero.

“Imputed Interest” in respect of a TRA Party shall mean any interest imputed under Sections 1272, 1274 or 483 or other provision of the Code with respect to the Corporate Taxpayer’s payment obligations in respect of such TRA Party under this Agreement.

“Initial Sales” has the meaning set forth in the Recitals to this Agreement.

“Interest Amount” has the meaning set forth in Section 3.1(b) of this Agreement.

“IPO” means the initial public offering of Class A Shares by the Corporate Taxpayer (including any greenshoe related to such initial public offering).

“IPO Basis” means, without duplication, (i) the Tax basis of the Reference Assets that are amortizable under Section 197 of the Code or that are otherwise depreciable or amortizable for U.S. federal income tax purposes to the extent allocable to the Corporate Taxpayer (for the avoidance of doubt, including as a result of Section 704(c) of the Code) as a result of its ownership of IPO Units (other than to the extent relating to the Preferred Redemption as described in Section 2.1(c)), determined as of the time of the IPO, and assuming the Reorganization and any Initial Sales did not yet occur, and (ii) the Tax basis of the Reference Assets that are amortizable under Section 197 of the Code or that are otherwise depreciable or

amortizable for U.S. federal income tax purposes, determined as of the time of the IPO, and any adjustment to the Tax basis of a Reference Asset under Section 734(b), 743(b) and/or 754 of the Code, in each case, associated with the Units deemed transferred as a result of the Preferred Redemption (as described in Section 2.1(c)).

“**IPO Basis Percentage**” in respect of a TRA Party shall mean the percentage, the numerator of which is the number of Units held by such TRA Party immediately prior to the Reorganization and the denominator of which is the total number of Units outstanding immediately prior to the Reorganization; provided, that in the case of a Blocker Shareholder, the IPO Basis Percentage shall be determined based on the number of Units indirectly held by such Blocker Shareholder as a result of its ownership of the applicable Blocker (measured after the GP Contribution and immediately prior to the Reorganization); provided further, that Units issued after January 1, 2021 as a result of the exercise of an option to purchase such Units will be disregarded in the calculation of both the numerator and denominator of the IPO Basis Percentage.

“**IPO Contribution**” has the meaning set forth in the Recitals of this Agreement.

“**IPO Date**” means the initial closing date of the IPO.

“**IPO Units**” means the Units acquired by PubCo with the net proceeds from the IPO (excluding any Units acquired in an Exchange).

“**IRS**” means the U.S. Internal Revenue Service.

“**LIBOR**” means during any period, the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market or such other commercially available source providing quotations of such rates as may be designated by PubCo from time to time), or the rate which is quoted by another source selected by the Corporate Taxpayer as an authorized information vendor for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (an “**Alternate Source**”), at approximately 11:00 a.m., London time, two (2) Business Days prior to the first day of such period as the London interbank offered rate for U.S. dollars having a borrowing date and a maturity comparable to such period (or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by the Corporate Taxpayer and the TRA Party Representative at such time, which determination shall be conclusive absent manifest error); provided, that at no time shall LIBOR be less than 0%. If the Corporate Taxpayer has made the determination (such determination to be conclusive absent manifest error) that (i) LIBOR is no longer a widely recognized benchmark rate for newly originated loans in the U.S. loan market in U.S. dollars or (ii) the applicable supervisor or administrator (if any) of LIBOR has made a public statement identifying a specific date after which LIBOR shall no longer be used for determining interest rates for loans in the U.S. loan market in U.S. dollars, then the Corporate Taxpayer and the TRA Party Representative shall (as determined by the Corporate Taxpayer and the TRA Party Representative to be consistent with market practice generally), establish a replacement interest rate (the “**Replacement Rate**”), in which case, the Replacement

Rate shall, subject to the next two sentences, replace LIBOR for all purposes under this Agreement. In connection with the establishment and application of the Replacement Rate, this Agreement shall be amended solely with the consent of the Corporate Taxpayer, OpCo and the TRA Party Representative, as may be necessary or appropriate, in the reasonable judgment of the Corporate Taxpayer and the TRA Party Representative, to effect the provisions of this section. The Replacement Rate shall be applied in a manner consistent with market practice; provided, that in each case, to the extent such market practice is not administratively feasible for the Corporate Taxpayer, such Replacement Rate shall be applied as otherwise reasonably determined by the Corporate Taxpayer and the TRA Party Representative.

“Market Value” shall mean the closing price of the Class A Shares on the applicable Exchange Date on the national securities exchange or interdealer quotation system on which such Class A Shares are then traded or listed, as reported by the *Wall Street Journal*; provided, that if the closing price is not reported by the *Wall Street Journal* for the applicable Exchange Date, then the Market Value shall mean the closing price of the Class A Shares on the Business Day immediately preceding such Exchange Date on the national securities exchange or interdealer quotation system on which such Class A Shares are then traded or listed, as reported by the *Wall Street Journal*; provided, further, that if the Class A Shares are not then listed on a national securities exchange or interdealer quotation system, “Market Value” shall mean the cash consideration paid for Class A Shares, or the fair market value of the other property delivered for Class A Shares, as determined by the Board in good faith. Notwithstanding anything to the contrary in the above sentence, to the extent property is exchanged for cash in a transaction, the Market Value shall be determined by reference to the amount of cash transferred in such transaction.

“Material Objection Notice” has the meaning set forth in Section 4.2 of this Agreement.

“Net Tax Benefit” has the meaning set forth in Section 3.1(b) of this Agreement.

“Non-Blocker Transferred Basis” means, with respect to any Reference Asset that is amortizable under Section 197 of the Code or that is otherwise depreciable or amortizable for U.S. federal income tax purposes, the Tax basis that such Reference Asset would have had if the Blocker Transferred Basis at the time of the Reorganization was equal to zero.

“Non-Exchange Basis” means, with respect to any Reference Asset that is amortizable under Section 197 of the Code or that is otherwise depreciable or amortizable for U.S. federal income tax purposes, the Tax basis that such Reference Asset would have had if the Exchange Basis at the time of such Exchange was equal to zero.

“Non-IPO Basis” means, (x) with respect to any Reference Asset that is amortizable under Section 197 of the Code or that is otherwise depreciable or amortizable for U.S. federal income tax purpose that is referred to in clause (i) or (ii) of the definition of IPO Basis, the Tax basis that such Reference Asset would have had if the IPO Basis of such Reference Asset at the time of the IPO was equal to zero and (y) with respect to any other Reference Asset referred to in clause (ii) of the definition of IPO Basis, the Tax basis that such Reference Asset would have had if there has been no adjustment to the Tax basis of such Reference Asset under Section 734(b), 743(b) and/or 754 of the Code.

“Non-Stepped Up Tax Basis” means, with respect to any Reference Asset, the Tax basis that such asset would have had at the time of the Exchange if no Basis Adjustments had been made.

“Objection Notice” has the meaning set forth in Section 2.4(a) of this Agreement.

“OpCo” means PHD Group Holdings, LLC, a Delaware limited liability company.

“OpCo Agreement” means the Second Amended and Restated Limited Liability Company Agreement of OpCo, dated on or about the date hereof, as such agreement may be further amended, restated, supplemented and/or otherwise modified from time to time.

“Person” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

“Preferred Redemption” means the redemption of preferred Units by OpCo in exchange for a promissory note prior to the Reorganization.

“Pre-Exchange Transfer” means any transfer (including upon the death of a Unit Holder) or distribution in respect of one or more Units (i) that occurs prior to an Exchange of such Units, and (ii) to which Section 734(b) or 743(b) of the Code applies.

“PubCo” has the meaning set forth in the Preamble to this Agreement.

“Realized Tax Benefit” means, for a Taxable Year, the excess, if any, of the Hypothetical Tax Liability over the Actual Tax Liability. If all or a portion of the Actual Tax Liability for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability (and any corresponding adjustments to the Hypothetical Tax Liability) shall not be included in determining the Realized Tax Benefit unless and until there has been a Determination.

“Realized Tax Detriment” means, for a Taxable Year, the excess, if any, of the Actual Tax Liability over the Hypothetical Tax Liability. If all or a portion of the Actual Tax Liability for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability (and any corresponding adjustments to the Hypothetical Tax Liability) shall not be included in determining the Realized Tax Detriment unless and until there has been a Determination.

“Reconciliation Dispute” has the meaning set forth in Section 7.9 of this Agreement.

“Reconciliation Procedures” has the meaning set forth in Section 2.4(a) of this Agreement.

“Redemption” has the meaning set forth in the Recitals to this Agreement.

“Reference Asset” means an asset that is held by OpCo, or by any of its direct or indirect Subsidiaries treated as a partnership or disregarded entity (but only to the extent such indirect

Subsidiaries are held through Subsidiaries treated as partnerships or disregarded entities) for purposes of the applicable Tax, at the time of the Reorganization, the IPO, the IPO Contribution or an Exchange, as relevant. A Reference Asset also includes any asset that is “substituted basis property” under Section 7701(a)(42) of the Code with respect to a Reference Asset. For the avoidance of doubt, references to Reference Assets that are depreciable or amortizable shall include assets that will eventually be subject to depreciation or amortization once placed in service.

“**Reorganization**” has the meaning set forth in the Recitals of this Agreement.

“**Replacement Rate**” has the meaning set forth in the definition of “LIBOR.”

“**S-1**” means the Form S-1 publicly filed by PubCo on September 27, 2021, and any amendments thereof.

“**Schedule**” means any of the following: (i) an Attribute Schedule; (ii) a Tax Benefit Schedule; or (iii) the Early Termination Schedule, and, in each case, any amendments thereto.

“**Section 734(b) Exchange**” means any Exchange that results in a Basis Adjustment under Section 734(b) of the Code.

“**Senior Obligations**” has the meaning set forth in Section 5.1 of this Agreement.

“**Subsidiaries**” means, with respect to any Person, as of any date of determination, any other Person as to which such Person, owns, directly or indirectly, or otherwise controls more than 50% of the voting power or other similar interests or the sole general partner interest or managing member or similar interest of such Person.

“**Subsidiary Stock**” means any stock or other equity interest in any Subsidiary of PubCo that is treated as a corporation for U.S. federal income tax purposes.

“**Tax Attributes**” has the meaning set forth in the Recitals of this Agreement.

“**Tax Benefit Payment**” has the meaning set forth in Section 3.1(b) of this Agreement.

“**Tax Benefit Schedule**” has the meaning set forth in Section 2.3(a) of this Agreement.

“**Tax Proceeding**” has the meaning set forth in Section 6.1 of this Agreement.

“**Tax Return**” means any return, declaration, report or similar statement filed or required to be filed with respect to Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated Tax.

“**Taxable Year**” means a taxable year of the Corporate Taxpayer as defined in Section 441(b) of the Code (and, therefore, for the avoidance of doubt, may include a period of less than twelve (12) months for which a Tax Return is made), ending on or after the IPO Date.

“**Taxes**” means any and all U.S. federal, state, and local taxes, assessments or similar charges that are based on or measured with respect to net income or profits (including, for the avoidance of doubt, alternative minimum taxes and franchise taxes that are based on or measured with respect to net income or profits), and any interest related to such Tax.

“**Taxing Authority**” means any domestic, federal, national, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority or any other authority exercising Tax regulatory authority.

“**Threshold Exchange Units**” has the meaning set forth in Section 3.4 of this Agreement.

“**TRA Party**” has the meaning set forth in the Preamble to this Agreement.

“**TRA Party Representative**” means, initially, BSR LLC, a Delaware limited liability company, and thereafter, that TRA Party or committee of TRA Parties determined from time to time by a plurality vote of the TRA Parties ratably in accordance with their right to receive Early Termination Payments hereunder if all TRA Parties had fully Exchanged their Units for Class A Shares, cash or other consideration and the Corporate Taxpayer had exercised its right of early termination on the date of the most recent Exchange.

“**Treasury Regulations**” means the final, temporary and proposed regulations under the Code promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable period.

“**Unit Holder**” means holders of Units following the Reorganization other than the Corporate Taxpayer.

“**Units**” has the meaning set forth in the Recitals of this Agreement.

“**Valuation Assumptions**” means, as of an Early Termination Effective Date, the assumptions that in each Taxable Year ending on or after such Early Termination Effective Date:

(1) the Corporate Taxpayer will have taxable income sufficient to fully utilize the Tax items arising from the Tax Attributes (other than any items addressed in clause (4) below) during such Taxable Year or future Taxable Years (including, for the avoidance of doubt, Basis Adjustments and Imputed Interest that would result from future payments made under this Agreement that would be paid in accordance with the Valuation Assumptions) in which such Tax items would arise;

(2) the U.S. federal income tax rates that will be in effect for each such Taxable Year will be those specified for each such Taxable Year by the Code and other law as in effect on the Early Termination Effective Date, and the Assumed State and Local Tax Rate will be calculated based on such rates and the apportionment factor applicable for the Taxable Year that includes the Early Termination Effective Date, in each case, except to the extent any change to such Tax rates for such Taxable Year have already been enacted into law;

(3) all taxable income of the Corporate Taxpayer will be subject to the maximum applicable U.S. federal income tax rates throughout the relevant period;

(4) any Blocker Attributes described in clause (i) of the definition thereof, and any loss carryovers generated by deductions arising from any Tax Attributes or Imputed Interest that are available as of the date of such Early Termination Effective Date will be used by the Corporate Taxpayer on a pro rata basis from the date of such Early Termination Effective Date through the earlier of (x) the scheduled expiration date under applicable Tax law of such loss carryovers or (y) the fifth (5th) anniversary of the Early Termination Effective Date;

(5) any non-amortizable, non-depreciable assets (other than Subsidiary Stock) will be deemed disposed of on the earlier of (i) the fifteenth anniversary of the applicable Basis Adjustment (or, if such Basis Adjustment occurred more than fifteen years before the Early Termination Effective Date, the Early Termination Effective Date), and (ii) in the case of any Blocker Attributes described in clause (ii) of the definition thereof and any IPO Basis described in clause (ii) of the definition thereof, the fifteenth anniversary of the IPO Date (or, if the IPO Date is more than fifteen years before the Early Termination Effective Date, the Early Termination Effective Date), and any cash equivalents will be disposed of twelve (12) months following the Early Termination Effective Date; provided that in the event of a Change of Control that includes the sale of any such non-amortizable, non-depreciable asset in the Change of Control (or the sale of all of the equity interests in a partnership or disregarded entity for U.S. federal income tax purposes that directly or indirectly owns such non-amortizable, non-depreciable asset), such non-amortizable, non-depreciable asset shall be deemed disposed of at the time of the sale of the relevant asset in such Change of Control (if earlier than such fifteenth anniversary);

(6) any Subsidiary Stock will be deemed never to be disposed of except if such Subsidiary Stock is actually disposed of; and

(7) if, on the Early Termination Effective Date, there are Units that have not been Exchanged, then such Units shall be deemed to be Exchanged for the Market Value of the Class A Shares and/or cash or other property that would be transferred if the Exchange occurred on the Early Termination Effective Date (and therefore, for the avoidance of doubt any outstanding Threshold Exchange Units held by a TRA Party shall also be deemed Exchanged on the Early Termination Date).

Section I.2 Rules of Construction. Unless otherwise specified herein:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) For purposes of interpretation of this Agreement:

(i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision thereof.

(ii) References in this Agreement to a Schedule, Article, Section, clause or sub-clause refer to the appropriate Schedule to, or Article, Section, clause or subclause in, this Agreement.

(iii) References in this Agreement to “dollars” or “\$” refer to the lawful currency of the United States of America.

(iv) The term “including” is by way of example and not limitation.

(v) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(c) 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.”

(d) Section headings herein are included for convenience of reference only and shall not affect the interpretation of this Agreement.

(e) Unless otherwise expressly provided herein, (a) references to organization documents (including the OpCo Agreement), agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted hereby; and (b) references to any law (including the Code and the Treasury Regulations) shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law.

Article II

DETERMINATION OF CERTAIN REALIZED TAX BENEFIT

Section II.1 Basis Adjustments; LLC 754 Election.

(a) Basis Adjustments. The parties acknowledge and agree that (A) the Initial Sales of Units and each Direct Exchange shall give rise to Basis Adjustments, and (B) each Redemption using Class A Shares and/or cash or other property contributed to OpCo by PubCo shall be treated as a direct purchase of Units by PubCo from the applicable TRA Party pursuant to Section 707(a)(2)(B) of the Code that shall give rise to Basis Adjustments. For the avoidance of doubt, payments made under this Agreement shall not be treated as resulting in a Basis Adjustment to the extent that such payments are treated as deductible interest for U.S. federal income tax purposes or as other than consideration for Units for U.S. federal income tax purposes.

(b) Section 754 Election. PubCo shall cause OpCo and each of its Subsidiaries that is treated as a partnership for U.S. federal income tax purposes to have in effect an election under

Section 754 of the Code and any similar provisions of U.S. state or local tax law for each Taxable Year.

(c) **Pre-Reorganization Transactions.** The parties acknowledge and agree that (A) the Preferred Redemption by OpCo in exchange for a promissory note and the repayment of such note by PubCo in connection with the IPO shall be treated as a deemed purchase of Units by PubCo pursuant to Section 707(a)(2)(B) of the Code that shall give rise to an adjustment to the basis of the Reference Assets under Section 743(b) of the Code and (B) the GP Contribution shall be a taxable transaction that gives rise to an adjustment to the basis of the Reference Assets under Section 743(b) of the Code.

Section II.2 Attribute Schedule. Within one hundred and twenty (120) calendar days after the due date (including extensions) of IRS Form 1120 (or any successor form) of the Corporate Taxpayer for each relevant Taxable Year, PubCo shall deliver to each TRA Party a schedule (the “**Attribute Schedule**”) that shows, in reasonable detail necessary to perform the calculations required by this Agreement, (i) the Blocker Transferred Basis of the Reference Assets Attributable to such TRA Party, if any, (ii) the IPO Basis of the Reference Assets Attributable to such TRA Party, if any, (iii) the Exchange Basis of the Reference Assets Attributable to such TRA Party, if any, (iv) the Basis Adjustment with respect to the Reference Assets Attributable to such TRA Party as a result of the Exchanges effected in such Taxable Year or any prior Taxable Year by such TRA Party, if any, calculated in the aggregate, (v) the Non-Stepped Up Tax Basis of the Reference Assets in respect of such TRA Party as of each applicable Exchange Date, if any, (vi) the period (or periods) over which the Reference Assets in respect of such TRA Party are amortizable and/or depreciable, (vii) the period (or periods) over which the Blocker Transferred Basis, the IPO Basis, the Exchange Basis, and each Basis Adjustment Attributable to such TRA Party is amortizable and/or depreciable, (viii) the amount of Blocker Attributes available to the Corporate Taxpayer in such Taxable Year Attributable to such TRA Party and the period (or periods) over which such Blocker Attributes are usable, and (ix) the amount of Imputed Interest Allocable to such TRA Party. All costs and expenses incurred in connection with the provision and preparation of the Attribute Schedules and Tax Benefit Schedules for each TRA Party in compliance with this Agreement shall be borne by OpCo. Each Attribute Schedule will become final as provided in Section 2.4(a) and may be amended as provided in Section 2.4(b) (subject to the procedures set forth in Section 2.4(b)).

Section II.3 Tax Benefit Schedule.

(a) **Tax Benefit Schedule.** Within one hundred and twenty (120) calendar days after the due date (including extensions) of IRS Form 1120 (or any successor form) of the Corporate Taxpayer for any Taxable Year in which there is a Realized Tax Benefit or a Realized Tax Detriment in respect of a TRA Party, PubCo shall provide to such TRA Party and the TRA Party Representative a schedule showing, in reasonable detail, the calculation of the Realized Tax Benefit and Tax Benefit Payment or the Realized Tax Detriment, as applicable, in respect of such TRA Party for such Taxable Year (a “**Tax Benefit Schedule**”). Each Tax Benefit Schedule will become final as provided in Section 2.4(a) and may be amended as provided in Section 2.4(b) (subject to the procedures set forth in Section 2.4(b)).

(b) Applicable Principles.

(i) General. Subject to Section 3.3, the Realized Tax Benefit (or the Realized Tax Detriment) for each Taxable Year is intended to measure the decrease (or increase) in the actual liability for Taxes of the Corporate Taxpayer for such Taxable Year attributable to the Tax Attributes, determined using a “with and without” methodology. Carryovers or carrybacks of any Tax item attributable to any of the Tax Attributes shall be considered to be subject to the rules of the Code and the Treasury Regulations or the appropriate provisions of U.S. state and local Tax law, as applicable, governing the use, limitation and expiration of carryovers or carrybacks of the relevant type. If a carryover or carryback of any Tax item includes a portion that is attributable to any Tax Attribute and another portion that is not, such portions shall be considered to be used in accordance with the “with and without” methodology. The parties agree that (A) all Tax Benefit Payments (or the right to receive such amounts) (other than Imputed Interest thereon) attributable to Blocker Transferred Basis or Blocker Attributes constitutes non-qualifying property or money received in the Reorganization for purposes of Section 356 of the Code, (B) all Tax Benefit Payments (or the right to receive such amounts) (other than Imputed Interest thereon) attributable to the IPO Basis Attributable to the Blocker Shareholders (with respect to the Acquired Units) will be treated as non-qualifying property or money received in the Reorganization for purposes of Section 356 of the Code, (C) all Tax Benefit Payments (other than Imputed Interest thereon) attributable to the Exchange Basis or Basis Adjustments (other than Basis Adjustments resulting from Tax Benefit Payments attributable to the IPO Basis) will be treated as subsequent upward purchase price adjustments with respect to the Units exchanged in the applicable Exchange that have the effect of creating additional Basis Adjustments to Reference Assets for the Corporate Taxpayer in the year of payment, (D) all Tax Benefit Payments (other than Imputed Interest thereon) attributable to the IPO Basis Attributable to an Exchanging Holder will be treated as subsequent upward purchase price adjustments with respect to the Threshold Exchange Units that have the effect of creating additional Basis Adjustments to Reference Assets for the Corporate Taxpayer in the year of payment, (E) as a result, any additional Basis Adjustments will be incorporated into the current year calculation and into future year calculations, as appropriate, and (F) the Actual Tax Liability will take into account the deduction of the portion of the Tax Benefit Payment that must be accounted for as Imputed Interest.

(ii) Applicable Principles of Section 734(b) Exchanges. Notwithstanding any provisions to the contrary in this Agreement, the foregoing treatment set out in Section 2.3(b)(i) shall not be required to apply to payments hereunder to an Exchanging Holder in respect of a Section 734(b) Exchange by such Exchanging Holder. For the avoidance of doubt, payments made under this Agreement relating to a Section 734(b) Exchange shall not be treated as resulting in a Basis Adjustment to the extent such payments are treated as Imputed Interest. The parties intend that (A) an Exchanging Holder that has made a Section 734(b) Exchange shall, with respect to the Basis Adjustment resulting from such Section 734(b) Exchange or any payments hereunder in respect of such Section 734(b) Exchange, be entitled to Tax Benefit Payments attributable to such Basis Adjustments only to the extent such Basis Adjustments are allocable to the Corporate Taxpayer following such Section 734(b) Exchange (without taking into account any concurrent or subsequent Exchanges) and (B) if, as a result of a subsequent Exchange, an increased portion of the Basis Adjustments resulting from such Section 734(b) Exchange or any payments hereunder in respect of such Section 734(b) Exchange becomes

allocable to the Corporate Taxpayer, then the Unit Holder that makes such subsequent Exchange shall be entitled to a Tax Benefit Payment calculated in respect of such increased portion. For purposes of this Agreement, such Basis Adjustments allocable to the Corporate Taxpayer as a result of subsequent Exchanges as described in (B) in the previous sentence shall be reported and treated like Exchange Basis for purposes of this Agreement, but for the avoidance of doubt, may include adjustments to assets that are different than those described in the definition of Exchange Basis.

(iii) Applicable Principles for Adjustments under Section 743(b). Any adjustments to tax basis occurring pursuant to Section 743(b) of the Code shall also refer to any new adjustments with respect to the same Units that occur pursuant to Section 743(b) of the Code in a tax-deferred transaction.

Section II.4 Procedures, Amendments

(a) Procedure. Every time PubCo delivers to a TRA Party an applicable Schedule under this Agreement, including any Amended Schedule, PubCo shall also (x) deliver to such TRA Party supporting schedules and work papers, as determined by PubCo or as reasonably requested by such TRA Party, providing reasonable detail regarding data and calculations that were relevant for purposes of preparing such Schedule and (y) allow such TRA Party reasonable access at no cost to the appropriate representatives at PubCo, as determined by PubCo or as reasonably requested by such TRA Party, in connection with a review of such Schedule. Without limiting the generality of the preceding sentence, PubCo shall ensure that any Tax Benefit Schedule that is delivered to a TRA Party, along with any supporting schedules and work papers, provides a reasonably detailed presentation of the calculation of the Actual Tax Liability (the “with” calculation) and the Hypothetical Tax Liability (the “without” calculation) and identifies any material assumptions or operating procedures or principles that were used for purposes of such calculations. An applicable Schedule or amendment thereto shall become final and binding on all parties thirty (30) calendar days from the date on which all relevant TRA Parties are treated as having received the applicable Schedule or amendment thereto under Section 7.1 unless the TRA Party Representative (i) within thirty (30) calendar days from such date provides PubCo with written notice of a material objection to such Schedule (“**Objection Notice**”) made in good faith or (ii) provides a written waiver of such right of any Objection Notice within the period described in clause (i) above, in which case such Schedule or amendment thereto becomes binding on the date the waiver is received by PubCo. If PubCo and the TRA Party Representative, for any reason, are unable to successfully resolve the issues raised in the Objection Notice within thirty (30) calendar days after receipt by PubCo of an Objection Notice, PubCo and the TRA Party Representative shall employ the reconciliation procedures as described in Section 7.9 of this Agreement (the “**Reconciliation Procedures**”).

(b) Amended Schedule. The applicable Schedule for any Taxable Year shall be amended from time to time by PubCo (i) in connection with a Determination affecting such Schedule, (ii) to correct inaccuracies in the Schedule identified as a result of the receipt of additional factual information relating to a Taxable Year after the date the Schedule was provided to a TRA Party, (iii) to comply with an Expert’s determination under the Reconciliation Procedures, (iv) to reflect a change in the Realized Tax Benefit, or the Realized Tax Detriment for such Taxable Year attributable to a carryback or carryforward of a loss or other Tax item to

such Taxable Year, (v) to reflect a change in the Realized Tax Benefit or the Realized Tax Detriment for such Taxable Year attributable to an amended Tax Return filed for such Taxable Year or (vi) to adjust an applicable TRA Party's Attribute Schedule to take into account payments made pursuant to this Agreement (any such Schedule, an "**Amended Schedule**"). PubCo shall provide an Amended Schedule to each TRA Party when PubCo delivers the Attribute Schedule for the following taxable year.

Article III

TAX BENEFIT PAYMENTS

Section III.1 Payments.

(a) **Payments.** Within five (5) calendar days after a Tax Benefit Schedule delivered to a TRA Party becomes final in accordance with Section 2.4(a) and Section 7.9, if applicable, PubCo shall pay such TRA Party for such Taxable Year the Tax Benefit Payment determined pursuant to Section 3.1(b) that is in respect of the Tax Attributes Attributable to the relevant TRA Party. Each such Tax Benefit Payment shall be made by wire transfer of immediately available funds to the bank account previously designated by such TRA Party to PubCo or as otherwise agreed by PubCo and such TRA Party. For the avoidance of doubt, (x) no Tax Benefit Payment shall be made in respect of estimated Tax payments, including, without limitation, U.S. federal estimated income Tax payments and (y) the payments provided for pursuant to the above sentence shall be computed separately for each TRA Party.

(b) A "**Tax Benefit Payment**" in respect of a TRA Party for a Taxable Year means an amount, not less than zero, equal to the Net Tax Benefit that is Attributable to such TRA Party and the Interest Amount with respect thereto. For the avoidance of doubt, for Tax purposes, the Interest Amount shall not be treated as interest, but instead, shall be treated as additional consideration in the applicable transaction, unless otherwise required by law. Subject to Section 3.3, the "**Net Tax Benefit**" for a Taxable Year shall be an amount equal to the excess, if any, of 85% of the Cumulative Net Realized Tax Benefit as of the end of such Taxable Year, over the total amount of payments previously made under the first sentence of Section 3.1(a) (excluding payments attributable to Interest Amounts); provided, for the avoidance of doubt, that no such recipient shall be required to return any portion of any previously made Tax Benefit Payment. The "**Interest Amount**" shall equal the interest on the Net Tax Benefit calculated at the Agreed Rate from the due date (without extensions) for filing IRS Form 1120 (or any successor form) of the Corporate Taxpayer with respect to Taxes for such Taxable Year until the payment date under Section 3.1(a).

(c) **Maximum Payments.** Notwithstanding anything to the contrary in this Agreement, with respect to the Reorganization, Initial Sales of Units and each other Exchange by or with respect to any TRA Party, if such TRA Party notifies PubCo in writing of a stated maximum selling price (within the meaning of Treasury Regulations Section 15A.453-1(c)(2)), then the amount of the consideration received in connection with the Reorganization, Initial Sales of Units or any other such Exchange and the aggregate Tax Benefit Payments to such TRA Party in respect of the Reorganization, Initial Sales of Units or any other such Exchange (other

than amounts accounted for as interest under the Code) shall not exceed such stated maximum selling price.

Section III.2 No Duplicative Payments. It is intended that the provisions of this Agreement will not result in duplicative payment of any amount (including interest) required under this Agreement. The provisions of this Agreement shall be construed in the appropriate manner to ensure such intentions are realized.

Section III.3 Pro Rata Payments; Late Payments; Excess Payments.

(a) Pro Rata Payments. Notwithstanding anything in Section 3.1 to the contrary, to the extent that the aggregate Realized Tax Benefit of the Corporate Taxpayer with respect to the Tax Attributes is limited in a particular Taxable Year because the Corporate Taxpayer does not have sufficient taxable income, the Net Tax Benefit for that Taxable Year shall be allocated among all parties then-eligible to receive Tax Benefit Payments under this Agreement in proportion to the amounts of Net Tax Benefit for that Taxable Year, respectively, that would have been Attributable to each TRA Party if the Corporate Taxpayer had sufficient taxable income so that there were no such limitation. For the avoidance of doubt, the determination of whether Tax Benefit Payments are held-back pursuant to Section 3.4, shall not be relevant in the determination of whether a Net Tax Benefit is eligible to be allocated to the relevant TRA Party for purposes of this Section 3.3. To the extent any part of the limitation on the Realized Tax Benefit is allocated in a manner that differs from the order prescribed in the applicable rules of the Code and the Treasury Regulations regarding the utilization, or deemed utilization, of such Tax items, appropriate adjustments, consistent with the principles of this Section 3.3 and the definition of Attributable, shall be made in future Taxable Years to take into account such differing allocation.

(b) Late Payments. If for any reason the Corporate Taxpayer does not fully satisfy its payment obligations to make all Tax Benefit Payments due under this Agreement in respect of a particular Taxable Year, then the Corporate Taxpayer and the TRA Parties agree that (i) the Tax Benefit Payments for such Taxable Year shall be allocated to all parties eligible to receive Tax Benefit Payments under this Agreement in such Taxable Year in proportion to the amounts of Tax Benefit Payments, respectively, that would have been made to each TRA Party if the Corporate Taxpayer had sufficient cash available to make such Tax Benefit Payments and (ii) no Tax Benefit Payment shall be made in respect of any Taxable Year until all Tax Benefit Payments to all TRA Parties in respect of all prior Taxable Years have been made in full; provided, however, that any payments that were not made by the Corporate Taxpayer to a TRA Party as a result of the operation of Section 3.4 but have since become due and payable pursuant to Section 3.4 shall be made prior to any other Tax Benefit Payments.

(c) Excess Payments. To the extent the Corporate Taxpayer makes a payment to a TRA Party in respect of a particular Taxable Year under Section 3.1(a) of this Agreement (taking into account Section 3.3(a) and (b)) in an amount in excess of the amount of such payment that should have been made to such TRA Party in respect of such Taxable Year, then (a) such TRA Party shall not receive further payments under Section 3.1(a) until such TRA Party has foregone an amount of payments equal to such excess and (b) the Corporate Taxpayer will pay the amount of such TRA Party's foregone payments to the other Persons to whom a payment is due under

this Agreement in a manner such that each such Person to whom a payment is due under this Agreement, to the maximum extent possible, receives aggregate payments under Section 3.1(a) (taking into account Section 3.3(a) and (b)) in the amount it would have received if there had been no excess payment to such TRA Party.

Section III.4 IPO Basis. Notwithstanding anything to the contrary herein, any and all Tax Benefit Payments that would otherwise be made pursuant to this Agreement with respect to any IPO Basis shall not be payable to the applicable TRA Party until such time as such TRA Party has exchanged Units in one or more Exchanges equal to more than 20% of the Units held by such TRA Party determined prior to the Reorganization (such Units, with respect to each TRA Party, such TRA Party's "**Threshold Exchange Units**"). Promptly following the time any such TRA Party has exchanged, in the aggregate, a number of Units equal to or exceeding the Threshold Exchange Units, such amount shall be paid by PubCo to the applicable TRA Party. Notwithstanding anything herein to the contrary, all Blocker Shareholders (with respect to the Acquired Units) shall be deemed to have exchanged any Threshold Exchange Units held by such Blocker Shareholders in the Reorganization, and, therefore, no amounts shall be held back pursuant to this Section 3.4.

Article IV

TERMINATION

Section IV.1 Early Termination of Agreement; Breach of Agreement.

(a) PubCo may terminate this Agreement with respect to all amounts payable to the TRA Parties and with respect to all of the Units held by the TRA Parties at any time by simultaneously paying to each TRA Party the Early Termination Payment in respect of such TRA Party; provided, however, that this Agreement shall only terminate upon the receipt of the Early Termination Payment by all TRA Parties, and provided, further, that PubCo may withdraw any notice to execute its termination rights under this Section 4.1(a) prior to the time at which any Early Termination Payment has been paid. Upon payment of the Early Termination Payment in respect of each TRA Party by PubCo, PubCo shall have no further payment obligations under this Agreement, other than for any (a) Tax Benefit Payments due and payable and that remain unpaid as of the Early Termination Notice and (b) Tax Benefit Payment due for the Taxable Year ending with or including the date of the Early Termination Notice (except to the extent that the amount described in clause (b) is included in the Early Termination Payment). If an Exchange occurs after PubCo makes all of the required Early Termination Payments, PubCo shall have no obligations under this Agreement with respect to such Exchange.

(b) In the event that (1) PubCo breaches any of its material obligations under this Agreement, whether as a result of failure to make any payment when due, failure to honor any other material obligation required hereunder or by operation of law as a result of the rejection of this Agreement in a case commenced under the Bankruptcy Code or otherwise or (2)(A) the Corporate Taxpayer shall commence any case, proceeding or other action (i) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate a bankruptcy or insolvency, or seeking reorganization, arrangement,

adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts or (ii) seeking an appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or it shall make a general assignment for the benefit of creditors or (B) there shall be commenced against the Corporate Taxpayer any case, proceeding or other action of the nature referred to in clause (A) above that remains undismissed or undischarged for a period of sixty (60) calendar days, all obligations hereunder shall be automatically accelerated and shall be immediately due and payable, and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of such breach and shall include, but not be limited to, (x) the Early Termination Payments calculated as if an Early Termination Notice had been delivered on the date of such breach, (y) any Tax Benefit Payment due and payable and that remains unpaid as of the date of such breach, and (z) any Tax Benefit Payment in respect of any TRA Party due for the Taxable Year ending with or including the date of such breach; provided, that procedures similar to the procedures of Section 4.2 shall apply with respect to the determination of the amount payable by PubCo pursuant to this sentence. Notwithstanding the foregoing, in the event that PubCo breaches this Agreement, to the fullest extent permitted by applicable law, each TRA Party shall be entitled to elect to receive the amounts set forth in clauses (x), (y) and (z) above or to seek specific performance of the terms hereof. The parties agree that the failure to make any payment due pursuant to this Agreement within three (3) months of the date such payment is due shall be deemed to be a breach of a material obligation under this Agreement for all purposes of this Agreement, and that it will not be considered to be a breach of a material obligation under this Agreement to make a payment due pursuant to this Agreement within three (3) months of the date such payment is due. Notwithstanding anything in this Agreement to the contrary, it shall not be a breach of a material obligation of this Agreement if the Corporate Taxpayer fails to make any Tax Benefit Payment when due to the extent that the Corporate Taxpayer has insufficient funds to make such payment; provided, that (i) PubCo has used reasonable efforts to obtain such funds and (ii) the interest provisions of Section 5.2 shall apply to such late payment.

(c) Changes of Control.

(i) In the event of a Change of Control, unless the TRA Party Representative elects otherwise, all obligations of PubCo hereunder shall be accelerated and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of such Change of Control and utilizing the Valuation Assumptions by substituting in each case the terms “the closing date of a Change of Control” in each place where the phrase “Early Termination Date” appears. Such obligations shall include (1) the Early Termination Payments calculated as if the Early Termination Date is the date of such Change of Control, (2) any Tax Benefit Payment due and payable and that remains unpaid as of the date of such Change of Control, and (3) any Tax Benefit Payment in respect of any TRA Party due for any Taxable Year ending prior to, with or including the date of such Change of Control (except to the extent any amounts described in clause (2) or (3) are included in the Early Termination Payment). For the avoidance of doubt, Sections 4.2 and 4.3 shall apply to a Change of Control, *mutatis mutandis*.

(ii) If the TRA Party Representative elects not to accelerate PubCo’s obligations hereunder, then in the event of a Change of Control, each TRA Party shall continue as a TRA Party under this Agreement after such Change of Control, in which case such TRA Party will not be entitled to receive the amounts set forth in Section 4.1(c)(i) above and

Valuation Assumptions (1), (4), (5) and (6) shall apply, substituting the terms “the closing date of a Change of Control” in each place where the phrase “Early Termination Date” appears.

Section IV.2 Early Termination Notice. If PubCo chooses to exercise its right of early termination under Section 4.1(a) above, PubCo shall deliver to the TRA Party Representative notice of such intention to exercise such right (“**Early Termination Notice**”) and a schedule (the “**Early Termination Schedule**”) showing in reasonable detail the calculation of the Early Termination Payment(s) due for each relevant TRA Party. Concurrently with the delivery of the Early Termination Notice and the Early Termination Schedule pursuant to the preceding sentence, Pubco shall deliver to each TRA Party a copy of the Early Termination Notice and such portion of the Early Termination Schedule that relates to such TRA Party. The Early Termination Schedule shall become final and binding on all parties thirty (30) calendar days from the first date on which the TRA Party Representative is treated as having received such Schedule or amendment thereto under Section 7.1 unless the TRA Party Representative (i) within thirty (30) calendar days after such date provides PubCo with notice of a material objection to such Schedule made in good faith (“**Material Objection Notice**”) or (ii) provides a written waiver of such right of a Material Objection Notice within the period described in clause (i) above, in which case such Schedule becomes binding on the date the waiver is received by PubCo. If PubCo and the TRA Party Representative, for any reason, are unable to successfully resolve the issues raised in such notice within thirty (30) calendar days after receipt by PubCo of the Material Objection Notice, PubCo and the TRA Party Representative shall employ the Reconciliation Procedures set forth in Section 7.9 in which case such Schedule becomes binding ten (10) calendar days after the conclusion of the Reconciliation Procedures.

Section IV.3 Payment upon Early Termination.

(a) Within three (3) Business Days after an Early Termination Effective Date, PubCo shall pay to each relevant TRA Party an amount equal to the Early Termination Payment in respect of such TRA Party. Such payment shall be made by wire transfer of immediately available funds to a bank account or accounts designated by such TRA Party or as otherwise agreed by PubCo and such TRA Party or, in the absence of such designation or agreement, by check mailed to the last mailing address provided by such TRA Party to the Corporate Taxpayer.

(b) “**Early Termination Payment**” in respect of a TRA Party shall equal the present value, discounted at the Early Termination Rate as of the applicable Early Termination Effective Date, of all Tax Benefit Payments in respect of such TRA Party that would be required to be paid by PubCo beginning from the Early Termination Date and assuming that the Valuation Assumptions in respect of such TRA Party are applied and that each Tax Benefit Payment for the relevant Taxable Year would be due and payable on the due date (without extensions) under applicable law as of the Early Termination Effective Date for filing of IRS Form 1120 (or any successor form) of the Corporate Taxpayer.

Article V

SUBORDINATION AND LATE PAYMENTS

Section V.1 Subordination. Notwithstanding any other provision of this Agreement to the contrary, any Tax Benefit Payment required to be made by PubCo to the TRA Parties under this Agreement shall rank subordinate and junior in right of payment to any principal, interest or other amounts due and payable in respect of any obligations in respect of indebtedness for borrowed money of PubCo and its Subsidiaries (“**Senior Obligations**”) and shall rank *pari passu* in right of payment with all current or future unsecured obligations of PubCo that are not Senior Obligations. To the extent that any payment under this Agreement is not permitted to be made at the time payment is due as a result of this Section 5.1 and the terms of agreements governing Senior Obligations, such payment obligation nevertheless shall accrue for the benefit of TRA Parties and PubCo shall make such payments at the first opportunity that such payments are permitted to be made in accordance with the terms of the Senior Obligations. Notwithstanding any other provision of this Agreement to the contrary, to the extent that PubCo or any of its Affiliates enters into future Tax receivable or other similar agreements (“**Future TRAs**”), PubCo shall ensure that the terms of any such Future TRA shall provide that the Tax Attributes subject to this Agreement are considered senior in priority to any Tax attributes subject to any such Future TRA for purposes of calculating the amount and timing of payments under any such Future TRA.

Section V.2 Late Payments by PubCo. The amount of all or any portion of any Tax Benefit Payment or Early Termination Payment not made to the TRA Parties when due under the terms of this Agreement, whether as a result of Section 5.1 or otherwise, shall be payable together with any interest thereon, computed at the Default Rate and commencing from the date on which such Tax Benefit Payment or Early Termination Payment was first due and payable to the date of actual payment.

Article VI

NO DISPUTES; CONSISTENCY; COOPERATION

Section VI.1 Participation in the Corporate Taxpayer’s and OpCo’s Tax Matters. Except as otherwise provided herein, and except as provided in the OpCo Agreement, the Corporate Taxpayer shall have full responsibility for, and sole discretion over, all Tax matters concerning the Corporate Taxpayer and OpCo, including without limitation the preparation, filing or amending of any Tax Return and defending, contesting or settling any issue pertaining to Taxes. Notwithstanding the foregoing, PubCo shall notify the TRA Party Representative of, and keep the TRA Party Representative reasonably informed with respect to, the portion of any audit, examination or any other administrative or judicial proceeding (a “**Tax Proceeding**”) of the Corporate Taxpayer and OpCo by a Taxing Authority the outcome of which is reasonably expected to materially affect the rights and obligations of a TRA Party under this Agreement, (ii) shall provide to the TRA Party Representative reasonable opportunity to provide information and other input to the Corporate Taxpayer, OpCo and their respective advisors concerning the conduct of any such portion of such audit, and (iii) shall not enter into any settlement with respect to any such portion of a Tax Proceeding that could have a material and adverse effect on

the TRA Parties' rights (including the right to receive payments) under this Agreement without the written consent of the TRA Party Representative, such consent not to be unreasonably withheld, conditioned, or delayed; provided, however, that the Corporate Taxpayer and OpCo shall not be required to take any action that is inconsistent with any provision of the OpCo Agreement; provided, further, that, notwithstanding anything to the contrary contained herein, the Corporate Taxpayer shall prepare, file, and/or amend all Tax Returns in accordance with applicable law (including with respect to the calculation of taxable income and any calculations required to be made under this Agreement) and nothing in this Agreement shall prevent the TRA Party Representative from disputing such Tax matters in accordance with Section 7.9.

Section VI.2 Consistency. PubCo and the TRA Parties agree to report and cause to be reported for all purposes, including U.S. federal, state and local Tax purposes and financial reporting purposes, all Tax-related items (including, without limitation, the Basis Adjustments and each Tax Benefit Payment) in a manner consistent with that contemplated by this Agreement or specified by PubCo in any Schedule required to be provided by or on behalf of PubCo under this Agreement unless otherwise required by law. PubCo shall (and shall cause OpCo and its other Subsidiaries to) use commercially reasonable efforts (for the avoidance of doubt, taking into account the interests and entitlements of all TRA Parties under this Agreement) to defend the Tax treatment contemplated by this Agreement and any Schedule in any audit, contest or similar proceeding with any Taxing Authority.

Section VI.3 Cooperation. Each of the TRA Parties shall (a) furnish to PubCo in a timely manner such information, documents and other materials as PubCo may reasonably request for purposes of making any determination or computation necessary or appropriate under this Agreement, preparing any Tax Return or contesting or defending any audit, examination or controversy with any Taxing Authority, (b) make itself available to PubCo and its representatives to provide explanations of documents and materials and such other information as PubCo or its representatives may reasonably request in connection with any of the matters described in clause (a) above, and (c) reasonably cooperate in connection with any such matter, and PubCo shall reimburse each TRA Party for any reasonable and documented out-of-pocket costs and expenses incurred pursuant to this Section 6.3. Upon the request of a TRA Party, the Corporate Taxpayer shall cooperate in taking any action reasonably requested by such TRA Party in connection with its tax or financial reporting and/or the consummation of any assignment or transfer of any of its rights and/or obligations under this Agreement, including without limitation, providing any information or executing any documentation.

Article VII

MISCELLANEOUS

Section VII.1 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed duly given and received (a) on the date of delivery if delivered personally, or by facsimile or email with confirmation of transmission by the transmitting equipment or (b) on the first Business Day following the date of dispatch if delivered by a recognized next-day courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to the Corporate Taxpayer, to:

Portillo's Inc. 2001 Spring Road, Suite 400
Oak Brook, IL 60523
Attention: Michelle G. Hook; Susan B. Shelton

Email: mhook@portillos.com; sshelton@portillos.com

If to the TRA Parties, to the respective addresses, fax numbers and email addresses set forth in the records of OpCo.

Any party may change its address, fax number or email by giving each of the other parties written notice of its new address, fax number or email in the manner set forth above.

Section VII.2 Counterparts. This Agreement may be executed in one or more counterparts (including counterparts transmitted electronically in portable document format (pdf)), all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. Delivery of an executed signature page to this Agreement by electronic transmission shall be as effective as delivery of a manually signed counterpart of this Agreement. Electronic signatures shall be a valid method of executing this Agreement.

Section VII.3 Entire Agreement; No Third Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section VII.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Delaware, without regard to the conflicts of laws principles thereof that would mandate the application of the laws of another jurisdiction.

Section VII.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section VII.6 Successors; Assignment; Amendments; Waivers.

(a) Each TRA Party may assign all or any portion of its rights under this Agreement to any Person as long as such transferee has executed and delivered, or, in connection with such transfer, executes and delivers, a joinder to this Agreement, substantially in form of Exhibit A hereto, agreeing to become a TRA Party for all purposes of this Agreement, except as otherwise provided in such joinder.

(b) No provision of this Agreement may be amended unless such amendment is approved in writing by each of PubCo and by the TRA Parties who would be entitled to receive at least two-thirds of the total amount of the Early Termination Payments payable to all TRA Parties hereunder if PubCo had exercised its right of early termination on the date of the most recent Exchange prior to such amendment (excluding, for purposes of this sentence, all payments made to any TRA Party pursuant to this Agreement since the date of such most recent Exchange); provided, that no such amendment shall be effective if such amendment will have a disproportionate effect on the payments one or more TRA Parties receive under this Agreement unless such amendment is consented in writing by such TRA Parties disproportionately affected who would be entitled to receive at least two-thirds of the total amount of the Early Termination Payments payable to all TRA Parties disproportionately affected hereunder if PubCo had exercised its right of early termination on the date of the most recent Exchange prior to such amendment (excluding, for purposes of this sentence, all payments made to any TRA Party pursuant to this Agreement since the date of such most recent Exchange). No provision of this Agreement may be waived unless such waiver is in writing and signed by the party against whom the waiver is to be effective.

(c) All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. PubCo shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of PubCo, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that PubCo would be required to perform if no such succession had taken place and this agreement shall be construed in a manner to preserve the rights of the TRA Parties in the event of such a succession.

(d) No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, duty, agreement, or condition.

Section VII.7 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section VII.8 Consent to Jurisdiction; Waiver of Jury Trial.

(a) Each party hereby irrevocably submits to the jurisdiction of the United States District Court for the State of Delaware and the state courts of the State of Delaware for the

purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each party hereto further agrees that service of any process, summons, notice or document by United States certified or registered mail (in each such case, prepaid return receipt requested) to such party's respective address set forth in PubCo's books and records or such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party shall be effective service of process in any action, suit or proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each party hereby waives, to the fullest extent permitted by applicable law, any objection which they now or hereafter may have to personal jurisdiction or to the laying of venue of any such ancillary suit, action or proceeding brought in the United States District Court for the State of Delaware and the state courts located in the State of Delaware and the parties agree not to plead or claim the same.

(b) Because disputes arising in connection with complex transactions are most quickly and economically resolved by an experienced and expert person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. Therefore, to achieve the best combination of the benefits of the judicial system and of arbitration, each party to this Agreement (including PubCo) hereby waives all rights to trial by jury in any action or proceeding brought to resolve any dispute between or among any of the parties hereto, whether arising in contract, tort, or otherwise, arising out of, connected with, related or incidental to this agreement, the transactions contemplated hereby and/or the relationships established among the parties hereunder.

Section VII.9 Reconciliation. In the event that PubCo and the TRA Party Representative are unable to resolve a disagreement with respect to the matters governed by Sections 2.4 and 4.2 within the relevant period designated in this Agreement ("**Reconciliation Dispute**"), the Reconciliation Dispute shall be submitted for determination to a nationally recognized expert (the "**Expert**") in the particular area of disagreement mutually acceptable to both parties. The Expert shall be a partner or principal in a nationally recognized accounting or law firm, and unless PubCo and the TRA Party Representative agree otherwise, the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with PubCo or the TRA Party Representative or other actual or potential conflict of interest. If PubCo and the TRA Party Representative are unable to agree on an Expert within fifteen (15) calendar days of receipt by the respondent(s) of written notice of a Reconciliation Dispute, then the Expert shall be appointed by the International Chamber of Commerce Centre for Expertise. The Expert shall resolve any matter relating to the TRA Party's Attribute Schedule or an amendment thereto or the Early Termination Schedule or an amendment thereto within thirty (30) calendar days and shall resolve any matter relating to a Tax Benefit Schedule or an amendment thereto within fifteen (15) calendar days or as soon thereafter as is reasonably practicable, in each case after the matter has been submitted to the Expert for resolution. Notwithstanding the preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement would be due (in the absence of such disagreement) or any Tax Return reflecting the subject of a disagreement is due, the undisputed amount shall be paid on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporate Taxpayer, subject to adjustment or amendment upon resolution. The costs and expenses relating to the engagement of such Expert or amending any Tax Return shall be borne by PubCo. Any dispute as to whether a

dispute is a Reconciliation Dispute within the meaning of this Section 7.9 shall be decided by the Expert. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.9 shall be binding on the Corporate Taxpayer and each of the TRA Parties and may be entered and enforced in any court having jurisdiction.

Section VII.10 Withholding. PubCo and its Affiliates and representatives shall be entitled to deduct and withhold from any payment payable pursuant to this Agreement such amounts as PubCo is required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local or foreign Tax law; provided, that prior to deducting or withholding any such amounts, PubCo shall notify the applicable TRA Party and shall consult in good faith with such TRA Party regarding the basis for such deduction or withholding. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by PubCo, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such withholding was made. To the extent that any payment pursuant to this Agreement is not reduced by such required deductions or withholdings, Pubco may withhold with respect to future payments to such Person to cover such amounts. Each TRA Party shall promptly provide PubCo, OpCo or other applicable withholding agent with any applicable Tax forms and certifications (including IRS Form W-9 or the applicable version of IRS Form W-8) reasonably requested, in connection with determining whether any such deductions and withholdings are required under the Code or any provision of U.S. state, local or foreign Tax law.

Section VII.11 Admission of PubCo into a Consolidated Group; Transfers of Corporate Assets.

(a) If PubCo is or becomes a member of an affiliated or consolidated group of corporations that files a consolidated income Tax Return pursuant to Sections 1501 et seq. of the Code or any corresponding provisions of state or local law, then: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Tax Benefit Payments, Early Termination Payments and other applicable items hereunder shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) If the Corporate Taxpayer (or any member of a group described in Section 7.11(a)) transfers or is deemed to transfer any Unit or any Reference Asset to a transferee that is treated as a corporation for U.S. federal income tax purposes (other than a member of a group described in Section 7.11(a)) in a transaction in which the transferee's basis in the property acquired is determined in whole or in part by reference to such transferor's basis in such property, then PubCo shall cause such transferee to assume the obligation to make payments hereunder with respect to the applicable Tax Attributes associated with any Reference Asset or interest therein acquired (directly or indirectly) in such transfer (taking into account any gain recognized in the transaction) in a manner consistent with the terms of this Agreement as the transferee (or one of its Affiliates) actually realizes Tax benefits from the Tax Attributes. If OpCo transfers (or is deemed to transfer for U.S. federal income tax purposes) any Reference Asset to a transferee that is treated as a corporation for U.S. federal income tax purposes (other than a member of a group described in Section 7.11(a)) in a transaction in which the transferee's basis in the property acquired is determined in whole or in part by reference to such transferor's basis in such property, then for the purposes of calculating payments under this Agreement,

OpCo shall be treated as having disposed of the Reference Asset in a wholly taxable transaction. The consideration deemed to be received by OpCo in a transaction contemplated in the prior sentence shall be equal to the fair market value of the deemed transferred asset, plus, to the extent applicable, the amount of any debt that would increase the transferor's "amount realized" for U.S. federal income tax purposes in connection with such transfer, in the case of a transfer of an encumbered asset (including an interest in an entity classified for U.S. federal income tax purposes as a partnership which has debt outstanding). If any member of a group described in Section 7.11(a) that owns any Unit deconsolidates from the group (or the Corporate Taxpayer deconsolidates from the group), then PubCo shall cause such member (or the parent of the consolidated group in a case where the Corporate Taxpayer deconsolidates from the group) to assume the obligation to make payments hereunder with respect to the applicable Tax Attributes associated with any Reference Asset it owns (directly or indirectly) in a manner consistent with the terms of this Agreement as the member (or one of its Affiliates) actually realizes Tax benefits. If a transferee or a member of a group described in Section 7.11(a) assumes an obligation to make payments hereunder pursuant to either of the foregoing sentences, then the initial obligor is relieved of the obligation assumed.

(c) If the Corporate Taxpayer (or any member of a group described in Section 7.11(a)) transfers (or is deemed to transfer for U.S. federal income tax purposes) any Unit in a transaction that is wholly or partially taxable, then for purposes of calculating payments under this Agreement, OpCo shall be treated as having disposed of the portion of any Reference Asset that is indirectly transferred by the Corporate Taxpayer (*i.e.*, taking into account the number of Units transferred) in a wholly or partially taxable transaction in which all income, gain or loss is allocated to the Corporate Taxpayer. The consideration deemed to be received by OpCo shall be equal to the fair market value of the deemed transferred asset, plus, to the extent applicable, the amount of any debt that would increase the transferor's "amount realized" for U.S. federal income tax purposes in connection with such transfer, in the case of a transfer of an encumbered asset (including an interest in an entity classified for U.S. federal income tax purposes as a partnership which has debt outstanding).

Section VII.12 Confidentiality.

(a) Subject to the last sentence of Section 6.3, each TRA Party and each of their assignees acknowledge and agree that the information of PubCo is confidential and, except in the course of, and to the extent reasonably required in connection with, performing any duties as necessary for PubCo and its Affiliates, as required by law or legal process or to enforce the terms of this Agreement, such person shall keep and retain in the strictest confidence and not disclose to any Person any confidential matters or confidential information, acquired pursuant to this Agreement, of PubCo and its Affiliates and successors, concerning OpCo and its Affiliates and successors or the Members, learned by the TRA Party heretofore or hereafter. This Section 7.12 shall not apply to (i) any information that has been made publicly available by PubCo or any of its Affiliates, becomes public knowledge (except as a result of an act of the TRA Party in violation of this Agreement) or is generally known to the business community, (ii) the disclosure of information to the extent necessary for the TRA Party to prosecute or defend claims arising under or relating to this Agreement, and (iii) the disclosure of information to the extent necessary for the TRA Party to prepare and file its Tax Returns, to respond to any inquiries regarding the same from any Taxing Authority or to prosecute or defend any action, proceeding or audit by any

Taxing Authority with respect to such returns. Notwithstanding anything to the contrary herein, each TRA Party and each of its assignees (and each employee, representative or other agent of the TRA Party or its assignees, as applicable) may disclose to any and all Persons, without limitation of any kind, the Tax treatment and Tax structure of PubCo, OpCo and their Affiliates, and any of their transactions, and all materials of any kind (including opinions or other Tax analyses) that are provided to the TRA Party relating to such Tax treatment and Tax structure.

(b) If a TRA Party or an assignee commits a breach, or threatens to commit a breach, of any of the provisions of this Section 7.12, PubCo shall have the right and remedy to have the provisions of this Section 7.12 specifically enforced by injunctive relief or otherwise by any court of competent jurisdiction without the need to post any bond or other security, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to PubCo or any of its Subsidiaries or the TRA Parties and the accounts and funds managed by PubCo and that money damages alone shall not provide an adequate remedy to such Persons. Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available at law or in equity.

Section VII.13 **Change in Law.** Notwithstanding anything herein to the contrary, if, in connection with an actual or proposed change in law, a TRA Party reasonably believes that the existence of this Agreement could cause income (other than income arising from receipt of a payment under this Agreement) recognized by the TRA Party upon any Exchange by such TRA Party to be treated as ordinary income rather than capital gain (or otherwise taxed at ordinary income rates) for U.S. federal income tax purposes or would have other material adverse Tax consequences to such TRA Party, then at the written election of such TRA Party in its sole discretion (in an instrument signed by such TRA Party and delivered to PubCo) and to the extent specified by such TRA Party, this Agreement (i) shall cease to have further effect with respect to such TRA Party, (ii) shall not apply to an Exchange by such TRA Party occurring after a date specified by such TRA Party, or (iii) shall otherwise be amended in a manner determined by such TRA Party and PubCo as it relates to such TRA Party, provided, that such amendment shall not result in an increase in payments under this Agreement at any time as compared to the amounts and times of payments that would have been due in the absence of such amendment.

Section VII.14 **Independent Nature of Rights and Obligations.** The rights and obligations of each TRA Party hereunder are several and not joint with the rights and obligations of any other Person. A TRA Party shall not be responsible in any way for the performance of the obligations of any other Person hereunder, nor shall a TRA Party have the right to enforce the rights or obligations of any other Person hereunder (other than PubCo). The obligations of a TRA Party hereunder are solely for the benefit of, and shall be enforceable solely by, PubCo. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any TRA Party pursuant hereto or thereto, shall be deemed to constitute the TRA Parties acting as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the TRA Parties are in any way acting in concert or as a group with respect to such rights or obligations or the transactions contemplated hereby, and PubCo acknowledges that the TRA Parties are not acting in concert or as a group and will not assert any such claim with respect to such rights or obligations or the transactions contemplated hereby.]

Section VII.15 **TRA Party Representative.** The TRA Party Representative may resign upon thirty (30) days' written notice to PubCo. All reasonable, documented out-of-pocket costs and expenses incurred by the TRA Party Representative in its capacity as such shall be promptly reimbursed by PubCo upon invoice and reasonable support therefor by the TRA Party Representative. To the fullest extent permitted by law, none of the TRA Party Representative, any of its Affiliates, or any of the TRA Party Representative's or Affiliate's directors, officers, employees, owners or other agents (each a "**Covered Person**") shall be liable, responsible or accountable in damages or otherwise to any TRA Party, OpCo or PubCo for damages arising from any action taken or omitted to be taken by the TRA Party Representative or any other Person with respect to any TRA Party, OpCo or PubCo (or any of their Affiliates), except in the case of any action or omission which constitutes, with respect to such Person, willful misconduct or fraud. Each of the Covered Persons may consult with legal counsel, accountants, and other experts selected by it, and any act or omission suffered or taken by it on behalf of any TRA Party, OpCo or PubCo (or any of their Affiliates) or in furtherance of the interests of any TRA Party, OpCo or PubCo (or any of their Affiliates) in good faith in reliance upon and in accordance with the advice of such counsel, accountants, or other experts shall create a rebuttable presumption of the good faith and due care of such Covered Person with respect to such act or omission; provided, that such counsel, accountants, or other experts were selected with reasonable care. Each of the Covered Persons may rely in good faith upon, and shall have no liability to OpCo, PubCo or the TRA Parties (or any of their Affiliates) for acting or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

Section VII.16 **Exercising Optionholders.** Notwithstanding anything to the contrary herein, any TRA Party that holds Units issued after January 1, 2021 as a result of the exercise of an option to purchase such Units, will have no rights hereunder of any kind in respect of such Units, treating such Units as the last to be Exchanged by such TRA Party.

[The remainder of this page is intentionally blank]

IN WITNESS WHEREOF, PubCo and each TRA Party have duly executed this Agreement as of the date first written above.

PubCo:

PORTILLO'S INC.

By: /s/ Michelle Hook

Name: Michelle Hook

Title: Chief Financial Officer

[Signature Page to Tax Receivable Agreement]

BROAD STREET PRINCIPAL
INVESTMENTS,
L.L.C.

By: /s/ Jeff Boyd
Name: Jeff Boyd
Title: Vice President

[Signature Page to Tax Receivable Agreement]

STONE STREET 2014, L.P.

By: Bridge Street Opportunity Advisors, L.L.C.,
its General Partner

By: /s/ Jeff Boyd

Name: Jeff Boyd

Title: Vice President

[Signature Page to Tax Receivable Agreement]

BRIDGE STREET 2014, L.P.

By: Bridge Street Opportunity Advisors, L.L.C.,
its General Partner

By: /s/ Jeff Boyd

Name: Jeff Boyd

Title: Vice President

[Signature Page to Tax Receivable Agreement]

MBD 2014, L.P.

By: MBD Advisors, L.L.C., its General Partner

By: /s/ Jeff Boyd

Name: Jeff Boyd

Title: Vice President

[Signature Page to Tax Receivable Agreement]

STONE STREET 2014 OFFSHORE,
L.P.

By: Bridge Street Opportunity
Advisors, L.L.C., its General
Partner

By: _____ /s/ Jeff
Boyd _____

Name: Jeff Boyd

Title: Vice President

[Signature Page to Tax Receivable Agreement]

2014 EMPLOYEE OFFSHORE
AGGREGATOR,
L.P.

By: Bridge Street Opportunity Advisors, L.L.C.,
its
General Partner

By: /s/ Jeff Boyd

Name: Jeff Boyd

Title: Vice President

[Signature Page to Tax Receivable Agreement]

PHD GROUP HOLDINGS LLC

By: /s/ Michelle Hook

Name: Michelle Hook

Title: Chief Financial Officer

[Signature Page to Tax Receivable Agreement]

/s/ Michael Osanloo

Michael Osanloo

/s/ Ann G. Bordelon

Ann G. Bordelon

/s/ Dolf Berle

Dolf Berle

/s/ Gerard J. Hart

Gerard J. Hart

/s/ John Nault

John Nault

/s/ Michael A. Miles, Jr.

Michael A. Miles, Jr.

/s/ Noah Glass

Noah Glass

[Signature Page to Tax Receivable Agreement]

Exhibit A

Form of Joinder

This JOINDER (this "Joinder") to the Tax Receivable Agreement (as defined below), is by and among Portillo's Inc. a Delaware corporation (including any successor corporation, "PubCo"), _____ ("Transferor") and _____ ("Permitted Transferee").

WHEREAS, on _____, Permitted Transferee shall acquire _____ percent of the Transferor's right to receive payments that may become due and payable under the Tax Receivable Agreement (as defined below) (the "Acquired Interests") from Transferor (the "Acquisition"); and

WHEREAS, Transferor, in connection with the Acquisition, has required Permitted Transferee to execute and deliver this Joinder pursuant to Section 7.6(a) of the Tax Receivable Agreement, dated as of October 20, 2021, between PubCo, OpCo and the TRA Parties (as defined therein) (the "Tax Receivable Agreement").

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

Section 1.1 Definitions. To the extent capitalized words used in this Joinder are not defined in this Joinder, such words shall have the respective meanings set forth in the Tax Receivable Agreement.

Section 1.2 Acquisition. For good and valuable consideration, the sufficiency of which is hereby acknowledged by the Transferor and the Permitted Transferee, the Transferor hereby transfers and assigns absolutely to the Permitted Transferee all of the Acquired Interests.

Section 1.3 Joinder. Permitted Transferee hereby acknowledges and agrees (i) that it has received and read the Tax Receivable Agreement, (ii) that the Permitted Transferee is acquiring the Acquired Interests in accordance with and subject to the terms and conditions of the Tax Receivable Agreement and (iii) to become a "TRA Party" (as defined in the Tax Receivable Agreement) for all purposes of the Tax Receivable Agreement.

Section 1.4 Notice. Any notice, request, consent, claim, demand, approval, waiver or other communication hereunder to Permitted Transferee shall be delivered or sent to Permitted Transferee at the address set forth on the signature page hereto in accordance with Section 7.1 of the Tax Receivable Agreement.

Section 1.5 Governing Law. This Joinder shall be governed by and construed in accordance with the law of the State of Delaware.

IN WITNESS WHEREOF, this Joinder has been duly executed and delivered by Permitted Transferee as of the date first above written.

PORTILLO'S INC.

By: ___
Name:
Title:

[TRANSFEROR]

By: ___
Name:
Title:

[PERMITTED TRANSFEREE]

By: ___
Name:
Title:

Address for notices:

**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

of

PHD GROUP HOLDINGS LLC

Dated as of October 20, 2021

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Article 14 REPRESENTATIONS OF MEMBERS

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Section 14.01. Representations of Members

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Schedule A Member Schedule

Exhibit A [Form of] Redemption Notice

SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this “**Agreement**”) OF PHD Group Holdings LLC, a Delaware limited liability company (the “**Company**”), dated as of October 20, 2021, by and among the Company, Portillo’s Inc., a Delaware corporation (“**Pubco**”), and the other Persons listed on the signature pages hereto.

W I T N E S S E T H:

WHEREAS, the Company has been heretofore formed as a limited liability company under the Delaware Act (as defined below) pursuant to a certificate of formation which was executed and filed with the Secretary of State of the State of Delaware on June 27, 2014;

WHEREAS, the Company, the Preferred Member, and the other members of the Company entered into the Amended and Restated Limited Liability Company Agreement of the Company, dated as of August 1, 2014, as amended by that certain First Amendment to the Amended and Restated Limited Liability Company Agreement of the Company, dated as of October 25, 2016 (collectively, the “**Prior LLC Agreement**”);

WHEREAS, pursuant to the terms of the Redemption Agreement, dated as of October 20, 2021, by and among the Company and the Preferred Member (the “**Preferred Unit Redemption Agreement**”), the parties thereto have agreed to consummate the redemption of the preferred units of the Company and to take the other actions contemplated in such Preferred Unit Redemption Agreement;

WHEREAS, the Company, Pubco and the holders of limited liability company interests in the Company (the “**Members**”) have agreed to consummate the reorganization of the Company and to take the other actions contemplated in connection with the initial underwritten public offering of Pubco (the “**Reorganization**”); and

WHEREAS, the parties listed on the signature pages hereto and listed on Schedule A (as defined below) represent all of the holders of limited liability company interests in the Company (the “**Members**”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein made and other good and valuable consideration, the Members hereto hereby agree to amend and restate the Prior LLC Agreement, as of the Effective Time, in its entirety as follows:

Article 1

DEFINITIONS AND USAGE

Section 1.01. *Definitions.*

(a) The following terms shall have the following meanings for the purposes of this Agreement:

1 “**Additional Member**” means any Person admitted as a Member of the Company pursuant to Section 3.02 in connection with the new issuance of Units to such Person.

2 **“Adjusted Capital Account Deficit”** means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts that such Member is deemed to be obligated to restore pursuant to the penultimate sentence in Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person; provided that no Member nor any Affiliate of any Member shall be deemed to be an Affiliate of any other Member or any of its Affiliates solely by virtue of such Members’ Units.

“Affiliated Fund” shall mean, with respect to any Person, an investment fund or investment partnership that is an Affiliate of such Person or an entity that is directly or indirectly wholly-owned by such Person or one or more of such funds or partnerships (other than a portfolio company of any such fund or partnership).

“Applicable Law” means, with respect to any Person, any federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person or its assets, as amended unless expressly specified otherwise.

“Assumed Income Tax Rate” means the highest effective combined marginal U.S. federal, state and local income tax rate applicable to an individual or corporation that is resident in New York, New York (whichever is higher) for such taxable year (taking into account the net investment income tax under Section 1411 of the Code and the deductibility of state and local taxes, in each case to the extent applicable), taking into account the character (long-term capital gain, qualified dividend income, tax exempt income, etc.) of the taxable income in question.

“Available Cash” means, with respect to any fiscal period, the amount of cash on hand which the Managing Member, in its sole discretion, deems available for distribution to the Members, taking into account all debts, liabilities and obligations of the Company then due and any Reserves.

“Business Day” means a day, other than Saturday, Sunday or other day on which commercial banks in Boston, Massachusetts or Chicago, Illinois are authorized or required by Applicable Law to close.

“**Capital Account**” means the capital account established and maintained for each Member pursuant to Section 5.02.

“**Capital Contribution**” means, with respect to any Member, the amount of money and the initial Carrying Value of any Property (other than money) contributed to the Company.

3 “**Carrying Value**” means with respect to any Property (other than money), such Property’s adjusted basis for federal income tax purposes, except as follows:

(i) The initial Carrying Value of any such Property contributed by a Member to the Company shall be the gross fair market value of such Property, as reasonably determined by the Managing Member;

(ii) The Carrying Values of all such Properties shall be adjusted to equal their respective gross fair market values (taking Section 7701(g) of the Code into account), as reasonably determined by the Managing Member, at the time of any Revaluation pursuant to Section 5.02(c);

(iii) The Carrying Value of any item of such Properties distributed to any Member shall be adjusted to equal the gross fair market value (taking Section 7701(g) of the Code into account) of such Property on the date of distribution as reasonably determined by the Managing Member; and

(iv) The Carrying Values of such Properties shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Properties pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (vi) of the definition of “**Net Income**” and “**Net Loss**” or Section 5.04(b)(vi); provided, however, that Carrying Values shall not be adjusted pursuant to this subparagraph (iv) to the extent that an adjustment pursuant to subparagraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv). If the Carrying Value of such Property has been determined or adjusted pursuant to subparagraph (i), (ii) or (iv), such Carrying Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Net Income and Net Loss.

“**Class A Common Stock**” means Class A common stock, \$0.01 par value per share, of Pubco.

“**Class B Common Stock**” means Class B common stock, \$0.01 par value per share, of Pubco.

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

“**Company Minimum Gain**” means “partnership minimum gain,” as defined in Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

“Control” (including the terms **“Controlling”** and **“Controlled”**), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of such subject Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise.

“Covered Person” means (i) each Member or an Affiliate thereof, in each case in such capacity, (ii) each officer, director, shareholder, member, partner, employee, representative, agent or trustee of a Member or an Affiliate thereof, in all cases in such capacity, and (iii) each officer, director, shareholder (other than any public shareholder of Pubco that is not a Member), member, partner, employee, representative, agent or trustee of the Managing Member, Pubco (in the event Pubco is not the Managing Member), the Company or an Affiliate Controlled thereby, in all cases in such capacity.

“Delaware Act” means the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 *et seq.*

“Depreciation” means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Carrying Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount that bears the same ratio to such beginning Carrying Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Carrying Value using any reasonable method selected by the Managing Member.

“Effective Time” means the date hereof.

“Exchange” means a Redemption or Direct Exchange.

“Equity Securities” means, with respect to any Person, any (i) membership interests or shares of capital stock, (ii) equity, ownership, voting, profit or participation interests or (iii) similar rights or securities in such Person or any of its Subsidiaries, or any rights or securities convertible into or exchangeable for, options or other rights to acquire from such Person or any of its Subsidiaries, or obligation on the part of such Person or any of its Subsidiaries to issue, any of the foregoing.

“Fiscal Year” means the Company’s fiscal year, which shall initially be the calendar year and which may be changed from time to time as determined by the Managing Member.

“Governmental Authority” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency, entity or official, including any political subdivision thereof.

“Indebtedness” means (a) all indebtedness for borrowed money (including capitalized lease obligations, sale-leaseback transactions or other similar transactions, however evidenced),

(b) any other indebtedness that is evidenced by a note, bond, debenture, draft or similar instrument, (c) notes payable and (d) lines of credit and any other agreements relating to the borrowing of money or extension of credit.

“Involuntary Transfer” means any Transfer of Units by a Member resulting from (i) any seizure under levy of attachment or execution, (ii) any bankruptcy (whether voluntary or involuntary) or (iii) any Transfer to a state or to a public officer or agency pursuant to any statute pertaining to escheat or abandoned property.

“IPO” means the initial underwritten public offering of Pubco.

“IRS” means the Internal Revenue Service of the United States.

“Liens” means any pledge, encumbrance, security interest, purchase option, conditional sale agreement, call or similar right.

“LLC Unit” means a common limited liability interest in the Company.

“Managing Member” (i) initially, PHD Berkshire Fund VIII-A Blocker Corporation, and pursuant to the Reorganization, Pubco as the successor to PHD Berkshire Fund VIII-A Blocker Corporation, so long as such Person has not withdrawn as the Managing Member pursuant to Section 7.02 and (ii) any successor thereof appointed as Managing Member in accordance with Section 7.02.

“Member” means any Person named as a Member of the Company on the Member Schedule and the books and records of the Company, as the same may be amended from time to time to reflect any Person admitted as an Additional Member or a Substitute Member, for so long as such Person continues to be a Member of the Company.

“Member Nonrecourse Debt” has the same meaning as the term “partner nonrecourse debt” in Treasury Regulations Section 1.704-2(b)(4).

“Member Nonrecourse Debt Minimum Gain” means an amount with respect to each “partner nonrecourse debt” (as defined in Treasury Regulation Section 1.704-2(b)(4)) equal to the Company Minimum Gain that would result if such partner nonrecourse debt were treated as a nonrecourse liability (as defined in Treasury Regulation Section 1.752-1(a)(2)) determined in accordance with Treasury Regulation Section 1.704-2(i)(3).

“Member Nonrecourse Deductions” has the same meaning as the term “partner nonrecourse deductions” in Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

4 **“Net Income”** and **“Net Loss”** mean, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such Fiscal Year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments (without duplication):

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition of “**Net Income**” and “**Net Loss**” shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) of the Code expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income and Net Loss pursuant to this definition of “**Net Income**” and “**Net Loss**,” shall be treated as deductible items;

(iii) In the event the Carrying Value of any Company asset is adjusted pursuant to subparagraphs (ii) or (iii) of the definition of “Carrying Value,” the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Carrying Value of the asset) or an item of loss (if the adjustment decreases the Carrying Value of the asset) from the disposition of such asset and shall be taken into account, immediately prior to the event giving rise to such adjustment, for purposes of computing Net Income and/or Net Loss;

(iv) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Carrying Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Carrying Value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition of Depreciation;

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member’s interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Net Income or Net Loss; and

(vii) Notwithstanding any other provision of this definition, any items that are specially allocated pursuant to Section 5.04(b), Section 5.04(c) and Section 5.04(d) shall not be taken into account in computing Net Income and Net Loss.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to Section 5.04(b), Section 5.04(c) and Section 5.04(d) shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (vi) above.

“**Non-Pubco Member**” means any Member that is not the Pubco Member.

“**Nonrecourse Deductions**” has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

“**Original Units**” means the Class A Units of the Company outstanding immediately prior to the effectiveness of this Agreement.

“**Percentage Interest**” means, with respect to any Member, a fractional amount, expressed as a percentage: (i) the numerator of which is the aggregate number of LLC Units owned of record thereby and (ii) the denominator of which is the aggregate number of LLC Units issued and outstanding. The sum of the outstanding Percentage Interests of all Members shall at all times equal 100%.

“**Permitted Transferee**” means

(i) with respect to a Member who is a natural person (or a trust for the benefit of a natural person), (a) such Member’s spouse, children (including legally adopted children and stepchildren), spouses of children, grandchildren (including legally adopted children or stepchildren of such Member’s children), spouses of grandchildren, parents or siblings, (b) a trust for the benefit of the Member and/or any of the Persons described in clause (a) or (c) a corporation, limited partnership or limited liability company whose sole shareholders, partners or members, as the case may be, are the Member and/or any of the Persons described in clauses (a) or (b); provided, that in any of clauses (a) or (c), the Member transferring such Units retains exclusive power to exercise all rights under this Agreement and retains a proxy to vote the Units such Member has transferred;

(ii) upon death or incapacity of a Member, such Member’s estate, executors, administrators and personal representatives, legal representatives, heirs or legatees (whether or not such recipients are a spouse, children, spouses of children, grandchildren, spouses of grandchildren, parents or siblings of such Member);

(iii) with respect to any Member that is an investment fund, investment account or investment entity, such Member’s (a) investment manager, investment advisor or general partner of such Member or any investment manager, investment advisor or general partner that is an Affiliate of such Member, (b) any investment fund, investment account or investment entity whose investment manager, investment advisor or general partner is such Member or an Affiliate of such Member or (c) any investment fund, investment account or investment entity whose investment manager, investment advisor or general partner is the same entity as or an Affiliate of such Member’s investment manager, investment advisor or general partner; and

(iv) with respect to a Member that is not a natural person, a trust for the benefit of a natural person or an investment fund, investment account or investment entity, such Member’s Affiliates.

“**Person**” means any individual, firm, corporation, partnership, limited liability company, trust, estate, joint venture, governmental authority or other entity.

“Preferred Member” means Broad Street Principal Investments, L.L.C.

“Pre-IPO Holders” means each Member as of the Effective Time (after taking the Reorganization into account) other than Pubco.

“Property” means an interest of any kind in any real, personal or intellectual (or mixed) property, including cash, and any improvements thereto, and shall include both tangible and intangible property.

“Pubco Common Stock” means all classes and series of common stock of Pubco, including the Class A Common Stock and Class B Common Stock.

“Pubco Member” means (i) Pubco and (ii) any Subsidiary of Pubco (other than the Company and its Subsidiaries) that is or becomes a Member.

“Registration Rights Agreement” means the Registration Rights Agreement, dated as of the date hereof, by and among Pubco and the Pre-IPO Holders.

“Relative Percentage Interest” means, with respect to any Member relative to another Member or Members, a fractional amount, expressed as a percentage, the numerator of which is the Percentage Interest of such Member; and the denominator of which is (x) the Percentage Interest of such Member plus (y) the aggregate Percentage Interest of such other Member or Members.

“Reorganization Date Capital Account Balance” means, with respect to any Member, the positive Capital Account balance of such Member as of immediately following the Reorganization, the amount or deemed value of which is set forth on the Member Schedule.

“Reorganization Documents” means this Agreement; the Tax Receivable Agreement; the Subscription Agreement; the Registration Rights Agreement and any other document entered into in connection with the Reorganization.

“Reserves” means, as of any date of determination, amounts allocated by the Managing Member, in its reasonable judgment, to reserves maintained for working capital of the Company, for contingencies of the Company, for operating expenses and debt reduction of the Company.

“SEC” means the United States Securities and Exchange Commission.

“Subscription Agreement” means the Subscription Agreement, to be dated the date of the closing of the IPO, by and among the Company and Pubco.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of Equity Securities or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or

Controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

“**Substantial Ownership Requirement**” means the beneficial ownership (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act) by the Pre-IPO Holders and any Permitted Transferees, collectively, of shares of Pubco Common Stock representing at least ten percent (10%) of the issued and outstanding shares of Pubco Common Stock.

“**Substitute Member**” means any Person admitted as a Member of the Company pursuant to Section 3.02 in connection with the Transfer of then existing Units to such Person.

“**Tax Receivable Agreement**” means the Tax Receivable Agreement, dated as of the date hereof, by and among Pubco, the Company and certain other parties thereto.

“**Trading Day**” means a day on which the principal U.S. securities exchange on which the Class A Common Stock is listed or admitted to trading is open for the transaction of business (unless such trading shall have been suspended for the entire day).

“**Transfer**” means any sale, assignment, transfer, exchange, gift, bequest, pledge, hypothecation or other disposition or encumbrance, direct or indirect, in whole or in part, by operation of law or otherwise, and shall include all matters deemed to constitute a Transfer under Article 8. The terms “**Transferred**”, “**Transferring**”, “**Transferor**”, “**Transferee**” and “**Transferable**” have meanings correlative to the foregoing. Notwithstanding the foregoing, in no event shall any direct or indirect sale, assignment, transfer, exchange, gift, bequest, pledge, hypothecation or other disposition or encumbrance, whether by operation of law or otherwise, of a limited partnership interest in an investment fund or investment partnership that is a direct or indirect equityholder of a Member be considered, in and of itself, a “**Transfer**” for purposes of this Agreement.

“**Treasury Regulations**” mean the regulations promulgated under the Code, as amended from time to time.

“**Units**” means LLC Units or any other class of limited liability interests in the Company designated by the Company after the date hereof in accordance with this Agreement; provided that any type, class or series of Units shall have the designations, preferences and/or special rights set forth or referenced in this Agreement, and the membership interests of the Company represented by such type, class or series of Units shall be determined in accordance with such designations, preferences and/or special rights.

“**Unit Redemption Price**” means the arithmetic average of the volume weighted average prices for a share of Class A Common Stock on the principal U.S. securities exchange or automated or electronic quotation system on which the Class A Common Stock trades, as reported by The Wall Street Journal or its successor, for each of the three (3) consecutive full Trading Days ending on and including the last full Trading Day immediately prior to the date of Redemption (or the date of the Call Notice, as applicable), subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock. If the Class A Common Stock no longer trades on a securities exchange or automated or electronic quotation system, then the Unit Redemption Price shall be

determined in good faith by a committee of the board of directors of Pubco composed of a majority of the directors of Pubco that do not have an interest in the LLC Units being redeemed.

(a) Each of the following terms is defined in the Section set forth opposite such term:

“**Agreement**” Preamble
“**Call Member**” 9.01
“**Call Notice**” 9.01
“**Call Units**” 9.01
“**Company**” Preamble
“**Confidential Information**” 13.11(b)
“**Controlled Entities**” 11.02(e)
“**Direct Exchange**” 10.03(a)
“**Economic Pubco Security**” 4.01(a)
“**e-mail**” 13.03
“**Exchange Election Notice**” 10.04(b)
“**Expenses**” 11.02(e)
“**GAAP**” 3.03(b)
“**Indemnification Sources**” 11.02(e)
“**Indemnitee-Related Entities**” 11.02(e)(i)
“**Jointly Indemnifiable Claims**” 11.02(e)(ii)
“**Member Parties**” 13.11(a)
“**Member Schedule**” 3.01(b)
“**Officers**” 7.05(a)
“**Prior LLC Agreement**” Recitals
“**Preferred Member**” Recitals
“**Preferred Unit Redemption Agreement**” Recitals
“**Pubco**” Preamble
“**Pubco Offer**” 10.04(a)
“**Redeemed Units**” 10.01(a)
“**Redeeming Member**” 10.01(a)
“**Redemption**” 10.01(a)
“**Redemption Date**” 10.01(a)
“**Redemption Notice**” 10.01(a)
“**Redemption Right**” 10.01(a)
“**Regulatory Allocations**” 5.04(c)
“**Reorganization**” Recitals
“**Revaluation**” 5.04(c)
“**Share Settlement**” 10.01(b)
“**Tax Distribution**” 5.03(e)
“**Tax Matters Representative**” 6.01(a)
“**Transferor Member**” 5.02(b)

Section 1.02. *Other Definitional and Interpretative Provisions.* The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions

herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement unless otherwise specified. All Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to “law”, “laws” or to a particular statute or law shall be deemed also to include any Applicable Law. As used in this Agreement, all references to “majority in interest” and phrases of similar import shall be deemed to refer to such percentage or fraction of interest based on the Relative Percentage Interests of the Members subject to such determination. Unless otherwise expressly provided herein, when any approval, consent or other matter requires any action or approval of any group of Members, including any holders of any class of Units, such approval, consent or other matter shall require the approval of a majority in interest of such group of Members. Except to the extent otherwise expressly provided herein, all references to any Member shall be deemed to refer solely to such Person in its capacity as such Member and not in any other capacity.

Article 2

THE COMPANY

Section 2.01. *Formation.* The Company was formed upon the filing of the certificate of formation of the Company with the Secretary of State of the State of Delaware on June 27, 2014. The authorized officer or representative, as an “authorized person” within the meaning of the Delaware Act, shall file and record any amendments and/or restatements to the certificate of formation of the Company and such other certificates and documents (and any amendments or restatements thereof) as may be required under the laws of the State of Delaware and of any other jurisdiction in which the Company may conduct business. The authorized officer or representative shall, on request, provide any Member with copies of each such document as filed and recorded. The Members hereby agree that the Company and its Subsidiaries shall be governed by the terms and conditions of this Agreement and, except as provided herein, the Delaware Act.

Section 2.02. *Name.* The name of the Company shall be PHD Group Holdings LLC; provided that the Managing Member may change the name of the Company to such other name

as the Managing Member shall determine, and shall have the authority to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by Applicable Law or as, in the reasonable judgment of the Managing Member, may be necessary or advisable to effect such change.

Section 2.03. *Term.* The Company shall have perpetual existence unless sooner dissolved and its affairs wound up as provided in Article 12.

Section 2.04. *Registered Agent and Registered Office.* The registered office required to be maintained by the Company in the State of Delaware pursuant to the Delaware Act is c/o the Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle. The name and address of the registered agent of the Company pursuant to the Delaware Act are the Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle. The Company may, upon compliance with the applicable provisions of the Act, change its registered office or registered agent from time to time in the discretion of the Managing Member.

Section 2.05. *Purpose.* Subject to the limitations contained elsewhere in this Agreement, the Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Delaware Act and engaging in any and all activities necessary, advisable, convenient or incidental thereto.

Section 2.06. *Powers of the Company.* The Company shall have the power and authority to take any and all actions necessary, appropriate or advisable to or for the furtherance of the purposes set forth in Section 2.05.

Section 2.07. *Partnership Tax Status.* The Members intend that the Company shall be treated as a partnership for federal, state and local income tax purposes to the extent such treatment is available, and agree to take such actions as may be necessary to receive and maintain such treatment and refrain from taking any positions or making any elections inconsistent therewith.

Section 2.08. *Regulation of Internal Affairs.* The internal affairs of the Company and the conduct of its business shall be regulated by this Agreement, and to the extent not provided for herein, shall be determined by the Managing Member.

Section 2.09. *Ownership of Property.* Legal title to all Property, conveyed to, or held by the Company or its Subsidiaries shall reside in the Company or its Subsidiaries and shall be conveyed only in the name of the Company or its Subsidiaries and no Member or any other Person, individually, shall have any ownership of such Property.

Section 2.10. *Subsidiaries.* The Company shall cause the business and affairs of each of the Subsidiaries to be managed by the Managing Member in accordance with and in a manner consistent with this Agreement.

Section 2.11. *Qualification in Other Jurisdictions.* The Managing Member shall execute, deliver and file certificates (and any amendments and/or restatements thereof) necessary

for the Company to qualify to do business in the jurisdictions in which the Company may wish to conduct business. In those jurisdictions in which the Company may wish to conduct business in which qualification or registration under assumed or fictitious names is required or desirable, the Managing Member shall cause the Company to be so qualified or registered in compliance with Applicable Law.

Article 3

UNITS; MEMBERS; BOOKS AND RECORDS; REPORTS

Section 3.01. *Units; Admission of Members.*

(a) Each Member's interest in the Company, including such Member's interest, if any, in the capital, income, gain, loss, deduction and expense of the Company and the right to vote, if any, on certain Company matters as provided in this Agreement, shall be represented by Units. The ownership by a Member of Units shall entitle such Member to allocations of profits and losses and other items and distributions of cash and other property as is set forth in Article 5. Units shall be issued in non-certificated form.

(b) Effective as of the execution of this Agreement, each Member hereby exchanges the Original Units held by such Member immediately prior to the execution of this Agreement for the number of LLC Units set forth opposite the name of such Member on Schedule A (the "**Member Schedule**") in the column titled "LLC Units". As a result of such exchange, the Original Units held by each Member immediately prior to the execution of this Agreement are hereby cancelled and extinguished without any further action by any Person.

(c) The Member Schedule shall be maintained by the Managing Member on behalf of the Company in accordance with this Agreement. Notwithstanding anything to the contrary contained herein or in the Delaware Act, neither the Managing Member nor the Company shall be required to disclose an unredacted Member Schedule to any Non-Pubco Member, or any other information showing the identity of the other Non-Pubco Members or the number of LLC Units or shares of Class B Common Stock owned by another Non-Pubco Member. For each Non-Pubco Member, the Company shall provide such Member, upon request, a redacted copy of the Member Schedule revealing only such Member's LLC Units, the total issued and outstanding LLC Units, and such Member's Percentage Interest. When any Units or other Equity Securities of the Company are issued, repurchased, redeemed, converted or Transferred in accordance with this Agreement, the Member Schedule shall be amended by the Managing Member to reflect such issuance, repurchase, redemption or Transfer, the admission of additional or substitute Members and the resulting Percentage Interest of each Member. Following the date hereof, no Person shall be admitted as a Member and no additional Units shall be issued except as expressly provided herein.

(d) The Managing Member may cause the Company to authorize and issue pursuant to Section 4.01, from time to time, such other Units or other Equity Securities of any type, class or series and having the designations, preferences and/or special rights as may be determined by the Managing Member. Such Units or other Equity Securities may be issued pursuant to such agreements as the Managing Member shall approve, including with respect to

Persons employed by or otherwise performing services for the Company or any of its Subsidiaries, other equity compensation agreements, options or warrants. When any such other Units or other Equity Securities are authorized and issued, the Member Schedule and this Agreement shall be amended by the Managing Member to reflect such additional issuances and resulting dilution, which shall be borne by all Members in proportion to their respective Percentage Interests.

(e) In addition to amendments permitted by Section 3.01(d), the Managing Member, in its sole discretion and without the approval at the time of any other Member or other Person bound by this Agreement and notwithstanding Section 13.10, may amend any provision of this Agreement, and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, as the Managing Member determines in its sole discretion to be necessary, desirable or advisable to effect the combination, subdivision and/or reclassification of outstanding Units as may be necessary or appropriate to give, economic effect to equity investments in the Company by the Managing Member that are not accompanied by the issuance by the Company to the Managing Member of additional Units and to update the books and records of the Company accordingly.

Section 3.02. *Substitute Members and Additional Members.*

(a) No Transferee of any Units or Person to whom any Units are issued pursuant to this Agreement shall be admitted as a Member hereunder or acquire any rights hereunder, including any voting rights or the right to receive distributions and allocations in respect of the Transferred or issued Units, as applicable, unless (i) such Units are Transferred or issued in compliance with the provisions of this Agreement (including Article 8), (ii) such Transferee or recipient shall have executed and delivered to the Company such instruments as the Managing Member deems necessary or desirable, in its reasonable discretion, to effectuate the admission of such Transferee or recipient as a Member and to confirm the agreement of such Transferee or recipient to be bound by all the terms and provisions of this Agreement, (iii) the Managing Member shall have received the opinion of counsel, if any, required by Section 3.02(b) in connection with such Transfer and (iv) all necessary instruments reflecting such Transfer and/or admission shall have been filed in each jurisdiction in which such filing is necessary in order to qualify the company to conduct business or to preserve the limited liability of the Members. Upon complying with the immediately preceding sentence, without the need for any further action of any Person, a Transferee or recipient shall be deemed admitted to the Company as a Member. A Substitute Member shall enjoy the same rights, and be subject to the same obligations, as the Transferor; provided that such Transferor shall not be relieved of any obligation or liability hereunder arising prior to the consummation of such Transfer but shall be relieved of all future obligations with respect to the Units so Transferred. As promptly as practicable after the admission of any Person as a Member, the books and records of the Company shall be changed to reflect such admission of a Substitute Member or Additional Member. In the event of any admission of a Substitute Member or Additional Member pursuant to this Section 3.02(a), this Agreement shall be deemed amended to reflect such admission, and any formal amendment of this Agreement (including the Member Schedule) in connection therewith shall only require execution by the Company and such Substitute Member or Additional Member, as applicable, to be effective.

(b) As a further condition to any Transfer of all or any part of a Member's Units, the Managing Member may, in its discretion, require a written opinion of counsel to the transferring Member reasonably satisfactory to the Managing Member, obtained at the sole expense of the transferring Member, reasonably satisfactory in form and substance to the Managing Member, as to such matters as are customary and appropriate in transactions of this type, including, without limitation (or, in the case of any Transfer made to a Permitted Transferee, limited to an opinion) to the effect that such Transfer will not result in a violation of the registration or other requirements of the Securities Act or any other federal or state securities laws. No such opinion, however, shall be required in connection with a Transfer made pursuant to Article 10 of this Agreement or in connection with a Transfer by any Member that is an investment fund, investment account or investment entity or any of their or their Affiliates' respective Affiliated Funds.

(c) If a Member shall Transfer all (but not less than all) of its Units, the Member shall thereupon cease to be a Member of the Company.

(d) All reasonable costs and expenses incurred by the Managing Member and the Company in connection with any Transfer of a Member's Units, including any filing and recording costs and the reasonable fees and disbursements of counsel for the Company, shall be paid by the transferring Member. In addition, the transferring Member hereby indemnifies the Managing Member and the Company against any losses, claims, damages or liabilities to which the Managing Member, the Company, or any of their Affiliates may become subject arising out of or based upon any false representation or warranty made by, or breach or failure to comply with any covenant or agreement of, such transferring Member or such transferee in connection with such Transfer.

(e) In connection with any Transfer of any portion of a Member's Units pursuant to Article 10 of this Agreement, the Managing Member shall cause the Company to take any action as may be required under Article 10 of this Agreement or requested by any party thereto to effect such Transfer promptly.

Section 3.03. *Tax and Accounting Information.*

(a) *Accounting Decisions and Reliance on Others.* All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Managing Member in accordance with Applicable Law and with accounting methods followed for federal income tax purposes. In making such decisions, the Managing Member may rely upon the advice of the independent accountants of the Company.

(b) *Records and Accounting Maintained.* The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in all material respects in accordance with United States generally accepted accounting principles as in effect from time to time ("**GAAP**"). The Fiscal Year of the Company shall be used for financial reporting and for federal income tax purposes.

(c) *Financial Reports.*

(i) The books and records of the Company shall be audited as of the end of each Fiscal Year by the same accounting firm that audits the books and records of Pubco (or, if such firm declines to perform such audit, by an accounting firm selected by the Managing Member).

(ii) In the event neither Pubco nor the Company is required to file an annual report on Form 10-K or quarterly report on Form 10-Q, the Company shall deliver, or cause to be delivered, the following to Pubco and each of the Non-Pubco Members, in each case for so long as the Substantial Ownership Requirement is met:

(A) not later than ninety (90) days after the end of each Fiscal Year of the Company, a copy of the audited consolidated balance sheet of the Company and its Subsidiaries as of the end of such Fiscal Year and the related statements of operations and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous year, all in reasonable detail; and

(B) not later than forty five (45) days or such later time as permitted under applicable securities law after the end of each of the first three fiscal quarters of each Fiscal Year, the unaudited consolidated balance sheet of the Company and its Subsidiaries, and the related statements of operations and cash flows for such quarter and for the period commencing on the first day of the Fiscal Year and ending on the last day of such quarter.

(d) *Tax Returns.*

(i) The Company shall timely prepare or cause to be prepared by an accounting firm selected by the Managing Member all federal, state, local and foreign tax returns (including information returns) of the Company and its Subsidiaries, which may be required by a jurisdiction in which the Company and its Subsidiaries operate or conduct business for each year or period for which such returns are required to be filed and shall cause such returns to be timely filed. Upon request of any Member, the Company shall furnish to such Member a copy of each such tax return; and

(ii) The Company shall furnish to each Member (a) as soon as reasonably practical after the end of each Fiscal Year and in any event by August 1, all information concerning the Company and its Subsidiaries required for the preparation of tax returns of such Members (or any beneficial owner(s) of such Member), including a report (including Schedule K-1), indicating each Member's share of the Company's taxable income, gain, credits, losses and deductions for such year, in sufficient detail to enable such Member to prepare its federal, state and other tax returns; provided that estimates of such information believed by the Managing Member in good faith to be reasonable shall be provided by March 15, and (b) from time to time as reasonably requested by such Member, such other information concerning the Company and its Subsidiaries that is reasonably requested by such Member for compliance with its tax

obligations (or the tax obligations of any beneficial owner(s) of such Member) including for purposes of making quarterly estimated tax payments.

(e) *Inconsistent Positions.* Each Member agrees not to, except as otherwise required by applicable law or regulatory requirements, (i) treat, on such Member's individual income tax returns, any item of income, gain, loss, deduction or credit relating to such Member's interest in the Company in a manner inconsistent with the treatment of such item by the Company as reflected on the Form K-1 or other information statement furnished by the Company to such Member for use in preparing such Member's income tax returns or (ii) file any claim for refund relating to any such item based on, or which would result in, such inconsistent treatment.

Article 4

PUBCO OWNERSHIP; RESTRICTIONS ON PUBCO STOCK

Section 4.01. *Pubco Ownership.*

(a) Except as otherwise determined by Pubco, if at any time Pubco issues a share of Class A Common Stock or any other Equity Security of Pubco entitled to any economic rights (including in the IPO) (an "**Economic Pubco Security**") with regard thereto (other than Class B Common Stock, or other Equity Security of Pubco not entitled to any economic rights with respect thereto), (i) the Company shall issue to Pubco one LLC Unit (if Pubco issues a share of Class A Common Stock) or such other Equity Security of the Company (if Pubco issues an Economic Pubco Security other than Class A Common Stock) corresponding to the Economic Pubco Security, and with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Economic Pubco Security and (ii) the net proceeds received by Pubco with respect to the corresponding Economic Pubco Security, if any, shall be concurrently contributed to the Company; provided, however, that if Pubco issues any Economic Pubco Securities, some or all of the net proceeds of which are to be used to fund expenses or other obligations of Pubco for which Pubco would be entitled to a distribution from the Company pursuant to Section 5.03(c) or reimbursement by the Company pursuant to Section 13.01, then Pubco shall not be required to transfer such net proceeds to the Company which are used or will be used to fund such expenses or obligations and provided, further, that if Pubco issues any shares of Class A Common Stock (including in the IPO) in order to purchase or fund the purchase from a Non-Pubco Member of a number of LLC Units (and shares of Class B Common Stock) or to purchase or fund the purchase of shares of Class A Common Stock, in each case equal to the number of shares of Class A Common Stock issued, then the Company shall not issue any new LLC Units in connection therewith and Pubco shall not be required to transfer such net proceeds to the Company (it being understood that such net proceeds shall instead be transferred to such Non-Pubco Member or transferor of Class A Common Stock, as applicable, as consideration for such purchase).

(b) If at any time Pubco issues one or more shares of Class A Common Stock in connection with an equity incentive program or other compensatory plan or program, whether such share or shares are issued upon exercise of an option (including with respect to the options outstanding on the date hereof) or equity appreciation right, settlement of a restricted stock unit, as restricted stock or otherwise, the Company shall issue to Pubco a corresponding number of

LLC Units; provided that Pubco shall be required to concurrently contribute the net proceeds (if any) received by Pubco from or otherwise in connection with such corresponding issuance of one or more shares of Class A Common Stock, including the exercise price of any option or equity appreciation right exercised, to the Company. If any such shares of Class A Common Stock so issued by Pubco in connection with an equity incentive program are subject to vesting or forfeiture provisions, then the LLC Units that are issued by the Company to Pubco in connection therewith in accordance with the preceding provisions of this Section 4.01(b) shall be subject to vesting or forfeiture on the same basis; if any of such shares of Class A Common Stock vest or are forfeited, then a corresponding number of the LLC Units issued by the Company in accordance with the preceding provisions of this Section 4.01(b) shall automatically vest or be forfeited. Any cash or property held by either Pubco or the Company or on either's behalf in respect of dividends paid on restricted Class A Common Stock that fails to vest shall be returned to the Company upon the forfeiture of such restricted Class A Common Stock.

Section 4.02. Restrictions on Pubco Common Stock.

(a) Except as otherwise determined by the Managing Member in accordance with Section 4.02(d), (i) the Company may not issue any additional LLC Units to Pubco or any of its Subsidiaries unless substantially simultaneously therewith Pubco or such Subsidiary issues or sells an equal number of shares of Class A Common Stock to another Person, (ii) the Company may not issue any additional LLC Units to any Person (other than Pubco or any of its Subsidiaries) unless simultaneously therewith Pubco issues or sells an equal number of shares of Class B Common Stock to such Person and (iii) the Company may not issue any other Equity Securities of the Company to Pubco or any of its Subsidiaries unless substantially simultaneously therewith, Pubco or such Subsidiary issues or sells, to another Person, an equal number of shares of a new class or series of Equity Securities of Pubco or such Subsidiary with substantially the same rights to dividends and distributions (including distributions upon liquidation) and other economic rights as those of such Equity Securities of the Company.

(b) Except as otherwise determined by the Managing Member in accordance with Section 4.02(d), (i) Pubco and its Subsidiaries may not redeem, repurchase or otherwise acquire any shares of Class A Common Stock unless substantially simultaneously therewith the Company redeems, repurchases or otherwise acquires from Pubco or any of its Subsidiaries an equal number of LLC Units for the same price per security (or, if Pubco uses funds received from distributions from the Company or the net proceeds from an issuance of Class A Common Stock to fund such redemption, repurchase or acquisition, then the Company shall cancel an equal number of LLC Units for no consideration) and (ii) Pubco and its Subsidiaries may not redeem or repurchase any other Equity Securities of Pubco unless substantially simultaneously therewith the Company redeems or repurchases from Pubco or any of its Subsidiaries an equal number of Equity Securities of the Company of a corresponding class or series with substantially the same rights to dividends and distributions (including distributions upon liquidation) or other economic rights as those of such Equity Securities of Pubco for the same price per security (or, if Pubco uses funds received from distributions from the Company or the net proceeds from an issuance of Equity Securities other than Class A Common Stock to fund such redemption, repurchase or acquisition, then the Company shall cancel an equal number of its corresponding Equity Securities for no consideration). Except as otherwise determined by the Managing Member in accordance with Section 4.02(d), (x) the Company may not redeem, repurchase or

otherwise acquire LLC Units from Pubco or any of its Subsidiaries unless substantially simultaneously Pubco or such Subsidiary redeems, repurchases or otherwise acquires an equal number of Class A Common Stock for the same price per security from holders thereof (except that if the Company cancels LLC Units for no consideration as described in Section 4.02(b)(i), then the price per security need not be the same) and (y) the Company may not redeem, repurchase or otherwise acquire any other Equity Securities of the Company from Pubco or any of its Subsidiaries unless substantially simultaneously Pubco or such Subsidiary redeems, repurchases or otherwise acquires for the same price per security an equal number of Equity Securities of Pubco of a corresponding class or series with substantially the same rights to dividends and distributions (including dividends and distributions upon liquidation) and other economic rights as those of such Equity Securities of Pubco (except that if the Company cancels Equity Securities for no consideration as described in Section 4.02(b)(ii), then the price per security need not be the same). Notwithstanding the immediately preceding sentence, to the extent that any consideration payable to Pubco in connection with the redemption or repurchase of any shares or other Equity Securities of Pubco or any of its Subsidiaries consists (in whole or in part) of shares or such other Equity Securities (including, for the avoidance of doubt, in connection with the cashless exercise of an option or warrant), then redemption or repurchase of the corresponding LLC Units or other Equity Securities of the Company shall be effectuated in an equivalent manner (except if the Company cancels LLC Units or other Equity Securities for no consideration as described in this Section 4.02(b)).

(c) Except as provided in Section 3.01(e), the Company shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the outstanding LLC Units unless accompanied by a substantively identical subdivision or combination, as applicable, of the outstanding Pubco Common Stock, with corresponding changes made with respect to any other exchangeable or convertible securities. Pubco shall not in any manner effect any subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the outstanding Pubco Common Stock unless accompanied by a substantively identical subdivision or combination, as applicable, of the outstanding LLC Units, with corresponding changes made with respect to any other exchangeable or convertible securities.

(d) Notwithstanding anything to the contrary in this Article 4:

(i) if at any time the Managing Member shall determine that any debt instrument of Pubco, the Company or its Subsidiaries shall not permit Pubco or the Company to comply with the provisions of Section 4.02(a) or Section 4.02(b) in connection with the issuance, redemption or repurchase of any shares of Class A Common Stock or other Equity Securities of Pubco or any of its Subsidiaries or any Units or other Equity Securities of the Company, then the Managing Member may in good faith implement an economically equivalent alternative arrangement without complying with such provisions; provided that, in the case that any such alternative arrangement is implemented because of restrictions in any debt instrument, such arrangement shall also be subject to the prior written consent (not to be unreasonably withheld) of a majority in

interest of the Non-Pubco Members, in each case for so long as the Substantial Ownership Requirement is met; and

(ii) if (x) Pubco incurs any indebtedness and desires to transfer the proceeds of such indebtedness to the Company and (y) Pubco is unable to lend the proceeds of such indebtedness to the Company on an equivalent basis because of restrictions in any debt instrument of Pubco, the Company or its Subsidiaries, then notwithstanding Section 4.02(a) or Section 4.02(b), the Managing Member may in good faith implement an economically equivalent alternative arrangement in connection with the transfer of proceeds to the Company using non-participating preferred Equity Securities of the Company without complying with such provisions; provided that, in the case that any such alternative arrangement is implemented because of restrictions in any debt instrument, such arrangement shall also be subject to the prior written consent (not to be unreasonably withheld) of a majority in interest of the Non-Pubco Members, in each case for so long as the Substantial Ownership Requirement is met.

Article 5

CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; DISTRIBUTIONS; ALLOCATIONS

Section 5.01. *Capital Contributions.*

(a) From and after the date hereof, no Member shall have any obligation to the Company, to any other Member or to any creditor of the Company to make any further Capital Contribution, except, with respect to Pubco, as expressly provided in Section 4.01(a), Section 4.01(b) or Section 10.02.

(b) Except as expressly provided herein, no Member, in its capacity as a Member, shall have the right to receive any cash or any other property of the Company.

Section 5.02. *Capital Accounts.*

(a) Maintenance of Capital Accounts. The Company shall maintain a Capital Account for each Member on the books of the Company in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv) and, to the extent consistent with such provisions, the following provisions:

(i) Each Member listed on the Member Schedule shall be credited with the Reorganization Date Capital Account Balance set forth on the Member Schedule. The Member Schedule shall be amended by the Managing Member from time to time to reflect adjustments to the Members' Capital Accounts made in accordance with Sections 5.02(a)(ii), 5.02(a)(iii), 5.02(a)(iv), 5.02(c) or otherwise.

(ii) To each Member's Capital Account there shall be credited: (A) such Member's Capital Contributions, (B) such Member's distributive share of Net Income and any item in the nature of income or gain that is allocated pursuant to Section

5.04 and (C) the amount of any Company liabilities assumed by such Member or that are secured by any Property distributed to such Member.

(iii) To each Member's Capital Account there shall be debited: (A) the amount of money and the Carrying Value of any Property distributed to such Member pursuant to any provision of this Agreement, (B) such Member's distributive share of Net Loss and any items in the nature of expenses or losses that are allocated to such Member pursuant to Section 5.04 and (C) the amount of any liabilities of such Member assumed by the Company or that are secured by any Property contributed by such Member to the Company.

(iv) In determining the amount of any liability for purposes of subparagraphs (ii) and (iii) above there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and the Treasury Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event that the Managing Member shall reasonably determine that it is prudent to modify the manner in which the Capital Accounts or any debits or credits thereto are maintained (including debits or credits relating to liabilities that are secured by contributed or distributed Property or that are assumed by the Company or the Members), the Managing Member may make such modification so long as such modification will not have any effect on the amounts distributed to any Person pursuant to Article 12 upon the dissolution of the Company. The Managing Member also shall (i) make any adjustments that are necessary or appropriate to maintain equality between Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

(b) *Succession to Capital Accounts.* In the event any Person becomes a Substitute Member in accordance with the provisions of this Agreement, such Substitute Member shall succeed to the Capital Account of the former Member (the "**Transferor Member**") to the extent such Capital Account relates to the Transferred Units.

(c) *Adjustments of Capital Accounts.* The Company shall revalue the Capital Accounts of the Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) (a "**Revaluation**") at the following times: (i) immediately prior to the contribution of more than a de minimis amount of money or other property to the Company by a new or existing Member as consideration for one or more Units; (ii) the distribution by the Company to a Member of more than a de minimis amount of property in respect of one or more Units; (iii) the issuance by the Company of more than a de minimis amount of Units as consideration for the provision of services to or for the benefit of the Company (as described in Treasury Regulations Section 1.704-1(b)(2)(iv)(f)(5)(iii)); and (iv) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i), (ii) and (iii) above shall be made only if the Managing Member reasonably

determines that such adjustments are necessary or appropriate to reflect the relative economic interest of the Members.

(d) No Member shall be entitled to withdraw capital or receive distributions except as specifically provided herein. A Member shall have no obligation to the Company, to any other Member or to any creditor of the Company to restore any negative balance in the Capital Account of such Member. Except as expressly provided elsewhere herein, no interest shall be paid on the balance in any Member's Capital Account.

(e) Whenever it is necessary for purposes of this Agreement to determine a Member's Capital Account on a per Unit basis, such amount shall be determined by dividing the Capital Account of such Member attributable to the applicable class of Units held of record by such Member by the number of Units of such class held of record by such Member.

Section 5.03. *Amounts and Priority of Distributions.*

(a) *Distributions Generally.* Except as otherwise provided in Section 5.03(e) or Section 12.02, distributions shall be made to the Members as set forth in this Section 5.03, at such times and in such amounts as the Managing Member, in its sole discretion, shall determine.

(b) *Distributions to the Members.* Subject to Sections 5.03(e), 5.03(f) and 5.03(g), distributions shall be made to the Members in proportion to their respective Percentage Interests at such times and in such amounts as the Managing Member, in its sole discretion, shall determine.

(c) *Pubco Distributions.* Notwithstanding the provisions of Section 5.03(b), the Managing Member, in its sole discretion, may authorize that cash be paid to Pubco or any of its Subsidiaries (which payment shall be made without pro rata distributions to the other Members) in exchange for the redemption, repurchase or other acquisition of Units held by Pubco or any of its Subsidiaries to the extent that such cash payment is used to redeem, repurchase or otherwise acquire an equal number of shares of Class A Common Stock in accordance with Section 4.02(b); provided, that no distribution (except a distribution relating to redemptions in respect of compensatory equity) shall be made pursuant to this Section 5.03(c) to the extent that, in the Managing Member's reasonable determination, such distribution would reduce distributions under Section 5.03(e).

(d) *Distributions in Kind.* Any distributions in kind shall be made at such times and in such amounts as the Managing Member, in its sole discretion, shall determine based on the fair market value of such in kind distributions as determined by the Managing Member in the same proportions as if distributed in accordance with Section 5.03(b), with all Members participating in proportion to their respective Percentage Interests. If cash and property are to be distributed in kind simultaneously, the Company shall distribute such cash and property in kind in the same proportion to each Member.

(e) *Tax Distributions.* The Managing Member shall (solely to the extent of any Available Cash) cause the Company, no later than five days prior to the date on which U.S. federal corporate quarterly estimated tax payments are due for a taxpayer with a taxable year ending on December 31, to make a distribution (a "**Tax Distribution**") to each Member in an

amount equal to the excess of (A) the product of (i) the estimated net taxable income allocable to such Member, for such taxable year through the end of such period, and (ii) the Assumed Income Tax Rate, over (B) distributions previously made to such Member pursuant to this Section 5.03 or Section 12.02 with respect to the taxable year. A final accounting for Tax Distributions shall be made after the allocation of the Company's actual net taxable income or loss has been determined for a taxable year (or applicable portion thereof) and any shortfall in the amount of Tax Distributions a Member received for such taxable year based on such final accounting shall, to the extent of Available Cash, be promptly distributed to such Member. In computing taxable income or loss for purposes of this Section 5.03(e), items of income, gain, loss and deduction shall be determined (i) with or without regard to any adjustments pursuant to Section 743 of the Code (in whole or in part), in the sole discretion of the Managing Member, and (ii) taking into account any allocations under Section 704(c) of the Code and the Treasury Regulations thereunder. A Tax Distribution to a Member in respect of any LLC Unit shall be charged against current or future distributions to which such Member would otherwise have been entitled under this Section 5.03 or Section 12.02 in respect of such Unit; provided, however, all LLC Units shall participate in distributions made pursuant to Section 5.03 on a pro rata basis. Notwithstanding the foregoing, (A) any distributions made pursuant to this Section 5.03(e) shall be made to the Members on a pro rata basis in accordance with the number of each Member's LLC Units over the total number of outstanding LLC Units, (B) to the extent of Available Cash, the pro rata amount to be distributed to each Member shall be calculated based on the distribution to the Member that would have the highest Tax Distribution under this Section 5.03(e) on a per-unit basis, calculated without regard to this sentence and (C) if there is insufficient Available Cash to make all of the distributions described in clause (B), the amount that would have been distributed to each Member pursuant to clause (B) shall be reduced on a pro rata basis. For the avoidance of doubt, whether a distribution is treated as a Tax Distribution or a distribution pursuant to Section 5.03(b) is not intended to impact allocations or ultimate economic entitlement under this Agreement, and this Agreement shall be interpreted consistent with such intent.

(f) *Distributions Resulting in Violation of Law or Default.* Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make, or cause to be made, any distribution to any Member (and the Company shall not make any distribution to Pubco) on account of any Unit if such distribution would violate any applicable Law or the terms of any financing agreement of the Pubco, the Company or any of its Subsidiaries or result in a default (or an event that, with notice or the lapse of time or both, would constitute a default) thereunder.

(g) *Assignment.* Each Member and its Permitted Transferees shall have the right to assign to any Transferee of LLC Units, pursuant to a Transfer made in compliance with this Agreement, the right to receive any portion of the amounts distributable or otherwise payable to such Member pursuant to Section 5.03(b).

Section 5.04. *Allocations.*

(a) *Net Income and Net Loss.* Except as otherwise provided in this Agreement, and after giving effect to the special allocations set forth in Section 5.04(b), Section 5.04(c) and Section 5.04(d), Net Income and Net Loss (and, to the extent necessary, individual

items of income, gain, loss, deduction or credit) of the Company shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal to (i) the distributions that would be made to such Member pursuant to Section 5.03(b) if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Carrying Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Carrying Value of the assets securing such liability), and the net assets of the Company were distributed, in accordance with Section 5.03(b), to the Members immediately after making such allocation, minus (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets.

(b) *Special Allocations.* The following special allocations shall be made in the following order:

(i) *Minimum Gain Chargeback.* Except as otherwise provided in Treasury Regulations Section 1.704-2(f), notwithstanding any other provision of this Article 5, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the immediately preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f)(6) and 1.704-2(j)(2). This Section 5.04(b)(i) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) *Member Nonrecourse Minimum Gain Chargeback.* Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Article 5, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 5.04(b)(ii) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) *Qualified Income Offset.* In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations

Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Member as promptly as possible; provided that an allocation pursuant to this Section 5.04(b)(iii) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 5 have been tentatively made as if this Section 5.04(b)(iii) were not in this Agreement.

(iv) *Nonrecourse Deductions.* Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in a manner determined by the Managing Member consistent with Treasury Regulations Sections 1.704-2(b) and 1.704-2(c).

(v) *Member Nonrecourse Deductions.* Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(j)(1).

(vi) *Section 754 Adjustments.* (A) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company or as a result of a Transfer of a Member's interest in the Company, as the case may be, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such asset) or loss (if the adjustment decreases the basis of such asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income and Net Loss. (B) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to such Members in accordance with their interests in the Company in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(c) *Curative Allocations.* The allocations set forth in Section 5.04(b)(i) through Section 5.04(b)(vi) and Section 5.04(d) (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or

deduction pursuant to this Section 5.04(c). Therefore, notwithstanding any other provision of this Article 5 (other than the Regulatory Allocations), the Managing Member shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Section 5.04.

(d) *Loss Limitation*. Net Loss (or individual items of loss or deduction) allocated pursuant to Section 5.04 hereof shall not exceed the maximum amount of Net Loss (or individual items of loss or deduction) that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Net Loss (or individual items of loss or deduction) pursuant to Section 5.04 hereof, the limitation set forth in this Section 5.04(d) shall be applied on a Member by Member basis and Net Loss (or individual items of loss or deduction) not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Net Loss to each Member under Treasury Regulations Section 1.704-1(b)(2)(ii)(d). Any reallocation of Net Loss pursuant to this (d) shall be subject to chargeback pursuant to the curative allocation provision of Section 5.04(c).

Section 5.05. *Other Allocation Rules*.

(a) *Interim Allocations Due to Changes in Interests*. For any fiscal year during which a Member's interest in the Company is assigned by such Member (or by an assignee or successor in interest to a Member), the portion of the Net Income and Net Loss of the Company that is allocable in respect of such Member's interest shall be apportioned between the assignor and the assignee of such Member's interest using, to the extent practicable, the closing of the books method under Section 706 of the Code and the Treasury Regulations thereunder.

(b) *Tax Allocations*: Code Section 704(c). In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company and with respect to reverse Code Section 704(c) allocations described in Treasury Regulations 1.704-3(a)(6) shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Carrying Value or its Carrying Value determined pursuant to Treasury Regulation 1.704-1(b)(2)(iv)(f) (computed in accordance with the definition of Carrying Value) using the traditional allocation method under Treasury Regulation 1.704-3(b) or such other allocation method with respect to existing allocation methods or reverse allocation methods under Section 704(c) of the Code that are already applicable with respect to the Company. Any elections or other decisions relating to such allocations shall be made by the Managing Member in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 5.05(b), Section 704(c) of the Code (and the principles thereof), and Treasury Regulation 1.704-1(b)(4)(i) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital

Account or share of Net Income, Net Loss, other items, or distributions pursuant to any provision of this Agreement (other than with respect to Tax Distributions).

Section 5.06. *Tax Withholding.* Each Member hereby authorizes the Company to withhold and to pay over any taxes required under applicable law to be withheld by the Company with respect to any amount payable, distributable or allocable by the Company to such Member; if and to the extent that the Company shall be required to withhold any such taxes, such Member shall be deemed for all purposes of this Agreement to have received a payment from the Company as of the time such withholding is required to be paid, which payment shall be deemed to be a distribution to such Member, provided that if the Managing Member reasonably determines that such Member would not be expected to receive any future distributions in the amount of such payment, the Member shall pay to the Company the amount by which such payment exceeds such expected future distributions. The withholdings referred to in this Section 5.06 shall be made at the maximum applicable statutory rate under applicable tax law unless the Company receives documentation, reasonably satisfactory to the Managing Member, to the effect that a lower rate is applicable, or that no withholding is applicable. To the fullest extent permitted by law, each Member hereby agrees to indemnify and hold harmless the Company and the other Members from and against any liability for taxes, penalties, additions to tax or interest with respect to income attributable to or distributions or other payments to such Member. The obligations of a Member set forth in this Section 5.06 shall survive the withdrawal of a Member from the Company or any Transfer of a Member's Units.

Article 6

CERTAIN TAX MATTERS

Section 6.01. *Tax Matters Representative.*

(a) The Managing Member shall cause the Company to take all necessary actions required by Law to designate Pubco as the "tax matters partner" within the meaning given to such term in Section 6231 of the Code (as in effect prior to the repeal of such section pursuant to the Bipartisan Budget Act of 2015) with respect to any taxable year of the Company beginning on or before December 31, 2017. The Managing Member shall further cause the Company to take all necessary actions required by Law to designate Pubco as the "partnership representative" within the meaning of Section 6223(a) of the Code with respect to any taxable year of the Company beginning after December 31, 2017, and if the "partnership representative" is an entity, the "partnership representative" is hereby authorized to appoint a "designated individual" within the meaning of Treasury Regulation Section 301.6223-1(b) (in such capacities, collectively, the "**Tax Matters Representative**"). The Tax Matters Representative shall have all of the rights, duties, powers and obligations provided for in the Code with respect to the Company. The Company shall not be obligated to pay any fees or other compensation to the Tax Matters Representative in its capacity as such, but the Company shall reimburse the Tax Matters Representative for all reasonable out-of-pocket costs and expenses (including attorneys' and other professional fees) incurred by it in its capacity as Tax Matters Representative. Each Member agrees to cooperate with the Company and the Tax Matters Representative and to do or refrain from doing any or all things reasonably requested by the Company or the Tax Matters Representative in connection with any examination of the Company's affairs by any federal,

state, or local tax authorities, including resulting administrative and judicial proceedings. The Company shall defend, indemnify, and hold harmless the Tax Matters Representative against any and all liabilities sustained or incurred as a result of any act or decision concerning Company tax matters and within the scope of such Member's responsibilities as Tax Matters Representative, so long as such act or decision was done or made in good faith and does not constitute gross negligence or willful misconduct.

(b) If the Company pays an imputed underpayment pursuant to Section 6225 of the Code or any similar provision of state, local or non-U.S. law, to the extent possible, the portion thereof attributable to a Member shall be treated as a withholding tax with respect to such Partner under Section 5.06. To the extent that such portion of an imputed underpayment cannot be withheld from a current distribution, the applicable Member (or former Member) shall be liable to the Company for the amount that cannot be so offset. The Members acknowledge that the Company may make the election described in Section 6226 of the Code and any analogous election under state, local or non-U.S. law to the extent such election is available under applicable law, instead of paying an imputed underpayment.

Section 6.02. *Section 754 Elections*. The Company shall make, and shall cause any Subsidiary of the Company that is treated as a partnership for U.S. federal income tax purposes to make, a timely election under Section 754 of the Code (and a corresponding election under state and local law) effective starting with the taxable year including the IPO, and the Managing Member shall not take any action to revoke such elections.

Article 7

MANAGEMENT OF THE COMPANY

Section 7.01. *Management by the Managing Member*. Except as otherwise specifically set forth in this Agreement, the Managing Member shall be deemed to be a "manager" for purposes of applying the Delaware Act. Except as expressly provided in this Agreement or the Delaware Act, the day-to-day business and affairs of the Company and its Subsidiaries shall be managed, operated and Controlled by the Managing Member in accordance with the terms of this Agreement and no other Members shall have management authority or rights over the Company or its Subsidiaries. The Managing Member is, to the extent of its rights and powers set forth in this Agreement, an agent of the Company for the purpose of the Company's and its Subsidiaries' business, and the actions of the Managing Member taken in accordance with such rights and powers, shall bind the Company (and no other Members shall have such right). Except as expressly provided in this Agreement, the Managing Member shall have all necessary powers to carry out the purposes, business, and objectives of the Company and its Subsidiaries. The Managing Member shall have the power and authority to delegate to one or more other Persons the Managing Member's rights and powers to manage and Control the business and affairs of the Company, including to delegate to agents and employees of a Member or the Company (including any officers or Subsidiary thereof), and to delegate by a management agreement or another agreement with, or otherwise to, other Persons. The Managing Member may authorize any Person (including any Member or officer of the Company) to enter into and perform any document on behalf of the Company or any Subsidiary.

Section 7.02. *Withdrawal of the Managing Member.* Pubco may withdraw as the Managing Member and appoint as its successor, at any time upon written notice to the Company, (i) any wholly-owned Subsidiary of Pubco, (ii) any Person of which Pubco is a wholly-owned Subsidiary, (iii) any Person into which Pubco is merged or consolidated or (iv) any transferee of all or substantially all of the assets of Pubco, which withdrawal and replacement shall be effective upon the delivery of such notice. No appointment of a Person other than Pubco (or its successor, as applicable) as Managing Member shall be effective unless Pubco (or its successor, as applicable) and the new Managing Member (as applicable) provide all other Members with contractual rights, directly enforceable by such other Members against the new Managing Member, to cause the new Managing Member to comply with all the Managing Member's obligations under this Agreement and the Reorganization Documents.

Section 7.03. *Decisions by the Members.*

(a) Other than the Managing Member, the Members shall take no part in the management of the Company's business and shall transact no business for the Company and shall have no power to act for or to bind the Company; provided, however, that the Company may engage any Member or principal, partner, member, shareholder or interest holder thereof as an employee, independent contractor or consultant to the Company, in which event the duties and liabilities of such individual or firm with respect to the Company as an employee, independent contractor or consultant shall be governed by the terms of such engagement with the Company. The Managing Member shall not (i) engage in any activity unrelated to the business or management of the Company and its Subsidiaries or (ii) own any material assets other than Units and/or any cash or other property or assets distributed by, or otherwise received from, the Company, without the prior written consent of the majority-in-interest of the Non-Pubco Members.

(b) Except as expressly provided herein, the Members shall not have the power or authority to vote, approve or consent to any matter or action taken by the Company. Except as otherwise provided herein, any proposed matter or action subject to the vote, approval or consent of the Members shall require the approval of a majority in interest of the Members or such class of Members, as the case may be, by (x) resolution at a duly convened meeting of the Members, or (y) written consent of the Members. Except as expressly provided herein, all Members shall vote together as a single class on any matter subject to the vote, approval or consent of the Members. In the case of any such approval, a majority in interest of the Members may call a meeting of the Members at such time and place or by means of telephone or other communications facility that permits all persons participating in such meeting to hear and speak to each other for the purpose of a vote thereon. Notice of any such meeting shall be required, which notice shall include a brief description of the action or actions to be considered by the Members. Unless waived by any such Member in writing, notice of any such meeting shall be given to each Member at least two Business Days (2) days prior thereto. Attendance or participation of a Member at a meeting shall constitute a waiver of notice of such meeting, except when such Member attends or participates in the meeting for the express purpose of objecting at the beginning thereof to the transaction of any business because the meeting is not properly called or convened. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the actions so taken, shall be signed by Members sufficient to approve such action pursuant to this Section

7.03(b). A copy of any such consent in writing will be provided to the Members promptly thereafter.

Section 7.04. *Duties.*

(a) The parties acknowledge that the Managing Member will take action through its board of directors and officers, and that the members of the Managing Member's board of directors and its officers will owe fiduciary duties to the stockholders of the Managing Member. The Managing Member will use all commercially reasonable and appropriate efforts and means, as determined in good faith by the Managing Member, to minimize any conflict of interest between the Members, on the one hand, and the stockholders of the Managing Member, on the other hand, and to effectuate any transaction that involves or affects any of the Company, the Managing Member, the Members and/or the stockholders of the Managing Member in a manner that does not (i) advantage or disadvantage the Members or their interests relative to the stockholders of the Managing Member, (ii) advantage or disadvantage the stockholders of the Managing Member relative to the Members or (iii) treats the Members and the stockholders of the Managing Member differently; provided that in the event of a conflict between the interests of the stockholders of the Managing Member and the interests of the Members other than the Managing Member, such other Members agree that the Managing Member shall discharge its fiduciary duties to such other Members by acting in the best interests of the Managing Member's stockholders.

Section 7.05. *Officers.*

(a) *Appointment of Officers.* The Managing Member may appoint individuals as officers ("**Officers**") of the Company, which may include such officers as the Managing Member determines are necessary and appropriate. No Officer need be a Member. An individual may be appointed to more than one office. If an Officer is also an officer of the Managing Member, then Section 7.04 shall apply to such Officer in the same manner as it applies to the Managing Member.

(b) *Authority of Officers.* The Officers shall have the duties, rights, powers and authority as may be prescribed by the Managing Member from time to time.

(c) *Removal, Resignation and Filling of Vacancy of Officers.* The Managing Member may remove any Officer, for any reason or for no reason, at any time. Any Officer may resign at any time by giving written notice to the Company, and such resignation shall take effect at the date of the receipt of that notice or any later time specified in that notice; provided that, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any such resignation shall be without prejudice to the rights, if any, of the Company or such Officer under this Agreement. A vacancy in any office because of death, resignation, removal or otherwise shall be filled by the Managing Member.

Article 8

TRANSFERS OF INTERESTS

Section 8.01. *Restrictions on Transfers.*

(a) Except as expressly permitted by Section 8.02, and subject to Section 8.01(b), Section 8.01(c), Section 8.01(d) and Section 8.01(e), any underwriter lock-up agreement applicable to such Member and/or any other agreement between such Member and the Company, Pubco or any of their Controlled Affiliates, without the prior written approval of the Managing Member, no Member shall directly or indirectly Transfer all or any part of its Units or any right or economic interest pertaining thereto, including the right to vote or consent on any matter or to receive or have any economic interest in distributions or advances from the Company pursuant thereto, to any Person. Any such Transfer which is not in compliance with the provisions of this Agreement shall be deemed a Transfer by such Member of Units in violation of this Agreement (and a breach of this Agreement by such Member) and shall be null and void ab initio. Notwithstanding anything to the contrary in this Article 8, (i) Section 10.03 of this Agreement shall govern the exchange of LLC Units for shares of Class A Common Stock, and an exchange pursuant to, and in accordance with, Section 10.03 of this Agreement shall not be considered a “**Transfer**” for purposes of this Agreement, and (ii) any other Transfer of shares of Class A Common Stock shall not be considered a “**Transfer**” for purposes of this Agreement.

(b) Except as otherwise expressly provided herein, it shall be a condition precedent to any Transfer otherwise permitted or approved pursuant to this Article 8 that:

(i) the Transferor shall have provided to the Company prior notice of such Transfer; and

(ii) the Transfer shall comply with all Applicable Laws and the Managing Member shall be reasonably satisfied that such Transfer will not result in a violation of the Securities Act.

(c) Notwithstanding any other provision of this Agreement to the contrary, no Member shall directly or indirectly Transfer all or any part of its Units or any right or economic interest pertaining thereto if such Transfer, in the reasonable discretion of the Managing Member, would (i) materially increase the risk that the Company would be classified as a “publicly traded partnership” as that term is defined in Section 7704 of the Code and Regulations promulgated thereunder or (ii) reasonably be expected to create a material risk that the Company would have more than one hundred (100) partners, within the meaning of Treasury Regulations Section 1.7704-1(h)(1) (determined pursuant to the rules of Treasury Regulations Section 1.7704-1(h)(3)).

(d) Any Transfer of Units pursuant to this Agreement, including this Article 8, shall be subject to the provisions of Section 3.01 and Section 3.02.

(e) If there is a Transfer of Units to Permitted Transferees pursuant to this Agreement, the Units held by each such Permitted Transferee shall be included in calculating the Substantial Ownership Requirement.

(f) Notwithstanding anything contained herein to the contrary, in no event shall any Member that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code Transfer any Units, unless such Member and the transferee have delivered to the Company, in respect of the relevant Transfer, written evidence that all required withholding under Section 1446(f) of the Code will have been done and duly remitted to the applicable taxing

authority or duly executed certifications (prepared in accordance with the applicable Treasury Regulations or other authorities) of an exemption from such withholding.

Section 8.02. *Certain Permitted Transfers*. Notwithstanding anything to the contrary herein but subject to Section 8.01(b) and Section 8.01(c), the following Transfers shall be permitted:

(a) Any Transfer in connection with the Reorganization;

(b) Any Transfer by any Member of its Units pursuant to a Disposition Event (as such term is defined in the certificate of incorporation of Pubco);

(c) At any time, any Transfer by any Member of Units to any Transferee approved in writing by the Managing Member (not to be unreasonably withheld), it being understood that it shall be reasonable for the Managing Member to withhold such consent if the Managing Member reasonably determines that such Transfer would materially increase the risk that the Company would be classified as a “publicly traded partnership” as that term is defined in Section 7704 of the Code and Regulations promulgated thereunder; and

(d) The Transfer of all or any portion of a Non-Pubco Member’s Units to a Permitted Transferee of such Member.

Section 8.03. *Distributions*. Notwithstanding anything in this Article 8 or elsewhere in this Agreement to the contrary, if a Member Transfers all or any portion of its Units after the designation of a record date and declaration of a distribution pursuant to Article 5 and before the payment date of such distribution, the transferring Member (and not the Person acquiring all or any portion of its LLC Units) shall be entitled to receive such distribution in respect of such transferred LLC Units.

Section 8.04. *Registration of Transfers*. When any Units are Transferred in accordance with the terms of this Agreement, the Company shall cause such Transfer to be registered on the books of the Company.

Article 9

CERTAIN OTHER AGREEMENTS

Section 9.01. *Company Call Right*. In connection with any Involuntary Transfer by any Non-Pubco Member, the Company or the Managing Member may, in the Managing Member’s sole discretion, elect to purchase from such Member and/or such Transferee(s) in such Involuntary Transfer (if applicable) (each, a “**Call Member**”) any or all of the Units so Transferred or so held by such Member (or such Member’s Permitted Transferees), as applicable (“**Call Units**”), at any time by delivery of a written notice (a “**Call Notice**”) to such Call Member. The Call Notice shall set forth the Unit Redemption Price and the proposed closing date of such purchase of such Call Units; provided that such closing date shall occur within ninety (90) days following the date of such Call Notice. At the closing of any such sale, in exchange for the payment by the Company or the Managing Member to such Call Members of the Unit Redemption Price in cash, (i) each Call Member shall deliver its Call Units, duly

endorsed, or accompanied by written instruments of transfer in form satisfactory to the Company or the Managing Member, as applicable, duly executed by such Call Member and accompanied by all requisite transfer taxes, if any, (ii) such Call Units shall be free and clear of any Liens and (iii) each Call Member shall so represent and warrant and further represent and warrant that it is the sole beneficial and record owner of such Call Units. Following such closing, any such Call Member shall no longer be entitled to any rights in respect of its Call Units, including any distributions of the Company or Pubco thereupon (other than the payment of the Unit Redemption Price at such closing), and, to the extent any such Call Member does not hold any Units thereafter, shall thereupon cease to be a Member of the Company and, to the extent any such Call Member does not hold any shares of Pubco Common Stock thereafter, shall thereupon cease to be a stockholder of Pubco.

Section 9.02. *Preemptive Rights.*

(a) No Person shall have any preemptive, preferential or other similar right with respect to (i) additional Capital Contributions; (ii) issuances or sales by the Company of any class or series of Units, whether unissued or hereafter created; (iii) issuances of any obligations, evidences of indebtedness or other securities of the Company convertible into or exchangeable for, or carrying or accompanied by any rights to receive, purchase or subscribe to, any Units; (iv) issuances of any right of subscription to or right to receive, or any warrant or option for the purchase of, any Units; or (v) issuances or sales of any other securities that may be issued or sold by the Company.

Article 10

REDEMPTION AND EXCHANGE RIGHTS

Section 10.01. *Redemption Right of a Member.*

(a) Without the need for approval by the Managing Member or consent by any other Members, each Non-Pubco Member shall be entitled to cause the Company to redeem (a “**Redemption**”) all or any portion of its LLC Units (the “**Redemption Right**”) at any time; provided that the Managing Member may force a Member to exercise its Redemption Right at any time following the expiration of such contractual lock-up period if such member holds fewer than 50,000 LLC Units. A Member desiring to exercise its Redemption Right (the “**Redeeming Member**”) shall exercise such right by giving written notice (the “**Redemption Notice**”) to the Company and Pubco in substantially the form of Exhibit A attached hereto. The Redemption Notice shall specify the number of LLC Units (the “**Redeemed Units**”) that the Redeeming Member intends to have the Company redeem (*provided*, that absent a waiver by the Managing Member, any such Redemption is for a minimum of the lesser of 50,000 LLC Units or all of the LLC Units held by such Redeeming Member) and a date, not less than three (3) Business Days nor more than ten (10) Business Days after delivery of such Redemption Notice (unless and to the extent that the Managing Member in its sole discretion agrees in writing to waive such time periods), on which exercise of the Redemption Right shall be completed (the “**Redemption Date**”); provided that the Company, Pubco and the Redeeming Member may change the number of Redeemed Units and/or the Redemption Date specified in such Redemption Notice to another number and/or date by mutual agreement signed in writing by each of them; provided further that

a Redemption Notice may be conditioned by the Redeeming Member on the closing of an underwritten or non-underwritten distribution or sale of the shares of Class A Common Stock that may be issued in connection with such proposed Redemption. Unless the Redeeming Member has revoked or delayed a Redemption as provided in Section 10.01(c), on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date) (i) the Redeeming Member shall transfer and surrender the Redeemed Units to the Company, free and clear of all Liens, and (ii) the Company shall (x) cancel the Redeemed Units, (y) transfer to the Redeeming Member the consideration to which the Redeeming Member is entitled under Section 10.01(b), and (z) if the Units are certificated, issue to the Redeeming Member a certificate for a number of Units equal to the difference (if any) between the number of Units evidenced by the certificate surrendered by the Redeeming Member pursuant to clause (i) of this Section 10.01(a) and the Redeemed Units.

(b) In exercising its Redemption Right, a Redeeming Member shall be entitled to receive, and Pubco shall issue, the number of shares of Class A Common Stock equal to the number of Redeemed Units (the “**Share Settlement**”). For the avoidance of doubt, Pubco shall have no obligation to deliver cash to effect a Redemption.

(c) A Redeeming Member shall be entitled to revoke its Redemption Notice or delay the consummation of a Redemption if any of the following conditions exists: (i) any registration statement pursuant to which the resale of the Class A Common Stock to be registered for such Redeeming Member at or immediately following the consummation of the Redemption shall have ceased to be effective pursuant to any action or inaction by the SEC or no such resale registration statement has yet become effective; (ii) Pubco shall have failed to cause any related prospectus to be supplemented by any required prospectus supplement necessary to effect such Redemption; (iii) Pubco shall have exercised its right to defer, delay or suspend the filing or effectiveness of a registration statement and such deferral, delay or suspension shall affect the ability of such Redeeming Member to have its Class A Common Stock registered at or immediately following the consummation of the Redemption; (iv) Pubco shall have disclosed to such Redeeming Member any material non-public information concerning Pubco, the receipt of which results in such Redeeming Member being prohibited or restricted from selling Class A Common Stock at or immediately following the Redemption without disclosure of such information (and Pubco does not permit disclosure); (v) any stop order relating to the registration statement pursuant to which the Class A Common Stock was to be registered by such Redeeming Member at or immediately following the Redemption shall have been issued by the SEC; (vi) there shall have occurred a material disruption in the securities markets generally or in the market or markets in which the Class A Common Stock is then traded; (vii) there shall be in effect an injunction, a restraining order or a decree of any nature of any Governmental Authority that restrains or prohibits the Redemption; (viii) if the Redeeming Member is a party to the Registration Rights Agreement, Pubco shall have failed to comply in all material respects with its obligations under the Registration Rights Agreement, and such failure shall have affected the ability of such Redeeming Member to consummate the resale of Class A Common Stock to be received upon such redemption pursuant to an effective registration statement; (ix) the Redemption Date would occur three (3) Business Days or less prior to, or during, any “black-out” or similar period under Pubco’s policies covering trading in the Pubco’s securities to which the applicable Redeeming Member is subject, which period restricts the ability of such Redeeming Member to immediately resell shares of Class A Common Stock to be delivered to

such Redeeming Member in connection with a Share Settlement; provided further, that in no event shall the Redeeming Member seeking to revoke its Redemption Notice or delay the consummation of such Redemption and relying on any of the matters contemplated in clauses (i) through (ix) above have Controlled or intentionally materially influenced any facts, circumstances, or Persons in connection therewith (except in the good faith performance of his or her duties as an officer or director of Pubco) in order to provide such Redeeming Member with a basis for such delay or revocation. If a Redeeming Member delays the consummation of a Redemption pursuant to this Section 10.01(c), the Redemption Date shall occur on the fifth Business Day following the date on which the conditions giving rise to such delay cease to exist (or such earlier day as Pubco, the Company and such Redeeming Member may agree in writing).

(d) The number of shares of Class A Common Stock that a Redeeming Member is entitled to receive under Section 10.01(b) shall not be adjusted on account of any distributions previously made with respect to the Redeemed Units or dividends previously paid with respect to Class A Common Stock; provided, however, that if a Redeeming Member causes the Company to redeem Redeemed Units and the Redemption Date occurs subsequent to the record date for any distribution with respect to the Redeemed Units but prior to payment of such distribution, the Redeeming Member shall be entitled to receive such distribution with respect to the Redeemed Units on the date that it is made notwithstanding that the Redeeming Member transferred and surrendered the Redeemed Units to the Company prior to such date (but in each case only if Pubco has declared a corresponding dividend of all amounts receivable by Pubco in such distribution with a record date for such dividend that is no later than the record date for such distribution).

(e) In the event of a reclassification or other similar transaction as a result of which the shares of Class A Common Stock are converted into another security, then in exercising its Redemption Right a Redeeming Member shall be entitled to receive the amount of such security that the Redeeming Member would have received if such Redemption Right had been exercised and the Redemption Date had occurred immediately prior to the record date of such reclassification or other similar transaction.

Section 10.02. *Election and Contribution of Pubco.* In connection with the exercise of a Redeeming Member's Redemption Rights under Section 10.01(a), Pubco shall contribute to the Company the consideration the Redeeming Member is entitled to receive under Section 10.01(b). On the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date) (i) Pubco shall make its Capital Contribution to the Company required under this Section 10.02, and (ii) the Company shall issue to Pubco a number of Units equal to the number of Redeemed Units surrendered by the Redeeming Member.

Section 10.03. *Exchange Right of Pubco.*

(a) Notwithstanding anything to the contrary in this Article 10, Pubco may, in its sole and absolute discretion, elect to effect on the Redemption Date the exchange of Redeemed Units for the Share Settlement through a direct exchange of such Redeemed Units and such consideration between the Redeeming Member and Pubco (a "**Direct Exchange**"). Upon such Direct Exchange pursuant to this Section 10.03, Pubco shall acquire the Redeemed Units and shall be treated for all purposes of this Agreement as the owner of such Units.

(b) Pubco may, at any time prior to a Redemption Date, deliver written notice (an “**Exchange Election Notice**”) to the Company and the Redeeming Member setting forth its election to exercise its right to consummate a Direct Exchange; provided that such election does not prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. An Exchange Election Notice may be revoked by Pubco at any time; provided that any such revocation does not prejudice the ability of the parties to consummate a Redemption or Direct Exchange on the Redemption Date. The right to consummate a Direct Exchange in all events shall be exercisable for all the Redeemed Units that would have otherwise been subject to a Redemption. Except as otherwise provided by this Section 10.03, a Direct Exchange shall be consummated pursuant to the same timeframe and in the same manner as the relevant Redemption would have been consummated if Pubco had not delivered an Exchange Election Notice.

Section 10.04. *Tender Offers and Other Events with Respect to Pubco.*

(a) In the event that a tender offer, share exchange offer, issuer bid, take-over bid, recapitalization or similar transaction with respect to Class A Common Stock (a “**Pubco Offer**”) is proposed by Pubco or is proposed to Pubco or its stockholders or is otherwise effected or to be effected, the Non-Pubco Members shall be permitted to participate in such Pubco Offer by delivery of a notice of exchange (which notice of exchange shall be effective immediately prior to the consummation of such Pubco Offer (and, for the avoidance of doubt, shall be contingent upon such Pubco Offer and not be effective if such Pubco Offer is not consummated)). In the case of a Pubco Offer proposed by Pubco, Pubco will use its reasonable efforts expeditiously and in good faith to take all such actions and do all such things as are necessary or desirable to enable and permit the holders of LLC Units (other than the Pubco Members) to participate in such Pubco Offer to the same extent or on an economically equivalent basis as the holders of shares of Class A Common Stock without discrimination; provided, that without limiting the generality of this sentence, Pubco will use its reasonable efforts expeditiously and in good faith to ensure that such holders may participate in each such Pubco Offer without being required to exchange LLC Units to the extent such participation is practicable. For the avoidance of doubt (but subject to Section 10.04(c)), in no event shall the holders of LLC Units be entitled to receive in such Pubco Offer aggregate consideration (other than pursuant to the Tax Receivable Agreement) for each LLC Unit that is greater than the consideration payable in respect of each share of Class A Common Stock in connection with a Pubco Offer.

(b) Notwithstanding any other provision of this Agreement, if a Disposition Event (as such term is defined in the Pubco certificate of incorporation) is approved by the board of directors of Pubco and consummated in accordance with Applicable Law, at the request of the Company (or following such Disposition Event, its successor) or Pubco (or following such Disposition Event, its successor), each of the holders of LLC Units shall be required to exchange with Pubco, at any time and from time to time after, or simultaneously with, the consummation of such Disposition Event, all of such holder’s LLC Units for aggregate consideration for each LLC Unit that is equivalent to the consideration payable in respect of each share of Class A Common Stock in connection with the Disposition Event.

(c) Notwithstanding any other provision of this Agreement, in a Disposition Event, payments under or in respect of the Tax Receivable Agreement shall not be considered part of the consideration payable in respect of any LLC Unit or share of Class A Common Stock in connection with such Disposition Event for the purposes of Section 10.04(a) and Section 10.04(b).

Section 10.05. *Reservation of Shares of Class A Common Stock; Certificate of Pubco.* At all times Pubco shall reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of issuance upon a Redemption or Direct Exchange, such number of shares of Class A Common Stock as shall be issuable upon any such Redemption or Direct Exchange pursuant to Share Settlements; provided that nothing contained herein shall be construed to preclude Pubco from satisfying its obligations in respect of any such Redemption or Direct Exchange by delivery of purchased Class A Common Stock (which may or may not be held in the treasury of Pubco). Pubco covenants that all Class A Common Stock issued upon a Redemption or Direct Exchange will, upon issuance, be validly issued, fully paid and non-assessable. The provisions of this Article 10 shall be interpreted and applied in a manner consistent with the corresponding provisions of the certificate of incorporation of Pubco.

Section 10.06. *Effect of Exercise of Redemption or Exchange Right.* This Agreement shall continue notwithstanding the consummation of a Redemption or Direct Exchange and all governance or other rights set forth herein shall be exercised by the remaining Members and the Redeeming Member (to the extent of such Redeeming Member's remaining interest in the Company). No Redemption or Direct Exchange shall relieve such Redeeming Member of any prior breach of this Agreement.

Section 10.07. *Tax Treatment.*

(a) Unless otherwise required by applicable Law, the parties hereto acknowledge and agree that any Redemption or Direct Exchange consummated hereunder shall be treated as a taxable sale of Redeemed Units by the Redeeming Member to Pubco for U.S. federal, and applicable state and local income tax purposes, and no party shall take a contrary position on any income tax return, amendment thereof or communication with a taxing authority unless an alternate position is permitted under the Code and Treasury Regulations and Pubco consents in writing.

(b) Notwithstanding any other provision in this Agreement, the Company, Pubco and their agents and affiliates shall have the right to deduct and withhold taxes (including Class A Common Stock with a fair market value determined in the sole discretion of the Pubco equal to the amount of such taxes) from any payments to be made pursuant to any Redemption or Direct Exchange consummated hereunder if, in their opinion, such withholding is required by law, and shall be provided with any necessary tax forms, including Form W-9 or the appropriate series of Form W-8, as applicable, and any similar information; provided, that Pubco may, in its sole discretion, allow or require a Redeeming Member to pay such taxes owed in respect of the Redemption or Direct Exchange in cash in lieu of withholding or deducting such taxes. To the extent that any of the aforementioned amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to the recipient of the payments in respect of which such deduction and withholding was made. To the extent that

any payment pursuant to any Redemption or Direct Exchange consummated hereunder is not reduced by such deductions or withholdings, such recipient shall indemnify the applicable withholding agent for any amounts imposed by any taxing authority together with any costs and expenses related thereto.

Section 10.08. *Additional Exchange Restrictions.* Notwithstanding anything to the contrary herein:

(a) No Exchange shall be permitted (and, if attempted, shall be void ab initio) if, in the good faith determination of the Managing Member or the Company, such an Exchange would pose a material risk that the Company would be a “publicly traded partnership” as that term is defined in Section 7704 of the Code and Regulations promulgated thereunder.

(b) The Company reasonably believes that, as of the date hereof, it satisfies the “safe harbor” requirements under Treasury Regulation Section 1.7704-1(h) (the “**100 Partner Safe Harbor**”) and the Company will not take any action or consent to any action that would reasonably be expected to result in the Company not satisfying the 100 Partner Safe Harbor for any taxable year. If the Managing Member determines at any time, in its sole discretion after consultation with the Company’s tax advisors, either (i) that the Company does not then satisfy the 100 Partner Safe Harbor, or (ii) there is a reasonable possibility that the Company will not satisfy the 100 Partner Safe Harbor at any time during the current or next taxable year, the Managing Member and the Company may impose such restrictions on, and impose such requirements on and procedures with respect to, Exchanges from time to time as the Managing Member and/or the Company may determine, in their sole discretion, to be necessary or advisable so that the Company is not treated as a “publicly traded partnership” under Section 7704 of the Code and such restrictions, requirements and procedures shall remain in effect unless and until the Managing Member determines otherwise; provided, that, for the avoidance of doubt, a transfer described under Treasury Regulation Section 1.7704-1(e)(2) shall not be restricted. Without limiting the discretion of the Managing Member and/or the Company under this Section 10.08(b), to impose any restrictions, requirements or procedures on Exchanges, such restrictions, requirements and procedures may include one or more of the following:

(i) providing that Members are permitted to effect Exchanges during a taxable year of the Company only on one or more of up to four specified dates determined by the Managing Member (each a “**Specified Exchange Date**”);

(ii) requiring a Member seeking to effect an Exchange to give the Company irrevocable written notice of an election to effect an Exchange on a date that is at least sixty (60) calendar days prior to the Specified Exchange Date on which such Exchange is to occur; and

(iii) providing that the number of Units that may be Exchanged or otherwise transferred during the taxable year of the Company (other than in private transfers described in Treasury Regulations Section 1.7704-1(e)) cannot exceed 10 percent of the total interest in the Company’s capital or profits (as determined pursuant to Treasury Regulation Section 1.7704-1(k)).

(c) Pubco shall bear all of its own expenses in connection with the consummation of any Redemption, whether or not any such Redemption is ultimately consummated, including any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, any Redemption (but not, in any case, any income taxes or other similar taxes); provided, however, that if any of the Share Settlement is to be delivered in a name other than that of the Redeeming Member that requested the Redemption, then such Redeeming Member and/or the Person in whose name such shares are to be delivered shall pay to Pubco the amount of any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, such Redemption or shall establish to the reasonable satisfaction of Pubco that such tax has been paid or is not payable. Except as otherwise may separately be agreed by the Company, the Redeeming Member shall bear all of its own expenses in connection with the consummation of any Redemption (including, for the avoidance of doubt, expenses incurred by such Redeeming Member in connection with any Redemption that are invoiced to the Company).

(d) In connection with any Redemption or Direct Exchange, an equal number of shares of Class B Common Stock shall be surrendered and cancelled in accordance with the certificate of incorporation of Pubco.

Article 11

LIMITATION ON LIABILITY, EXCULPATION AND INDEMNIFICATION

Section 11.01. *Limitation on Liability.* The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company; provided that the foregoing shall not alter a Member's obligation to return funds wrongfully distributed to it.

Section 11.02. *Exculpation and Indemnification; Elimination of Fiduciary Duties.*

(a) Subject to the duties of the Managing Member and Officers set forth in Section 7.01, neither the Managing Member nor any other Covered Person shall be liable, including under any legal or equitable theory of fiduciary duty or other theory of liability, to the Company or to any other Covered Person for any losses, claims, damages or liabilities incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company. There shall be, and each Covered Person shall be entitled to, a presumption that such Covered Person acted in good faith. None of the Members shall have any fiduciary duties to any other Member, the Company or any other Person, and any duties or implied duties (including fiduciary duties) of any Member to any other Member or the Company that would otherwise apply at law (common or statutory) or in equity are hereby eliminated to the fullest extent permitted under any Applicable Law.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such Person's professional or expert competence.

(c) The Company shall indemnify, defend and hold harmless each Covered Person against any losses, claims, damages, liabilities, expenses (including all reasonable out-of-pocket fees and expenses of counsel and other advisors), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, in which such Covered Person may be involved or become subject to, in connection with any matter arising out of or in connection with the Company's business or affairs, or this Agreement or any related document, unless such loss, claim, damage, liability, expense, judgment, fine, settlement or other amount (i) is a result of a Covered Person not acting in good faith on behalf of the Company or arose as a result of the willful commission by such Covered Person of any act that is dishonest and materially injurious to the Company, (ii) results from its contractual obligations under any Reorganization Document to be performed in a capacity other than as a Covered Person or from the breach by such Covered Person of Section 9.01 or (iii) results from the breach by any Member (in such capacity) of its contractual obligations under this Agreement. If any Covered Person becomes involved in any capacity in any action, suit, proceeding or investigation in connection with any matter arising out of or in connection with the Company's business or affairs, or this Agreement or any related document (other than any Reorganization Document), other than (x) by reason of any act or omission performed or omitted by such Covered Person that was not in good faith on behalf of the Company or constituted a willful commission by such Covered Person of an act that is dishonest and materially injurious to the Company or (y) as a result of any breach by such Covered Person of Section 9.01, the Company shall reimburse such Covered Person for its reasonable legal and other reasonable out-of-pocket expenses (including the cost of any investigation and preparation) as they are incurred in connection therewith; provided that such Covered Person shall promptly repay to the Company the amount of any such reimbursed expenses paid to it if it shall be finally judicially determined that such Covered Person was not entitled to indemnification by, or contribution from, the Company in connection with such action, suit, proceeding or investigation. If for any reason (other than the bad faith of a Covered Person or the willful commission by such Covered Person of an act that is dishonest and materially injurious to the Company) the foregoing indemnification is unavailable to such Covered Person, or insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by such Covered Person as a result of such loss, claim, damage, liability, expense, judgment, fine, settlement or other amount in such proportion as is appropriate to reflect any relevant equitable considerations. There shall be, and each Covered Person shall be entitled to, a rebuttable presumption that such Covered Person acted in good faith.

(d) The obligations of the Company under Section 11.02(c) shall be satisfied solely out of and to the extent of the Company's assets, and no Covered Person shall have any personal liability on account thereof.

(e) Given that certain Jointly Indemnifiable Claims may arise by reason of the service of a Covered Person to the Company and/or as a director, trustee, officer, partner, member, manager, employee, consultant, fiduciary or agent of other corporations, limited liability companies, partnerships, joint ventures, trusts, employee benefit plans or other enterprises Controlled by the Company (collectively, the "**Controlled Entities**"), or by reason of any action alleged to have been taken or omitted in any such capacity, the Company acknowledges and agrees that the Company shall be fully and primarily responsible for the payment to the Covered Person in respect of indemnification or advancement of all out-of-pocket costs of any type or nature whatsoever (including, without limitation, all attorneys' fees and

related disbursements) in each case, actually and reasonably incurred by or on behalf of a Covered Person in connection with either the investigation, defense or appeal of a claim, demand, action, suit or proceeding or establishing or enforcing a right to indemnification under this Agreement or otherwise incurred in connection with a claim that is indemnifiable hereunder (collectively, “**Expenses**”) in connection with any such Jointly Indemnifiable Claim, pursuant to and in accordance with (as applicable) the terms of (i) the Delaware Act, (ii) this Agreement, (iii) any other agreement between the Company or any Controlled Entity and the Covered Person pursuant to which the Covered Person is indemnified, (iv) the laws of the jurisdiction of incorporation or organization of any Controlled Entity and/or (v) the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership, certificate of qualification or other organizational or governing documents of any Controlled Entity ((i) through (v) collectively, the “**Indemnification Sources**”), irrespective of any right of recovery the Covered Person may have from the Indemnatee-Related Entities. Under no circumstance shall the Company or any Controlled Entity be entitled to any right of subrogation or contribution by the Indemnatee-Related Entities and no right of advancement or recovery the Covered Person may have from the Indemnatee-Related Entities shall reduce or otherwise alter the rights of the Covered Person or the obligations of the Company or any Controlled Entity under the Indemnification Sources. In the event that any of the Indemnatee-Related Entities shall make any payment to the Covered Person in respect of indemnification or advancement of Expenses with respect to any Jointly Indemnifiable Claim, (i) the Company shall, and to the extent applicable shall cause the Controlled Entities to, reimburse the Indemnatee-Related Entity making such payment to the extent of such payment promptly upon written demand from such Indemnatee-Related Entity, (ii) to the extent not previously and fully reimbursed by the Company and/or any Controlled Entity pursuant to clause (i), the Indemnatee-Related Entity making such payment shall be subrogated to the extent of the outstanding balance of such payment to all of the rights of recovery of the Covered Person against the Company and/or any Controlled Entity, as applicable, and (iii) the Covered Person shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the Indemnatee-Related Entities effectively to bring suit to enforce such rights. The Company and the Covered Person agree that each of the Indemnatee-Related Entities shall be third-party beneficiaries with respect to this Section 11.02(e), entitled to enforce this Section 11.02(e) as though each such Indemnatee-Related Entity were a party to this Agreement. The Company shall cause each of the Controlled Entities to perform the terms and obligations of this Section 11.02(e) as though each such Controlled Entity was the “Company “ under this Agreement. For purposes of this Section 11.02(e), the following terms shall have the following meanings:

(i) The term “**Indemnatee-Related Entities**” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Company, any Controlled Entity or the insurer under and pursuant to an insurance policy of the Company or any Controlled Entity) from whom a Covered Person may be entitled to indemnification or advancement of Expenses with respect to which, in whole or in part, the Company or any Controlled Entity may also have an indemnification or advancement obligation.

(ii) The term “**Jointly Indemnifiable Claims**” shall be broadly construed and shall include, without limitation, any claim, demand, action, suit or proceeding for which the Covered Person shall be entitled to indemnification or advancement of Expenses from both (i) the Company and/or any Controlled Entity pursuant to the Indemnification Sources, on the one hand, and (ii) any Indemnitee-Related Entity pursuant to any other agreement between any Indemnitee-Related Entity and the Covered Person pursuant to which the Covered Person is indemnified, the laws of the jurisdiction of incorporation or organization of any Indemnitee-Related Entity and/or the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of any Indemnitee-Related Entity, on the other hand.

(f) The rights conferred on any Covered Person by this Section 11.02 shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of this Agreement, agreement, vote of members, by determination of the Managing Member or otherwise. Further, the Company shall have the power and authority to provide indemnification, advancement of expenses and other similar rights to other Persons (including by agreements with members of the board of directors of Pubco) as is approved by the Managing Member.

Article 12

DISSOLUTION AND TERMINATION

Section 12.01. *Dissolution.*

(a) The Company shall not be dissolved by the admission of Additional Members or Substitute Members pursuant to Section 3.02.

(b) No Member shall (i) resign from the Company prior to the dissolution and winding up of the Company except in connection with a Transfer of Units pursuant to the terms of this Agreement or (ii) take any action to dissolve, terminate or liquidate the Company or to require apportionment, appraisal or partition of the Company or any of its assets, or to file a bill for an accounting, except as specifically provided in this Agreement, and each Member, to the fullest extent permitted by Applicable Law, hereby waives any rights to take any such actions under Applicable Law, including any right to petition a court for judicial dissolution under Section 18-802 of the Delaware Act.

(c) The Company shall be dissolved and its business wound up only upon the earliest to occur of any one of the following events (each a “**Dissolution Event**”):

(i) The expiration of forty-five (45) days after the sale or other disposition of all or substantially all the assets of the Company;

(ii) upon the approval of the Managing Member;

(iii) the entry of a decree of dissolution of the Company under Section 18-802 of the Delaware Act; or

(iv) at any time there are no members of the Company, unless the Company is continued in accordance with the Delaware Act.

(d) The death, retirement, resignation, expulsion, bankruptcy, insolvency or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member of the Company shall not in and of itself cause dissolution of the Company.

Section 12.02. *Winding Up of the Company.*

(a) The Managing Member shall promptly notify the other Members of any Dissolution Event. Upon dissolution, the Company's business shall be liquidated in an orderly manner. The Managing Member shall appoint a liquidating trustee to wind up the affairs of the Company pursuant to this Agreement. In performing its duties, the liquidating trustee is authorized to sell, distribute, exchange or otherwise dispose of the assets of the Company in accordance with the Delaware Act and in any reasonable manner that the liquidating trustee shall determine to be in the best interest of the Members.

(b) The proceeds of the liquidation of the Company shall be distributed in the following order and priority:

(i) first, to the creditors (including any Members or their respective Affiliates that are creditors) of the Company in satisfaction of all of the Company's liabilities (whether by payment or by making reasonable provision for payment thereof, including the setting up of any reserves which are, in the judgment of the liquidating trustee, reasonably necessary therefor); and

(ii) second, to the Members in the same manner as distributions under Section 5.03(b).

(c) *Distribution of Property.* In the event it becomes necessary in connection with the liquidation of the Company to make a distribution of Property in-kind, subject to the priority set forth in Section 12.02(b), the liquidating trustee shall have the right to compel each Member to accept a distribution of any Property in-kind (with such Property, as a percentage of the total liquidating distributions to such Member, corresponding as nearly as possible to such Member's Percentage Interest), with such distribution being based upon the amount of cash that would be distributed to such Members if such Property were sold for an amount of cash equal to the fair market value of such Property, as determined by the liquidating trustee in good faith.

(d) In the event of a dissolution pursuant to Section 12.01(c), the relative economic rights of each class of Units immediately prior to such dissolution shall be preserved to the greatest extent practicable with respect to distributions made to Members pursuant to Section 10.01(b) in connection with such dissolution, taking into consideration tax and other legal constraints that may adversely affect one or more parties to such dissolution and subject to compliance with Applicable Laws.

Section 12.03. *Termination.* The Company shall terminate when all of the assets of the Company, after payment of or reasonable provision for the payment of all debts and liabilities of the Company, shall have been distributed to the Members in the manner provided for in this Article 12, and the certificate of formation of the Company shall have been cancelled in the manner required by the Delaware Act.

Section 12.04. *Survival.* Termination, dissolution, liquidation or winding up of the Company for any reason shall not release any party from any liability which at the time of such termination, dissolution, liquidation or winding up already had accrued to any other party or which thereafter may accrue in respect to any act or omission prior to such termination, dissolution, liquidation or winding up.

Article 13

MISCELLANEOUS

Section 13.01. *Expenses.* Other than as provided for in the Tax Receivable Agreement, the Company shall (a) pay, or cause to be paid, all costs, fees, operating expenses, administrative expenses and other expenses of the Company (including the costs, fees and expenses of attorneys, accountants or other professionals and the compensation of all personnel providing services to the Company) incurred in pursuing and conducting, or otherwise related to, the business of the Company and (b) in the sole discretion of the Managing Member, reimburse the Managing Member for any out-of-pocket costs, fees and expenses incurred by it or its Subsidiaries in connection therewith. To the extent that the Managing Member reasonably determines in good faith that its expenses are related to the business conducted by the Company and/or its Subsidiaries, then the Managing Member may cause the Company to pay or bear all such expenses of the Managing Member or its Subsidiaries, including (i) costs of any securities offerings (including any underwriters discounts and commissions), investment or acquisition transaction (whether or not successful) not borne directly by Members, (ii) compensation and meeting costs of its board of directors, (iii) cost of periodic reports to its stockholders, (iv) any judgments, settlements, penalties, fines or other costs and expenses in respect of any claims against, or any litigation or proceedings involving, Pubco, (v) accounting and legal costs, (vi) franchise taxes (which are not based on, or measured by, income), (vii) payments in respect of Indebtedness and preferred stock, to the extent the proceeds are used or will be used by Pubco or its Subsidiaries to pay expenses or other obligations described in this Section 13.01 (in either case only to the extent economically equivalent Indebtedness or Equity Securities of the Company were not issued to Pubco or its Subsidiaries) and (viii) other fees and expenses in connection with the maintenance of the existence of Pubco and its Subsidiaries (including any costs or expenses associated with being a public company listed on a national securities exchange), provided that the Company shall not pay or bear any income tax obligations of the Managing Member or its Subsidiaries pursuant to this provision. Payments under this Section 13.01 are intended to constitute reasonable compensation for past or present services and are not “distributions” within the meaning of Section 5.03 above or §18-607 of the Delaware Act.

Section 13.02. *Further Assurances.* Each Member agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by Applicable Law or as,

in the reasonable judgment of the Managing Member, may be necessary or advisable to carry out the intent and purposes of this Agreement.

Section 13.03. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including electronic mail transmission of attachments to such electronic mail in portable document format (“**e-mail**”), so long as a receipt of such e-mail is requested and received) and shall be given to such party at the address or e-mail address specified for such party on the Member Schedule hereto, or to such other address as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt. All such notices, requests and other communications to any party hereunder shall be given to such party as follows:

If to Pubco or the Company:

c/o PHD Group Holdings LLC
2001 Spring Road, Suite 400
Oak Brook, IL 60523
Attention: Michelle G. Hook; Susan B. Shelton
Email: mhook@portillos.com; sshelton@portillos.com

With copies (which shall not constitute actual notice) to:

Weil, Gotshal & Manges, LLP
100 Federal Street, 34th Floor
Boston, MA 02110
Attention: Shayla K. Harlev; Alexander D. Lynch; Michael Messina
Email: shayla.harlev@weil.com; alex.lynch@weil.com; michael.messina@weil.com

Section 13.04. *Binding Effect; Benefit; Assignment.*

(a) The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Except as provided in Article 8, no Member may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the Managing Member.

Section 13.05. *Jurisdiction.*

(a) The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (whether brought by any party or any of its Affiliates or against any party or any of its Affiliates) shall be brought in the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of

Delaware or other Delaware state court, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 13.03 shall be deemed effective service of process on such party.

(b) EACH OF THE COMPANY AND THE MEMBERS HEREBY IRREVOCABLY DESIGNATES CORPORATION TRUST COMPANY (IN SUCH CAPACITY, THE “**PROCESS AGENT**”), WITH AN OFFICE AT CORPORATION TRUST COMPANY, 1209 ORANGE STREET, WILMINGTON, DELAWARE 19801, AS ITS DESIGNEE, APPOINTEE AND AGENT TO RECEIVE, FOR AND ON ITS BEHALF SERVICE OF PROCESS IN SUCH JURISDICTION IN ANY LEGAL ACTION OR PROCEEDINGS WITH RESPECT TO THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, AND SUCH SERVICE SHALL BE DEEMED COMPLETE UPON DELIVERY THEREOF TO THE PROCESS AGENT; PROVIDED THAT IN THE CASE OF ANY SUCH SERVICE UPON THE PROCESS AGENT, THE PARTY EFFECTING SUCH SERVICE SHALL ALSO DELIVER A COPY THEREOF TO EACH OTHER SUCH PARTY IN THE MANNER PROVIDED IN SECTION 13.03 OF THIS AGREEMENT AND, TO THE EXTENT A MEMBER IS NOT ORGANIZED UNDER THE LAWS OF THE STATE OF DELAWARE, AS REQUIRED BY THE LAW OF THE JURISDICTION OF ORGANIZATION OF SUCH MEMBER. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW.

Section 13.06. *WAIVER OF JURY TRIAL.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.07. *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 13.08. *Entire Agreement.* This Agreement and the Reorganization Documents constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement. Nothing in this Agreement shall create any third-party beneficiary rights in favor of any Person or other party, except to the extent provided herein with respect to Indemnatee Related Entities, each of whom

are intended third-party beneficiaries of those provisions that specifically related to them with the right to enforce such provisions as if they were a party hereto.

Section 13.09. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 13.10. *Amendment.*

(a) This Agreement can be amended at any time and from time to time by written instrument signed by each of the Members who together own a majority in interest of the Units then outstanding, provided that no amendment to this Agreement may adversely modify in any material respect the Units (or the rights, preferences or privileges of the Units) then held by any Members in any materially disproportionate manner to those then held by any other Members without the prior written consent of a majority in interest of such disproportionately affected Member or Members.

(b) For the avoidance of doubt: (i) the Managing Member, acting alone, may amend this Agreement, including the Member Schedule, (x) to reflect the admission of new Members or Transfers of Units, each as provided by and in accordance with, the terms of this Agreement and (y) to effect any subdivisions or combinations of Units made in compliance with Section 4.02(c) and (z) to issue additional LLC Units or any new class of Units (whether or not pari passu with the LLC Units) in accordance with the terms of this Agreement and to provide that the Members being issued such new Units be entitled to the rights provided to Members; and (ii) any merger, consolidation or other business combination that constitutes a Disposition Event (as such term is defined in the certificate of incorporation of Pubco) in which the Non-Pubco Members are required to exchange all of their LLC Units pursuant to Section 10.03(b) of this Agreement and receive consideration in such Disposition Event in accordance with the terms of this Agreement and Section 10.04(b) of this Agreement shall not be deemed an amendment hereof; provided, that such amendment is only effective upon consummation of such Disposition Event.

(c) No waiver of any provision or default under, nor consent to any exception to, the terms of this Agreement or any agreement contemplated hereby shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

Section 13.11. *Confidentiality.*

(a) Each Member shall, and shall direct those of its Affiliates and their respective directors, officers, members, stockholders, partners, employees, attorneys, accountants, consultants, trustees and other advisors (the “**Member Parties**”) who have access to

Confidential Information to, keep confidential and not disclose any Confidential Information to any Person other than a Member Party who agrees to keep such Confidential Information confidential in accordance with this Section 13.11, in each case without the express consent, in the case of Confidential Information acquired from the Company, of the Managing Member or, in the case of Confidential Information acquired from another Member, such other Member, unless:

- (i) such disclosure shall be required by Applicable Law;
- (ii) such disclosure is reasonably required in connection with any tax audit involving the Company or any Member or its Affiliates;
- (iii) such disclosure is reasonably required in connection with any litigation against or involving the Company or any Member;
- (iv) such disclosure is reasonably required in connection with any proposed Transfer of all or any part of such Member's Units in the Company; provided that with respect to any such use of any Confidential Information referred to in this clause (iv), advance notice must be given to the Managing Member so that it may require any proposed Transferee that is not a Member to enter into a confidentiality agreement with terms substantially similar to the terms of this Section 13.11 (excluding this clause (iv)) prior to the disclosure of such Confidential Information; or
- (v) such disclosure is of financial and other information of the type typically disclosed to limited partners and limited liability company members (and prospective transferees or investors thereof) and is made to the partners or members of, and/or prospective investors in, Affiliates of the Members and such partner, Member or prospective investor is bound by the confidentiality provisions of a customary non-disclosure agreement entered into with the disclosing party that covers the Confidential Information so disclosed.

(b) **“Confidential Information”** means any information related to the activities of the Company, the Members and their respective Affiliates that a Member may acquire from the Company or the Members, other than information that (i) is already available through publicly available sources of information (other than as a result of disclosure by such Member), (ii) was available to a Member on a non-confidential basis prior to its disclosure to such Member by the Company, or (iii) becomes available to a Member on a non-confidential basis from a third party, provided such third party is not known by such Member, after reasonable inquiry, to be bound by this Agreement or another confidentiality agreement with the Company. Such Confidential Information may include information that pertains or relates to the business and affairs of any other Member or any other Company matters. Confidential Information may be used by a Member and its Member Parties only in connection with Company matters and in connection with the maintenance of its interest in the Company.

(c) Subject to Section 13.11(d), in the event that any Member or any Member Parties of such Member is required to disclose any of the Confidential Information, such Member shall use reasonable efforts to provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with

the provisions of this Agreement, and such Member shall use reasonable efforts to cooperate with the Company in any effort any such Person undertakes to obtain a protective order or other remedy. In the event that such protective order or other remedy is not obtained, or that the Company waives compliance with the provisions of this Section 13.11, such Member and its Member Parties shall furnish only that portion of the Confidential Information that is legally required and shall exercise all reasonable efforts to obtain reasonably reliable assurance that the Confidential Information shall be accorded confidential treatment.

(d) Notwithstanding anything in this Agreement to the contrary, (i) each Member may disclose to any persons the U.S. federal income tax treatment and tax structure of the Company and the transactions set out in the Reorganization Documents, (ii) nothing in this Agreement limits, restricts or in any other way affects any Member's communication with any Governmental Authority, or communication with any official or staff person of a Governmental Authority, concerning matters relevant to the Governmental Authority that do not constitute attorney-client privileged information of the Company or its Affiliates and (iii) no Member can be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (x) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigation a suspected violation of law or (y) in a complaint or other document filed under seal in a lawsuit or other proceeding. For purpose of the foregoing clause (i), "**tax structure**" is limited to any facts relevant to the U.S. federal income tax treatment of the Company and does not include information relating to the identity of the Company or any Member.

Section 13.12. *Governing Law.* This Agreement and all related claims shall be governed by, construed and enforced in accordance with the internal laws of the State of Delaware, without giving effect to any laws, provisions or rules (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware and without regard to any borrowing statute that would result in the application of the statutes of limitations or repose of any other jurisdiction. In furtherance of the foregoing, the laws of the State of Delaware will control even if under such jurisdiction's choice of law or conflict of law analysis, the substantive or procedural law of some other jurisdiction would ordinarily or necessarily apply.

Article 14

REPRESENTATIONS OF MEMBERS

Section 14.01. *Representations of Members.* Each Member (unless otherwise noted) to which a Unit is issued as of the date of this Agreement represents and warrants to the Company as follows:

(a) The Units issued to such Member, if any, are being acquired for investment for such Member's own account, not as a nominee or agent, and not with a view to or for sale in connection with the distribution thereof.

(b) Such Member has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the Member's investment

in the Units; such Member has the ability to bear the economic risks of such investment; such Member has the capacity to protect its own interests in connection with the transactions contemplated by this Agreement; and such Member has had an opportunity to ask questions and to obtain such financial and other information regarding the Company as such Member deems necessary or appropriate in connection with evaluating the merits of the investment in the Units. Such Member acknowledges that the Units have not been and will not be registered under the Securities Act or under any state securities act and may not be transferred except in compliance with the Securities Act and all applicable state laws.

(c) Each Member qualifies as an Accredited Investor within the meaning of Regulation D promulgated under the Securities Act or the acquisition of its interest otherwise qualifies under an applicable exemption from registration under the Securities Act.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amended and Restated Limited Liability Company Agreement to be duly executed as of the day and year first written above.

COMPANY:

PHD GROUP HOLDINGS LLC

By: /s/ Michelle Hook
Name: Michelle Hook
Title: Chief Financial Officer

PUBCO MEMBER:

PORTILLO'S INC.

By: /s/ Michelle Hook
Name: Michelle Hook
Title: Chief Financial Officer

[Signature Page to Second A&R Limited Liability Company Agreement]

NON-PUBCO MEMBERS:

BROAD STREET PRINCIPAL
INVESTMENTS,
L.L.C.

By: /s/ Jeff Boyd

Name: Jeff Boyd

Title: Vice President

[Signature Page to Second A&R Limited Liability Company Agreement]

STONE STREET 2014, L.P.

By: Bridge Street Opportunity Advisors, L.L.C.,
its General Partner

By: /s/ Jeff Boyd

Name: Jeff Boyd

Title: Vice President

[Signature Page to Second A&R Limited Liability Company Agreement]

BRIDGE STREET 2014, L.P.

By: Bridge Street Opportunity Advisors, L.L.C.,
its General Partner

By: /s/ Jeff Boyd

Name: Jeff Boyd

Title: Vice President

[Signature Page to Second A&R Limited Liability Company Agreement]

WEIL:19813866019168083.0004

MBD 2014, L.P.

By: MBD Advisors, L.L.C., its General Partner

By: /s/ Jeff Boyd

Name: Jeff Boyd

Title: Vice President

[Signature Page to Second A&R Limited Liability Company Agreement]

CARBOPIA HOLDINGS, INC.

By: /s/ Kathryn Sloan

Name: Kathryn Sloan

Title: Vice President

[Signature Page to Second A&R Limited Liability Company Agreement]

WEIL:198138660\9\68083.0004

/s/ Michael Osanloo

Michael Osanloo

/s/ Ann G. Bordelon

Ann G. Bordelon

/s/ Dolf Berle

Dolf Berle

/s/ Gerard J. Hart

Gerard J. Hart

/s/ John Nault

John Nault

/s/ Michael A. Miles, Jr.

Michael A. Miles, Jr.

/s/ Noah Glass

Noah Glass

[Signature Page to Second A&R Limited Liability Company Agreement]

SCHEDULE A

Member Schedule

Effective as of October 25, 2021

| Pubco Member | LLC Units |
|--|------------------|
| Portillo's Inc. | 23,310,810 |
| Non-Pubco Members | LLC Units |
| Berkshire Fund VIII, LP | 29,706,279 |
| Berkshire Investors III LLC | 816,386 |
| Berkshire Investors IV LLC | 2,688,820 |
| Broad Street Principal Investments, L.L.C. | 1,288,540 |
| Stone Street 2014, L.P. | 120,487 |
| Bridge Street 2014, L.P. | 258,481 |
| MBD 2014, L.P. | 85,148 |
| Ann G. Bordelon | 17,789 |
| Noah Glass | 23,309 |
| Gerard J. Hart | 50,072 |
| Michael A. Miles, Jr. | 293,900 |
| Michael Osanloo | 293,900 |
| Dolf Berle | 16,691 |
| John Nault | 13,519 |

[SCHEDULE A]

EXHIBIT A
[FORM OF]
REDEMPTION NOTICE

c/o PHD Group Holdings LLC
2001 Spring Road, Suite 400
Oak Brook, IL 60523
Attention: Michelle G. Hook; Susan B. Shelton
Email: mhook@portillos.com; sshelton@portillos.com
c/o Portillo's Inc.
2001 Spring Road, Suite 400
Oak Brook, IL 60523
Attention: Michelle G. Hook; Susan B. Shelton
Email: mhook@portillos.com; sshelton@portillos.com

Reference is hereby made to the Second Amended and Restated Limited Liability Company Agreement, dated as of October 20, 2021 (as amended from time to time, the "LLC Agreement"), among Portillo's Inc., a Delaware corporation ("Pubco"), PHD Group Holdings LLC, a Delaware limited liability company (the "Company"), and the members from time to time party thereto (each, a "Member"). Capitalized terms used but not defined herein shall have the meanings given to them in the LLC Agreement.

Pursuant and subject to the terms of Article 10 of the LLC Agreement, the undersigned Member hereby transfers and surrenders to the Company the number of Units set forth below in exchange for shares of Class A Common Stock to be issued in its name.

Legal Name of Member: _____

Address: _____

Number of Units: _____

Limitation on Tax Benefit Payments under Section 3.1(c) of the Tax Receivable Agreement (Optional; may indicate a percentage or dollar figure):

[[FORM OF] REDEPTION NOTICE]

The undersigned hereby represents and warrants that (i) the undersigned has full legal capacity to execute and deliver this Redemption Notice and to perform the undersigned's obligations hereunder; (ii) this Redemption Notice has been duly executed and delivered by the undersigned and is the legal, valid and binding obligation of the undersigned enforceable against it in accordance with the terms thereof or hereof, as the case may be, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and the availability of equitable remedies; (iii) the Units subject to this Redemption Notice are being transferred to the Company free and clear of any pledge, lien, security interest, encumbrance, equities or claim; and (iv) no consent, approval, authorization, order, registration or qualification of any third party or with any court or governmental agency or body having jurisdiction over the undersigned or the Units subject to this Redemption Notice is required to be obtained by the undersigned for the transfer of such Units to the Company.

The undersigned hereby irrevocably constitutes and appoints any officer of Pubco or of the Company as the attorney of the undersigned, with full power of substitution and resubstitution in the premises, to do any and all things and to take any and all actions that may be necessary to transfer to the Company the Units subject to this Redemption Notice and to deliver to the undersigned the shares of Class A Common Stock to be delivered in exchange therefor.

Name:

Date:

[Signature Page to Redemption Notice]

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULE 13A-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael Osanloo, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended September 26, 2021 of Portillo's 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 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)) 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) [Omitted];
 - 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;
 - 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 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: November 18, 2021

By: /s/ Michael Osanloo

President, Chief Executive Officer and Director
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO RULE 13A-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Michelle Hook, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended September 26, 2021 of Portillo's Inc.; 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;
2. 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;
3. The registrant's other certifying officer 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)) 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) [Omitted];
 - 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;
 - 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
4. The registrant's other certifying officer 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: November 18, 2021

By: /s/ Michelle Hook

Chief Financial Officer and Treasurer
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Portillo's Inc. (the "Company"), for the quarterly period ended September 26, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of such officer's knowledge:

- 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: November 18, 2021

By: /s/ Michael Osanloo

President, Chief Executive Officer and Director
(Principal Executive Officer)

Date: November 18, 2021

By: /s/ Michelle Hook

Chief Financial Officer and Treasurer
(Principal Financial Officer)