

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 March 27, 2022**

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 April 25, 2022, there were 35,847,171 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 in our Annual Report on Form 10-K for the fiscal year ended December 26, 2021 filed with the Securities and Exchange Commission (the "SEC") on March 10, 2022, which is available on the SEC's website at [www.sec.gov](http://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.

## PART I – FINANCIAL INFORMATION



### Item 1. Financial Statements (Unaudited)

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**PORTILLO'S INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(UNAUDITED)**

(In thousands, except share and per share data)

	March 27, 2022	December 26, 2021
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents and restricted cash	\$ 32,182	\$ 39,263
Accounts receivable	5,401	7,840
Inventory	5,147	6,078
Prepaid expenses	6,155	5,836
Total current assets	48,885	59,017
Property and equipment, net	192,093	190,834
<b>OTHER ASSETS:</b>		
Goodwill	394,298	394,298
Trade names	223,925	223,925
Other intangible assets, net	35,047	35,832
Equity method investment	16,127	16,170
Deferred tax asset	74,289	74,455
Other assets	4,636	5,042
Total other assets	748,322	749,722
<b>TOTAL ASSETS</b>	<b>\$ 989,300</b>	<b>\$ 999,573</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 22,170	\$ 27,249
Current portion of long-term debt	3,324	3,324
Current deferred revenue	5,063	6,893
Accrued expenses	21,265	29,472
Total current liabilities	51,822	66,938
<b>LONG-TERM LIABILITIES:</b>		
Long-term debt, net of current portion	315,619	315,829
Deferred rent	33,324	32,174
Tax receivable agreement liability	156,638	156,638
Other long-term liabilities	4,156	4,588
Total long-term liabilities	509,737	509,229
Total liabilities	561,559	576,167
<b>COMMITMENTS AND CONTINGENCIES (NOTE 15)</b>		
<b>STOCKHOLDERS' EQUITY:</b>		
Preferred stock, \$0.01 par value per share, 10,000,000 shares authorized, — issued and outstanding	—	—
Class A common stock, \$0.01 par value per share, 380,000,000 shares authorized, and 35,807,171 shares issued and outstanding	358	358
Class B common stock, \$0.00001 par value per share, 50,000,000 shares authorized, and 35,673,321 shares issued and outstanding	—	—
Additional paid-in-capital	188,752	186,856
Accumulated deficit	(15,756)	(15,950)
Total stockholders' equity attributable to Portillo's Inc.	173,354	171,264
Non-controlling interest	254,387	252,142
Total stockholders' equity	427,741	423,406
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 989,300</b>	<b>\$ 999,573</b>

See accompanying notes to unaudited condensed consolidated financial statements.

**PORTILLO'S INC**  
**CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS**  
**(UNAUDITED)**

(In thousands, except share and per share data)

	Quarter Ended	
	March 27, 2022	March 28, 2021
<b>REVENUES, NET</b>	\$ 134,482	\$ 117,307
<b>COST AND EXPENSES:</b>		
Restaurant operating expenses:		
Cost of goods sold, excluding depreciation and amortization	46,266	35,024
Labor	37,313	31,030
Occupancy	7,755	6,784
Other operating expenses	15,165	14,708
<b>Total restaurant operating expenses</b>	<b>106,499</b>	<b>87,546</b>
General and administrative expenses	15,687	11,835
Pre-opening expenses	556	1,289
Depreciation and amortization	5,205	6,289
Net income attributable to equity method investment	(123)	(64)
Other income, net	(156)	(441)
<b>OPERATING INCOME</b>	<b>6,814</b>	<b>10,853</b>
Interest expense	6,099	10,729
<b>INCOME BEFORE INCOME TAXES</b>	<b>715</b>	<b>124</b>
Income tax expense	165	—
<b>NET INCOME</b>	<b>550</b>	<b>124</b>
Less: Redeemable preferred units accretion	—	(5,515)
<b>NET INCOME (LOSS) ATTRIBUTABLE TO COMMON UNIT HOLDERS</b>	<b>550</b>	<b>(5,391)</b>
Net income attributable to non-controlling interests	356	—
<b>NET INCOME (LOSS) ATTRIBUTABLE TO PORTILLO'S INC.</b>	<b>194</b>	<b>(5,391)</b>
Income (loss) per common share attributable to Portillo's Inc.:		
Basic	\$ 0.01	\$ (0.11)
Diluted	\$ 0.00	\$ (0.11)
Weighted-average common shares outstanding:		
Basic	35,807,171	51,192,285
Diluted	39,944,086	51,192,285

See accompanying notes to unaudited condensed consolidated financial statements.

**PORTILLO'S INC**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' AND MEMBERS' EQUITY**  
**(UNAUDITED)**

(In thousands, except share data)

	Preferred Units		Quarter Ended March 27, 2022 and March 28, 2021									
	Units	Amounts	Member's Equity	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Deficit	Non- Controlling Interest	Total Stockholders' Equity	
				Shares	Amount	Shares	Amount					
<b>Balance at December 27, 2020</b>	100,000	\$200,571	\$ 140,709	—	\$ —	—	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 140,709
Net income	—	—	124	—	—	—	—	—	—	—	—	124
Equity-based compensation	—	—	105	—	—	—	—	—	—	—	—	105
Repayment of subscription receivable	—	—	250	—	—	—	—	—	—	—	—	250
Redeemable preferred units accretion	—	5,515	(5,515)	—	—	—	—	—	—	—	—	(5,515)
<b>Balance at March 28, 2021</b>	100,000	206,086	135,673	—	—	—	—	—	—	—	—	135,673
<b>Balance at December 26, 2021</b>	—	—	—	35,807,171	358	35,673,321	—	186,856	(15,950)	252,142	—	423,406
Net income	—	—	—	—	—	—	—	—	194	356	—	550
Equity-based compensation	—	—	—	—	—	—	—	1,896	—	1,889	—	3,785
<b>Balance at March 27, 2022</b>	—	\$ —	\$ —	35,807,171	\$ 358	35,673,321	\$ —	\$ 188,752	\$ (15,756)	\$ 254,387	\$ —	\$ 427,741

See accompanying notes to unaudited condensed consolidated financial statements.



**PORTILLO'S INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(UNAUDITED)**  
*(In thousands)*

	<b>Quarter Ended</b>	
	<b>March 27, 2022</b>	<b>March 28, 2021</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income	\$ 550	\$ 124
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	5,205	6,289
Amortization of debt issuance costs and discount	621	961
Loss (gain) on sales of assets	22	(18)
Equity-based compensation	3,785	105
Deferred rent and tenant allowance	1,253	1,080
Deferred income tax expense	165	—
Amortization of deferred lease incentives	(105)	(90)
Gift card breakage	(293)	(255)
Changes in operating assets and liabilities:		
Accounts receivable	1,816	201
Receivables from related parties	(8)	(130)
Inventory	931	1,300
Other current assets	(319)	(184)
Accounts payable	(3,708)	(267)
Accrued expenses and other liabilities	(9,745)	(4,173)
Deferred lease incentives	600	—
Other assets and liabilities	30	105
<b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>	<b>800</b>	<b>5,048</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchase of property and equipment	(6,279)	(10,966)
Purchase of investment securities	—	(200)
Proceeds from the sale of property and equipment	—	34
<b>NET CASH USED IN INVESTING ACTIVITIES</b>	<b>(6,279)</b>	<b>(11,132)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Payments of long-term debt	(831)	(831)
Payment of initial public offering issuance costs	(771)	—
Repayment of stock subscription receivable	—	250
<b>NET CASH USED IN FINANCING ACTIVITIES</b>	<b>(1,602)</b>	<b>(581)</b>
<b>NET DECREASE IN CASH AND CASH EQUIVALENTS AND RESTRICTED CASH</b>	<b>(7,081)</b>	<b>(6,665)</b>
<b>CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT BEGINNING OF THE PERIOD</b>	<b>39,263</b>	<b>41,432</b>
<b>CASH AND CASH EQUIVALENTS AND RESTRICTED CASH AT END OF THE PERIOD</b>	<b>\$ 32,182</b>	<b>\$ 34,767</b>

See accompanying notes to unaudited condensed consolidated financial statements.

**PORTILLO'S INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(UNAUDITED)**  
*(In thousands)*

	Quarter Ended	
	March 27, 2022	March 28, 2021
<b>SUPPLEMENTAL CASH FLOW INFORMATION</b>		
Interest paid	\$ 5,356	\$ 9,803
Income tax paid	—	—
<b>NON-CASH INVESTING AND FINANCING ACTIVITIES:</b>		
Accrued capital expenditures	\$ 1,626	\$ 3,714
Redeemable preferred units accretion	—	(5,515)

See accompanying notes to unaudited condensed consolidated financial statements.

## 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 as sole managing member, the Company operates and controls all of the business and affairs of Portillo's OpCo. As a result, the Company consolidates the financial results of Portillo's OpCo and reports a non-controlling interest representing the economic interest in Portillo's OpCo held by the other members of Portillo's OpCo (the "pre-IPO LLC Members"). Unless the context otherwise requires, references to "we," "us," "our," "Portillo's," and the "Company" refer to Portillo's Inc. and its subsidiaries, including Portillo's OpCo.

The Company operates fast-casual restaurants in Illinois, Indiana, California, Arizona, Florida, Wisconsin, Minnesota, Iowa and Michigan, along with two food production commissaries in Illinois. As of March 27, 2022 and December 26, 2021, the Company had 69 and 68 restaurants in operation, respectively, excluding a restaurant owned by C&O Chicago, LLC ("C&O"), of which Portillo's owns 50% of the equity. The Company also had three non-traditional locations in operation as of March 27, 2022 and December 26, 2021. 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 additionally has a 50% interest in a single restaurant owned by C&O, that is referred to in Note 7. The Company's principal corporate offices are located in Oak Brook, IL.

### Initial Public Offering

The Company's registration statement on Form S-1, as amended (Registration No. 333-259810), related to its initial public offering ("IPO") was declared effective October 20, 2021, and the Company's Class A common stock began trading on the Nasdaq Global Select Market under the symbol "PTLO" 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 overallotment option), at an offering price of \$20.00 per share. The Company received aggregate net proceeds of approximately \$430.0 million after deducting underwriting discounts and commissions of \$29.1 million and other offering expenses of approximately \$7.1 million.

In connection with the IPO, we completed the following:

- We amended and restated the limited liability company agreement of Portillo's OpCo ("LLC Agreement") to, among other things, convert all outstanding equity interests (except for those redeemable preferred units which were redeemed in connection with the IPO) 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 consolidated the financial results of Portillo's OpCo, and a portion of our net income was 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 was under the common control of the pre-IPO LLC Members before and after the Transactions, we measured the assets and liabilities of Portillo's OpCo at their carrying amounts as of the date of the completion of the Transactions.
- 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 entitles 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 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 ("TRA") with certain pre-IPO LLC Members, in which the Company will be generally obligated to pay 85% of the amount of applicable cash savings, if any, in U.S. federal, state, and local income tax that the Company actually realizes or is deemed to realize as a result of (i) our allocable share of existing tax basis in depreciable or amortizable assets relating to LLC Units acquired in the IPO, (ii) certain favorable tax attributes acquired by the Company from Blocker Companies (including net operating losses and the Blocker Companies' allocable share of existing tax basis), (iii) increases in our allocable share of then existing tax basis in depreciable or amortizable assets, and adjustments to the tax basis of the tangible and intangible assets, of Portillo's OpCo and its subsidiaries, as a result of (x) sales or exchanges of interests in Portillo's OpCo (including the repayment of the redeemable preferred units) in connection with the IPO and (y) future or exchanges of LLC Units by pre-IPO LLC Members for Class A common stock and (iv) certain other tax benefits related to entering into the TRA, including payments made under the TRA. We will retain the benefit of the remaining 15% of these tax savings.

## **NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

### **Basis of Presentation**

The accompanying unaudited 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 26, 2021 included in our Annual Report on Form 10-K for the fiscal year ended December 26, 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 consolidated financial statements, and therefore, does not separately present a statement of comprehensive income (loss).

### **Segment Reporting**

The Company owns and operates fast-casual restaurants in the United States, along with two food production commissaries in Illinois. The Company's chief operating decision maker (the "CODM") is its Chief Executive Officer ("CEO"). The CODM reviews financial performance and allocates resources at a consolidated level on a recurring basis. The Company has 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. 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 2022 and 2021 each consist of 52 weeks. The fiscal periods presented in this report are the quarters ended March 27, 2022 and March 28, 2021, 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 consolidated financial statements and notes thereto have been adjusted retroactively to give effect to the 7.4-for-1 reverse common unit split.

## 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. For delivery sales through Portillos.com or the Portillo's App, the Company recognizes revenue, including delivery fees, when the performance obligation is complete and the food is transferred to the customer. For delivery sales through a non-Company owned channel, such as the delivery partner's website or app, as of the end of 2021, we recognize marketplace sales, including third-party delivery menu price premiums, as revenue when the control of the food is transferred to the delivery service, excluding any delivery or service fees charged to the customer. Prior to the end of 2021, this price premium was previously recorded in cost of goods sold, excluding depreciation and amortization. The amount of the price premium recorded in 2021 and prior periods is not material and there is no anticipated or actual impact on operating income or net income for any period.

Generally, revenue is recognized as promised goods or services transfer to the guest or customer in an amount that reflects the consideration we expect to be entitled to in exchange for those goods or services. Revenues are recognized when payment is tendered at the point of sale as the performance obligation has been satisfied. Refer to Note 3. Revenue Recognition for additional detail.

## Recently Issued Accounting Standards

In February 2016, the FASB issued Accounting Standards Update ("ASU") No. 2016-02, Leases (Topic 842) ("ASC 842"), along with related clarifications and improvements. The pronouncement requires lessees to recognize a lease liability, 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 will adopt this standard for the annual period ending December 25, 2022. We expect the adoption of this standard will have a significant impact on the Company's consolidated balance sheet as we recognize the operating lease assets and lease liabilities for our operating leases. We anticipate the adoption will have an immaterial impact on the condensed consolidated statements of operations, stockholders' equity, and 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 does not expect a significant impact on 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 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 recognizes revenue, including third-party menu price premiums, 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 \$0.3 million for each of the quarters ended March 27, 2022 and March 28, 2021, respectively.

The Company's 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 consolidated balance sheets is as follows (in thousands):

	March 27, 2022	December 26, 2021
Gift card liability	\$ 4,992	\$ 6,606

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	
	March 27, 2022	March 28, 2021
Revenue recognized from gift card liability balance at the beginning of the year	\$ 1,806	\$ 1,688

### NOTE 4. INVENTORY

Inventories consisted of the following (in thousands):

	March 27, 2022	December 26, 2021
Raw materials	\$ 3,399	\$ 4,181
Work in progress	124	114
Finished goods	1,057	1,395
Consigned inventory	567	388
	<u>\$ 5,147</u>	<u>\$ 6,078</u>

## NOTE 5. PROPERTY & EQUIPMENT, NET

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

	March 27, 2022	December 26, 2021
Land improvements	\$ 15,560	\$ 15,451
Furniture, fixtures, and equipment	116,734	115,187
Leasehold improvements	142,294	138,923
Transportation equipment	2,203	2,203
Construction-in-progress	8,902	8,300
	285,693	280,064
Less accumulated depreciation	(93,600)	(89,230)
	<u>\$ 192,093</u>	<u>\$ 190,834</u>

Depreciation expense was \$4.4 million and \$4.1 million for the quarters ended March 27, 2022 and March 28, 2021, respectively, and is included in depreciation and amortization in the condensed consolidated statements of operations.

## NOTE 6. 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.

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

	As of March 27, 2022		
	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	(22,150)	33,967
Favorable rental contracts	2,991	(1,911)	1,080
	<u>\$ 283,033</u>	<u>\$ (24,061)</u>	<u>\$ 258,972</u>
	As of December 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	(21,427)	34,690
Favorable rental contracts	2,991	(1,849)	1,142
	<u>\$ 283,033</u>	<u>\$ (23,276)</u>	<u>\$ 259,757</u>

Amortization expense was \$0.8 million and \$2.2 million for the quarters ended March 27, 2022 and March 28, 2021, 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 \$2.3 million, \$3.1 million, \$3.1 million, \$3.0 million, \$2.9 million, \$2.7 million and \$17.9 million, respectively.

## **NOTE 7. EQUITY METHOD INVESTMENT**

The Company has a 50% interest in C&O. The Company accounts for the investment and financial results in the 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):

	<b>March 27, 2022</b>	<b>December 26, 2021</b>
<b>Assets:</b>		
Current assets	\$ 1,917	\$ 1,957
Property, plant, and equipment, net of accumulated depreciation \$5,932 and \$5,951, respectively	866	817
<b>Total assets</b>	<b>2,783</b>	<b>2,774</b>
<b>Liabilities:</b>		
Current liabilities	967	757
Non-current liabilities		
Deferred rent	1,215	1,211
<b>Total liabilities</b>	<b>2,182</b>	<b>1,968</b>
Members' equity	601	806
<b>Total liabilities and members' equity</b>	<b>\$ 2,783</b>	<b>\$ 2,774</b>

	<b>Quarter Ended</b>	
	<b>March 27, 2022</b>	<b>March 28, 2021</b>
<b>Results from operations:</b>		
Sales	\$ 2,858	\$ 2,357
Net income	245	128

## **NOTE 8. 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 March 27, 2022 and December 26, 2021, the fair value of the mutual fund investments and deferred compensation obligations were as follows (in thousands):

	<b>March 27, 2022</b>	<b>December 26, 2021</b>
	<b>Level 1</b>	<b>Level 1</b>
<b>Assets</b> - Investments designated for deferred compensation plan		
Cash/money accounts	\$ 945	\$ 1,482
Mutual Funds	3,312	3,185
Total assets	<u>\$ 4,257</u>	<u>\$ 4,667</u>

As of March 27, 2022 and December 26, 2021, we had no Level 2 or Level 3 assets.

The mutual fund investments and deferred compensation obligations are included in other assets, accrued expenses and other long-term liabilities in the 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 consolidated statements of operations and offsetting increases or decreases in the deferred compensation obligation are recorded in other long-term liabilities in the 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 quarters ended March 27, 2022 and March 28, 2021.

## NOTE 9. DEBT

Debt consisted of the following (in thousands):

	March 27, 2022	December 26, 2021
First Lien Term B-3 Loans	\$ 324,921	\$ 325,752
Revolving Loans	—	—
Unamortized discount and debt issuance costs	(5,978)	(6,599)
Total debt, net	318,943	319,153
Less: current portion	(3,324)	(3,324)
Long-term debt, net	\$ 315,619	\$ 315,829

### 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 to \$50.0 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 March 27, 2022, the interest rate on the Term Loans was 6.50%. As of March 27, 2022 and March 28, 2021, the effective interest rate on the Term Loans was 7.74% and 7.28%, 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 March 27, 2022 and December 26, 2021, the Company had no borrowings under the Revolver outstanding, respectively. As of both March 27, 2022 and March 28, 2021, the interest rate on the Revolver was 3.25%, subject to change based on a consolidated first lien net leverage ratio as defined in the First Lien Credit Agreement. As of both March 27, 2022 and March 28, 2021, the commitment fees, pursuant to the First Lien, to maintain the Revolver were 0.250%. Also pursuant to the First Lien Credit Agreement, as of both March 27, 2022 and March 28, 2021, 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 \$5.0 million of letters of credit issued against the Revolving Facility as of both March 27, 2022 and December 26, 2021, respectively. As of March 27, 2022, the Company had \$45.0 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%.

In connection with the IPO, the Company received aggregate net proceeds of approximately \$430.0 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 in full, including a \$3.1 million prepayment penalty, which was recorded as a loss on debt extinguishment during the year ended December 26, 2021 in the consolidated statement of operations.

### **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.

In connection with the repayment of the Second Lien Term B-3 Loans as described above, deferred financing costs and original issuance discount of \$4.2 million were recorded as a loss on debt extinguishment during the year ended December 26, 2021 in the consolidated statement of operations.

The Company amortized \$0.4 million and \$0.6 million of deferred financing costs, respectively, during each of the quarters ended March 27, 2022 and March 28, 2021, which is included in interest expense in the condensed consolidated statements of operations. In addition, the Company also amortized \$0.2 million and \$0.4 million in original issue discount related to the long-term debt in each of the quarters ended March 27, 2022 and March 28, 2021 which is included in interest expense in the condensed consolidated statements of operations.

Total interest costs incurred were \$6.1 million and \$10.7 million for the quarters ended March 27, 2022 and March 28, 2021, respectively.

As of March 27, 2022 and December 26, 2021, 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 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. These covenants are customary for these types of debt agreements. As of March 27, 2022, the Company was in compliance with all covenants.

## **NOTE 10. NON-CONTROLLING INTERESTS**

In connection with the Transactions described in Note 1. Description Of Business we are the sole managing member of Portillo's OpCo, and as a result, consolidated the financial results of Portillo's OpCo. We report a non-controlling interest representing the LLC interests in Portillo's OpCo held by pre-IPO LLC Members. Changes in our ownership interest in Portillo's OpCo while we retain our controlling interest in Portillo's OpCo will be accounted for as equity transactions. As such, future redemptions or direct exchanges of LLC interests in Portillo's OpCo by the pre-IPO LLC members will result in a change in ownership and reduce the amount recorded as non-controlling interest and increase additional paid-in capital.

As of March 27, 2022, there were 71,480,492 LLC interests outstanding, of which we owned 35,807,171 LLC interests, representing a 50.1% ownership interest in Portillo's OpCo.

## NOTE 11. EQUITY-BASED COMPENSATION

Equity-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 equity-based compensation expense will be recognized at that time.

Equity-based compensation expense included in the Company's consolidated statements of operations is as follows (in thousands):

	Quarter Ended	
	March 27, 2022	March 28, 2021
Labor	\$ 350	\$ —
General and administrative expenses	3,435	105
Total equity-based compensation expense	\$ 3,785	\$ 105

## NOTE 12. INCOME TAXES

As a result of the IPO and Transactions described in Note 1. Description Of Business we became the sole managing member of Portillo's OpCo, and as a result, began consolidating the financial results of Portillo's OpCo. Portillo's OpCo is treated as a partnership for U.S. federal and most applicable state and local income tax purposes. As a partnership, Portillo's OpCo is not subject to U.S. federal and certain state and local income taxes. Any taxable income or loss generated by Portillo's OpCo is passed through to and included in the taxable income or loss of its members, including us, on a pro rata basis. Beginning at the time of the IPO in 2021, we are subject to U.S. federal income taxes, in addition to state and local income taxes with respect to our allocable share of any taxable income or loss of Portillo's OpCo subsequent to the IPO and Transactions, as well as any stand-alone income or loss generated by Portillo's Inc.

### Income Tax Expense

The effective income tax rate for the quarter ended March 27, 2022 was 16.6%. The Company's annual effective tax rate was less than the statutory rate of 21% primarily because the Company is not liable for income taxes on the portion of OpCo's earnings that are attributable to non-controlling interests.

## NOTE 13. EARNINGS (LOSS) PER SHARE

Basic net earnings (loss) per share of Class A Common Stock is computed by dividing net income (loss) attributable to Portillo's Inc. by the weighted-average number of Class A common stock outstanding.

As described in Note 1. Description Of Business, in connection with the IPO, the Portillo's OpCo LLC Agreement was amended and restated to, among other things, (i) to authorize the issuance of two classes of common stock and (ii) convert all outstanding equity interests (except for those redeemable preferred units which were redeemed in connection with the IPO) into LLC Units. For purposes of calculating earnings per share, the prior period amounts have been retroactively adjusted to give effect to the above-mentioned amendment and resulting recapitalization. The computations of earnings per share for periods prior to our IPO do not consider the 23,310,810 shares of Class A common stock issued to investors in our IPO.

Diluted earnings (loss) per share is computed by dividing net income (loss) attributable to Portillo's Inc. by the weighted-average number of dilutive securities, using the treasury stock method.

The computations of basic and diluted earnings (loss) per share for the quarters ended March 27, 2022 and March 28, 2021 are as follows (in thousands):

	Quarter Ended	
	March 27, 2022	March 28, 2021
Net income attributable to common unit holders	\$ 550	\$ (5,391)
Net income attributable to non-controlling interests	356	—
Net income (loss) attributable to Portillo's Inc.	<u>\$ 194</u>	<u>\$ (5,391)</u>
Shares:		
Weighted-average number of common shares outstanding-basic	35,807	51,192
Dilutive share awards	4,137	—
Weighted-average number of common shares outstanding-diluted	39,944	51,192
Basic net income (loss) per share	\$ 0.01	\$ (0.11)
Diluted net income (loss) per share	\$ 0.00	\$ (0.11)

The following shares were excluded from the calculation of diluted earnings per share because they would be anti-dilutive (in thousands):

	Quarter Ended	
	March 27, 2022	March 28, 2021
Shares subject to performance conditions	1,196	319
Shares that were antidilutive	—	365
Total shares excluded from diluted income (loss) per share	<u>1,196</u>	<u>684</u>

## **NOTE 14. 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.

## **NOTE 15. RELATED PARTY TRANSACTIONS**

As of March 27, 2022 and December 26, 2021, the related parties' receivables consisted of a receivable balance due from C&O of \$0.3 million and \$0.4 million, respectively, which is included in accounts receivable in the condensed consolidated balance sheets.

Noah Glass, a member of the Company's Board, is the founder and CEO of Olo, Inc. ("Olo"), a platform the Company uses in connection with our mobile ordering application and delivery.

The Company incurred the following Olo-related costs for the quarter ended March 27, 2022 and March 28, 2021 (in thousands):

	Quarter Ended	
	March 27, 2022	March 28, 2021
Cost of goods sold, excluding depreciation and amortization	\$ 325	\$ 130
Other operating expenses	113	154
Net Olo-related costs	<u>\$ 438</u>	<u>\$ 284</u>

As of March 27, 2022 and December 26, 2021, \$0.1 million and \$0.0 million was payable to Olo and was included in accounts payable in the condensed consolidated balance sheets.

### **Tax Receivable Agreement**

As described in Note 1. Description Of Business, we entered into a TRA with certain members of Portillo's OpCo that provides for the payment by us of 85% of the amount of tax benefits, if any, that Portillo's Inc. actually realizes or in some cases is deemed to realize as a result of certain transactions.

(in thousands)	<b>March 27, 2022</b>	<b>December 26, 2021</b>
Tax receivable agreement liability	\$ 156,638	\$ 156,638

## **NOTE 16. SUBSEQUENT EVENTS**

The Company opened one new restaurant subsequent to March 27, 2022 for a total of 70 restaurants, excluding a restaurant owned by C&O, of which Portillo's owns 50% of the equity.

## 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 consolidated financial statements and accompanying 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 Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 26, 2021 and Part II, Item 1A of this Form 10-Q. The following discussion should be read in conjunction with our Annual Report on Form 10-K for the fiscal year ended December 26, 2021 and the condensed consolidated financial statements and notes thereto included in Part I, Item 1 of this Form 10-Q. All information presented herein is based on our fiscal calendar. Unless otherwise stated, references to particular years, quarters, months or periods refer to our fiscal years and the associated quarters, months and periods of those fiscal years.

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 consolidated financial statements and the accompanying notes thereto included herein.

We have prepared the unaudited 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 Securities and Exchange Commission (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," we have 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, delivery and catering in order to quickly and efficiently serve our guests. No matter how our guests order from us, our highly productive kitchens and team members consistently serve high quality food and deliver a memorable guest experience. We believe the combination of our craveable food, multichannel sales model, dedication to operational excellence, and a distinctive culture driven by our team members gives us a competitive advantage.

As of March 27, 2022, we owned and operated 70 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 March 27, 2022 vs. Quarter Ended March 28, 2021:

- Total revenue increased 14.6% or \$17.2 million to \$134.5 million;
- Same restaurant sales increased 8.2%;
- Operating income decreased \$4.0 million to \$6.8 million;
- Net income increased \$0.4 million to \$0.6 million;
- Restaurant-Level Adjusted EBITDA\* decreased \$1.8 million to \$28.0 million; and
- Adjusted EBITDA\* decreased \$0.9 million to \$17.6 million.

\* Adjusted EBITDA and Restaurant-Level Adjusted EBITDA are non-GAAP measures. Definitions and reconciliations of Adjusted EBITDA to net income and Restaurant-Level Adjusted EBITDA to operating income the most directly comparable financial measures presented in accordance with GAAP, are set forth under the section "Key Performance Indicators and Non-GAAP Financial Measures".

## Recent Developments and Trends

As the COVID-19 Omicron variant began quickly spreading in late 2021 and into the first several weeks of January 2022, our sales and staffing levels were negatively impacted. However, we saw improvements in sales trends and staffing levels beginning in mid-January 2022. Same-restaurant sales during period one of 2022 grew 9.2% and improved to 13.6% growth in period two of 2022 and grew 2.5% in period three of 2022. During period three of 2022, we were comparing against a same-restaurant sales increase of 24.6% in period three of 2021.

During the first quarter ended March 27, 2022, we also experienced unprecedented commodity inflation, with the highest impact in pork, chicken and beef prices. While we expect these commodity pressures to continue in fiscal 2022, we do not believe they will have a material impact to our long-term growth and profitability. Additionally, we experienced higher labor expenses during the first quarter of 2022 versus the first quarter of 2021 and anticipate additional wage investments in fiscal 2022. These wage investments, along with expected commodity inflation in the range of 13% to 15%, will have an impact to Restaurant-Level Adjusted EBITDA Margin in fiscal 2022. We plan to partially offset these expense increases through menu price increases and operational efficiencies. During the first quarter of 2022, we increased certain menu prices by approximately 1.5%, and expect additional menu price increases during the second quarter of 2022. Absent significant and prolonged COVID-19 relapses or global economic disruptions, and based on the current trend of our business operations and our focused efforts to elevate guest experiences and enhance digital capabilities, we believe the strength of our brand will deliver consistent, long-term growth.

## Development Highlights

One new restaurant was opened during the first quarter ending March 27, 2022. The opening of this restaurant brings the total restaurant count to 70 as of March 27, 2022, including a restaurant owned by C&O of which Portillo's owns 50% of the equity.

Location	Opening Date
Joliet, Illinois	February 2022



## Consolidated Results of Operations

The following table summarizes our results of operations for the quarters ended March 27, 2022 and March 28, 2021 (in thousands):

	Quarter Ended			
	March 27, 2022		March 28, 2021	
<b>REVENUES, NET</b>	\$ 134,482	100.0 %	\$ 117,307	100.0 %
<b>COST AND EXPENSES:</b>				
Restaurant operating expenses:				
Cost of goods sold, excluding depreciation and amortization	46,266	34.4 %	35,024	29.9 %
Labor	37,313	27.7 %	31,030	26.5 %
Occupancy	7,755	5.8 %	6,784	5.8 %
Other operating expenses	15,165	11.3 %	14,708	12.5 %
<b>Total restaurant operating expenses</b>	<b>106,499</b>	<b>79.2 %</b>	<b>87,546</b>	<b>74.6 %</b>
General and administrative expenses	15,687	11.7 %	11,835	10.1 %
Pre-opening expenses	556	0.4 %	1,289	1.1 %
Depreciation and amortization	5,205	3.9 %	6,289	5.4 %
Net income attributable to equity method investment	(123)	(0.1)%	(64)	(0.1)%
Other income, net	(156)	(0.1)%	(441)	(0.4)%
<b>OPERATING INCOME</b>	<b>6,814</b>	<b>5.1 %</b>	<b>10,853</b>	<b>9.3 %</b>
Interest expense	6,099	4.5 %	10,729	9.1 %
<b>INCOME BEFORE INCOME TAXES</b>	<b>715</b>	<b>0.5 %</b>	<b>124</b>	<b>0.1 %</b>
Income tax expense	165	0.1 %	—	— %
<b>NET INCOME</b>	<b>550</b>	<b>0.4 %</b>	<b>124</b>	<b>0.1 %</b>
Less: Redeemable preferred units accretion	—	— %	(5,515)	(4.7)%
<b>NET INCOME (LOSS) ATTRIBUTABLE TO COMMON HOLDERS</b>	<b>550</b>	<b>0.4 %</b>	<b>(5,391)</b>	<b>(4.6)%</b>
Net income attributable to non-controlling interests	356	0.3 %	—	— %
<b>NET INCOME (LOSS) ATTRIBUTABLE TO PORTILLO'S INC.</b>	<b>\$ 194</b>	<b>0.1 %</b>	<b>\$ (5,391)</b>	<b>(4.6)%</b>

### Revenues, Net

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, third-party delivery platform prices and product mix. At the end of 2021, the Company began to record the difference in higher third-party delivery menu prices, versus regular menu prices, in revenues. This markup was previously recorded in cost of goods sold, excluding depreciation and amortization. As a result, we anticipate this change to positively impact our same-restaurant sales growth by 2%-3% in each quarter in 2022 and for the full fiscal year 2022, with a corresponding increase to costs of goods sold, excluding depreciation and amortization. There is no anticipated or actual impact on operating income for any period. See Note 2. Summary Of Significant Accounting Policies-Revenue Recognition, for more information.

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Revenues for the quarter ended March 27, 2022 were \$134.5 million compared to \$117.3 million for the quarter ended March 28, 2021, an increase of \$17.2 million or 14.6%. The increase in revenues was primarily attributed to an increase in our same-restaurant sales and the opening of five new restaurants in 2021 and one new restaurant during the quarter ended March 27, 2022. The new restaurants positively impacted revenues by approximately \$8.5 million in the quarter ended March 27, 2022. Same-restaurant sales increased 8.2% during the first quarter ended March 27, 2022, which was attributable to an increase in average check of 7.5% and a 2.9% impact from the change in recording third-party delivery pricing, offset by a decline in traffic of 2.2%. The higher average check was primarily driven by an increase in menu prices and to a lesser extent, mix of items sold. We increased prices approximately 1.5% in the first quarter of 2022 and expect to additionally increase prices in the second quarter of 2022 to continue to combat inflationary cost pressures. For the purpose of calculating same-restaurant sales for March 27, 2022, sales for 61 restaurants were included in the Comparable Restaurant Base (as defined in "Selected Operating Data" below) versus 58 as of the quarter ended March 28, 2021.

### **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 and third-party delivery commissions. 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. We anticipate the comparability of cost of goods sold, excluding depreciation and amortization, to be impacted in 2022 versus 2021 due to the aforementioned change in how the Company records third-party delivery menu prices. There is no anticipated or actual impact on operating income for any period.

Cost of goods sold, excluding depreciation and amortization for the quarter ended March 27, 2022 was \$46.3 million compared to \$35.0 million for the quarter ended March 28, 2021, an increase of \$11.2 million or 32.1%. This increase was primarily driven by a 15.7% increase in all commodity prices, with higher impacts in pork, chicken and beef prices; the impact of how the Company records third-party delivery menu prices; and the opening of five new restaurants in 2021 and one new restaurant during the quarter ended March 27, 2022. As a percentage of revenues, cost of goods sold, excluding depreciation and amortization increased 4.5% during the quarter ended March 27, 2022. The increase was primarily due to an increase in all commodity prices and the impact of how the Company records third-party delivery menu prices, partially offset by 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 March 27, 2022 were \$37.3 million compared to \$31.0 million for the quarter ended March 28, 2021, an increase of \$6.3 million or 20.2%. This increase was primarily driven the opening of five new restaurants in 2021 and one new restaurant during the quarter ended March 27, 2022, incremental investments to support our team members, primarily hourly rate increases made in the second quarter of 2021, and the comparative impact of continued expansion of our dine-in capacity. As a percentage of revenues, labor increased 1.2% due primarily to the aforementioned incremental hourly rate increases to support our team members and continued expansion of our dine-in capacity, partially offset by an increase in our average check and the favorable effect resulting from the leverage of higher revenues due to the impact of how the Company records third-party delivery menu prices.

### **Occupancy Expenses**

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

Occupancy expenses for the quarter ended March 27, 2022 were \$7.8 million compared to \$6.8 million for the quarter ended March 28, 2021, an increase of \$1.0 million or 14.3%, primarily driven by the opening of five new restaurants in 2021 and one new restaurant during the quarter ended March 27, 2022.

### **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.

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Other operating expenses for the quarter ended March 27, 2022 were \$15.2 million compared to \$14.7 million for the quarter ended March 28, 2021, an increase of \$0.5 million or 3.1%, primarily driven by the opening of five new restaurants in 2021 and one new restaurant during the quarter ended March 27, 2022 as well as an increase in repair and maintenance, offset by a reduction in utility and uniform costs.

### **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 equity-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 March 27, 2022 were \$15.7 million compared to \$11.8 million for the quarter ended March 28, 2021, an increase of \$3.9 million or 32.5%. This increase was primarily driven by an increase in equity-based compensation of \$3.3 million. The remainder of the increase is related to a \$0.7 million increase in transaction-related fees and expenses, consisting primarily of certain professional fees.

### **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 March 27, 2022 were \$0.6 million compared to \$1.3 million for the quarter ended March 28, 2021, a decrease of \$0.7 million or 56.9%. This decrease was due to the timing and geographic location of restaurant openings in the first quarter of 2022 versus 2021.

### **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.

Depreciation and amortization expense for the quarter ended March 27, 2022 was \$5.2 million compared to \$6.3 million for the quarter ended March 28, 2021, a decrease of \$1.1 million or 17.2%. This decrease was primarily attributable to an expired non-compete intangible asset, partially offset by incremental depreciation of capital expenditures related to the opening of five new restaurants in 2021 and one new restaurant during the quarter ended March 27, 2022.

### **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 was \$0.1 million for each of the quarters ended March 27, 2022 and March 28, 2021.

### **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 March 27, 2022 was \$0.2 million compared to \$0.4 million for the quarter ended March 28, 2021 a decrease of \$0.3 million or 64.6%. This decrease was primarily due to a decrease in trading gains in our deferred compensation plan.

### **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 the quarter ended March 27, 2022 was \$6.1 million compared to \$10.7 million for quarter ended March 28, 2021, a decrease of \$4.6 million or 43.2%. This decrease was primarily driven by the payoff of the Second Term B-3 Loans with the use of IPO proceeds during the year ended December 26, 2021 and decreased borrowings on the First Lien Term B-3 Loans during the quarter ended March 27, 2022. There were no outstanding borrowings under the Revolving Facility during the quarter ended March 27, 2022 or the quarter ended March 28, 2021.

### **Income Tax Expense**

Portillo's OpCo is treated as a partnership for U.S. federal, as well as state and local income tax purposes and is not subject to taxes. Rather, any taxable income or loss generated by Portillo's OpCo is passed through to and included in the taxable income or loss of its members on a pro rata basis. As of the IPO, we are subject to U.S. federal, as well as state and local income taxes with respect to our allocable share of any taxable income or loss of Portillo's OpCo, as well as any stand-alone income or loss generated by Portillo's Inc.

Income tax expense for the quarter ended March 27, 2022 was \$0.2 million. Our effective income tax rate for quarter ended March 27, 2022 was 16.6%. There was no income tax expense for the quarter ended March 28, 2021.

### **Net Income Attributable to Non-controlling Interests**

In connection with the IPO, we became the sole managing member of Portillo's OpCo. We manage and operate the business and control the strategic decisions and day-to-day operations of Portillo's OpCo and we also have a substantial financial interest in Portillo's OpCo. Accordingly, we consolidate the financial results of Portillo's OpCo, and a portion of our net income is allocated to non-controlling interests to reflect the entitlement of the pre-IPO LLC Members who retained their equity ownership in Portillo's OpCo (the "pre-IPO LLC Members"). The weighted average ownership percentages for the applicable reporting periods are used to attribute net income (loss) to Portillo's Inc. and the non-controlling interest holders.

Net income attributable to non-controlling interests for the quarter ended March 27, 2022 was \$0.4 million. There was no such income (loss) for the quarter ended March 28, 2021.

## Key Performance Indicators and Non-GAAP Financial Measures

In addition to the GAAP measures presented in our financial statements, we use the following key performance indicators and non-GAAP financial measures to evaluate our business, measure our performance, develop financial forecasts and make strategic decisions. These key measures include new restaurant openings, average unit volume ("AUV"), same-restaurant sales, Adjusted EBITDA, Adjusted EBITDA Margin, Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin. The Company includes these 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	
	March 27, 2022	March 28, 2021
Total Restaurants (a)	70	65
AUV (in millions) (a)	\$ 8.3	\$ 7.6
Change in same-restaurant sales (b)	8.2 %	0.8 %
Adjusted EBITDA (in thousands)	\$ 17,630	\$ 18,534
Adjusted EBITDA Margin	13.1 %	15.8 %
Restaurant-Level Adjusted EBITDA (in thousands)	\$ 27,983	\$ 29,761
Restaurant-Level Adjusted EBITDA Margin	20.8 %	25.4 %

(a) Includes a restaurant that is owned by C&O, of which Portillo's owns 50% of the equity, as described in Note 7. Equity Method Investment in the notes to the unaudited condensed consolidated financial statements. AUVs for the quarters ended March 27, 2022 and March 28, 2021 represent AUVs for the twelve months ended March 27, 2022 and March 28, 2021, 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 quarters ended March 27, 2022 and March 28, 2021, there were 61 and 58 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 7. 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, including a restaurant that is owned by C&O, 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, and Restaurant-Level Adjusted EBITDA and Restaurant-Level Adjusted EBITDA Margin. Accordingly, these measures are not required by, nor presented in accordance with GAAP, but rather are supplemental measures of operating performance of our restaurants. You should be aware that these measures are not indicative of overall results for the Company and that 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. These measures are supplemental measures of operating performance and our calculations thereof may not be comparable to similar measures reported by other companies. These measures are important measures to evaluate the performance and profitability of our restaurants, individually and in the aggregate, but also have important limitations as analytical tools and should not be considered in isolation as substitutes for analysis of our results as reported under GAAP.

## Adjusted EBITDA and Adjusted EBITDA Margin

Adjusted EBITDA represents net income 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, the most directly comparable GAAP measure to Adjusted EBITDA. 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.

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

	Quarter Ended	
	March 27, 2022	March 28, 2021
Net income	\$ 550	\$ 124
Depreciation and amortization	5,205	6,289
Interest expense	6,099	10,729
Income tax expense	165	—
EBITDA	12,019	17,142
Deferred rent (1)	1,081	796
Equity-based compensation	3,785	105
Consulting fees (2)	—	500
Other loss (income) (3)	31	(9)
Transaction-related fees & expenses (4)	714	—
Adjusted EBITDA	\$ 17,630	\$ 18,534
Adjusted EBITDA Margin	13.1 %	15.8 %

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

(2) Represents consulting fees related to our former owner.

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

(4) Represents the exclusion of certain expenses that management believes are not indicative of ongoing operations, consisting primarily of certain professional fees.

## 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.

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.

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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	
	March 27, 2022	March 28, 2021
Operating income	\$ 6,814	\$ 10,853
Plus:		
General and administrative expenses	15,687	11,835
Pre-opening expenses	556	1,289
Depreciation and amortization	5,205	6,289
Net income attributable to equity method investment	(123)	(64)
Other income, net	(156)	(441)
Restaurant-Level Adjusted EBITDA	\$ 27,983	\$ 29,761
Restaurant-Level Adjusted EBITDA Margin	20.8 %	25.4 %

## 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 March 27, 2022, we maintained a cash and cash equivalents and restricted cash balance of \$32.2 million and had \$45.0 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.

Based upon current levels of operations and anticipated growth, we expect that cash flows from operations will be sufficient to meet our needs for at least the next twelve months and the foreseeable future.

## 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 \$430.0 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, we entered into a Tax Receivable Agreement ("TRA") with certain of our pre-IPO LLC Members, in which we will generally be required to pay 85% of the amount of cash savings, if any, in U.S. federal, state, and local income tax that we actually realize or be deemed to realize, as a result of (i) our allocable share of existing tax basis in depreciable or amortizable assets relating to LLC Units acquired in the IPO, (ii) certain favorable tax attributes acquired by the Company from entities treated as corporations for U.S. tax purposes that held LLC Units prior to the Transactions ("Blocker Companies") (including net operating losses and the Blocker Companies' allocable share of existing tax basis), (iii) increases in our allocable share of then existing tax basis in depreciable or amortizable assets, and adjustments to the tax basis of the tangible and intangible assets, of Portillo's OpCo and its subsidiaries, as a result of (x) sales or exchanges of interests in Portillo's OpCo (including the repayment of the redeemable preferred units) in connection with the IPO and (y) future exchanges of LLC Units by pre-IPO LLC Members for Class A common stock and (iv) certain other tax benefits related to entering into the TRA, including payments made under the TRA.

As of March 27, 2022, such TRA obligations totaled \$156.6 million. Amounts payable under the TRA are contingent upon, among other things, (i) generation of future taxable income over the term of the TRA and (ii) future changes in tax laws. If we do not generate sufficient taxable income in the aggregate over the term of the TRA to utilize the tax benefits, then we would not be required to make the related TRA payments. The payments that we are required to make will generally reduce the amount of overall cash flow that might have otherwise been available to us, but we expect the cash tax savings we will realize to fund the required payments. Assuming no material changes in relevant tax law and that we earn sufficient taxable income to realize all tax benefits that are subject to the TRA, we estimate that the tax savings associated with all tax attributes described above would aggregate to approximately \$184.2 million as of March 27, 2022. Under this scenario, we would be required to pay the TRA Parties approximately 85% of such amount, or \$156.6 million, primarily over the next 15 years, substantially declining in year 16 through year 47.

## Summary of Cash Flows

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

(in thousands)

	Quarter Ended	
	March 27, 2022	March 28, 2021
Net cash provided by operating activities	\$ 800	\$ 5,048
Net cash used in investing activities	(6,279)	(11,132)
Net cash used in financing activities	(1,602)	(581)
Net decrease in cash and cash equivalents and restricted cash	(7,081)	(6,665)
Cash and cash equivalents and restricted cash at beginning of period	39,263	41,432
Cash and cash equivalents and restricted cash at end of period	\$ 32,182	\$ 34,767

### Operating Activities

Net cash provided by operating activities for the quarter ending March 27, 2022 was \$0.8 million compared to net cash provided by operating activities of \$5.0 million for the quarter ending March 28, 2021, a decrease of \$4.2 million or 84.2%. This decrease was primarily driven by a decrease in the change in operating assets and liabilities of \$7.3 million, partially offset by an increase in non-cash charges of \$2.6 million and an increase in net income of \$0.4 million.

The \$7.3 million change in our operating asset and liability balances was primarily driven by operating assets and liabilities being a use of net cash of \$10.4 million in the quarter ending March 27, 2022, compared to a use of net cash of \$3.1 million in quarter ending March 28, 2021 driven by the change in accounts payable and accrued expenses and other liabilities in the quarter ending March 27, 2022.

### Investing Activities

Net cash used in investing activities was \$6.3 million for the quarter ending March 27, 2022 compared to net cash used in investing activities of \$11.1 million for the quarter ending March 28, 2021, a decrease of \$4.9 million or 43.6%. This decrease was primarily due to the timing of restaurant openings in 2022 compared to the timing of restaurant openings in 2021.

### Financing Activities

Net cash used in financing activities was \$1.6 million for the quarter ending March 27, 2022 compared to net cash used in financing activities of \$0.6 million for the quarter ending March 28, 2021, an increase of \$1.0 million. This increase is primarily due to a \$0.8 million payment of initial public offering issuance costs in the quarter ending March 27, 2022, which were accrued for as of December 26, 2022.

### 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.

As of March 27, 2022, there were no borrowings outstanding under the Revolver. We had \$45.0 million of availability, as of March 27, 2022, after giving effect to \$5.0 million in outstanding letters of credit.



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In connection with the IPO, the Company received aggregate net proceeds of approximately \$430.0 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.

Borrowings under the First 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. These covenants are customary for these types of debt agreements. As of March 27, 2022, the Company was in compliance with all covenants.

## **Material Cash Requirements**

There have been no material changes to the material cash requirements as disclosed in our Annual Report on Form 10-K for the fiscal year ended December 26, 2021, other than those payments made in the ordinary course of business.

## **Critical Accounting Estimates**

This discussion and analysis of financial condition and results of operations is based upon the Company's condensed consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP"). The preparation of these financial statements requires the Company to make estimates, judgments, and assumptions that can have a meaningful effect on the reporting of condensed consolidated financial statements. There have been no significant changes to our critical accounting estimates or significant accounting policies as disclosed in our Annual Report on Form 10-K for the fiscal year ended December 26, 2021.

See Note 2. Summary of Significant Accounting Policies under Part I, Item 1 of this Form 10-Q for an analysis of recently issued accounting pronouncements.

## **JOBS Act**

We qualify as an emerging growth company ("EGC") pursuant to the provisions of the Jumpstart our Business Startups ("JOBS") Act. For as long as we are an EGC, we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not EGCs, 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 EGC 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 EGC 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.

We will remain an EGC until the last day of the fiscal year following the fifth anniversary of the date of the first sale of our Class A common stock pursuant to an effective registration statement, which was October 21, 2021, unless, prior to that time, we have more than \$1.07 billion in annual gross revenue, have a market value for our Class A common stock held by non-affiliates of more than \$700 million as of the last day of our second fiscal quarter of the fiscal year and a determination is made that we are deemed to be a "large accelerated filer," as defined in Rule 12b-2 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or issue more than \$1.0 billion of non-convertible debt over a three-year period, whether or not issued in a registered offering. We have availed ourselves of the reduced reporting obligations with respect to executive compensation disclosure and expect to continue to avail ourselves of the reduced reporting obligations available to EGCs in future filings.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

There have been no material changes to our exposure to market risks as described in Part II, Item 7A of our Annual Report on Form 10-K for the fiscal year ended December 26, 2021.

### **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 March 27, 2022 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 14. 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 to the risk factors disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended December 26, 2021.

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

None.

### 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>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: May 5, 2022

By: /s/ Michael Osanloo

Michael Osanloo  
President, Chief Executive Officer and Director  
(Principal Executive Officer)

Date: May 5, 2022

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 66⅔% 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.

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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]*

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**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 Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Corporation of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding, and regardless of such Indemnitee's ability to repay any such amounts in the event of an ultimate determination that Indemnitee is not entitled thereto. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee 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 (Indemnitee) 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 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, 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 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 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.

**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 March 27, 2022 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: May 5, 2022

By: /s/ Michael Osanloo

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 March 27, 2022 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  
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):
4.
  - 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: May 5, 2022

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 March 27, 2022, 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: May 5, 2022

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

Date: May 5, 2022

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