
**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 October 1, 2019

or

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

Commission File Number: 0-20574

THE CHEESECAKE FACTORY INCORPORATED

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation or organization)

51-0340466

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

**26901 Malibu Hills Road
Calabasas Hills, California**

(Address of principal executive offices)

91301

(Zip Code)

(818) 871-3000

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

<u>Title of Each Class</u>	<u>Trading Symbol</u>	<u>Name of Each Exchange on which Registered</u>
Common Stock, par value \$.01 per share	CAKE	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 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, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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

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

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

As of November 1, 2019, 44,633,789 shares of the registrant's Common Stock, \$.01 par value per share, were outstanding.

THE CHEESECAKE FACTORY INCORPORATED
INDEX

	<u>Page</u> <u>Number</u>
PART I	
FINANCIAL INFORMATION	
Item 1. Unaudited Financial Statements:	1
Condensed Consolidated Balance Sheets	1
Condensed Consolidated Statements of Income	2
Condensed Consolidated Statements of Comprehensive Income	3
Condensed Consolidated Statement of Stockholders' Equity	4
Condensed Consolidated Statements of Cash Flows	6
Notes to Condensed Consolidated Financial Statements	7
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	17
Item 3. Quantitative and Qualitative Disclosures About Market Risk	26
Item 4. Controls and Procedures	27
PART II	
OTHER INFORMATION	27
Item 1. Legal Proceedings	27
Item 1A. Risk Factors	28
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	29
Item 6. Exhibits	30
Signatures	31

PART I — FINANCIAL INFORMATION
Item 1. Financial Statements.

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)
(Unaudited)

	October 1, 2019	January 1, 2019
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 306,252	\$ 26,578
Accounts receivable	16,356	20,928
Income taxes receivable	8,415	—
Other receivables	31,445	68,193
Inventories	47,778	38,886
Prepaid expenses	38,895	40,645
Total current assets	449,141	195,230
Property and equipment, net	759,243	913,275
Other assets:		
Intangible assets, net	20,271	26,209
Prepaid rent	—	34,961
Operating lease assets	984,838	—
Investments in unconsolidated affiliates	69,328	79,767
Other	98,949	64,691
Total other assets	1,173,386	205,628
Total assets	<u>\$ 2,381,770</u>	<u>\$ 1,314,133</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 36,095	\$ 49,071
Income taxes payable	—	712
Gift card liabilities	135,566	172,336
Operating lease liabilities	90,027	—
Other accrued expenses	172,098	194,381
Total current liabilities	433,786	416,500
Deferred income taxes	38,449	52,123
Deferred rent liabilities	—	79,697
Deemed landlord financing liabilities	—	113,095
Long-term debt	335,000	10,000
Operating lease liabilities	959,632	—
Other noncurrent liabilities	81,087	71,659
Commitments and contingencies (Note 7)		
Stockholders' equity:		
Preferred stock, \$.01 par value, 5,000,000 shares authorized; none issued	—	—
Common stock, \$.01 par value, 250,000,000 shares authorized; 97,548,633 and 96,621,990 issued at October 1, 2019 and January 1, 2019, respectively	975	967
Additional paid-in capital	850,485	828,676
Retained earnings	1,375,690	1,384,494
Treasury stock, 52,906,744 and 51,791,941 shares at cost at October 1, 2019 and January 1, 2019, respectively	(1,692,701)	(1,642,140)
Accumulated other comprehensive loss	(633)	(938)
Total stockholders' equity	533,816	571,059
Total liabilities and stockholders' equity	<u>\$ 2,381,770</u>	<u>\$ 1,314,133</u>

See the accompanying notes to the condensed consolidated financial statements.

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share data)
(Unaudited)

	Thirteen Weeks Ended October 1, 2019	Thirteen Weeks Ended October 2, 2018	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
Revenues	\$ 586,536	\$ 575,160	\$ 1,788,662	\$ 1,747,176
Costs and expenses:				
Cost of sales	132,941	132,168	403,566	398,059
Labor expenses	213,600	203,449	648,831	624,432
Other operating costs and expenses	149,397	140,975	451,724	426,466
General and administrative expenses	39,746	37,469	116,116	118,166
Depreciation and amortization expenses	21,342	24,090	64,363	71,819
Impairment of assets and lease terminations	—	263	—	2,846
Preopening costs	2,546	3,251	6,851	5,799
Total costs and expenses	<u>559,572</u>	<u>541,665</u>	<u>1,691,451</u>	<u>1,647,587</u>
Income from operations	26,964	33,495	97,211	99,589
Loss on investment in unconsolidated affiliates	(10,345)	(1,558)	(13,439)	(2,686)
Interest and other income/(expense), net	6	(1,732)	(17)	(5,018)
Income before income taxes	16,625	30,205	83,755	91,885
Income tax provision	535	1,730	5,171	9,028
Net income	<u>\$ 16,090</u>	<u>\$ 28,475</u>	<u>\$ 78,584</u>	<u>\$ 82,857</u>
Net income per share:				
Basic	<u>\$ 0.37</u>	<u>\$ 0.63</u>	<u>\$ 1.78</u>	<u>\$ 1.82</u>
Diluted	<u>\$ 0.36</u>	<u>\$ 0.61</u>	<u>\$ 1.76</u>	<u>\$ 1.79</u>
Weighted average shares outstanding:				
Basic	43,682	45,321	44,034	45,418
Diluted	44,186	46,368	44,643	46,400

See the accompanying notes to the condensed consolidated financial statements.

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands)
(Unaudited)

	Thirteen Weeks Ended October 1, 2019	Thirteen Weeks Ended October 2, 2018	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
Net income	\$ 16,090	\$ 28,475	\$ 78,584	\$ 82,857
Other comprehensive gain/(loss):				
Foreign currency translation adjustment	(109)	272	305	(223)
Other comprehensive gain/(loss)	(109)	272	305	(223)
Total comprehensive income	<u>\$ 15,981</u>	<u>\$ 28,747</u>	<u>\$ 78,889</u>	<u>\$ 82,634</u>

See the accompanying notes to the condensed consolidated financial statements

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(In thousands)
(Unaudited)

For the thirty-nine weeks ended October 1, 2019:

	Shares of Common Stock	Common Stock	Additional Paid-in Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Loss	Total
Balance, January 1, 2019	96,622	\$ 967	\$ 828,676	\$ 1,384,494	\$ (1,642,140)	\$ (938)	\$ 571,059
Cumulative effect of adopting the pronouncement related to lease accounting, net of tax	—	—	—	(41,466)	—	—	(41,466)
Balance, January 1, 2019, as adjusted	96,622	967	828,676	1,343,028	(1,642,140)	(938)	529,593
Net income	—	—	—	26,984	—	—	26,984
Foreign currency translation adjustment	—	—	—	—	—	239	239
Cash dividends declared Common stock, \$0.33 per share	—	—	—	(14,952)	—	—	(14,952)
Stock-based compensation	350	3	5,907	—	—	—	5,910
Common stock issued under stock-based compensation plans	412	4	5,537	—	—	—	5,541
Treasury stock purchases	—	—	—	—	(11,071)	—	(11,071)
Balance, April 2, 2019	97,384	\$ 974	\$ 840,120	\$ 1,355,060	\$ (1,653,211)	\$ (699)	\$ 542,244
Net income	—	—	—	35,510	—	—	35,510
Foreign currency translation adjustment	—	—	—	—	—	175	175
Cash dividends declared Common stock, \$0.33 per share	—	—	—	(14,899)	—	—	(14,899)
Stock-based compensation	47	1	4,691	—	—	—	4,692
Common stock issued under stock-based compensation plans	49	—	650	—	—	—	650
Treasury stock purchases	—	—	—	—	(28,093)	—	(28,093)
Balance, July 2, 2019	97,480	\$ 975	\$ 845,461	\$ 1,375,671	\$ (1,681,304)	\$ (524)	\$ 540,279
Net income	—	—	—	16,090	—	—	16,090
Foreign currency translation adjustment	—	—	—	—	—	(109)	(109)
Cash dividends declared Common stock, \$0.36 per share	—	—	—	(16,071)	—	—	(16,071)
Stock-based compensation	13	—	4,699	—	—	—	4,699
Common stock issued under stock-based compensation plans	56	0	325	—	—	—	325
Treasury stock purchases	—	—	—	—	(11,397)	—	(11,397)
Balance, October 1, 2019	97,549	\$ 975	\$ 850,485	\$ 1,375,690	\$ (1,692,701)	\$ (633)	\$ 533,816

See the accompanying notes to the condensed consolidated financial statements.

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(In thousands)
(Unaudited)

For the thirty-nine weeks ended October 2, 2018:

	Shares of Common Stock	Common Stock	Additional Paid-in Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Loss	Total
Balance, January 2, 2018	95,412	\$ 954	\$ 799,862	\$ 1,345,666	\$ (1,532,864)	\$ (88)	\$ 613,530
Cumulative effect of adopting the pronouncement related to revenue recognition, net of tax	—	—	—	(3,560)	—	—	(3,560)
Balance, January 2, 2018, as adjusted	95,412	954	799,862	1,342,106	(1,532,864)	(88)	609,970
Net income	—	—	—	26,029	—	—	26,029
Foreign currency translation adjustment	—	—	—	—	—	(246)	(246)
Cash dividends declared Common stock, \$0.29 per share	—	—	—	(13,280)	—	—	(13,280)
Stock-based compensation	334	4	6,079	—	—	—	6,083
Common stock issued under stock-based compensation plans	211	2	538	—	—	—	540
Treasury stock purchases	—	—	—	—	(34,903)	—	(34,903)
Balance, April 3, 2018	95,957	\$ 960	\$ 806,479	\$ 1,354,855	\$ (1,567,767)	\$ (334)	\$ 594,193
Net income	—	—	—	28,353	—	—	28,353
Foreign currency translation adjustment	—	—	—	—	—	(249)	(249)
Cash dividends declared Common stock, \$0.29 per share	—	—	—	(13,296)	—	—	(13,296)
Stock-based compensation	45	—	5,130	—	—	—	5,130
Common stock issued under stock-based compensation plans	227	2	5,775	—	—	—	5,777
Treasury stock purchases	—	—	—	—	(7,126)	—	(7,126)
Balance, July 3, 2018	96,229	\$ 962	\$ 817,384	\$ 1,369,912	\$ (1,574,893)	\$ (583)	\$ 612,782
Net income	—	—	—	28,475	—	—	28,475
Foreign currency translation adjustment	—	—	—	—	—	272	272
Cash dividends declared Common stock, \$0.33 per share	—	—	—	(15,082)	—	—	(15,082)
Stock-based compensation	51	—	4,803	—	—	—	4,803
Common stock issued under stock-based compensation plans	108	1	1,019	—	—	—	1,020
Treasury stock purchases	—	—	—	—	(18,864)	—	(18,864)
Balance, October 2, 2018	96,388	\$ 963	\$ 823,206	\$ 1,383,305	\$ (1,593,757)	\$ (311)	\$ 613,406

See the accompanying notes to the condensed consolidated financial statements.

THE CHEESECAKE FACTORY INCORPORATED
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
Cash flows from operating activities:		
Net income	\$ 78,584	\$ 82,857
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation and amortization expenses	64,363	71,819
Deferred income taxes	(2,640)	916
Impairment of assets and lease terminations	—	2,532
Stock-based compensation	15,135	15,807
Loss from investments in unconsolidated affiliates	13,439	2,686
Changes in assets and liabilities:		
Accounts and other receivable	40,634	35,747
Income taxes receivable/payable	(9,127)	11,832
Inventories	(8,890)	2,789
Prepaid expenses	(2,746)	10,163
Operating lease assets/liabilities	(5,234)	—
Other assets	(8,985)	279
Accounts payable	(15,654)	(8,392)
Gift card liabilities	(36,774)	(38,606)
Other accrued expenses	(5,898)	(8,323)
Cash provided by operating activities	116,207	182,106
Cash flows from investing activities:		
Additions to property and equipment	(46,702)	(78,716)
Additions to intangible assets	(353)	(2,677)
Investments in unconsolidated affiliates	(3,000)	(25,000)
Loans made to unconsolidated affiliates	(22,500)	—
Proceeds from variable life insurance contract	—	540
Cash used in investing activities	(72,555)	(105,853)
Cash flows from financing activities:		
Deemed landlord financing proceeds	—	19,156
Deemed landlord financing payments	—	(3,799)
Borrowings on credit facility	335,000	45,000
Repayments on credit facility	(10,000)	(35,000)
Proceeds from exercise of stock options	6,516	7,337
Cash dividends paid	(44,990)	(41,449)
Treasury stock purchases	(50,561)	(60,893)
Cash provided/(used) in financing activities	235,965	(69,648)
Foreign currency translation adjustment	57	26
Net change in cash and cash equivalents	279,674	6,631
Cash and cash equivalents at beginning of period	26,578	6,008
Cash and cash equivalents at end of period	\$ 306,252	\$ 12,639
Supplemental disclosures:		
Interest paid	\$ 854	\$ 6,156
Income taxes paid	\$ 16,966	\$ 8,144
Construction payable	\$ 6,400	\$ 8,609
Non-cash operating:		
Settlement of sale-leaseback accounting	\$ —	\$ 286
Non-cash investing:		
Settlement of landlord sale-leaseback accounting	\$ —	\$ (1,174)
Non-cash financing:		
Settlement of landlord financing obligation for sale-leaseback leases	\$ —	\$ 888
Deemed landlord financing proceeds	\$ —	\$ 7,278

See the accompanying notes to the condensed consolidated financial statements.

THE CHEESECAKE FACTORY INCORPORATED
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Significant Accounting Policies

Basis of Presentation

The accompanying condensed consolidated financial statements include the accounts of The Cheesecake Factory Incorporated and its wholly owned subsidiaries (referred to herein collectively as the “Company,” “we,” “us” and “our”) and are prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”). All intercompany accounts and transactions for the periods presented have been eliminated in consolidation. The unaudited financial statements presented herein include all material adjustments (consisting of normal recurring adjustments) which are, in the opinion of management, necessary for the fair statement of the financial condition, results of operations and cash flows for the period. However, these results are not necessarily indicative of results that may be achieved for any other interim period or for the full fiscal year. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been omitted pursuant to the rules of the Securities and Exchange Commission (“SEC”). The accompanying condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended January 1, 2019 filed with the SEC on March 4, 2019 (“fiscal 2018 10-K”).

We utilize a 52/53-week fiscal year ending on the Tuesday closest to December 31 for financial reporting purposes. Fiscal 2019 consists of 52 weeks and will end on December 31, 2019. Fiscal 2018, which ended on January 1, 2019, was also a 52-week year.

Beginning with our fiscal 2018 10-K, we separately disclosed our investments in unconsolidated affiliates on the consolidated balance sheet and our related share of losses on the consolidated statement of income and statement of cash flow. Corresponding balances for the thirteen and thirty-nine weeks ended October 1, 2018 were reclassified to conform to the current presentation.

Beginning with our fiscal 2018 10-K, we corrected an error in our consolidated statements of income by reclassifying complimentary meals out of revenue and other operating expenses. We also reclassified the associated cost of complimentary meals from other operating expenses to cost of sales and labor. The reclassifications had no impact on previously reported income from operations or net income. Corresponding balances for the first three fiscal quarters of 2018 were reclassified to conform to the current presentation.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions for the reporting periods covered by the financial statements. These estimates and assumptions affect the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingent liabilities. Actual results could differ from these estimates.

Recent Accounting Pronouncements

We adopted FASB Accounting Standards Codification (“ASC”) Topic 842, “Leases,” as of January 2, 2019, using the alternative transition method and recorded a cumulative effect adjustment to beginning retained earnings without restating prior periods. We elected the package of practical expedients which allowed us to carry forward our historical lease classification, our assessment of whether a contract is or contains a lease and our initial direct costs for any leases that existed prior to adoption of the new standard. In addition, we elected the hindsight practical expedient, which lengthened the lease term for certain of our leases to include renewal options, and the short-term lease exclusion. Adoption of the new standard resulted in the recognition of operating lease assets and liabilities of \$975.1 million and \$1,045.4 million, respectively, and a reduction to retained earnings of \$41.5 million, net of tax. All prior lease-related balances of \$39.2 million of prepaid rent, \$140.2 million in property and equipment, net, \$6.2 million of intangible assets, net, \$82.1 million of deferred rent liabilities and \$118.7 million of deemed landlord financing have been reclassified into operating lease assets or eliminated upon ASC 842 adoption.

Leases

We currently lease all our restaurant locations, generally with initial terms of 20 years plus two five-year renewal options. Our leases typically require contingent rent above the minimum base rent payments based on a percentage of revenues, have escalating minimum rent requirements over the term of the lease and require payment for various expenses incidental to the use of the property. A majority of our leases provide for a reduced level of overall rent obligation should specified co-tenancy requirements not be satisfied. We expend cash for leasehold improvements and furniture, fixtures, and equipment to build out and equip our leased premises. We may also expend cash for structural additions that we make to leased premises. Generally, a portion of the leasehold improvements and building costs are reimbursed to us by our landlords as construction contributions. If obtained, landlord construction contributions usually take the form of up-front cash, full or partial credits against our future minimum or percentage rents, or a combination thereof. We do not meet any of the accounting criteria for being the owner of the asset under construction. Many of our leases provide early termination rights permitting us to terminate the lease prior to expiration in the event our revenues are below a stated level for a period of time, generally conditioned upon repayment of the unamortized landlord contributions.

In addition to leases for our restaurant locations, we also lease automobiles and certain equipment that is used in the restaurants, bakeries and corporate office. The automobile leases are the only non-real estate leases included in our operating lease assets and liabilities. All other leases are immaterial or qualify for the short-term lease exclusion.

The assessment of whether a contract is or contains a lease is performed at contract inception. A lease is defined as a contract that conveys the right to control the use of an identified asset for a period of time in exchange for consideration. Control is defined as having both the right to obtain substantially all the economic benefits from the use of the asset and to direct how and for what purpose the asset is used.

At lease commencement, we evaluate each lease to determine its appropriate classification as an operating or finance lease. All our restaurant and automobile leases are classified as operating leases. For restaurant leases existing at transition, we will continue to apply our historical practice of excluding executory costs, and only minimum base rent will be factored into the initial operating lease liability and corresponding lease asset. For restaurant leases beginning after adoption of ASC 842, we have elected the single lease component practical expedient. Operating lease assets and liabilities are recorded on the balance sheet at lease commencement based on the present value of minimum base rent and other fixed payments over the reasonably certain lease term. The difference between the amounts we expend for structural costs and the construction contributions received from our landlords is recorded as an adjustment to the operating lease asset. Lease terms include the build-out period for our leases where no rent payments are typically due under the terms of the lease, as well as options to renew when we deem we have significant economic incentive to exercise the extension. When determining if we have a significant economic incentive, we consider relevant factors, such as contractual, asset, entity and market-based considerations. Option periods are included in the lease term for the majority of our leases. Termination rights have not been factored into the lease terms since based on our probability assessment we are reasonably certain we will not terminate our leases.

We cannot determine the interest rate implicit in our leases because we do not have access to the lessor's estimated residual value or the amount of the lessor's deferred initial direct costs. Therefore, we use our incremental borrowing rate as the discount rate for our leases. Our incremental borrowing rate for a lease is the rate of interest we would have to pay on a collateralized basis to borrow an amount equal to the lease payments under similar terms. Because we do not generally borrow on a collateralized basis, we derive an appropriate incremental borrowing rate using the interest rate we pay on our non-collateralized borrowings, adjusted for the amount of the lease payments, the lease term and the effect of designating specific collateral with a value equal to the unpaid lease payments for that lease. We apply the incremental borrowing rate on a portfolio basis given the impact of applying it on a lease by lease basis would be immaterial.

We monitor for events or changes in circumstances that require reassessment of our leases. When a reassessment results in the re-measurement of a lease liability, a corresponding adjustment is made to the carrying amount of the operating lease asset. We also assess the potential impairment of our operating lease assets under long-lived asset impairment guidance in ASC 360.

Rent expense included in our operating lease assets is recognized on a straight-line basis. Contingent rent expense is recorded as incurred to the extent it exceeds minimum base rent per the lease agreement. Other variable rent expense is recognized as incurred. The reasonably certain lease term and the incremental borrowing rate for each restaurant location require judgment by management and can impact the classification and accounting for a lease as operating or finance, as well as the value of the operating lease asset and liability. These judgments may produce materially different amounts of rent expense than would be reported if different assumptions were used.

2. Inventories

Inventories consisted of (in thousands):

	October 1, 2019	January 1, 2019
Restaurant food and supplies	\$ 20,102	\$ 18,362
Bakery finished goods and work in progress	21,679	13,845
Bakery raw materials and supplies	5,997	6,679
Total	<u>\$ 47,778</u>	<u>\$ 38,886</u>

3. Gift Cards

The following tables present information related to gift cards (in thousands):

Gift card liabilities:

	Thirteen Weeks Ended October 1, 2019	Thirteen Weeks Ended October 2, 2018	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
Beginning balance	\$ 142,361	\$ 133,617	\$ 172,336	\$ 163,951
Activations	21,577	20,559	70,949	70,754
Redemptions and breakage	(28,372)	(28,834)	(107,719)	(109,363)
Ending balance	<u>\$ 135,566</u>	<u>\$ 125,342</u>	<u>\$ 135,566</u>	<u>\$ 125,342</u>

Gift card contract assets: ⁽¹⁾

	Thirteen Weeks Ended October 1, 2019	Thirteen Weeks Ended October 2, 2018	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
Beginning balance	\$ 20,092	\$ 20,619	\$ 23,388	\$ 23,814
Deferrals	2,929	2,500	8,993	8,902
Amortization	(4,689)	(4,756)	(14,049)	(14,353)
Ending balance	<u>\$ 18,332</u>	<u>\$ 18,363</u>	<u>\$ 18,332</u>	<u>\$ 18,363</u>

(1) Included in prepaid expenses on the condensed consolidated balance sheets.

4. Other Assets

Other assets consisted of (in thousands):

	October 1, 2019	January 1, 2019
Executive Savings Plan trust assets	\$ 66,869	\$ 57,605
Loans receivable from unconsolidated affiliates	22,500	—
Deposits	5,485	5,489
Deferred income taxes	4,095	1,597
Total	<u>\$ 98,949</u>	<u>\$ 64,691</u>

5. Leases

Components of lease expense were as follows (in thousands):

	Thirteen Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 1, 2019
Operating	\$ 26,270	\$ 77,875
Variable	15,768	48,529
Short-term	81	234
Total	<u>\$ 42,119</u>	<u>\$ 126,638</u>

Rent expense on all operating leases (under ASC 840) was as follows (in thousands):

	Thirteen Weeks Ended October 2, 2018	Thirty-Nine Weeks Ended October 2, 2018
Straight-lined minimum base rent	\$ 21,078	\$ 62,051
Contingent rent	4,980	15,187
Common area maintenance and taxes	10,110	29,948
Total	<u>\$ 36,168</u>	<u>\$ 107,186</u>

Supplemental cash flow information related to leases (in thousands, except percentages):

	Thirty-Nine Weeks Ended October 1, 2019
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows from operating leases	\$ 73,163
Right-of-use assets obtained in exchange for new operating lease liabilities	35,271
Weighted-average remaining lease term — operating leases (in years)	17.1
Weighted-average discount rate — operating leases	5.3 %

As of October 1, 2019, the maturities of our operating lease liabilities are as follows (in thousands):

2019	\$ 18,474
2020	100,442
2021	98,794
2022	97,528
2023	96,003
Thereafter	1,230,956
Total future lease payments	<u>\$ 1,642,197</u>
Less: Interest	592,538
Present value of lease liabilities	<u>\$ 1,049,659</u>

As of January 1, 2019, the aggregate minimum annual lease payments under operating leases (under ASC 840), including amounts characterized as deemed landlord financing payments, were as follows (in thousands):

2019	\$ 93,792
2020	91,808
2021	88,829
2022	86,925
2023	81,929
Thereafter	495,091
Total	<u>\$ 938,374</u>

During the first three quarters of fiscal 2019, five leases were executed; three have initial terms of 20 years plus two five-year renewal options, one has an initial term of 10 years and four five-year renewal options and one has a term of 20 years. All but one include allowances for tenant improvements. Four of these leases commenced in the third quarter of fiscal 2019, two with reasonably certain lease terms of 20 years and two with reasonably certain lease terms of 30 years. The remaining lease is expected to commence in the fourth quarter of fiscal 2019 with undiscounted fixed payments over the initial term of \$14.1 million. We will assess the reasonably certain lease term at lease commencement.

6. Long-Term Debt

On July 30, 2019, we entered into a Third Amended and Restated Loan Agreement (the "New Facility"), which amends and restates in its entirety our prior Second Amended and Restated Loan Agreement dated as of December 22, 2015. The New Facility, which terminates on July 30, 2024, provides us with revolving loan commitments that total \$400 million (of which \$40 million may be used for issuances of letters of credit). The New Facility contains a commitment increase feature that could provide for an additional \$200 million in available credit upon our request and subject to the participating lenders electing to increase their commitments or new lenders being added to the New Facility. During the third quarter of fiscal 2019, we utilized the New Facility to support the North Italia and Fox Restaurant Concepts LLC ("FRC") acquisitions (see Note 12 for further discussion of the acquisitions). At October 1, 2019, we had net availability for borrowings of \$45.6 million, based on a \$335.0 million outstanding debt balance and \$19.4 million in standby letters of credit.

We are subject to certain financial covenants under the New Facility requiring us to maintain (i) a maximum "Net Adjusted Leverage Ratio" of 4.75 and (ii) a minimum ratio of EBITDAR to interest and rent expense of 1.9 ("EBITDAR Ratio"), as well as customary events of default that, if triggered, could result in acceleration of the maturity of the New Facility. The New Facility also limits cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a defined ratio, and also sets forth negative covenants that restrict indebtedness, liens, investments, sales of assets, fundamental changes and other matters.

Borrowings under the New Facility bear interest, at our option, at a rate equal to either: (i) the adjusted LIBO Rate (as customarily defined) (the "Adjusted LIBO Rate") plus a margin that is based on our net adjusted leverage ratio, or (ii) the sum of (a) the highest of (1) the rate of interest last quoted by The Wall Street Journal as the prime rate in effect in the United States, (2) the greater of the rate calculated by the Federal Reserve Bank of New York as the effective federal funds rate or the rate that is published by the Federal Reserve Bank of New York as an overnight bank funding rate, in either case plus 0.5%, and (3) the one-month Adjusted LIBO Rate plus 1.0%, plus (b) a margin that is based on our net adjusted leverage ratio. Letters of credit issued under the New Facility bear fees that are equivalent to the interest rate margin that is applicable to revolving loans that bear interest at the adjusted LIBO Rate plus other customary fees charged by the issuing bank. Under the New Facility, we paid certain customary loan origination fees and will pay an unused fee on the unused portion of the New Facility that is also based on our Net Adjusted Leverage Ratio. Our Net Adjusted Leverage and EBITDAR Ratios were 3.3 and 2.5, respectively, at October 1, 2019, and we were in compliance with all covenants in effect at that date.

Our obligations under the New Facility are unsecured. Certain of our material subsidiaries have guaranteed our obligations under the New Facility. The New Facility will be used for our general corporate purposes, including for the issuance of standby letters of credit to support our self-insurance programs, and to fund dividends, stock repurchases and permitted acquisitions.

7. Commitments and Contingencies

On December 10, 2015, a former restaurant management employee filed a class action lawsuit in the Los Angeles County Superior Court, alleging that the Company improperly classified its managerial employees, failed to pay overtime, and failed to provide accurate wage statements, in addition to other claims. The lawsuit seeks unspecified penalties under the California Labor Code Private Attorney General Act in addition to other monetary payments (*Tagalogon v. The Cheesecake Factory Restaurants, Inc.*; Case No. BC603620). On July 29, 2016, we filed a response to the complaint. On March 7, 2019, the parties participated in voluntary mediation, which concluded without the parties reaching a resolution. On June 4, 2019, the parties notified the Court that they reached a tentative agreement to settle this case. The settlement agreement is subject to documentation and court approval. Based on the current status of this matter, we have reserved an immaterial amount in anticipation of settlement.

On June 7, 2018, the California Department of Industrial Relations issued a \$4.2 million wage citation jointly against the Company and our vendor that provides janitorial services to eight of our Southern California restaurants, alleging that the janitorial vendor or its subcontractor failed to comply with various provisions of the California Labor Code (Wage Citation Case No. 35-CM-188798-16). The wage citation seeks to recover penalties and other monetary payments on behalf of the employees that worked for this vendor or its subcontractor. On June 28, 2018, we filed an appeal of the wage citation. The initial hearing on our appeal took place on November 5, 2019. We intend to vigorously defend this action. However, it is not possible at this time to reasonably estimate the outcome of or any potential liability from this matter and, accordingly, we have not reserved for any potential future payments.

On June 22, 2018, the Internal Revenue Service issued a Notice of Deficiency in which they disallowed \$8.0 million of our §199 Domestic Production Activities Deduction for tax years 2010, 2011 and 2012. On September 11, 2018 we petitioned the United States Tax Court for a redetermination of the deficiency. The tax court has assigned docket number 18150-18 to our case. We intend to vigorously defend our position in litigation and based on our analysis of the law, regulations and relevant facts, we have not reserved for any potential future payments.

Within the ordinary course of our business, we are subject to private lawsuits, government audits, administrative proceedings and other claims. These matters typically involve claims from customers, staff members and others related to operational and employment issues common to the foodservice industry. A number of these claims may exist at any given time, and some of the claims may be pled as class actions. From time to time, we are also involved in lawsuits with respect to infringements of, or challenges to, our registered trademarks and other intellectual property, both domestically and abroad. We could be affected by adverse publicity and litigation costs resulting from such allegations, regardless of whether they are valid or whether we are legally determined to be liable.

At this time, we believe that the amount of reasonably possible losses resulting from final disposition of any pending lawsuits, audits, proceedings and claims will not have a material adverse effect individually or in the aggregate on our financial position, results of operations or liquidity. It is possible, however, that our future results of operations for a particular quarter or fiscal year could be impacted by changes in circumstances relating to lawsuits, audits, proceedings or claims. Legal costs related to such claims are expensed as incurred.

8. Stockholders' Equity

On July 25, 2019, our Board of Directors ("Board") approved a quarterly cash dividend of \$0.36 per share that was paid on August 27, 2019 to the stockholders of record at the close of business on August 14, 2019. Future decisions to pay or to increase or decrease dividends are at the discretion of the Board and will be dependent on our operating performance, financial condition, capital expenditure requirements, limitations on cash distributions pursuant to the terms and conditions of the New Facility and applicable law, and such other factors that our Board considers relevant. (See Note 6 for further discussion of the New Facility.)

Under authorization by our Board to repurchase up to 56.0 million shares of our common stock, we have cumulatively repurchased 52.9 million shares at a total cost of \$1,692.7 million through October 1, 2019, including 0.3 million shares at a cost of \$11.4 million repurchased during the third quarter of fiscal 2019. Repurchased common stock is reflected as a reduction of stockholders' equity in treasury stock.

Our share repurchase authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. Shares may be repurchased in the open market or through privately negotiated transactions at times and prices considered appropriate by us. We make the determination to repurchase shares based on several factors, including current and forecasted operating cash flows, capital needs associated with new restaurant development and maintenance of existing locations, dividend payments, debt levels and cost of borrowing, obligations associated with the Acquisitions, our share price and current market conditions. (See Note 12 for further discussion of the acquisitions.) The timing and number of shares repurchased are also subject to legal constraints and financial covenants under the New Facility that limit share repurchases based on a defined ratio. (See Note 6 for further discussion of our long-term debt.) Our objectives regarding share repurchases are to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth.

9. Stock-Based Compensation

On April 5, 2017, our Board approved an amendment to our 2010 Stock Incentive Plan to increase the number of shares of common stock available for grant under the plan to 12.7 million shares from 9.2 million shares. This amendment was approved by our stockholders at our annual meeting held on June 8, 2017. On April 4, 2019, our Board adopted The Cheesecake Factory Incorporated Stock Incentive Plan. This plan was approved by our stockholders at our annual meeting held on May 30, 2019. The maximum number of shares of common stock available for grant under this plan is 4.8 million shares plus 1.8 million shares, which, as of May 30, 2019, were available for issuance under our 2010 Stock Incentive Plan plus 1.9 million shares which may become available for issuance under The Cheesecake Factory Incorporated Stock Incentive Plan due to forfeiture or lapse of awards under our 2010 Stock Incentive Plan following May 30, 2019.

The following table presents information related to stock-based compensation, net of forfeitures (in thousands):

	Thirteen Weeks Ended October 1, 2019	Thirteen Weeks Ended October 2, 2018	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
Labor expenses	\$ 1,742	\$ (129)	\$ 5,184	\$ 4,046
Other operating costs and expenses	68	110	204	220
General and administrative expenses	2,837	4,751	9,747	11,541
Total stock-based compensation	4,647	4,732	15,135	15,807
Income tax benefit	1,141	1,180	3,719	3,944
Total stock-based compensation, net of taxes	\$ 3,506	\$ 3,552	\$ 11,416	\$ 11,863
Capitalized stock-based compensation ⁽¹⁾	\$ 52	\$ 71	\$ 166	\$ 209

- (1) It is our policy to capitalize the portion of stock-based compensation costs for our internal development department that relates to capitalizable activities such as the design and construction of new restaurants, remodeling existing locations and equipment installation. Capitalized stock-based compensation is included in property and equipment, net and other assets on the condensed consolidated balance sheets.

Stock Options

We did not issue any stock options during the third quarters of fiscal 2019 or fiscal 2018. Stock option activity during the thirty-nine weeks ended October 1, 2019 was as follows:

	Shares (In thousands)	Weighted Average Exercise Price (Per share)	Weighted Average Remaining Contractual Term (In years)	Aggregate Intrinsic Value ⁽¹⁾ (In thousands)
Outstanding at January 1, 2019	1,799	\$ 45.03	4.1	\$ 5,606
Granted	300	46.03		
Exercised	(219)	29.81		
Forfeited or cancelled	(17)	48.38		
Outstanding at October 1, 2019	1,863	\$ 46.95	4.4	\$ 1,993
Exercisable at October 1, 2019	1,028	\$ 45.37	2.9	\$ 1,993

- (1) Aggregate intrinsic value is calculated as the difference between our closing stock price at fiscal period end and the exercise price, multiplied by the number of in-the-money options and represents the pre-tax amount that would have been received by the option holders, had they all exercised their options on the fiscal period end date.

[Table of Contents](#)

The total intrinsic value of options exercised during the thirteen and thirty-nine weeks ended October 1, 2019 was \$0.1 million and \$3.7 million, respectively. The total intrinsic value of options exercised during the thirteen and thirty-nine weeks ended October 2, 2018 was \$0.8 million and \$5.5 million, respectively. As of October 1, 2019, total unrecognized stock-based compensation expense related to unvested stock options was \$7.7 million, which we expect to recognize over a weighted average period of approximately 3.3 years.

Restricted Shares and Restricted Share Units

Restricted share and restricted share unit activity during the thirty-nine weeks ended October 1, 2019 was as follows:

	Shares (In thousands)	Weighted Average Fair Value (Per share)
Outstanding at January 1, 2019	1,702	\$ 48.08
Granted	453	45.80
Vested	(317)	45.16
Forfeited	(82)	48.05
Outstanding at October 1, 2019	1,756	\$ 48.01

Fair value of our restricted shares and restricted share units is based on our closing stock price on the date of grant. The weighted average fair value for restricted shares and restricted share units issued during the third quarter of fiscal 2019 and fiscal 2018 was \$44.24 and \$50.15, respectively. The fair value of shares that vested during the thirteen weeks and thirty-nine weeks ended October 1, 2019 was \$1.9 million and \$14.3 million, respectively. The fair value of shares that vested during the thirteen weeks and thirty-nine weeks ended October 2, 2018 was \$3.0 million and \$14.8 million, respectively. As of October 1, 2019, total unrecognized stock-based compensation expense related to unvested restricted shares and restricted share units was \$39.9 million, which we expect to recognize over a weighted average period of approximately 3.6 years.

10. Net Income Per Share

Basic net income per share is computed by dividing net income available to common stockholders by the weighted average number of common shares outstanding during the period, reduced by unvested restricted stock awards. As of October 1, 2019 and October 2, 2018, 1.8 million shares and 1.7 million shares, respectively, of restricted stock issued to staff members were unvested and, therefore, excluded from the calculation of basic earnings per share for the fiscal periods ended on those dates. Diluted net income per share includes the dilutive effect of outstanding equity awards, calculated using the treasury stock method. Shares of common stock equivalents of 2.1 million and 1.3 million as of October 1, 2019 and October 2, 2018, respectively, were excluded from the diluted calculation due to their anti-dilutive effect.

	Thirteen Weeks Ended October 1, 2019	Thirteen Weeks Ended October 2, 2018	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
	(In thousands, except per share data)			
Net income	\$ 16,090	\$ 28,475	\$ 78,584	\$ 82,857
Basic weighted average shares outstanding	43,682	45,321	44,034	45,418
Dilutive effect of equity awards	504	1,047	609	982
Diluted weighted average shares outstanding	44,186	46,368	44,643	46,400
Basic net income per share	\$ 0.37	\$ 0.63	\$ 1.78	\$ 1.82
Diluted net income per share	\$ 0.36	\$ 0.61	\$ 1.76	\$ 1.79

11. Segment Information

For decision-making purposes, our management reviews discrete financial information for The Cheesecake Factory, Grand Lux Cafe, RockSugar Southeast Asian Kitchen and Social Monk Asian Kitchen restaurants, our bakery division, consumer packaged goods and international licensing operations. Based on quantitative thresholds set forth in ASC 280, “Segment Reporting,” The Cheesecake Factory is our only business that meets the criteria of a reportable operating segment. The other segments noted above are combined in “Other.” Unallocated corporate expenses, assets and capital expenditures are presented below as reconciling items to the amounts presented in the condensed consolidated financial statements.

Segment information is presented below (in thousands):

	Thirteen Weeks Ended October 1, 2019	Thirteen Weeks Ended October 2, 2018	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
Revenues:				
The Cheesecake Factory restaurants	\$ 536,101	\$ 524,846	\$ 1,636,253	\$ 1,596,561
Other	50,435	50,314	152,409	150,615
Total	<u>\$ 586,536</u>	<u>\$ 575,160</u>	<u>\$ 1,788,662</u>	<u>\$ 1,747,176</u>
Income/(loss) from operations:				
The Cheesecake Factory restaurants ⁽¹⁾	\$ 59,664	\$ 63,013	\$ 189,897	\$ 193,955
Other	4,388	3,495	15,416	14,353
Corporate	(37,088)	(33,013)	(108,102)	(108,719)
Total	<u>\$ 26,964</u>	<u>\$ 33,495</u>	<u>\$ 97,211</u>	<u>\$ 99,589</u>
Depreciation and amortization:				
The Cheesecake Factory restaurants	\$ 17,728	\$ 20,116	\$ 53,340	\$ 60,452
Other	2,410	2,798	7,270	7,666
Corporate	1,204	1,176	3,753	3,701
Total	<u>\$ 21,342</u>	<u>\$ 24,090</u>	<u>\$ 64,363</u>	<u>\$ 71,819</u>
Capital expenditures:				
The Cheesecake Factory restaurants	\$ 16,149	\$ 20,375	\$ 42,880	\$ 50,537
Other ⁽²⁾	642	5,718	2,185	25,668
Corporate	540	753	1,637	2,511
Total	<u>\$ 17,331</u>	<u>\$ 26,846</u>	<u>\$ 46,702</u>	<u>\$ 78,716</u>
			October 1, 2019	January 1, 2019
Total assets:				
The Cheesecake Factory restaurants			\$ 1,888,948	\$ 928,345
Other			226,098	164,972
Corporate			266,724	220,816
Total			<u>\$ 2,381,770</u>	<u>\$ 1,314,133</u>

(1) The thirteen and thirty-nine weeks ended October 2, 2018 include \$0.3 million and \$2.8 million of lease termination costs related to the closure of one The Cheesecake Factory restaurant.

(2) The thirteen and thirty-nine weeks ended October 2, 2018 include costs related to an infrastructure modernization of our California bakery facility.

12. Subsequent Events

Dividend

On October 23, 2019, our Board declared a quarterly cash dividend of \$0.36 per share to be paid on November 26, 2019 to the stockholders of record at the close of business on November 12, 2019.

North Italia and Fox Restaurant Concepts LLC (“FRC”) Acquisitions

On October 2, 2019 (the “Closing Date” or “Closing”), we completed the acquisition of North Italia (the “North Italia Acquisition”) and the remaining business of Fox Restaurant Concepts LLC (the “FRC Acquisition”), including Flower Child and all other FRC brands (the “FRC Acquisition” and together with the North Italia Acquisition, the “Acquisitions”). North Italia is a restaurant company that operated 21 locations across ten states and Washington D.C. as of the Closing Date. FRC is a multi-concept restaurant company that operated 10 concepts with 47 locations across eight states and Washington D.C. as of the Closing Date.

We have concluded that the Acquisitions represent a single business combination of related businesses under common control within the scope of ASC Topic 805, “Business Combinations”. The acquisition date was determined to be the Closing Date, which was the date we obtained control by legally transferring the consideration for the remaining ownership interests, acquiring the assets and assuming the liabilities of North Italia and the remaining FRC business.

The Acquisitions, which we expect will accelerate and diversify our revenue growth, were completed for consideration consisting of the following components: \$286 million in cash at Closing, which was primarily funded by drawing on the New Facility; assumption of \$10 million in debt previously owed by FRC to us; \$45 million of deferred consideration due ratably over the next four years (including a \$13 million indemnity escrow amount specifically related to the FRC Acquisition); and a \$12 million indemnity escrow amount specifically related to the North Italia Acquisition due ratably over the next two years. Additionally, included in consideration are the acquisition-date fair values of contingent consideration and our previously held equity interests in North Italia and Flower Child.

The provision for contingent consideration is payable on the fifth anniversary of the Closing Date and is based on achievement of revenue and profitability targets for the FRC brands other than North Italia and Flower Child with considerations made in the event we undergo a change in control or divest any FRC brand (other than North Italia and Flower Child) during the five years after Closing. We are also required to provide financing to FRC in an amount sufficient to support achievement of these targets during the five years after Closing.

During the third quarter of fiscal 2019, we incurred \$3.2 million of costs to effect the Acquisitions, which have been expensed in accordance with ASC 805 and are included in general and administrative expenses in the accompanying condensed consolidated statement of operations.

We have excluded the disclosure of purchase accounting and supplemental pro forma financial information required under ASC 805 for a public business entity. Disclosure of such information has been deemed impracticable by management due primarily to the short timeframe we have had to obtain the necessary information from the acquired company (not a public business entity), apply various valuation methodologies and prepare the information for this filing. The purchase accounting and related disclosures will be included in the Company’s Annual Report on Form 10-K for the fiscal year ending December 31, 2019 and finalized within the one-year measurement period permitted under ASC 805.

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

Forward-Looking Statements

Certain information included in this Form 10-Q and other materials filed or to be filed by us with the Securities and Exchange Commission (“SEC”), as well as information included in oral or written statements made by us or on our behalf, may contain forward-looking statements about our current and presently expected performance trends, growth plans, business goals and other matters.

These statements may be contained in our filings with the SEC, in our press releases, in other written communications, and in oral statements made by or with the approval of one of our authorized officers. These statements are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, as codified in Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (together with the Securities Act, the “Acts”). This includes, without limitation, financial guidance and projections and statements with respect to the acquisitions of North Italia and Fox Restaurant Concepts LLC (“FRC”) and expectations regarding accelerated and diversified revenue growth as a result of the acquisition of North Italia and FRC, as well as expectations of our future financial condition, results of operations, cash flows, plans, targets, goals, objectives, performance, growth potential, competitive position and business; and our ability to: leverage our competitive strengths, including investing in or acquiring new restaurant concepts and expanding The Cheesecake Factory® brand to other retail opportunities; deliver comparable sales growth; provide a differentiated experience to customers; outperform the casual dining industry and increase our market share; leverage sales increases and manage flow through; manage cost pressures, including increasing wage rates, insurance costs and legal expenses, and stabilize margins; grow earnings; remain relevant to consumers; attract and retain qualified management and other staff; manage risks associated with the magnitude and complexity of regulations in the jurisdictions where our restaurants are located; increase shareholder value; find suitable sites and manage increasing construction costs; profitably expand our concepts domestically and in Canada, and work with our licensees to expand our concept internationally; support the growth of North Italia and other FRC restaurants; operate Social Monk Asian Kitchen; and utilize our capital effectively and continue to increase cash dividends and repurchase our shares. These forward-looking statements may be affected by factors outside of our control including: the ability to achieve projected financial results; economic and political conditions that impact consumer confidence and spending; impact of recently enacted tax reform; acceptance and success of The Cheesecake Factory in international markets; acceptance and success of North Italia and the FRC concepts, Social Monk Asian Kitchen and other concepts; the risks of doing business abroad through Company-owned restaurants and/or licensees; foreign exchange rates, tariffs and cross border taxation; changes in unemployment rates; changes in laws impacting our business, including increases in minimum wages and benefit costs; the economic health of our landlords and other tenants in retail centers in which our restaurants are located; the economic health of suppliers, licensees, vendors and other third parties providing goods or services to us; adverse weather conditions in regions in which our restaurants are located; factors that are under the control of government agencies, landlords and other third parties; the risk, costs and uncertainties associated with opening new restaurants; and other risks and uncertainties detailed from time to time in our filings with the SEC. Such forward-looking statements include all other statements that are not historical facts, as well as statements that are preceded by, followed by or that include words or phrases such as “believe,” “plan,” “will likely result,” “expect,” “intend,” “will continue,” “is anticipated,” “estimate,” “project,” “may,” “could,” “would,” “should” and similar expressions. These statements are based on our current expectations and involve risks and uncertainties which may cause results to differ materially from those set forth in such statements.

In connection with the “safe harbor” provisions of the Acts, we have identified and are disclosing important factors, risks and uncertainties that could cause our actual results to differ materially from those projected in forward-looking statements made by us, or on our behalf. (See Part II, Item 1A of this report, “Risk Factors,” and Part I, Item 1A, “Risk Factors,” included in our Annual Report on Form 10-K for the fiscal year ended January 1, 2019.) These cautionary statements are to be used as a reference in connection with any forward-looking statements. The factors, risks and uncertainties identified in these cautionary statements are in addition to those contained in any other cautionary statements, written or oral, which may be made or otherwise addressed in connection with a forward-looking statement or contained in any of our subsequent filings with the SEC. Because of these factors, risks and uncertainties, we caution against placing undue reliance on forward-looking statements. Although we believe that the assumptions underlying forward-looking statements are currently reasonable, any of the assumptions could be incorrect or incomplete, and there can be no assurance that forward-looking statements will prove to be accurate. Forward-looking statements speak only as of the date on which they are made, and we undertake no obligation to publicly update or revise any forward-looking statements or to make any other forward-looking statements, whether as a result of new information, future events or otherwise, unless required to do so by law.

General

This discussion and analysis, which contains forward-looking statements, should be read in conjunction with our interim unaudited condensed consolidated financial statements and related notes in Part I, Item 1 of this report and with the following items included in our Annual Report on Form 10-K for the fiscal year ended January 1, 2019: the audited consolidated financial statements and related notes in Part IV, Item 15; the “Risk Factors” included in Part I, Item 1A; the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in Part II, Item 7; and the cautionary statements included throughout this report. The inclusion of supplementary analytical and related information herein may require us to make estimates and assumptions to enable us to fairly present, in all material respects, our analysis of trends and expectations with respect to our results of operations and financial position.

The Cheesecake Factory Incorporated is a leader in experiential dining. We are culinary forward and relentlessly focused on hospitality. We currently own and operate 290 restaurants throughout the United States and Canada under brands including The Cheesecake Factory®, North Italia® and a collection within the FRC subsidiary. Internationally, 23 The Cheesecake Factory® restaurants operate under licensing agreements; one location in the Middle East closed in preparation for a relocation early in fiscal 2020. Our bakery division operates two facilities that produce quality cheesecakes and other baked products for our restaurants, international licensees and third-party bakery customers.

Overview

Our strategy is driven by our commitment to customer satisfaction and is focused primarily on menu innovation, service and operational execution to continue to differentiate ourselves from other restaurant concepts, as well as to drive competitively strong performance that is sustainable. Financially, we are focused on prudently managing expenses at our restaurants, bakery facilities and corporate support center, and leveraging our size to make the best use of our purchasing power.

Investing in new Company-owned restaurant development is our top capital allocation priority, with a focus on opening our concepts in premier locations within both new and existing markets. For The Cheesecake Factory concept, we target an average cash-on-cash return on investment of approximately 20% to 25% at the unit level. We target an average cash-on-cash return on investment of over 30% for the North Italia concept and 25% to 30% for the FRC concepts. Returns are affected by the cost to build restaurants, the level of revenues that each restaurant can deliver and our ability to maximize the profitability of restaurants. Investing in new restaurant development that meets our return on investment criteria is expected to support achieving mid-teens Company-level return on invested capital.

Our overall revenue growth is primarily driven by revenues from new restaurant openings and increases in comparable restaurant sales. Changes in comparable restaurant sales come from variations in customer traffic, as well as in average check.

For The Cheesecake Factory concept, our strategy is to increase comparable restaurant sales by growing average check and stabilizing customer traffic through (1) continuing to offer innovative, high quality menu items that offer customers a wide range of options in terms of flavor, price and value (2) focusing on service and hospitality with the goal of delivering an exceptional customer experience and (3) continuing to provide our customers with convenient options for off-premise dining. We are continuing our efforts on a number of initiatives, including a greater focus on increasing customer throughput in our restaurants, leveraging the success of our gift card program, working with a third party to provide delivery services for our restaurants, increasing customer awareness of our online ordering capabilities, augmenting our marketing programs, enhancing our training programs and leveraging our customer satisfaction measurement platform.

Average check is driven by menu price increases and/or changes in menu mix. We generally update The Cheesecake Factory restaurant menus twice a year, and our philosophy is to use price increases to help offset key operating cost increases in a manner that balances protecting both our margins and customer traffic levels. We plan to continue targeting menu price increases of approximately 2% to 3% annually, utilizing a market-based strategy to help mitigate cost pressure in higher-wage geographies, and expect near-term increases to be at the higher end of this range.

On October 2, 2019, we completed the acquisitions of North Italia and FRC, including Flower Child, which we expect will accelerate and diversify our revenue growth. (See Note 12 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of the Acquisitions.)

[Table of Contents](#)

Margins are subject to fluctuations in commodity costs, labor, restaurant-level occupancy expenses, general and administrative (“G&A”) expenses and preopening expenses. Our objective is to stabilize our margins, and longer-term to drive margin expansion, by maintaining flat restaurant-level margins at The Cheesecake Factory concept, leveraging our bakery operations, international and consumer packaged goods royalty revenue streams and G&A expense over time, and optimizing our restaurant portfolio.

We plan to maintain a balanced capital allocation strategy, comprised of: investing in new restaurants that are expected to meet our targeted returns, repaying borrowings under our credit facility and continuing our dividend and share repurchase program, the latter of which offsets dilution from our equity compensation program and supports our earnings per share growth. Our ability to declare dividends and repurchase shares is subject to financial covenants under the New Facility.

Our domestic revenue growth (comprised of our annual unit growth and comparable sales growth), combined with international expansion, planned debt repayment, our share repurchase program and our dividend supports our long-term financial objective of 13% to 14% total return to shareholders, on average. We define our total return as earnings per share growth plus our dividend yield.

Results of Operations

The following table presents, for the periods indicated, information from our condensed consolidated statements of income expressed as percentages of revenues. The results of operations for the interim periods presented are not necessarily indicative of the results to be expected for any other interim period or for the full fiscal year.

	Thirteen Weeks Ended October 1, 2019	Thirteen Weeks Ended October 2, 2018	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
Revenues	100.0 %	100.0 %	100.0 %	100.0 %
Costs and expenses:				
Cost of sales	22.7	23.0	22.6	22.8
Labor expenses	36.4	35.4	36.3	35.7
Other operating costs and expenses	25.5	24.5	25.2	24.4
General and administrative expenses	6.8	6.5	6.5	6.8
Depreciation and amortization expenses	3.6	4.2	3.6	4.1
Impairment of assets and lease expiration	—	0.0	—	0.2
Preopening costs	0.4	0.6	0.4	0.3
Total costs and expenses	95.4	94.2	94.6	94.3
Income from operations	4.6	5.8	5.4	5.7
Loss on investments in unconsolidated affiliates	(1.8)	(0.2)	(0.7)	(0.1)
Interest and other expense, net	(0.0)	(0.3)	(0.0)	(0.3)
Income before income taxes	2.8	5.3	4.7	5.3
Income tax provision	0.1	0.3	0.3	0.6
Net income	2.7 %	5.0 %	4.4 %	4.7 %

Thirteen Weeks Ended October 1, 2019 Compared to Thirteen Weeks Ended October 2, 2018

Revenues

Revenues increased 2.0% to \$586.5 million for the thirteen weeks ended October 1, 2019 compared to \$575.2 million for the thirteen weeks ended October 2, 2018, primarily due to new restaurant openings and positive comparable restaurant sales.

[Table of Contents](#)

Comparable sales at The Cheesecake Factory restaurants increased by 0.4%, or \$1.9 million, from the third quarter of fiscal 2018. This compares to the casual dining industry which experienced a comparable sales decline of 0.8%, as measured by Knapp Track. Our comparable sales growth was driven by average check growth of 4.1% (based on increases of 3.2% in menu pricing and 0.9% in mix), partially offset by a decline in customer traffic of 3.7%. We implemented effective menu price increases of approximately 1.6% and 1.6% in the first and third quarter of fiscal 2019, respectively. The Cheesecake Factory average sales per restaurant operating week increased 0.3% to \$203,996 in the third quarter of fiscal 2019 from \$203,429 in the third quarter of fiscal 2018. Total operating weeks at The Cheesecake Factory restaurants increased 1.9% to 2,628 for the thirteen weeks ended October 1, 2019 compared to 2,580 for the comparable prior year period.

The Cheesecake Factory restaurants become eligible to enter our comparable sales base in their 19th month of operation. At October 1, 2019, there were six The Cheesecake Factory restaurants not yet in our comparable sales base. International licensed locations and restaurants that are no longer in operation, including those which we have relocated, are excluded from our comparable sales calculations.

External bakery sales were \$13.8 million for the third quarter of fiscal 2019 compared to \$13.6 million in the comparable prior year period.

Cost of Sales

Cost of sales consists of food, beverage, retail and bakery production supply costs incurred in conjunction with our restaurant and bakery revenues, and excludes depreciation, which is captured separately in depreciation and amortization expenses. As a percentage of revenues, cost of sales was 22.7% for the third quarter of fiscal 2019 compared to 23.0% for the comparable period of fiscal 2018. Higher produce costs were more than offset by favorability across several commodity categories.

The Cheesecake Factory restaurant menus are among the most diversified in the foodservice industry and, accordingly, are not overly dependent on a few select commodities. Changes in costs for one commodity sometimes can be offset by cost changes in other commodity categories. The principal commodity categories for our restaurants include general grocery items, dairy, produce, seafood, poultry, meat and bread. (See the discussion of our contracting activities in Item 3 — “Quantitative and Qualitative Disclosures About Market Risk.”)

As has been our past practice, we will carefully consider opportunities to introduce new menu items and implement selected menu price increases to help offset any expected cost increases for key commodities and other goods and services. For new restaurants, cost of sales will typically be higher for a period of time after opening until our management team becomes more accustomed to predicting, managing and servicing the sales volumes at these restaurants.

Labor Expenses

As a percentage of revenues, labor expenses, which include restaurant-level labor costs and bakery direct production labor, including associated fringe benefits, were 36.4% and 35.4% in the third quarters of fiscal 2019 and 2018, respectively. This variance was primarily due to higher hourly wage rates, stock-based compensation expense and payroll taxes.

Other Operating Costs and Expenses

Other operating costs and expenses consist of restaurant-level occupancy expenses (rent, common area expenses, insurance, licenses, taxes and utilities), other operating expenses (excluding food costs and labor expenses, which are reported separately) and bakery production overhead and distribution expenses. As a percentage of revenues, other operating costs and expenses were 25.5% and 24.5% for the thirteen weeks ended October 1, 2019 and October 2, 2018, respectively. This variance was primarily driven by increased rent expense related to our adoption of the new lease accounting standard, as well as higher marketing expense. These increases were partially offset by lower workers’ compensation and general liability insurance costs.

[Table of Contents](#)

G&A Expenses

G&A expenses consist of the restaurant management recruiting and training program, restaurant field supervision, corporate support and bakery administrative organizations, as well as gift card commissions to third-party distributors. As a percentage of revenues, G&A expenses were 6.8% and 6.5% for the third quarters of fiscal 2019 and 2018, respectively. This variance was primarily due to \$3.2 million of acquisition-related costs incurred in the third quarter of fiscal 2019, partially offset by lower stock-based compensation.

Depreciation and Amortization Expenses

As a percentage of revenues, depreciation and amortization expenses were 3.6% and 4.2% for the thirteen weeks ended October 1, 2019 and the comparable period of last year, respectively. This decrease was primarily due to our adoption of the new lease accounting standard.

Impairment of Assets and Lease Terminations

There was no impairment of assets in the third quarter of fiscal 2019. In the third quarter of fiscal 2018, we recorded \$0.3 million of lease termination costs related to the closure of one The Cheesecake Factory restaurant.

Preopening Costs

Preopening costs were \$2.5 million for the thirteen weeks ended October 1, 2019 compared to \$3.3 million in the comparable period of fiscal 2018. We opened one restaurant in the third quarter of fiscal 2019 compared to two restaurants in the comparable prior year period. Preopening costs include all costs to relocate and compensate restaurant management staff members during the preopening period, costs to recruit and train hourly restaurant staff members, and wages, travel and lodging costs for our opening training team and other support staff members. Also included are expenses for maintaining a roster of trained managers for pending openings, the associated temporary housing and other costs necessary to relocate managers in alignment with future restaurant opening and operating needs, and corporate travel and support activities. Preopening costs can fluctuate significantly from period to period based on the number and timing of restaurant openings and the specific preopening costs incurred for each restaurant.

Loss on Investment in Unconsolidated Affiliates

Loss on investment in unconsolidated affiliates, which represents our share of losses incurred by North Italia and Flower Child, was \$10.3 million and \$1.6 million in the thirteen weeks ended October 1, 2019 and October 2, 2018, respectively. This increase was primarily driven by impairment of assets, acquisition-related expenses, and preopening costs associated with new unit development.

Interest and Other Income/(Expense), Net

Interest and other income/(expense), net was \$6,051 of income for the third quarter of fiscal 2019 compared to \$1.7 million of expense for the comparable prior year period. This variance was primarily due to our adoption of the new lease accounting standard under which we no longer have deemed landlord financing liabilities and associated interest expense.

Income Tax Provision

Our effective income tax rate was 3.2% for the third quarter of fiscal 2019 compared to 5.7% for the comparable prior year period. This decrease was primarily due to a higher proportion of FICA tip credit in relation to pre-tax income, higher non-taxable gains on our investments in variable life insurance contracts used to support our non-qualified executive deferred compensation plan and the impact of technical guidance published in the fourth quarter of fiscal 2018 regarding the deductibility of employee meals.

Thirty-Nine Weeks Ended October 1, 2019 Compared to Thirty-Nine Weeks Ended October 2, 2018

Revenues

Revenues increased 2.4% to \$1,788.7 million for the thirty-nine weeks ended October 1, 2019 compared to \$1,747.2 million for the thirty-nine weeks ended October 2, 2018, primarily due to new restaurant openings and positive comparable restaurant sales.

[Table of Contents](#)

Comparable sales at The Cheesecake Factory restaurants increased by 0.9%, or \$14.2 million, from the first three quarters of fiscal 2018, outperforming the casual dining industry which experienced a comparable sales increase of 0.1%, as measured by Knapp Track. Our comparable sales growth was driven by average check growth of 3.9% (based on an increase of 3.1% in menu pricing and 0.8% in mix), partially offset by a decline in customer traffic of 3.0%. The Cheesecake Factory average sales per restaurant operating week increased 1.0% to \$208,042 in the first three quarters of fiscal 2019 versus \$206,034 in the first three quarters of fiscal 2018. Total operating weeks at The Cheesecake Factory restaurants increased 1.5% to 7,865 for the thirty-nine weeks ended October 1, 2019 compared to 7,749 for the comparable prior year period.

External bakery sales were \$39.1 million for the first three quarters of fiscal year 2019 compared to \$38.7 million in the comparable prior year period.

Cost of Sales

As a percentage of revenues, cost of sales was 22.6% for the first three quarters of fiscal 2019 compared to 22.8% for the comparable period of fiscal 2018. Higher produce costs were more than offset by favorability across several commodity categories.

Labor Expenses

As a percentage of revenues, labor expenses were 36.3% and 35.7% in the first three quarters of fiscal 2019 and 2018, respectively. This variance was primarily due to higher hourly wage rates.

Other Operating Costs and Expenses

As a percentage of revenues, other operating costs and expenses were 25.2% and 24.4% for the thirty-nine weeks ended October 1, 2019 and October 2, 2018, respectively. This variance was primarily driven by increased rent expense related to our adoption of the new lease accounting standard and higher marketing costs. These increases were partially offset by lower general liability and workers compensation.

General and Administrative Expenses

As a percentage of revenues, G&A expenses were 6.5% and 6.8% for the first three quarters of fiscal 2019 and 2018, respectively. This variance was primarily due to lower legal costs and several other categories, partially offset by \$3.2 million of acquisition-related costs incurred in the third quarter of fiscal 2019.

Depreciation and Amortization Expenses

As a percentage of revenues, depreciation and amortization expenses were 3.6% and 4.1% for the thirty-nine weeks ended October 1, 2019 and the comparable period of last year, respectively. This decrease was primarily due to our adoption of the new lease accounting standard.

Impairment of Assets and Lease Terminations

There was no impairment of assets in the first three quarters of fiscal 2019. In the first three quarters of fiscal 2018, we recorded \$2.8 million of lease termination costs related to the closure of one The Cheesecake Factory restaurant.

Preopening Costs

Preopening costs were \$6.9 million for the thirty-nine weeks ended October 1, 2019 compared to \$5.8 million in the comparable period of fiscal 2018. We opened three restaurants in the first three quarters of fiscal 2019 compared to two restaurants in the comparable prior year period.

[Table of Contents](#)

Loss on Investment in Unconsolidated Affiliates

Loss on investment in unconsolidated affiliates, which represents our share of losses incurred by North Italia and Flower Child, was \$13.4 million and \$2.7 million in the thirty-nine weeks ended October 1, 2019 and October 2, 2018, respectively. This increase was primarily driven by impairment of assets, acquisition-related expenses, and preopening costs associated with new unit development.

Interest and Other Income/(Expense), Net

Interest and other income/(expense), net was \$16,986 of expense for the first three quarters of fiscal 2019 compared to \$5.0 million of expense for the comparable period last year. This variance was primarily due to our adoption of the new lease accounting standard under which we no longer have deemed landlord financing liabilities and associated interest expense.

Income Tax Provision

Our effective income tax rate was 6.2% for the first three quarters of fiscal 2019 compared to 9.8% for the comparable prior year period. This decrease was primarily due to a higher proportion of FICA tip credit in relation to pre-tax income, higher non-taxable gains on our investments in variable life insurance contracts used to support our non-qualified executive deferred compensation plan and the impact of technical guidance published in the fourth quarter of fiscal 2018 regarding the deductibility of employee meals.

Non-GAAP Measures

Adjusted net income and adjusted diluted net income per share are supplemental measures of our performance that are not required by or presented in accordance with GAAP. These non-GAAP measures may not be comparable to similarly titled measures used by other companies and should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP. We calculate these non-GAAP measures by eliminating from net income and diluted net income per share the impact of items we do not consider indicative of our ongoing operations. We use these non-GAAP financial measures for financial and operational decision-making and as a means to evaluate period-to-period comparisons. Our inclusion of these adjusted measures should not be construed as an indication that our future results will be unaffected by unusual or infrequent items. In the future, we may incur expenses or generate income similar to the adjusted items.

Following is a reconciliation from net income and diluted net income per share to the corresponding adjusted measures (in thousands, except per share data):

	Thirteen Weeks Ended October 1, 2019	Thirteen Weeks Ended October 2, 2018	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
Net income	\$ 16,090	\$ 28,475	\$ 78,584	\$ 82,857
After-tax impact from:				
Impairment of assets and lease terminations ⁽¹⁾	—	195	—	2,106
Loss on investments in unconsolidated affiliates ⁽²⁾	7,655	1,153	9,945	1,988
Acquisition costs ⁽³⁾	2,361	—	2,361	—
Adjusted net income	<u>\$ 26,106</u>	<u>\$ 29,823</u>	<u>\$ 90,890</u>	<u>\$ 86,951</u>
Diluted net income per share	\$ 0.36	\$ 0.61	\$ 1.76	\$ 1.79
After-tax impact from:				
Impairment of assets and lease terminations ⁽¹⁾	—	0.00	—	0.04
Loss on investments in unconsolidated affiliates ⁽²⁾	0.18	0.03	0.23	0.04
Acquisition costs ⁽³⁾	0.05	—	0.05	—
Adjusted diluted net income per share ⁽⁴⁾	<u>\$ 0.59</u>	<u>\$ 0.64</u>	<u>\$ 2.04</u>	<u>\$ 1.87</u>

(1) Represents lease termination costs related to the closure of one The Cheesecake Factory restaurant. The associated pre-tax amounts were \$0.3 million and \$2.8 million in the thirteen and thirty-nine weeks ended October 2, 2018, respectively. This

[Table of Contents](#)

amount is recorded in impairment of assets and lease terminations on the condensed consolidated statements of income. The tax effect assumes a 26% tax rate based on the federal statutory rate and an estimated blended state tax rate.

- (2) Represents our share of losses incurred by North Italia and Flower Child. The pre-tax amounts associated with these items were \$10.3 million and \$13.4 million in the thirteen and thirty-nine weeks ended October 1, 2019, respectively, and \$1.6 million and \$2.7 million in the thirteen and thirty-nine weeks ended October 2, 2018, respectively. These amounts are recorded in loss on investment in unconsolidated affiliates on the condensed consolidated statements of income. The tax effect assumes a 26% tax rate based on the federal statutory rate and an estimated blended state tax rate.
- (3) Represents our costs incurred to effect the Acquisitions. The pre-tax amount associated with this item was \$3.2 million in both the thirteen and thirty-nine weeks ended October 1, 2019. These costs are recorded in general and administrative expenses on the condensed consolidated statements of income. The tax effect assumes a 26% tax rate based on the federal statutory rate and an estimated blended state tax rate.
- (4) Adjusted diluted net income per share may not add due to rounding.

Fiscal 2019 Outlook

The following fiscal 2019 outlook excludes any gain or loss on investment in unconsolidated affiliates and any impact from the Acquisitions, including integration costs. (See Note 12 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of the Acquisitions.)

For the fourth quarter of fiscal 2019, we estimate adjusted diluted net income per share will be between \$0.61 and \$0.66 based on an assumed comparable sales range of 0.5% to 1.5% at The Cheesecake Factory restaurants. We estimate adjusted diluted net income per share for fiscal 2019 will be between \$2.65 and \$2.70 based on an assumed comparable sales range of approximately 1% at The Cheesecake Factory restaurants. Reconciliations of our anticipated adjusted diluted net income per share ranges to their corresponding GAAP measures have not been provided as we cannot determine the probable significance or timing of certain reconciling items which are outside of our control and therefore cannot be reasonably predicted. For fiscal 2019, we estimate commodity cost inflation of about 2%, primarily driven by produce, meat and seafood costs, wage rate inflation of approximately 6% and an effective tax rate of approximately 9%.

In fiscal 2019, we plan to open as many as five new The Cheesecake Factory restaurants, two of which opened during the first three quarters of fiscal 2019. In addition, the first location of Social Monk Asian Kitchen, our new fast casual concept, opened during the first quarter of fiscal 2019. We expect as many as six The Cheesecake Factory restaurants to open internationally under licensing agreements, three of which opened during the first three quarters of fiscal 2019. In addition, the licensed location in Beirut ceased operations on May 1, 2019 and one location in Kuwait closed in preparation for a relocation in early fiscal 2020. We expect as many as two Flower Child locations to open in the fourth quarter of fiscal 2019, one of which opened in October. We also expect as many as one North Italia restaurants during the fourth quarter of fiscal 2019.

We currently estimate fiscal 2019 cash capital expenditures to range between \$80 million and \$90 million. This estimate contemplates a net outlay of \$45 million to \$49 million for restaurants expected to be opened during fiscal 2019, \$30 million to \$35 million for replacements, enhancements and capacity additions to our existing restaurants and approximately \$5 million to \$6 million for bakery and corporate infrastructure investments. In addition, we now expect \$10 million to support the planned North Italia and FRC openings during the fourth quarter of fiscal 2019.

We plan to maintain a balanced capital allocation strategy, investing in new restaurants that are expected to meet our targeted returns, repaying borrowings under our credit facility and continuing our dividend and share repurchase program.

Fiscal 2020 Outlook

We expect fiscal 2020 net capital expenditures to range between \$130 million and \$140 million to support our objective for accelerated unit growth of 7%. We will also make an \$11.3 million acquisition installment payment on the post-close consideration.

For fiscal 2020, we are currently estimating commodity cost inflation of approximately 2%, wage rate inflation of approximately 5.5% and an effective tax rate of approximately 8% to 9%.

[Table of Contents](#)

In fiscal 2020, we plan new unit growth to accelerate with as many as 20 new restaurants. This includes six The Cheesecake Factory restaurants, six North Italia restaurants and eight restaurants within the FRC subsidiary, which includes as many as five Flower Child locations. We also expect as many as four locations to open internationally under licensing agreements.

Liquidity and Capital Resources

The following table presents, for the periods indicated, a summary of our key cash flows from operating, investing and financing activities (in millions):

	Thirty-Nine Weeks Ended October 1, 2019	Thirty-Nine Weeks Ended October 2, 2018
Cash provided by operating activities	\$ 116.2	\$ 182.1
Additions to property and equipment	\$ (46.7)	\$ (78.7)
Growth capital provided to unconsolidated affiliates	\$ (25.5)	\$ (25.0)
Net borrowings on credit facility	\$ 325.0	\$ 10.0
Proceeds from exercise of stock options	\$ 6.5	\$ 7.3
Cash dividends paid	\$ (45.0)	\$ (41.4)
Treasury stock purchases	\$ (50.6)	\$ (60.9)

During the thirty-nine weeks ended October 1, 2019, our cash and cash equivalents increased by \$279.7 million to \$306.3 million. This increase was primarily attributable to borrowings on the New Facility to support Acquisitions (see Note 12 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of the Acquisitions), cash provided by operating activities and proceeds from exercise of stock options, partially offset by treasury stock purchases, additions to property and equipment, dividend payments and growth capital provided to North Italia and Flower Child. Cash flows from operations decreased by \$65.9 million from October 2, 2018, primarily due to timing of income tax payments, prepaid expenses and the depletion of inventory during the first three quarters of fiscal 2018 due to the temporary closure of our California bakery while we upgraded the facility.

As of October 1, 2019, we maintained a \$400 million unsecured revolving credit facility (the “New Facility”), \$40 million of which could be used for issuances of letters of credit. The New Facility, which terminates on July 30, 2024, contains a commitment increase feature that could provide for an additional \$200 million in available credit upon our request and the satisfaction of certain conditions. Certain of our material subsidiaries have guaranteed our obligations under the New Facility. During the third quarter of fiscal 2019, we utilized the New Facility to support the Acquisitions (see Note 12 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of the Acquisitions.) At October 1, 2019, we had net availability for borrowings of \$45.6 million, based on a \$335.0 million outstanding debt balance and \$19.4 million in standby letters of credit. The New Facility limits cash distributions with respect to our equity interests, such as cash dividends and share repurchases, based on a defined ratio. As of October 1, 2019, we were in compliance with the covenants set forth in the New Facility. (See Note 6 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.)

As of October 1, 2019, we held cumulative minority equity investments of \$88 million in two of FRC’s brands, North Italia and Flower Child, including \$3 million invested in the first quarter of fiscal 2019. In addition, we provided these concepts with \$22.5 million under secured promissory notes during the first three quarters of fiscal 2019. Pursuant to agreements entered with FRC in 2016, we had the right, and an obligation if certain financial, legal and operational conditions were met, to acquire the remaining interest in North Italia in fiscal 2019 and in Flower Child in fiscal 2021. On October 2, 2019, we acquired North Italia and FRC, including Flower Child and all other FRC brands.

The Acquisitions were completed for consideration consisting of the following components: \$286 million in cash at Closing, which was primarily funded by drawing on our New Facility; assumption of \$10 million in debt previously owned by FRC to us; \$45 million of deferred consideration due ratably over the next four years (including a \$13 million indemnity escrow amount specifically related to the FRC Acquisition); and a \$12 million indemnity escrow amount specifically related to the North Italia Acquisition due ratably over the next two years. Additionally, included in consideration are the acquisition-date fair values of contingent consideration and our previously held equity interests in North Italia and Flower Child.

The provision for contingent consideration is payable on the fifth anniversary of the Closing Date and is based on achievement of revenue and profitability targets for the FRC brands other than North Italia and Flower Child with considerations made in the event

we undergo a change in control or divest any FRC brand (other than North Italia and Flower Child). We are also required to provide financing to FRC in an amount sufficient to support achievement of these targets during the five years after Closing.

In fiscal 2012, our Board approved the initiation of a cash dividend to our stockholders, which is subject to quarterly Board approval. Cash dividends have been declared every quarter since initiation. Future decisions to pay or to increase or decrease dividends are at the discretion of the Board and will be dependent on our operating performance, financial condition, capital expenditure requirements, limitations on cash distributions pursuant to the terms and conditions of the New Facility and applicable law, and other such factors that the Board considers relevant.

Under authorization by our Board to repurchase up to 56.0 million shares of our common stock, we have cumulatively repurchased 52.9 million shares at a total cost of \$1,692.7 million through October 1, 2019, including 0.3 million shares at a cost of \$11.4 million repurchased during the third quarter of fiscal 2019. Our share repurchase authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. We make the determination to repurchase shares based on several factors, including current and forecasted operating cash flows, capital needs associated with new restaurant development and maintenance of existing locations, dividend payments, debt levels and cost of borrowing, obligations associated with the Acquisitions, our share price and current market conditions. The timing and number of shares repurchased are also subject to legal constraints and financial covenants under the New Facility that limit share repurchases based on a defined ratio. (See Note 6 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.) Our objectives regarding share repurchases are to offset the dilution to our shares outstanding that results from equity compensation grants and to supplement our earnings per share growth. (See Note 8 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our repurchase authorization and methods.)

Based on our current expansion objectives, we believe that during the upcoming 12 months our cash and cash equivalents, combined with expected cash flows provided by operations, available borrowings under the New Facility and expected landlord construction contributions should be sufficient in the aggregate to finance our capital allocation strategy, including capital expenditures, continuation of our dividend and share repurchase program, potential debt repayments and obligations associated with the Acquisitions. (See Note 12 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of the Acquisitions.)

As of October 1, 2019, we had no financing transactions, arrangements or other relationships with any unconsolidated entities or related parties other than our then existing arrangement with FRC. Additionally, we had no financing arrangements involving synthetic leases or trading activities involving commodity contracts.

Recent Accounting Pronouncements

See Note 1 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for a summary of new accounting standards.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

The following discussion of market risks contains forward-looking statements and should be read in conjunction with our interim unaudited condensed consolidated financial statements and related notes included in Part I, Item 1 of this report and with the following items included in our Annual Report on Form 10-K for the fiscal year ended January 1, 2019: the audited consolidated financial statements and related notes in Part IV, Item 15; the “Risk Factors” included in Part I, Item 1A; the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in Part II, Item 7; and the cautionary statements included throughout the report. Actual results may differ materially from the following discussion based on general conditions in the commodity and financial markets.

We purchase food and other commodities for use in our operations based on market prices established with our suppliers. Many of the commodities purchased by us can be subject to volatility due to market supply and demand factors outside of our control. We mitigate the risk of supply shortages and obtain competitive prices by utilizing multiple qualified suppliers for substantially all our ingredients and supplies. We negotiate short-term and long-term agreements for some of our principal commodity, supply and equipment requirements, such as certain dairy products and poultry, depending on market conditions and expected demand. We continue to evaluate the possibility of entering into similar arrangements for other commodities and also periodically evaluate hedging vehicles, such as direct financial instruments, to assist us in managing risk and variability associated with such commodities. Although

these vehicles may be available to us, as of October 1, 2019, we had chosen not to enter into any hedging contracts due to pricing volatility, excessive risk premiums, hedge inefficiencies or other factors. Commodities for which we have not entered into contracts can be subject to unforeseen supply and cost fluctuations, which at times may be significant. Additionally, the cost of commodities subject to governmental regulation, such as dairy and corn, can be especially susceptible to price fluctuation. Commodities we purchase on the international market may be subject to even greater fluctuations in cost and availability, which could result from a variety of factors, including the value of the U.S. dollar relative to other currencies, international trade disputes, tariffs and varying global demand. We may or may not have the ability to increase menu prices or vary menu items in response to food commodity price increases. For the third quarters of both fiscal 2019 and 2018, a hypothetical increase of 1% in food costs would have negatively impacted cost of sales by \$1.3 million.

We are exposed to market risk from interest rate changes on our funded debt. This exposure relates to the component of the interest rate on the New Facility that is indexed to market rates. Based on outstanding borrowings at October 1, 2019 and January 1, 2019, a hypothetical 1% rise in interest rates would have increased interest expense by \$3.4 million and \$100,000, respectively, on an annual basis. (See Note 6 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.)

We are also subject to market risk related to our investments in variable life insurance contracts used to support our non-qualified executive deferred compensation plan, to the extent these investments are not equivalent to the related liability. In addition, because changes in these investments are not taxable, gains and losses result in tax benefit and tax expense, respectively, and directly affect net income through the income tax provision. Based on balances at October 1, 2019 and January 1, 2019, a hypothetical 10% decline in the market value of our deferred compensation asset and related liability would not have impacted income before income taxes. However, under such scenario, net income would have declined by \$1.7 million and \$1.5 million at October 1, 2019 and January 1, 2019, respectively.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

We have established and maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 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 our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only a reasonable assurance of achieving the desired control objectives, and management was necessarily required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. We carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of October 1, 2019.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934) during the fiscal quarter ended October 1, 2019 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.

See Note 7 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report.

Item 1A. Risk Factors.

A description of the risk factors associated with our business is contained in Part I, Item 1A, “Risk Factors,” of our Annual Report on Form 10-K for the fiscal year ended January 1, 2019 (“Annual Report”). These cautionary statements are to be used as a reference in connection with any forward-looking statements. The factors, risks and uncertainties identified in these cautionary statements are in addition to those contained in any other cautionary statements, written or oral, which may be made or otherwise addressed in connection with a forward-looking statement or contained in any of our subsequent filings with the SEC.

Except as set forth below, there have been no material changes in our risk factors since the filing of our Annual Report.

We have incurred and will further incur substantial costs in connection with the Acquisitions.

We have incurred and expect to continue to incur significant costs in connection with the Acquisitions, including accounting, legal and other fees and expenses. Further, the FRC Acquisition requires us to pay contingent consideration and provide financing to FRC in an amount sufficient to support certain targets during the five years after closing, in each case, subject to the satisfaction of certain conditions. In addition, we will incur substantial costs in connection with integrating FRC’s businesses with ours, and there can be no assurance that we will not incur a material amount of unanticipated costs.

We may not be able to successfully integrate FRC’s businesses with ours.

Combining independent companies with separate businesses, customers, employees, cultures and systems is a complex, costly and time-consuming process. We may experience material unanticipated difficulties or expenses in connection with the integration, and this process may disrupt the business of either or both companies. Some of the difficulties we face include:

- consolidating and retaining management and other key employees;
- integrating information, communications and other systems;
- integrating purchasing, logistics, marketing and administration methods;
- integrating corporate and administrative infrastructures;
- minimizing the diversion of management’s attention from ongoing business concerns; and
- failing to successfully manage and coordinate the growth of the combined company.

Many of these factors are outside of our control and any one of them could result in increased costs, decreased revenues and diversion of management’s time and focus, which could materially and adversely impact our business, financial condition and operating results.

Any failure to realize the anticipated benefits of the Acquisitions could have a material adverse effect on us.

We acquired FRC’s businesses with the expectation that the Acquisitions will result in various benefits including, among others, business and growth opportunities and synergies in supply chain, real estate and other areas over time. However, even if we are able to successfully integrate FRC’s businesses with ours, there can be no assurances that we will realize some or all of the anticipated benefits of the Acquisitions, within the anticipated timeframes, if at all. We may experience increased competition that limits our ability to expand our business, we may not be able to capitalize on expected business opportunities, and general industry and business conditions may deteriorate. If any of these or other expected or unexpected factors limit our ability to achieve the anticipated benefits of the Acquisitions, or if such business opportunities, growth prospects and synergies are not realized for any other reason, our business, financial condition and operating results could be materially adversely affected.

We have substantial additional indebtedness following the Acquisitions, which could adversely affect our business.

We financed the Acquisitions with a new revolving credit facility of \$400 million and cash on hand. (See Note 6 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of the New Facility.) At close of the Acquisitions we had an outstanding balance of approximately \$335 million. This increased indebtedness and our resulting higher

debt-to-equity ratio, as compared to that which has existed on a historical basis, could limit our ability to obtain additional financing in the future and have other material consequences, including:

- increasing our vulnerability to, and limiting our flexibility in planning for, changing business and market conditions, making us more vulnerable to adverse economic and industry conditions;
- limiting our ability to use proceeds from any offering or divestiture transaction for purposes other than the repayment of debt; and
- creating competitive disadvantages compared to other companies with less indebtedness.

Under the New Facility, we are subject to certain financial covenants, limitations on cash distributions and negative covenants that restrict indebtedness, liens, investments, sales of assets, fundamental changes and other matters. If we fail to comply with any of these requirements, the New Facility could be terminated and the related outstanding indebtedness could become due and payable at the administrative agent's discretion (or upon request of the lenders comprising more than 50% of total commitments). A default may also significantly affect our ability to obtain additional or alternative financing. Our ability to refinance our obligations will depend on our operating and financial performance, which in turn, is subject to prevailing economic conditions and to financial, business and other factors beyond our control.

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

The following table presents our purchases of our common stock during the thirteen weeks ended October 1, 2019 (in thousands, except per share data):

Period	Total Number of Shares Purchased ⁽¹⁾	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
July 3 — August 6, 2019	249	\$ 43.54	249	3,104
August 7 — September 3, 2019	9	38.02	—	3,095
September 4 — October 1, 2019	5	38.76	—	3,090
Total	263		249	

(1) The total number of shares purchased includes 14,890 shares withheld upon vesting of restricted share awards to satisfy tax withholding obligations.

Under authorization by our Board to repurchase up to 56.0 million shares of our common stock, we have cumulatively repurchased 52.9 million shares at a total cost of \$1,692.7 million through October 1, 2019, including 0.3 million shares at a cost of \$11.4 million during the third quarter of fiscal 2019. Our share repurchase authorization does not have an expiration date, does not require us to purchase a specific number of shares and may be modified, suspended or terminated at any time. (See Note 8 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our repurchase authorization and methods.) The timing and number of shares repurchased are also subject to legal constraints and financial covenants under the Facility that limit share repurchases based on a defined ratio. (See Note 6 of Notes to Condensed Consolidated Financial Statements in Part I, Item 1 of this report for further discussion of our long-term debt.)

[Table of Contents](#)

Item 6. Exhibits

Exhibit No.	Item	Form	File Number	Incorporated by Reference from Exhibit Number	Filed with SEC
2.1	Purchase Agreement, dated as of November 14, 2016, as amended by Amendment & Option Exercise Agreement, dated as of July 30, 2019, by and among The Cheesecake Factory Incorporated and the other Parties thereto*	—	—	—	Filed herewith
2.2	First Amendment to Option Exercise Agreement and Second Amendment to Purchase Agreement and Operating Agreement, dated as of October 2, 2019, by and among The Cheesecake Factory Incorporated and the other Parties thereto*	—	—	—	Filed herewith
2.3	Membership Interest Purchase Agreement, dated as of July 30, 2019, by and among The Cheesecake Factory Restaurants, Inc., Fox Restaurant Concepts LLC, the Sellers party thereto, SWF Posse LLC, as Seller's representative, and, solely for limited purposes set forth therein, The Cheesecake Factory Incorporated**†	—	—	—	Filed herewith
2.4	First Amendment to Membership Interest Purchase Agreement, dated as of October 2, 2019, by and among The Cheesecake Factory Restaurants, Inc., Fox Restaurant Concepts LLC, and SWF Posse LLC, as Seller's representative*	—	—	—	Filed herewith
3.1	Restated Certificate of Incorporation of The Cheesecake Factory Incorporated	10-Q	000-20574	3.2	8/6/18
3.2	Bylaws of The Cheesecake Factory Incorporated (Amended and Restated on May 20, 2009)	8-K	000-20574	3.8	5/27/09
10.1	Third Amended and Restated Loan Agreement with JPMorgan Chase Bank, National Association dated as of July 30, 2019	—	—	—	Filed herewith
31.1	Rule 13a-14(a)/15d-14(a) Certification of the Principal Executive Officer	—	—	—	Filed herewith
31.2	Rule 13a-14(a)/15d-14(a) Certification of the Principal Financial Officer	—	—	—	Filed herewith
32.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 of the Principal Executive Officer	—	—	—	Filed herewith
32.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 of the Principal Financial Officer	—	—	—	Filed herewith
101.1	The following materials from The Cheesecake Factory Incorporated's Quarterly Report on Form 10-Q for the quarter ended October 1, 2019, formatted in Inline eXtensible Business Reporting Language (iXBRL): (i) condensed consolidated balance sheets, (ii) condensed consolidated statements of income, (iii) condensed consolidated statements of comprehensive income, (iv) condensed consolidated statement of stockholders' equity, (v) condensed consolidated statements of cash flows, and (vi) the notes to the condensed consolidated financial statements	—	—	—	Filed herewith
104.1	The cover page of The Cheesecake Factory Incorporated's Quarterly Report on Form 10-Q for the quarter ended October 1, 2019, formatted in iXBRL (included with Exhibit 101.1)	—	—	—	Filed herewith

*The schedules (or similar attachments) to this exhibit have been omitted from this filing pursuant to Item 601(a)(5) of Regulation S-K. The Company will furnish copies of any such schedules (or similar attachments) to the SEC upon request.

† Certain confidential information contained in this agreement has been omitted because it (i) is not material and (ii) would be competitively harmful if publicly disclosed.

SIGNATURES

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

Date: November 8, 2019

THE CHEESECAKE FACTORY INCORPORATED

By: /s/ DAVID OVERTON

David Overton

Chairman of the Board and Chief Executive Officer

(Principal Executive Officer)

By: /s/ MATTHEW E. CLARK

Matthew E. Clark

Executive Vice President and Chief Financial Officer

(Principal Financial Officer)

AMENDMENT & OPTION EXERCISE AGREEMENT

THIS AMENDMENT & OPTION EXERCISE AGREEMENT (this “Agreement”) is entered into as of July 30, 2019, by and between (i) North Investors LLC, an Arizona limited liability company (“North Investors”), (ii) Villa Entertainment Group, LLC, a California limited liability company (“Villa”), (iii) TCF California Holding Company, a California corporation (“TCF”), (iv) The Cheesecake Factory Incorporated, a Delaware corporation (“Cake”), (v) Samuel W. Fox (“Fox”), (vi) Fox Restaurant Concepts LLC, an Arizona limited liability company (“FRC”), (vii) North Restaurants LLC, an Arizona limited liability company (“North Restaurants”), (viii) each of the Persons listed on Exhibit A (each, a “North LLC” and collectively, the “North LLCs”) and (ix) FRC Management LLC, an Arizona limited liability company (“FRC Management”). North Investors, Villa, TCF, Cake, Fox, FRC, North Restaurants and the North LLCs shall each be referred to herein as a “Party” and collectively, the “Parties.” Capitalized terms used, but not defined, in this Amendment shall have the meanings ascribed thereto in the Original Operating Agreement (as defined below).

RECITALS

WHEREAS, FRC, North Investors, Villa and TCF entered into an Operating Agreement of North Restaurants, dated as of November 14, 2016 (the “Original Operating Agreement” and, as amended hereby, the “Operating Agreement”);

WHEREAS, pursuant to Section 12.10 thereof, the Original Operating Agreement may be amended by a written amendment approved by its Members;

WHEREAS, North Investors and TCF (constituting all of the Members of North Restaurants) desire to amend the Original Operating Agreement pursuant to Section 12.10 thereof as provided herein;

WHEREAS, TCF desires to exercise the Option and provide notice of such exercise to North Investors and FRC (in its capacity as the Manager of North Restaurants), and TCF and North Investors desire to effectuate the Option Purchase as provided herein;

WHEREAS, the Parties entered into a Purchase Agreement (North Italia), dated as of November 14, 2016 (the “Original Purchase Agreement” and, as amended hereby, the “Purchase Agreement”);

WHEREAS, pursuant to Section 16(b) thereof, the Original Purchase Agreement may be amended by a written modification executed by each party thereto; and

WHEREAS, the Parties desire to amend the Original Purchase Agreement pursuant to Section 10.5 thereof to incorporate certain changes as provided herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

Section 1 Option Purchase.

(a) Option Notice. Pursuant to Section 8.7(a)(i) of the Operating Agreement, TCF hereby delivers written notice to North Investors and FRC (in its capacity as the Manager of North Restaurants) of its election to require North Investors, the only other holder of a Membership Interest other than TCF and its Affiliates, to sell, assign, transfer and convey such Membership Interests to TCF in accordance with the terms of the Operating Agreement and this Agreement. TCF, FRC, Villa and North Investors hereby acknowledge and agree that (i) this Agreement shall constitute the Option Notice, (ii) the Option Date shall be the date hereof and (iii) the Option Purchase shall be consummated on the terms set forth in Section 8.7 of the Operating Agreement (as modified pursuant to this Agreement). Each of FRC, Villa and North Investors hereby acknowledge and agree that it has received the Option Notice as required by Section 8.7(a)(iv).

(b) Closing Date. Pursuant to Section 8.7(c)(iii) of the Operating Agreement, FRC and TCF mutually agree that, subject to the satisfaction of the conditions set forth in Section 8.8 of the Operating Agreement (or the waiver thereof by the party entitled to waive that condition), the Closing Date shall be October 2, 2019 (or, if such conditions are not satisfied on such date, November 6, 2019) and the closing of the Option Purchase (the “Closing”) shall be deemed to take place at the offices of Latham & Watkins LLP at 355 South Grand Avenue, Suite 100, Los Angeles, California 90071-1560 at 12:01 a.m. local time on the Closing Date (and adjusted across time zones such that the Closing shall be deemed to have been effective as of 12:01 a.m. in each time zone), unless another time and/or date are agreed to in writing by FRC and TCF.

(c) Initial Acquisition Price. Each Party hereby agrees that the “Initial Acquisition Price” shall be \$120,000,000, less the amount of indebtedness of North Restaurants and its Subsidiaries set forth in (i) the Payoff Letters.

(d) No Adjusted Acquisition Price. Notwithstanding anything to the contrary set forth in the Operating Agreement, the Purchase Agreement or this Agreement Party hereby acknowledges and agrees that (i) there will be no adjustments to the amount of the Initial Acquisition Price as set forth in the first sentence of Section 1(c), (ii) for purposes of the Operating Agreement, the “Adjusted Acquisition Price” shall be deemed to equal the Initial Acquisition Price as set forth in the first sentence of Section 1(c) and (iii) any and all provisions in the Original Agreements or the Escrow Agreement directly pertaining to the Adjusted Acquisition Price shall be of no force and effect.

(e) Forbearance. Until the earlier of the termination of this Agreement in accordance with Section 3 and the consummation of the Option Purchase, TCF shall not exercise the Option pursuant to Section 8.7(a)(ii) or Section 8.7(a)(iii) of the Operating Agreement, and North Investors shall not exercise the Put pursuant to Section 8.7(b) of the Operating Agreement.

Section 2 Governmental Approvals; Consents.

(a) Upon the terms and subject to the conditions set forth in the Purchase Agreement, the Operating Agreement and this Agreement, each of the Parties shall use all commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary to consummate and make effective, as promptly as commercially practicable, the Option Purchase, including using commercially reasonable efforts to obtain all necessary actions or nonactions, waivers, consents and approvals from Governmental Authorities and to make all necessary registrations and filings (including filings with Governmental Authorities, which shall include filing the premerger notifications and related documentation required under the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (“HSR Act”) no later than ten Business Days following the date hereof) and to take all commercially reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid a legal proceeding by, any Governmental Authority. Each of TCF and North Restaurants shall pay 50% of the HSR Act filing fees related to such filing. Notwithstanding the foregoing, TCF shall not have any obligation to (and North Restaurants and its Affiliates shall not without TCF’s prior written request) (x) propose, negotiate, commit to or effect, by consent decree, hold separate order or otherwise, the sale, divestiture or disposition of any assets or businesses of TCF, North Restaurants or any of their Subsidiaries or Affiliates or (y) otherwise take or commit to take any actions that would limit the freedom of TCF, North Restaurants or any of their Subsidiaries or their Affiliates with respect to, or their ability to retain, one or more of their businesses, product lines or assets.

(b) Before the Closing, North Restaurants shall use all commercially reasonable efforts to obtain, and to cooperate in obtaining, all consents, approvals, waivers, licenses, permits, franchises and authorizations (“Consents”) from third parties necessary or appropriate to permit the consummation of the Option Purchase; provided, however, that the Parties shall not be required to pay or commit to pay any amount to (or incur any obligation in favor of) any Person from whom any such Consent may be required (other than customary filing fees payable to Governmental Authorities and nominal filing or application fees payable to other third parties) and no Party shall agree to any conditions or restrictions imposed by any third party that, individually or in the aggregate, would materially impair (or could reasonably be expected to materially impair) the ability of such Party to consummate the Option Purchase or would reasonably be expected to have a material adverse effect on the economic benefits to TCF arising therefrom.

(c) Prior to the Closing, subject to Laws relating to the sharing of information, each of the Parties shall have the right to review in advance, and to the extent practicable each will consult the others on, any filing made with, or written materials submitted to, any third party or any Governmental Authority in connection with the Option Purchase. Each of the Parties shall furnish to the other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of any such filing or submission. Furthermore, the Parties shall (i) keep each other fully informed of all communications received from, or made to, and any inquiries or requests for additional information or documents from, the United States Federal Trade Commission, the Antitrust Division of the United States Department of Justice or any other Governmental Authority in connection with the transactions contemplated hereby, (ii) not make any submission to a Governmental Authority related to the transactions

contemplated hereby without first having provided the other party and its counsel a reasonable opportunity to provide comments on such submission, and having considered such comments in good faith and (iii) promptly and completely provide any information or documents requested by any Governmental Authority in connection with transactions contemplated hereby.

Section 3 Termination.

(a) Termination. Notwithstanding anything to the contrary set forth in the Operating Agreement, the Purchase Agreement or this Agreement, this Agreement may be terminated and the Option Purchase may be abandoned at any time prior to the Closing:

(i) by mutual written consent of TCF and North Investors; or

(ii) by TCF or North Investors if the Option Purchase shall have not been consummated by November 6, 2019 (the “Outside Date”); provided, however, that the right to terminate pursuant to this Section 3(a)(ii) shall not be available to TCF or North Investors, as applicable, in the event that failure to fulfill any material obligations of such Party under this Agreement or Sections 8.7 and 8.8 of the Operating Agreement has been the principal cause of or resulted in the failure of the Closing to occur on or before the Outside Date.

(b) Effect of Termination. If this Agreement is terminated and the Option Purchase is abandoned as described in Section 3(a), then this Agreement shall become null and void and of no further force and effect, and all further obligations of the Parties under this Agreement will terminate, except (a) for Section 3 and Section 7, and (b) following the termination of this Agreement, nothing herein shall relieve any Party from liability for any breach of this Agreement occurring prior to the termination of this Agreement.

(c) Certain Conditions Precedent.

(i) Assignment Agreement. At the Closing, North Investors will deliver to TCF, and TCF will deliver to North Investors an assignment agreement, in a form reasonably acceptable to TCF, assigning North Investors’ Membership Interests to TCF free and clear of any Lien, which assignment agreement shall be deemed to be the written instrument of assignment under Section 8.8(a) of the Operating Agreement.

(ii) Transferee. TCF, FRC, Villa and North Investors acknowledge and agree that TCF is already bound by the terms of the Operating Agreement, and no further action on the part of TCF shall be required to satisfy the requirements of Section 8.8(b) of the Operating Agreement.

(iii) Payoff Letters. At least three Business Days prior to the Closing, North Restaurants will deliver to TCF payoff letters executed by the lenders under any third-party indebtedness of North Restaurants or its Subsidiaries, including Lender, to evidence the full payment of such indebtedness and full and complete release of any security therefor (“Payoff Letters”), which Payoff Letters shall be in form and substance reasonably acceptable to TCF. At the Closing, TCF shall pay, on behalf of North Restaurants, the amount of such Payoff Letters by wire transfer of immediately available funds to an account or accounts of the applicable payees thereof designated in the Payoff Letters.

(d) Manager Determinations. Pursuant to Section 8.8(d) of the Operating Agreement, FRC (in its capacity as the Manager of North Restaurants) hereby acknowledges and agrees that it is reasonably satisfied that after the completion of the Option Purchase, the Company will (i) remain qualified to do business in each jurisdiction in which the Company is qualified, organized or does business; maintain its status as a partnership for federal and applicable state tax purposes; (ii) comply with any applicable state and federal laws including securities laws and regulations and not subject the Company to any public reporting requirements; and (iii) not require registration of the Membership Interest under any federal or state securities laws.

Section 4 Amendments to Original Operating Agreement.

(a) Amendment to Section 1.9. Section 1.9 of the Original Operating Agreement is hereby amended by adding the following prior to the first sentence thereof: “All capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the Purchase Agreement and Operating Agreement (and in the event of a conflict between the two, the definition in the Operating Agreement shall prevail)”.

(b) Amendment to Section 8.7(a). Section 8.7(a) of the Original Operating Agreement is hereby amended by deleting the reference to the month of “August 30” and inserting in its place “July 31”.

(c) Amendment to Section 8.8. Section 8.8 of the Original Operating Agreement is hereby amended by adding the following after Section 8.8(d) of the Original Operating Agreement:

“(e) The waiting period applicable to the consummation of the Option Purchase under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder shall have expired or been terminated.”

(d) Amendment to Exhibit E. Exhibit E of the Original Operating Agreement is hereby amended and restated as follows: “[Reserved]”.

Section 5 Amendments to Original Purchase Agreement.

(a) Amendment to Section 8. Effective upon the Closing, Section 8 of the Original Purchase Agreement is hereby amended and restated as follows: “[Reserved]”.

(b) Amendment to Section 9. Effective upon the Closing, Section 9 of the Original Purchase Agreement is hereby amended and restated as follows: “[Reserved]”.

(c) Amendment to Section 12. Effective upon the Closing, Section 12 of the Original Purchase Agreement is hereby amended and restated as follows: “[Reserved]”.

(d) Amendment to Section 14. Effective upon the Closing, Section 14 of the Original Purchase Agreement is hereby amended and restated as follows: “[Reserved]”.

Section 6 Representations and Warranties. Each Party represents and warrants to each other Party as follows:

(a) **Organization, Standing and Power.** Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has full power and authority to own, lease or otherwise hold its properties and assets and to conduct its business as presently conducted.

(b) **Authority, Execution and Delivery, Enforceability.** Such Party has full power and authority to execute, deliver and perform its obligations under this Agreement and, if applicable, to consummate the Option Purchase. The execution, delivery and performance by such Party of this Agreement and, if applicable, the consummation by such Party of the Option Purchase have been duly authorized by all necessary corporate, limited liability company or other entity action of such Party. Such Party has duly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as limited by applicable laws affecting the enforcement of creditors' rights generally or by general equitable principles.

(c) **Ownership.** In the case of North Investors, North Investors owns all of the Membership Interest of the Company (other than the Membership Interest owned by TCF and its Affiliates) free and clear of all Liens (except the NBA Liens (as defined in the Original Purchase Agreement)) and other defects in title of any kind or description.

(d) **Bring-Down.** In the case of North Investors, North Investors hereby makes each of the representations and warranties of North Investors (with the updated and amended disclosure schedule dated as of the Closing Date) set forth in the Original Purchase Agreement as of Closing Date.

Section 7 Miscellaneous.

(a) **Governing Law.** This Agreement and all actions (whether at law, in contract, in tort or otherwise) arising out of or relating to this Agreement will be governed by and construed according to the laws of the State of Arizona without regard to conflicts of law principles and will bind and inure to the benefit of the heirs, successors, assigns, and personal representatives of the Parties; **PROVIDED THAT, NOTWITHSTANDING THE FOREGOING, ANY DISPUTES INVOLVING THE TCF FINANCING SOURCES WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING REGARD TO CONFLICTS OR CHOICE OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.** Each Party hereto waives any objection based on forum non conveniens and waives any objection to venue of any action instituted hereunder. EACH PARTY HERETO IRREVOCABLY WAIVES (TO THE EXTENT PERMITTED BY LAW) ALL RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR OTHER PROCEEDING (WHETHER AT LAW, IN CONTRACT, IN TORT OR OTHERWISE) INSTITUTED BY OR AGAINST SUCH PARTY IN RESPECT OF ITS OBLIGATIONS HEREUNDER, INCLUDING IN ANY ACTION, PROCEEDING OR COUNTERCLAIM AGAINST ANY TCF FINANCING SOURCE.

(b) Enforcement. The Parties agree that irreparable damage could occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to seek to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity. Any requirements for the securing or posting of any bond in connection with such remedy are waived. Each of the Parties hereby irrevocably waives, and agrees not to assert or attempt to assert, by way of motion or other request for leave from the court, as a defense, counterclaim or otherwise, in any proceeding, any claim or argument that there is an adequate remedy at law or that an award of specific performance is not otherwise an available or appropriate remedy. Notwithstanding anything to the contrary in this Agreement or the Original Purchase Agreement, each Party agrees that nothing in this Agreement shall require TCF or any of its Affiliates to enforce and none of the Parties shall be entitled to seek specific performance, injunctive relief or other equitable remedies to cause TCF or any of its Affiliates to enforce their respective rights under the TCF Loan Agreement or cause TCF Financing to be funded.

(c) Notices. Notices may be delivered either by United States mail, electronic mail, hand delivery, recognized overnight air service (e.g., Federal Express) or facsimile. Any notice or document required or permitted hereunder shall be in writing and shall be deemed to be given on the date received by the recipient; provided, however, that all notices and documents mailed in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the recipient at its respective address as shown in the signature pages to this Agreement, shall be deemed to have been received five (5) days after mailing, and all notices and documents delivered by electronic mail or facsimile to a recipient at its respective electronic mail address or facsimile number, if any, as shown in the signature pages to this Agreement shall be deemed to have been received by the recipient upon the later of twenty-four (24) hours after transmission or 5:00 p.m. local time of the recipient on the next Business Day following the day of transmission of such electronic mail or facsimile. The mailing address, electronic mail address and facsimile number of each of the Party shall be for all purposes as set forth in the signature pages to this Agreement unless otherwise changed by such Party by notice to the Company and all other Parties as provided herein.

(d) Interpretation; Captions. The headings contained herein and in any Exhibit hereto are for reference purposes only and shall not affect in any way the meaning or interpretation hereof. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part hereof as if set forth in full herein. Any capitalized terms used in any Exhibit, but not otherwise defined therein, shall have the meaning as defined herein. When a reference is made herein to a Section or Exhibit, such reference shall be to a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns. For all purposes of this Agreement, unless otherwise specified herein, (i) "or" shall be construed in the inclusive sense of "and/or"; (ii) words (including capitalized terms defined herein) in the singular shall be construed to include the plural and vice versa and words (including

capitalized terms defined herein) of one gender shall be construed to include the other gender as the context requires; (iii) the terms “hereof” and “herein” and words of similar import shall be construed to refer to this Agreement as a whole (including all the Exhibits and Schedules) and not to any particular provision of this Agreement; (iv) the terms “including” and “include” mean “including, without limiting the generality of the foregoing”; and (v) all references herein to “\$” or dollars shall refer to United States dollars. Each representation, warranty, covenant and agreement contained herein shall have independent significance. Accordingly, if any representation, warranty, covenant or agreement contained herein is breached, the fact that there exists another representation, warranty, covenant or agreement relating to the same subject matter (regardless of the relative levels of specificity) shall not detract from or mitigate the breach of the first representation, warranty, covenant or agreement. Except to the extent a shorter time period is expressly set forth herein for a particular cause of action, actions hereunder may be brought at any time prior to the expiration of the longest time period permitted by applicable law. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is a non-business day, the period in question shall end on the next succeeding business day.

(e) Amendments. Except as otherwise provided in this Agreement, this Agreement shall not be altered, modified or changed except by a written amendment approved by each Party. Notwithstanding the foregoing, the provisions of Section 7(a), (b) (n) and this Section 7(e) (and any other provision of this Agreement to the extent an amendment, supplement, waiver or other modification of such provision would modify the substance of such sections) may not be amended, supplemented, waived or otherwise modified in any manner that is materially adverse to the TCF Financing Sources without the prior written consent of each TCF Financing Source.

(f) The Original Agreements. Except as specifically amended hereby, the Original Operating Agreement and Original Purchase Agreement (the “Original Agreements”) shall continue in full force and effect in accordance with the provisions thereof in existence on the date hereof. Unless the context otherwise requires, after the date hereof, any reference to either of the Original Agreements shall mean such Original Agreement as amended hereby.

(g) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Parties. The exchange of copies hereof, including signature pages hereto, by facsimile, e mail or other means of electronic transmission shall constitute effective execution and delivery hereof as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures transmitted by facsimile, e-mail or other means of electronic transmission shall be deemed to be original signatures for all purposes.

(h) Inconsistencies. In the event of any inconsistency between this Agreement and either of the Original Operating Agreement or the Original Purchase Agreement, this Agreement shall prevail.

(i) Expenses. Except as otherwise expressly set forth in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such expense.

(j) Attorneys' Fees. If any proceeding relating to this Agreement or any of the transactions contemplated hereby or the enforcement thereof is brought against any Party, the prevailing Party, if any, shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

(k) Assignment. This Agreement and the rights and obligations hereunder shall not be assignable by any Party without the prior written consent of all other Parties. Notwithstanding the foregoing, TCF may, without the consent of any other Party, assign all or any portion of its rights and obligations hereunder to any Affiliate or Affiliates of TCF. No such assignment shall release TCF from any of its obligations hereunder without the consent of other Parties.

(l) Severability. If any provision hereof (or any portion thereof) or the application of any such provision (or any portion thereof) to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion thereof) or the application of such provision to any other persons or circumstances.

(m) Definitive Documentation. This agreement constitutes one of the Definitive Documentation (as defined in the Original Purchase Agreement).

(n) TCF Financing Sources. Notwithstanding anything to the contrary contained herein, each Party (other than TCF) hereby irrevocably and unconditionally agrees that none of the TCF Financing Sources shall have any liability or obligation to any Seller under or in connection with this Agreement, any commitment letter, engagement letter or definitive financing document (including the TCF Loan Agreement) or any of the transactions contemplated hereby or thereby (including with respect to the TCF Financing). Each Party (other than TCF) hereby waives any and all rights or claims and causes of action (whether at law, in equity, in contract, in tort or otherwise) against the TCF Financing Sources that may be based upon, arise out of or relate to this Agreement, any commitment letter, engagement letter or definitive financing document (including the TCF Loan Agreement) or any of the transactions contemplated hereby or thereby (including the TCF Financing), and each Seller agrees not to commence or support a proceeding against any TCF Financing Source in connection with this Agreement or any commitment letter, engagement letter or definitive financing document (including the TCF Loan Agreement) or any of the transactions contemplated hereby or thereby (including any proceeding related to the TCF Financing). Nothing in this Section 7(n) will limit the rights of TCF or its affiliates in respect of the TCF Financing under the TCF Loan Agreement. Without limiting the foregoing, no TCF Financing Source shall be subject to any special, consequential, punitive or indirect damages or damages of a tortious nature to any Seller. The TCF Financing Sources shall be express third party beneficiaries of this Section 7(n) and Sections 7(a), (b) and (e), each of such sections shall expressly enure to the benefit of the TCF Financing Sources and the TCF Financing Sources shall

be entitled to rely on and enforce the provisions of such Sections. For purposes of this Section 7, the following capitalized terms shall have the following meanings:

“TCF Financing” means one or more loans or extensions of credit made under the TCF Loan Agreement in order to financing in part the payment of the Initial Acquisition Price.

“TCF Financing Sources” means the agents, arrangers, lenders, issuing banks and other persons that have committed to provide or arrange or otherwise entered into the TCF Loan Agreement or otherwise agreed to provide any portion of the TCF Financing, together with their respective Affiliates and their and such Affiliates’ respective direct or indirect, former, current or future general and limited partners, officers, directors, employees, controlling persons, agents, representatives, advisors and counsel and their respective successors and assigns.

“TCF Loan Agreement” means that certain Third Amended and Restated Loan Agreement, dated as of July 30, 2019, among The Cheesecake Factory Incorporated, the owner of 100% of the capital stock of TCF, as borrower, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent, as the same may be amended, restated or supplemented from time to time.

[Signature Page Follows]

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

THE CHEESECAKE FACTORY INCORPORATED

By: /s/ David Overton

Name: David Overton

Title: Chief Executive Officer

Contact Information:

TCF CALIFORNIA HOLDING COMPANY

By: /s/ David Overton

Name: David Overton

Title: President and Chief Executive Officer

Contact Information:

VILLA ENTERTAINMENT GROUP, LLC

By: /s/ Randy Delano

Name: Randy Delano

Title: Managing Member

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

FOX RESTAURANT CONCEPTS LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

FRC MANAGEMENT LLC

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

NORTH INVESTORS LLC

By: Fox Restaurant Concepts LLC
Its: Manager

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

NORTH RESTAURANTS LLC

By: Fox Restaurant Concepts LLC
Its: Manager

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

NORTH LLCs:

FRC NORTH-ITALIAN (TUCSON) LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

FRC NORTH (KC 119)

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

FRC (NORTH – 119) LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

FRC (NORTH-CHERRY CREEK) LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

FRC NORTH-ITALIAN LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

FRC 40TH STREET LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

FRC NORTH HOUSTON LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

FRC (NORTH-DOMAIN AUSTIN) LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

FRC – AUSTIN MANAGEMENT LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

FRC DOMAIN BEVERAGES LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

FRC NORTH THE POINT LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

FRC NORTH (PARK PLACE) LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

NORTH LEGACY WEST LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

NORTH FV LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

NORTH 2ND STREET LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

FRC NORTH ONE PASEO LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

FRC NORTH-ITALIAN (ARROWHEAD) LLC

By: FRC Management LLC
Its: Manager

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:

[Signature Page to Amendment and Option Exercise Agreement]

PURCHASE AGREEMENT (NORTH ITALIA)

THIS PURCHASE AGREEMENT (NORTH ITALIA) ("**Agreement**") is made and effective as of November 14, 2016 ("**Effective Date**"), by and among The Cheesecake Factory Incorporated, a Delaware corporation ("**CAKE**"), TCF California Holding Company, a California corporation ("**TCF**"), Samuel W. Fox ("**Fox**"), Fox Restaurant Concepts LLC, an Arizona limited liability company ("**FRC**"), FRC Management LLC, an Arizona limited liability company ("**FRC Management**"), Villa Entertainment Group, LLC, a California limited liability company ("**Villa**"), North Investors LLC, an Arizona limited liability company ("**North Investors**"), North Restaurants LLC, an Arizona limited liability company ("**North Restaurants**" or "**Company**"), and each of the Persons listed on **Exhibit A** (each, a "**North LLC**" and collectively, the "**North LLCs**"). Fox, FRC, FRC Management, North Investors, North Restaurants and the North LLCs are collectively referred to herein as the "**FRC Entities**". North Restaurants and the North LLCs are collectively referred to herein as the "**North Entities**". The Parties enter into this Agreement with reference to the following facts:

A. Prior to the "**Reorganization**" (defined below), FRC and Villa owned all the Membership Interests in North Restaurants, which in turn owned, and as of the Effective Date owns, all the membership interests in each of the North LLCs. The North LLCs lease each of the Restaurants currently operating or in development under the name "North Italia" at the locations listed on **Schedule 2(a)** and subject to the leases listed on **Schedule 2(1)** attached hereto. Such leases, together with all future leases entered into by any North Entity are herein referred to as the ("**Real Property Leases**").

B. Prior to or on the Effective Date, the FRC Entities and Villa completed a corporate reorganization (the "**Reorganization**") in which FRC and Villa formed North Investors, transferred all the outstanding Membership Interests in North Restaurants to North Investors (who became North Restaurants sole Member), and FRC and Villa were admitted as the sole members of North Investors, and as part of the Reorganization:

(a) North Investors amended and restated the operating agreement of North Restaurants in the form attached hereto as **Exhibit B** (the "**North Operating Agreement**");

(b) FRC Entities and Villa transferred all "**Intellectual Property Rights**" (as defined below) relating to the Restaurants operated by the North LLCs and to the North Italia restaurant concept to North Restaurants;

(c) The FRC Entities terminated any existing management agreement(s) between FRC Management and the North LLCs, and FRC Management entered into a new management agreement in the form attached hereto as **Exhibit C** (the "**Management Agreement**") with North Restaurants pursuant to which FRC Management will manage the day-to-day operations of the existing North Italia Restaurants and all future Restaurants owned by North Restaurants or its "**Subsidiaries**", for a term described in the Management Agreement.

C. North Entities and their Property and equity interests in and to the North Entities ("**North Security**") are encumbered by a security interest ("**NBA Lien**") granted by the FRC

Entities and Villa in favor of ZB, N.A. (doing business as, and a division of which is, National Bank of Arizona) (ZB, N.A. and National Bank of Arizona are referred to herein collectively as “**National Bank of Arizona**” or as “**Lender**”) to secure the repayment of a several loans with a current aggregate outstanding balance of \$ 5,422,111.01 (“**North Loans**”). Prior to or on the Effective Date, the FRC Entities, TCF and CAKE (and the other parties included therein) shall enter into agreements with the Lender referenced in **Exhibit D** attached hereto (collectively, the “**Lender Agreement**”) whereby Lender, among other things, confirms that the only loan agreements to which the North Entities and their Property (including, but not limited to, the Intellectual Property Rights) and equity interests in and to the North Entities are encumbered by NBA Liens securing the North Loans listed on **Schedule 2(1)** hereto, and that there are no other Liens against the North Entities, or any of their Property or equity interests in and to the North Entities except for the North Loans, all of which are the subject of the Lender Agreement.

D. This Agreement, the North Operating Agreement, the Lender Agreement, the Management Agreement, and all the other documents, instruments and agreements referred to herein and therein, are herein called the “**Definitive Documentation**.” Capitalized terms used herein and not otherwise defined shall have the meaning given such term in the North Operating Agreement, and in the event of a conflict between the definition of a term in this Agreement and the definition of a term in the North Operating Agreement, the definition in this Agreement shall prevail. The following Exhibits and Schedules are attached hereto and incorporated herein:

Exhibit A	North LLCs
Exhibit B	North Operating Agreement
Exhibit C	Management Agreement
Exhibit D	Lender Agreement
Schedule 1	Funds Flow Memo
Schedule 2(a)	Restaurants operating or in development, including street location, limited liability company manager and the members, by percentage interest and outstanding capitalization, and noting lease guarantor, if any
Schedule 2(b)	FRC Entities and Villa, state of organization, limited liability company managers and Controlling members, and membership interests
Schedule 2(c)	North Restaurants Unaudited balance sheet, statements of operations, changes in stockholders’ equity and cash flows for the nine fiscal months ended September 27, 2016 (including FRC as it relates to North Entities)
Schedule 2(d)	Date Down of representations and warranties
Schedule 2(f)	Material suits, actions or legal, administrative, arbitration or other proceedings or governmental investigations
Schedule 2(j)	North Entities’ patents, trademarks, trade names, service marks, domain names, copyrights
Schedule 2(k)	Shared Recipes and other Persons using such recipes
Schedule 2(l)	Material Agreements, any defaults under such agreements
Schedule 2(n)	Membership interests owned by FRC Entities and Villa
Schedule 2(o)	North Entities and outstanding capitalization immediately prior to Effective Date
Schedule 2(p)	Liens
Schedule 2(r)	Government Approvals held pursuant to Environmental Law

Schedule 2(s)	Insurance policies
Schedule 2(t)	Ten largest suppliers for the two most recent complete fiscal year; aggregate payments

F. In consideration of the recitals contained herein, and for other valuable consideration described below, the parties desire (a) that TCF purchase from North Investors certain Membership Interests in North Restaurants and be admitted as a Member thereof and receive Membership Interests as described below, (b) that TCF make certain Capital Contributions to North Restaurants and, in exchange, receive additional Membership Interests therein, (c) to make certain other provisions for the operations of North Restaurants and its Subsidiaries, and (d) to provide for the potential acquisition by TCF of all of the Membership Interests in North Restaurants and, consequently of all membership interests of its Subsidiaries, through the exercise of an “**Option**” or “**Put**”, all on the terms and conditions set forth in this Agreement and the other Definitive Documentation.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions stated herein, the parties hereby agree as follows:

Section 8 Purchase of Membership Interest; Capital Contributions; Lender Agreement.

(a) On the Effective Date, TCF shall purchase from North Investors a Membership Interest in North Restaurants for a cash purchase price equal to twenty million dollars (\$20,000,000) (the “**Initial Payment**”), as shown in **Schedule 1** attached hereto, and shall be admitted as a Member of North Restaurants with the rights, preferences and privileges set forth in the North Operating Agreement, and FRC, as Manager of the North Restaurants, shall take such administrative actions as may be required to cause TCF to be admitted as a Member under the North Operating Agreement and applicable laws. Upon such Initial Payment, TCF’s Percentage Interest will be twenty-five percent (25.0%) of the outstanding Membership Interests in North Restaurants, and North Investors’ Percentage Interest will be the remaining seventy-five percent (75.0%) of the Membership Interests in North Restaurants.

(b) On the Effective Date, TCF shall make Growth Capital Contributions to North Restaurants in the amount shown on **Schedule 1** and in exchange therefor, shall receive an additional two percent (2%) Percentage Interest in North Restaurants, such that upon payment of such Growth Capital Contributions, TCF’s Percentage Interest shall be a total of twenty-seven percent (27%) of the outstanding Membership Interests in North Restaurants and North Investors’ Percentage Interest will be the remaining seventy-three percent (73%) of the outstanding Membership Interests in North Restaurants.

(c) The Initial Payment shall be paid by wire transfer to FRC of immediately available funds to the account designated by FRC to TCF in writing.

(d) The Growth Capital Contributions under clause (b) above shall be paid by wire transfer of immediately available funds to North Restaurants to the account designated by FRC to TCF in writing.

(e) The parties hereby acknowledge and confirm the receipt of the Initial Payment and the Growth Capital Contributions described in clause (b), and the admission of TCF as a Member of North Restaurants with an aggregate Membership Interest equal to a twenty seven percent (27%) Percentage Interest in North Restaurants, all as described in this Section 1.

(f) The parties hereby acknowledge and confirm receipt of the Lender Agreement, executed by all parties thereto, including the Lender.

(g) All actions to be taken pursuant to this Section 1 shall be deemed to have occurred simultaneously as a single transaction, and no action shall be considered to have been taken until all actions are completed.

Section 9 Representations and Warranties of the FRC Entities.

As a material inducement to CAKE and TCF to enter into this Agreement and the other Definitive Documentation, and to make the Initial Payment and Growth Capital Contributions, each of the FRC Entities and Villa, jointly and severally, represents and warrants to CAKE and TCF that each statement set forth in this Section 2 is true, correct and complete as of the Effective Date and, as supplemented by FRC to TCF in writing by delivery of an updated and revised disclosure schedule as of the date of a request for any additional Growth Capital Contributions, is true, correct and complete as of the date of any such Growth Capital Contribution:

(a) Each of the FRC Entities and Villa have all requisite right, power and authority to execute, deliver and perform his/her or its respective obligations under this Agreement and each of the other Definitive Documentation to which he/she or it is a party, and to consummate the transactions contemplated hereby and thereby, without obtaining the approval or consent of any other Person, including but not limited to any Government Approval from any Government Authority, or any landlords under the Real Property Leases; all proceedings have been taken and all authorizations have been secured by each of the FRC Entities and Villa which are necessary to authorize the execution, delivery and performance by it of this Agreement and each of the other Definitive Documentation to which it is a party; and, assuming the due execution and delivery of each other Person who is a party thereto, this Agreement and each of the other Definitive Documentation has been duly executed and delivered and is a legal, valid and binding agreement of each of the FRC Entities and Villa and is enforceable against them in accordance with its terms;

(b) Each of the FRC Entities (other than Fox) and Villa is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its organization and each other state or jurisdiction where it is qualified to do business set forth opposite its respective name on **Schedule 2(b)** hereto, with all requisite right, power and authority (corporate, limited liability company and other) to own, lease and operate its properties as now owned, leased or operated and to carry on its business as now conducted and as currently contemplated to be conducted, and is duly qualified to do business and is in good standing in each jurisdiction in which the conduct of its business or the ownership, lease or use of its properties makes such qualification necessary and where the failure to so qualify would materially and adversely affect its business or properties taken as a whole. **Schedule 2(b)** also sets forth, for each of the FRC Entities and Villa, its respective managers, and for each of the FRC Entities and Villa, their respective Controlling

members and the number of units or other membership interests held by such Controlling members. Except as shown on Schedule 2(b), no other Person owns any interest in, or has a right to acquire any interest in the North Entities.

(c) **Schedule 2(c)** hereto contains the unaudited consolidated balance sheet of the North Entities as of September 27, 2016 (the “**Financials Date**”) and the unaudited consolidated statements of operations, changes in members’ equity and cash flows of North Entities for the nine fiscal months then ended. The foregoing financial statements:

(i) were prepared in accordance with United States generally accepted accounting principles (subject to normal year-end adjustments) consistently applied throughout the period;

(ii) are consistent with the books and records of the North Entities and were prepared on a basis consistent with prior years; and

(iii) fairly present the North Entities’ financial condition and results of operations as at the dates and for the periods therein specified in all material respects.

North Restaurants and North Investors (and FRC as to the North Entities) have no material liabilities or obligations, whether contingent or absolute, direct or indirect, or matured or unmatured, which are not shown or provided for on the Financials Date balance sheet or set forth on **Schedule 2(c)** hereto, except those liabilities or obligations incurred in the ordinary course of business subsequent to the Financials Date or arising by virtue of the consummation of the transactions contemplated by this Agreement, and “**to FRC’s Knowledge**” (as defined below), there is no basis for the assertion of any such liabilities or obligations. Without limiting the generality of the foregoing, the North Entities do not have any liability or obligation to any lender, or to any successor or assignee of any lender, with respect to any loan made by any lender, nor are any equity interests issued by the North Entities, nor is any Property of the North Entities, subject to any Lien to secure, any loan by, or obligation to, any lender, or any obligation to any successor or assignee of any lender, with respect to any loan made by any lender, including but not limited to National Bank of Arizona, excepting, as to all of the foregoing, the the North Security under the North Loans secured by the NBA Lien, and subject to the Lender Agreement.

(d) Since the Financials Date, each of the North Entities has conducted its respective businesses only in the ordinary course of business consistent with past practices (except for the execution and performance of this Agreement and the transactions contemplated hereby, including the Reorganization) and during such period there has not been any event, occurrence, development or state of circumstances or facts that has had or would reasonably be expected, individually or in the aggregate, to materially and adversely affect its business, properties or assets. Without limiting the generality of the foregoing, since the Financials Date and except as disclosed on **Schedule 2(d)** hereto, there has not been:

(i) any material change in the condition (financial or other), net worth, earnings, results of operations, liabilities, capitalization, business or properties of any of the North Entities other than changes described in **Schedule 2(d)** hereto or occurring in the ordinary course

of business consistent with past practices, which taken in the aggregate have not (and are not reasonably expected to) materially and adversely affected the business or properties of any of the North Entities;

(ii) any indebtedness incurred by any of the North Entities or any Lien created or suffered to be incurred by any of the North Entities, other than trade debt incurred in the ordinary course of business consistent with past practice and other than the NBA Liens encumbering the North Security arising from the North Loans and which are the subject of the Lender Agreement;

(iii) any contract or commitment entered into by any of the FRC Entities, Villa, or the North Entities affecting the North Entities other than contracts or commitments made in the ordinary course of business consistent with past practices or pursuant to this Agreement or any of the other Definitive Documentation;

(iv) any sale, assignment, transfer or other disposition of any Property used in connection with the business of any of the North Entities, other than inventory or supplies consumed or disposed of in the ordinary course of business;

(v) any damage, destruction or loss (whether or not covered by insurance) affecting the Business or Property of any of the North Entities that individually or in the aggregate exceeded \$50,000 in value;

(vi) any cancellation or waiver of any material claims or rights in respect of the Business or Property of any of the North Entities;

(vii) any change in the authorized or issued Membership Interests in North Restaurants or other equity interests of any of the North LLCs other than as contemplated by this Agreement;

(viii) any declaration or payment of any dividend or other distribution in respect of any membership interests or other equity of any of the FRC Entities, other than a tax distribution prior to the Effective Date as permitted by the Operating Agreement, as contemplated by this Agreement;

(ix) any grant, purchase, redemption, retirement, transfer, assignment or other acquisition by any Person of any membership interest, equity, right, warrant or option to acquire any equity, or any security convertible into equity of any of the North Entities, other than as contemplated by this Agreement;

(x) any amendment or change in the certificate or articles of formation, operating agreement, limited liability company agreement, or similar organizational documents of any of the North Entities, other than as contemplated by this Agreement;

(xi) any material change in any of the North Entities' method of accounting or manner of keeping books, accounts or records, or accounting practices, except as may be required by reason of a concurrent change in United States generally accepted accounting principles;

(xii) any payment of any material bonuses, or material change (except for regular adjustments in the ordinary course of business consistent with past practices) in the rate of compensation, commission, bonus, benefits or other direct or indirect remuneration payable, whether as bonus, extra compensation, pension or severance or vacation pay or otherwise, to any member, director, manager, officer, employee, consultant, or agent of any of the North Entities;

(xiii) any amendment or termination of any existing employee benefit plan, or adoption or creation of any new employee benefit plan for employees of any of the North Entities;

(xiv) any judgments entered into against, or Bankruptcy filing with respect to, any of the North Entities;

(xv) any other event or condition which has materially and adversely affected, or would be reasonably expected to materially and adversely affect, the Business or Properties of any of the North Entities; or

(xvi) any contract entered into by any of the FRC Entities or Villa thereof that does, or could reasonably be expected to result in, any of the items or circumstances described in Section 2(d)(i)-(xv).

(e) Each of the North Entities has properly prepared and filed returns for and paid in full all federal, state and local taxes, assessments and penalties to the extent such filings and payments are required prior to the date hereof, and there is no outstanding or proposed deficiency by any federal, state or local government with respect to any tax period. None of the North Entities has any liability with respect to taxes of any kind, whether or not assessed, which deficiency was not adequately provided for in tax accrual reserves.

(f) **Schedule 2(f)** hereto contains a true and complete list of all suits, actions or legal, administrative, arbitration or other proceedings or governmental investigations (collectively, “**Actions**”) pending, filed or, to FRC’s Knowledge, threatened by, against or affecting the FRC Entities or Villa, or any of their respective officers, directors, managers, employees or agents in their capacities as such, to the extent any such Actions have a material, adverse effect on the North Entities. To FRC’s Knowledge, there is no basis for the assertion of any such Action against or affecting any of the North Entities, other than as shown on **Schedule 2(f)**.

(g) The business and operations of each of the North Entities have been and are being conducted in accordance with all applicable laws, ordinances, rules and regulations of all Government Authorities in all material respects. None of the North Entities is in violation of, or in default under, any term or provision of its organizational documents or of any Lien (including the NBA Liens), lease, agreement, instrument, commitment or other arrangement, or is subject to any restriction of any kind or character, which could materially and adversely affect the Business, Property, or prospects of such North Entity.

(h) The execution, delivery and performance of this Agreement and the other Definitive Documentation, and the consummation of the transactions contemplated by this Agreement and the other Definitive Documentation, will not conflict with or result in the breach of any term or provision of, or constitute a default under, the organizational documents of any of the FRC Entities or Villa or any statute, order, judgment, writ, injunction, decree, license, permit,

approval, authorization, rule or regulation of any court or any Government Authority, or any agreement, lease, contract, document or obligation of any kind or nature to which it is a party or by which it or its assets or properties is bound, or result in the creation of any Lien on any of its properties or assets, or require the consent or approval of, or filing, license, permit, authorization, declaration or registration with any Government Authority, except for those obtained or whose failure to obtain would not have a material and adverse effect on the Business, Property, or prospects of any of the North Entities;

(i) Each of the North Entities has all Government Approvals necessary to carry on its Business as now conducted and as currently contemplated to be conducted and no other Government Approval with or from any Government Authority is required, except for those items which have been obtained or applied for in the ordinary course of business, and, to FRC's Knowledge, no Government Authority has threatened to deny, suspend or cancel any of them;

(j) **Schedule 2(j)** contains a true and complete list of all patents, trademarks, trade names, service marks, domain names, and copyrights, owned by or used by any of the North Entities in connection with the Business of the North Italia Restaurants, as currently conducted and as currently contemplated to be conducted (collectively, the "**Intellectual Property Rights**") and each, an "**Intellectual Property Right**"). Although not specified on **Schedule 2(j)**, Intellectual Property Rights also includes all recipes, trade dress, trade design, trade secrets, computer software programs and other Intellectual Property owned by or used in connection with the North Italia Restaurants. Except as noted on **Schedule 2(j)**, the North Entities own or have the perpetual, exclusive, royalty free right to use the Intellectual Property Rights listed on Schedule 2(j). None of the FRC Entities has received notice of, and to FRC's Knowledge, none of the North Entities is infringing the rights of any third party with regard to any Intellectual Property Right. To FRC's Knowledge, no third party is infringing the rights of the North Entities as to any of the Intellectual Property Rights.

(k) **Schedule 2(k)** hereto contains a list of the recipes used at the North Italia Restaurants which are used in common with one or more other restaurant concepts owned and operated by the FRC Entities, other than the North Entities (the "**Shared Recipes**"). With respect to the Shared Recipes, each of the North Entities has the perpetual, non-exclusive, royalty free right to use the Shared Recipes, including all modifications, derivations, revisions and compilations thereof. Except for FRC and its Affiliates, the FRC Entities have not granted to any other Person a right to use any of the recipes used at the North Italia Restaurants other than the Shared Recipes.

(l) **Schedule 2(l)** contains a true and complete list of the following agreements (collectively, the "**Material Agreements**"), whether written or oral, if any, to which any of the North Entities is a party or by which any of its Property is bound:

(i) contracts with employees, agents, consultants or advisors not cancellable at will without cost or other liability by reason of such termination;

(ii) bonus, deferred or incentive compensation or other employee benefit plans;

(iii) leases as lessor or lessee (including the Real Property Leases for the locations listed on **Schedule 2(a)**);

(iv) deeds of trust, mortgages, conditional sales contracts, security agreements, pledge agreements, trust receipts or any other agreements or arrangements whereby any of the assets of any of the North Entities are subject to a Lien or any of the North Entities have incurred any indebtedness (including the North Loan secured by the NBA Liens);

(v) contracts restricting doing business in any areas or in any way limiting competition (except for radius restrictions in Real Property Leases); and

(vi) contracts (other than contracts entered into in the ordinary course of business) to be performed in whole or in part more than 30 days from the date hereof calling for aggregate payments by any of the North Entities in excess of \$250,000 and which are not terminable without cost or liability on 30 days' notice.

Each of the North Entities has in all respects performed all material obligations required to be performed to date under the Material Agreements and except as listed on **Schedule 2(l)**, to FRC's Knowledge, is not in default under any Material Agreement. All parties to each Material Agreement are in material compliance thereunder, and no event has occurred which through the giving of notice or the lapse of time or both would cause or constitute a material default under or would cause the acceleration of any obligation of any party to the Material Agreements, or the creation of a Lien upon any Properties of any of the North Entities. All Material Agreements are valid and binding obligations of each of the North Entities in accordance with their respective terms.

(m) None of the North Entities has incurred any liability to any broker, finder or agent for any brokerage fees, finder's fees or commissions with respect to the transactions contemplated by this Agreement or any of the other Definitive Documentation.

(n) Fox and each of the FRC Entities and Villa own the membership interests set forth on **Schedule 2(n)** free and clear of all Liens (except the North Security encumbered by the NBA Liens) or other defects in title of any kind or description.

(o) The outstanding capitalization of each of the North Entities is as set forth on **Schedule 2(o)**. Except as provided for in the North Operating Agreement, there are no preemptive rights or options, warrants, rights or other agreements, arrangements or commitments which provide for the issuance, sale, conversion, exchange, subscription, redemption or repurchase of any membership interests, units or other securities of any of the North Entities, nor are there any securities outstanding or in existence which are convertible or exchangeable into any membership interests, units or other securities of any of the North Entities.

(p) Except as described on **Schedule 2(p)** and except for the North Security encumbered by the NBA Liens which is subject to the Lender Agreement, each of the North Entities owns and holds good title to all of its Property, free and clear of any Liens, excluding assets and properties sold or disposed of in the ordinary course of business consistent with past practices since the Financials Date. All tangible personal property owned or otherwise used by any of the North Entities is physically identifiable and in the possession or control of a North Entity and is free from material defects, has

been maintained consistent with industry practices in the ordinary course of business consistent with past practice, and is in reasonably good operating condition and repair (subject to ordinary wear and tear).

(q) None of the North Entities owns any real property related to or used in connection with North Italia Restaurants or operations as of the date hereof. **Schedule 2(a)** contains a true, complete and correct list of all real property leased by any of the FRC Entities related to or used in connection with North Italia Restaurants or operations. With respect to the Real Property Leases:

(i) Each of the North Entities, as applicable, has good and marketable title to its leasehold interest in the Real Property Leases, free and clear of any and all Liens (except for the NBA Lien encumbering the North Security that is subject to the Lender Agreement) including but not limited to, any landlord liens;

(ii) To FRC's Knowledge, there are no disputes, oral agreements, or forbearance programs in effect as to any Real Property Lease;

(iii) None of the FRC Entities or Villa has assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in any Real Property Lease;

(iv) There are no pending or, to FRC's Knowledge, threatened Actions, proceedings or claims, including condemnation proceedings, related to any real property used by any of the North Entities related to or used in connection with North Italia Restaurants or operations;

(v) There are no other matters materially and adversely affecting the current use or occupancy of any real property used by any of the North Entities related to or used in connection with North Italia Restaurants or operations;

(vi) None of the FRC Entities or Villa have received any written notice for assessments for public improvements against any real property used by any of the North Entities related to or used in connection with North Italia Restaurants or operations that are delinquent and remain unpaid, other than ad valorem property taxes payable in the ordinary course of business consistent with past practices;

(vii) To FRC's Knowledge, there are no present material violations of any legal requirement related to any real property used by any of the North Entities related to or used in connection with North Italia Restaurants or operations, and neither the FRC Entities nor Villa has received written notice of any such actual or claimed material violation related to or used in connection with Restaurants or operations; and

(viii) Each of the North Entities has received all required Governmental Approvals (including permits and certificates of occupancy or other such certificates permitting lawful occupancy and use of the real property used by the North Entities related to or used in connection with Restaurants or operations) required in connection with its use of such real property, except with respect to the properties noted on **Schedule 2(a)** as currently in development by the North Entities, and for which all applicable Government Approvals have been or will be applied for.

(r) Each of the North Entities is in material compliance with all **Environmental Laws** (as defined below) related to the North Italia restaurants or operations, which compliance includes the possession by each of the North Entities of all Government Approvals required under Environmental Laws and compliance with the terms and conditions thereof. Neither the FRC Entities nor Villa has received any written notice or other written communication, whether from a Government Authority, citizens groups, employee or otherwise, that alleges that any of the North Entities or any of the North Italia Restaurants or operations is not in compliance with any Environmental Law, and to FRC's Knowledge, there are no circumstances that may prevent or interfere with the compliance by any of the North Entities with any current Environmental Law in the future. To FRC's Knowledge, no current or prior owner of any property leased or possessed by any of the North Entities or related to the North Italia Restaurants or operations has received any written notice or other written communication, whether from a Government Authority, citizens group, employee or otherwise, that alleges that such current or prior owner or any of the North Entities is not in compliance with any Environmental Law. All Government Approvals held by any of the FRC Entities pursuant to any Environmental Law (if any) related to the North Italia restaurants or operations are identified in **Schedule 2(r)**. For purposes of this Section 2(r):

(i) "**Environmental Law**" means any federal, provincial, state or local statute, law, regulation, guideline, rule, standard or other legal requirement relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), including any law or regulation relating to emissions, discharges, releases or threatened releases of **Materials of Environmental Concern** (as defined below) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern; and

(ii) "**Materials of Environmental Concern**" include chemicals, pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products and any other substance that is currently regulated by an Environmental Law or that is otherwise a danger to health, reproduction or the environment.

(s) **Schedule 2(s)** sets forth a true and complete list of the insurance policies held by, or for the benefit of, any of the North Entities, including the underwriter of such policies and the amount of coverage thereunder. There are no pending claims in excess of the applicable deductible amount against such insurance policies or pending claims as to which insurers have denied liability; and there exist no claims that have not been timely submitted by any of the North Entities to the applicable insurers.

(t) **Schedule 2(t)** lists the ten (10) largest suppliers or vendors of the North Entities by dollar volume of business with each supplier for the two (2) most recent complete fiscal years, together with the aggregate payments made to each such supplier or vendor for or on behalf of the North Entities during each fiscal year of such period. None of the suppliers listed on **Schedule 2(t)** have threatened in writing to terminate, or otherwise make any material adverse reductions to, their respective business relationships with the applicable North Entity.

(u) To FRC's Knowledge, no statement contained in these representations and warranties, including the schedules thereto, contains any untrue statement of a material nature, or omits any material fact necessary in order to make such statement not misleading.

In any representation or warranty of the FRC Entities or Villa in this Agreement that is limited by the phrase “**To FRC’s Knowledge**”, such phrase shall mean the actual knowledge of any of Fox, Russell Owens, Chief Operating Officer, Leezie Kim, General Counsel, Brian Stoll, Chief Financial Officer, Dan Clay, Vice President of Operations, Alain Ane, Chief People Officer (or any subsequent officer of the FRC Entities who holds a like position as the named individual). Such individuals, in the ordinary course of business of the FRC Entities, given the organization, reporting procedures, and other controls in place at the FRC Entities, are the individuals who would have knowledge of the matters warranted and represented whenever so limited by the phrase “**To FRC’s Knowledge**”.

Section 10 Representations and Warranties of CAKE and TCF.

CAKE and TCF, jointly and severally, represent and warrant to the FRC Entities and Villa that each statement set forth in this Section 3 is true, correct and complete as of the date hereof (except where expressly limited to a specific date, in which case such statement is true, correct and complete only as of such specific date).

(a) CAKE and TCF each has all requisite right, power and authority to execute, deliver and perform its respective obligations under this Agreement and each of the Definitive Documentation to which it is a party, and to consummate the transactions contemplated hereby and thereby, without obtaining the approval or consent of any other Person or Government Authority; all proceedings have been taken and all authorizations have been secured by each of CAKE and TCF which are necessary to authorize the execution, delivery and performance by it of this Agreement and each of the other Definitive Documentation to which it is a party; and, assuming the due execution and delivery by each other party thereto, this Agreement and each of the other Definitive Documentation is a legal, valid and binding agreement of each of CAKE and TCF and is enforceable against it in accordance with its terms.

(b) The consummation of the transactions contemplated by this Agreement and the other Definitive Documentation will not conflict with or result in the breach of any term or provision of, or constitute a default under any statute, order, judgment, writ, injunction, decree, license, permit, approval, authorization, rule or regulation of any court or any Government Authority or any agreement, lease, contract, document or obligation of any kind or nature to which it is a party or by which it is bound.

(c) Neither CAKE nor TCF has incurred any liability to any broker, finder or agent for any brokerage fees, finder’s fees or commissions with respect to the transactions contemplated by this Agreement or any of the other Definitive Documentation.

Section 11 North Investors and FRC Obligations

Notwithstanding anything to the contrary herein, North Investors and FRC, and Villa, shall be jointly and severally liable to TCF and CAKE, and their respective officers and directors, for any default hereunder or under the other Definitive Documentation by North Investors (or its members), or any Member who is an Affiliate of, or under the Control of FRC, FRC Management, or Fox; and North Investors and FRC and Villa agree to cause North

Investors and its members to perform, all of its and their obligations hereunder and under the other Definitive Documentation.

Section 12 CAKE Guarantee.

(a) CAKE hereby guarantees for the benefit of each FRC Entity and Villa (each such party, a “**Benefited Party**”), all of the obligations of TCF under the Definitive Documentation in favor of such Benefited Party, including without limitation, the obligations of TCF under the North Operating Agreement to fund the Growth Capital Contributions and the Additional Capital Contributions as and when required and to pay the Acquisition Price upon a valid exercise of the Option or Put (collectively, the “**Obligations**”).

(b) CAKE hereby expressly waives, relinquishes and releases, in any action brought on, arising out of or relating to the guarantee set forth in Section 5(a) above pursuant to (i) California Civil Code Section 2856(a)(1), all of CAKE’s rights and defenses that are or may become available to CAKE by reason of California Civil Code Sections 2787 to 2855, inclusive, and (ii) pursuant to California Civil Code Section 2856(a)(2), all rights or defenses CAKE may have in respect of its Obligations by reason of any election of remedies by any Benefited Party, even if that election of remedies has destroyed CAKE’s rights of subrogation and reimbursement against TCF.

(c) Notwithstanding anything to the contrary herein, CAKE does not (whether by reason of any of the provisions of this Agreement or otherwise) waive, and hereby reserves and shall have the right to assert against any Benefited Party, any defense that (i) TCF has fully and finally performed the Obligations in favor of such Benefited Party in accordance with the express terms of one or more Definitive Documentation, (ii) any Obligation has not been breached by TCF or any dispute or challenge regarding the substance, nature or extent of any breach of any Obligation asserted by any Benefited Party, and (iii) would be available to CAKE under any Definitive Documentation as if CAKE were party to such agreement in place of TCF.

Section 13 Approval of Reorganization.

Each of the parties to this Agreement hereby ratifies, approves and confirms for all purposes the following actions:

- (a) the amendment and restatement of the North Operating Agreement;
- (b) the appointment of FRC as the Manager of North Restaurants;
- (c) the transfer by the FRC Entities and Villa of all Intellectual Property Rights relating to the Restaurants and to the North Italia concept operated by the North LLCs to North Restaurants;
- (d) the execution and delivery by each party thereto of the other Definitive Documentation; and
- (e) the transactions contemplated by this Agreement, including, but not limited to, the purchase by TCF of the Membership Interests, the capital contributions by TCF to North

Restaurants, the issuance and transfer to TCF of the Membership Interests in North Restaurants described in Section 1, and the admission of TCF as a Member of North Restaurants.

Section 14 Consulting Services.

TCF may provide, upon the mutual agreement of TCF and North Investors, consulting services for North Restaurants, including, without limitation, such services related to operational execution, real estate, supply chain, information systems, financial analysis, risk management, intellectual property, staff relations, training and development, and legal services. Such consulting services shall be provided by TCF at no cost or charge to North Restaurants except for reimbursement of out-of-pocket costs, unless otherwise agreed by the parties. The timing and scope of such consulting services, if any, shall be subject to mutual agreement.

Section 15 Future Opportunities.

From the date hereof through August 30, 2022, so long as no TCF Default has occurred, before FRC or Fox transfers to any person other than an Affiliate of FRC or Fox all or substantially all of their interest in any restaurant concept owned or created by FRC or Fox, FRC and Fox shall give TCF an opportunity to make an offer to acquire such concept.

Section 16 Noncompetition.

(a) As used in this Agreement, the term “**Competitive Activity**” shall mean an upper scale, full service restaurant concept that serves food and beverages of Italian cuisine, featuring freshly-made pastas and pizza (a “**Competing Concept**”) (except for the Restaurants); *provided, however*, that all of the existing restaurant concepts that, as of the Effective Date, are owned by or directly or indirectly Controlled by FRC (including without limitation its roast chicken and pizza concept called “Doughbird” and a potential boutique hotel and dining concept), or that are owned by or directly or indirectly Controlled by CAKE, shall not be deemed Competing Concepts.

(b) Until August 30, 2021, each of TCF, CAKE, Fox and the FRC Entities shall refrain from engaging in any Competitive Activity anywhere in the United States of America and its territories, including but not limited to each city and county in which a North Italia Restaurant is then currently in operation.

(c) Each of the parties hereto agrees that a breach of any of the provisions of this Section 9 will cause irreparable damage to the other parties for which money damages alone would be an insufficient remedy. Therefore, in the event of such breach or a threatened breach, except to the extent prohibited by law, each of the parties hereto, in addition to any other remedies available at law or in equity, shall be entitled to enforce the provisions of this Agreement by temporary, preliminary and permanent injunction to (A) restrain any violation by any party, any of the party’s partners, agents, servants, employers, and employees, and any Person acting for or with such party, and (B) to compel specific performance of the terms and conditions of this Agreement. Notwithstanding the foregoing, the parties hereto covenant and agree that in the event that any party seeks injunctive relief, the other parties shall consent to expedited discovery, including production of documents, depositions and interrogatories.

(d) The parties hereto have carefully considered the provisions of this Agreement and agree that, under all circumstances, the restrictions set forth herein are fair and reasonable and required for protection of the legitimate interests of the other parties hereto in the operation of their respective businesses, do not confer a benefit upon any party disproportionate to the detriment to the other parties, and are a material and necessary part of the transactions contemplated by this Agreement and the other Definitive Documentation. The parties hereto further agree that the restrictions are reasonable in scope, geographic area and time. The parties hereto certify that they have each had the opportunity to discuss this Agreement with legal advisors of their choosing and that each party hereto understands its provisions and has entered into this Agreement freely and voluntarily.

(e) The parties hereto agree that if a court deems any of the provisions in this Agreement (or portions thereof) as applied to any party too broad for the protection of the other parties' (or their Affiliates') legitimate interests or otherwise unenforceable, the parties hereto agree the court may limit, reform or modify the restrictions to the extent reasonably necessary to protect the other parties' (or their Affiliates') legitimate business interests. In the event such modification is impossible, the unenforceable provision (or portions thereof) shall be deemed severed from this Agreement and every other provision of this Agreement, including the remainder of the paragraph from which a provision is severed, shall remain in full force and effect.

(f) The parties hereto agree that each of the parties is receiving good and valuable consideration for entering into this Agreement. The parties hereto acknowledge that the other parties have relied upon the covenants contained in this Agreement and that such covenants are conditions to and a material part of each of the parties' willingness to consummate the transactions contemplated by this Agreement and the other Definitive Documentation.

Section 17 Publicity.

The timing and text of any announcements or statements pertaining to any transaction contemplated by this Agreement or the other Definitive Documentation shall be mutually agreed to by FRC and CAKE. Notwithstanding the foregoing, the parties hereto may disclose information concerning any such transaction to the extent such party reasonably determines that such disclosure is required to comply with the federal securities laws or any other applicable laws; *provided, however*, that the party making such disclosure shall promptly advise the other such party of the disclosure and the reasons therefor.

Section 18 Confidentiality.

(a) The term "**Confidential Information**" shall mean (i) the existence and terms of this Agreement and each of the agreements referred to in this Agreement, including, but not limited to, the other Definitive Documentation, and (ii) any information concerning any party to any such agreement (the "**disclosing party**") that is furnished to any other party thereto (the "**receiving party**"); *provided, however*, that the term "Confidential Information" shall not include any information which: (i) is or becomes generally available to the general public other than as a result of an unauthorized disclosure by the receiving party in breach of this Agreement; (ii) is disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, provided that the receiving party is not aware at the time of such disclosure that the source of such Confidential Information was bound by a confidentiality agreement with the disclosing party; or (iii) the receiving party has already acquired or ascertained without violating this Agreement.

(b) The receiving party shall receive any and all Confidential Information on a confidential basis, and shall use the Confidential Information solely for the purpose contemplated by the relevant Definitive Documentation. The foregoing notwithstanding, the receiving party may disclose the Confidential Information or any portion thereof to any persons who need to know such Confidential Information to assist the receiving party in such purpose. As a condition precedent to disclosing any Confidential Information to such person, the receiving party shall inform such person of the confidential nature of the Confidential Information and shall direct such person to keep such Confidential Information confidential to the extent required by this Agreement. If at any time the receiving party becomes aware of any unauthorized use, disclosure, dissemination or communication, or any threat thereof, of Confidential Information, the receiving party shall promptly notify the disclosing party. The receiving party shall be responsible for the breach of this Agreement by any person to which it discloses the Confidential Information.

(c) Notwithstanding anything contrary in this Section 11, the receiving party may disclose Confidential Information if the receiving party reasonably determines it is legally compelled to do so. The receiving party agrees that it shall provide the disclosing party with prompt notice of any legal demand for Confidential Information so that disclosing party may seek a protective order or other appropriate remedy. In any case, the receiving party may furnish only that portion of the Confidential Information which is legally required to be disclosed.

Section 19 Post-Closing Date Adjustments.

Pursuant to Section 8.7(c)(viii) of the Operating Agreement, upon exercise of the Option or Put, if the Adjusted Acquisition Price is less than the Initial Acquisition Price, then on the First Adjustment Date, North Investors, and FRC on behalf of North Investors and its members, shall authorize the release of the difference between the Adjusted Acquisition Price and the Initial Acquisition Price (the “**Negative True Up Amount**”) to TCF from Escrow. However, if such amounts released to TCF are less than the total Negative True Up Amount, then North Investors, and FRC on behalf of North Investors and its members, shall remit such remaining Negative True Up Amount balance directly to TCF within ten (10) Business Days of invoice from TCF.

Section 20 Survival of Representations, Warranties and Covenants; Indemnification.

(a) Unless otherwise expressly stated in this Agreement, the representations, warranties and covenants of the parties set forth in this Agreement shall remain in full force and effect, and shall, if the Option or Put is exercised, survive the Closing Date until the expiration of the applicable statute of limitations.

(b) From and after the Closing Date, and except as limited under Section 13(c) and Section 13(g), North Investors, FRC, FRC Management, and Villa (the “**FRC Indemnitors**”) shall indemnify and hold harmless the North Entities, CAKE and TCF (and each of the North Entities, CAKE and TCF’s respective members, Affiliates, officers, directors, employees, agents, representatives, successors and assigns) (the “**TCF Indemnitees**”) for all losses, damages and liabilities (including reasonable out-of-pocket attorneys’ and consultants’ fees and expenses) (a “**Loss**”) arising out of, relating to or resulting from any: (i) breach of any of the representations or warranties of any of the FRC Entities or Villa contained in this Agreement or any other Definitive Documentation; (ii) failure of any FRC Entity or its members to perform any of its or their

covenants or obligations contained in this Agreement or any other Definitive Documentation; and/or (iii) Extraordinary Liabilities that arise or occur prior to the Closing Date (whether or not known or suspected as of such date) and which as of the Closing Date are unpaid and unextinguished and not accrued for on the books and records of the North Entities (and therefore are not factored into the Adjusted Acquisition Price calculations on the Closing Date). Any Loss incurred by the TCF Indemnitees under this Section 13(b) shall first be paid to the TCF Indemnitees from Escrow (and the FRC Indemnitees shall authorize Escrow Holder to release such funds to TCF), and to the extent funds held in Escrow are not sufficient, shall be paid by the FRC Indemnitees directly to the TCF Indemnitees, subject to the limits in Section 13(c), within ten (10) Business Days of invoice from TCF.

(c) Notwithstanding anything to the contrary contained in Section 13(b):

(i) The maximum aggregate liability of the FRC Indemnitors under Sections 13(b)(i) and 13(b)(iii) (but not Section 13(b)(ii)) shall not exceed a sum equal to (x) 10% of the Adjusted Acquisition Price, less (y) all Extraordinary Liabilities that were included in the Initial Closing Adjustments, and less (z) amounts paid to a TCF Indemnatee by FRC Indemnitors for any breach of a representation or warranty prior to the Closing Date;

(ii) To the extent that any Extraordinary Liabilities are based upon fraud, theft, unpaid tax liability or unfunded employee benefit plans of the Company or its Subsidiaries, the aggregate amount indemnified in respect of such Extraordinary Liabilities shall not be limited under Section 13(c)(i) and shall, instead, include the full amount of all Losses up to the total amount of the Adjusted Acquisition Price (and once the such amount is paid to any of the TCF Indemnitees up to the amount of the Adjusted Acquisition Price, such obligation shall terminate);

(iii) FRC Indemnitors shall have no liability for indemnification under Section 13(b)(i) or Section 13(b)(iii) unless, on or before the third anniversary of the Closing Date, a TCF Indemnatee notifies FRC of the Loss specifying the factual basis of the Loss in reasonable detail to the extent then known to TCF Indemnatee; *provided, however*, that if any Extraordinary Liabilities are based upon fraud, theft, unpaid tax liability or unfunded employee benefit plans, the notice period shall be extended to coincide with the statute of limitations for such claim; and

(iv) For avoidance of doubt, any Loss incurred by the TCF Indemnitees under Section 13(b)(ii) shall not be limited by this Section 13(c).

(d) From and after the Closing Date, and except as limited under Section 13(e) and Section 13(g), CAKE and TCF (the “**TCF Indemnitors**”) shall indemnify and hold harmless each FRC Entity (and each of their respective members, Affiliates, officers, directors, employees, agents, representatives, successors and assigns) (the “**FRC Indemnitees**”) for all Loss arising out of, relating to or resulting from any (i) breach of any of the representations or warranties of the TCF Indemnitors contained in this Agreement or any other Definitive Documentation, (ii) failure of any TCF Indemnitor to perform any of its covenants or obligations contained in this Agreement or any other Definitive Documentation, and/or (iii) after the Closing Date, breach by any of the North Entities of its or their respective obligations under any of the Real Property Leases which breach first arises or accrues after the Closing Date and results in an action for payment or performance against any FRC Indemnatee who is a guarantor of such Lease.

(e) Notwithstanding anything to the contrary contained in Section 13(d):

(i) TCF Indemnitors shall have no liability for indemnification under such section unless on or before the applicable statute of limitations for such claim, a FRC Indemnitee notifies CAKE of the Loss specifying the factual basis of the Loss in reasonable detail to the extent then known to such FRC Indemnitee;

(ii) The maximum aggregate liability of the TCF Indemnitors under Section 13(d)(i) and Section 13(d)(ii) for any such Loss shall be limited to an amount equal to the Adjusted Acquisition Price (and if and when the Adjusted Acquisition Price is paid by TCF, such obligations shall terminate); and

(iii) For avoidance of doubt, any Loss incurred by the FRC Indemnitees under Section 13(d)(iii) shall not be limited by this Section 13(e).

(f) Each Indemnitee shall promptly notify the Indemnitors of the existence of any third party claim that is indemnifiable under this Section 13 and of which it has actual knowledge, and shall give the Indemnitors a reasonable opportunity to defend the same at its expense and with counsel of its own selection (who shall be approved by the Indemnitees, which approval shall not be withheld unreasonably); *provided, however*, that the Indemnitees shall at all times also have the right to fully participate in the defense at its own expense, and to provide defense at the expense of the Indemnitors should the Indemnitors fail to provide such defense.

(g) From and after the Closing Date, except for an Indemnitors failure to perform any of its covenants or obligations contained in this Agreement or any other Definitive Documentation, the sole and exclusive remedy for any TCF Indemnitee or FRC Indemnitee with respect to any and all Loss for (i) any breach of any representation or warranty set forth herein or in any other Definitive Documentation, or (ii) in the case of the TCF Indemnitees, any Extraordinary Liabilities, or (iii) in the case of the FRC Indemnitees, any action against a guarantor of a Real Property Lease, shall be pursuant to the indemnification provisions set forth in this Section 13. In furtherance of the foregoing, from and after the Closing Date, and except as expressly limited in this Section 13, each of TCF and CAKE, on the one hand, and the FRC Entities and their respective members, on the other hand, hereby waives, to the fullest extent permitted under law, any and all rights, claims and causes of action for any breach of any representation or warranty set forth herein or in any other Definitive Documentation or, in the case of the TCF Indemnitees, for any Extraordinary Liabilities, or in the case of the FRC Indemnitees, for any action against a guarantor of a Real Property Lease, that it may have against any of the other parties and their respective Affiliates, arising under or based upon any law, except pursuant to the indemnification provisions set forth in this Section 13. For the avoidance of doubt, the TCF Indemnitees shall retain all rights and remedies, causes of actions, and claims hereunder, at law or in equity, with respect to a breach of any covenants and obligations of the FRC Entities or their respective members under the Definitive Documentation.

Section 21 Restrictions on Transfer.

No party to this Agreement shall Transfer any interest in this Agreement or in the North Entities except for Permitted Transfers in compliance with the North Operating Agreement and

only if upon such Transfer, the transferee of such right or interest agrees in writing to comply with all provisions of this Agreement and each of the other Definitive Documentation by which his or its transferor is bound with respect to such interest in the North Entities. For purposes of this Agreement, a Transfer or any other transaction or series of related transactions pursuant to which (a) CAKE no longer, directly or indirectly, owns or Controls a majority or more of the voting securities of TCF shall be deemed to be a Transfer of TCF's Membership Interests, (b) Fox no longer, directly or indirectly, owns or Controls a majority or more of the voting securities of FRC or FRC Management shall be deemed a Transfer of North Investors' Membership Interests, or (c) FRC no longer, directly or indirectly, owns or Controls a majority or more of the voting securities of North Investors, shall be deemed to be a Transfer of North Investors' Membership Interests, and each of such Transfers described in clauses (a), (b) and (c) shall require the approval of the other parties as provided in the Operating Agreement.

Section 22 CAKE Information.

If and for so long as CAKE ceases to be subject to, or to comply with, the reporting requirements applicable to a company with securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, and until the expiration or earlier exercise of the Option and Put, CAKE shall furnish to FRC:

(a) within ninety (90) days after the end of each fiscal year of CAKE, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year; and

(b) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of CAKE, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its financial officers as presenting fairly in all material respects the financial condition and results of operations of CAKE and its consolidated subsidiaries on a consolidated basis in accordance with generally acceptable accounting principles, consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

Section 23 Miscellaneous.

(a) Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given (i) if personally delivered, when so delivered, (ii) if mailed, one (1) week after being placed in the United States mail, registered or certified, postage prepaid, addressed to the party to whom it is directed at the address set forth on the signature pages hereof, (iii) if given by telecopier, when such notice or communication is transmitted to the telecopier number set forth on the signature pages hereof, (iv) on the date of confirmation of receipt of transmission by facsimile or email transmission (or, the first (1st) Business Day following such receipt if (A) the date of delivery is not a Business Day or (B) confirmation of receipt is given after 5:00 p.m., Pacific Time), or (v) on the date of confirmation of receipt if delivered by an internationally recognized overnight courier service (or, the first (1st) Business Day following such receipt if (A) the date of delivery is not a Business Day

or (B) confirmation of receipt is given after 5:00 p.m., Pacific Time). Each of the parties shall be entitled to specify a different address by giving the other parties notice as aforesaid.

(b) This Agreement and the other Definitive Documentation, and the exhibits and schedules thereto (which are incorporated herein by this reference), constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, relating to the subject matter of this Agreement. No supplement, modification, waiver or termination of this Agreement shall be valid unless executed by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver, unless otherwise expressly provided. In the event of any conflict between the terms of this Agreement and the terms of any of the other Definitive Documentation, the terms of this Agreement shall govern.

(c) Section and subsection headings are not to be considered part of this Agreement and are included solely for convenience and reference and are not intended to be full or accurate descriptions of the content thereof.

(d) All of the terms, provisions and obligations of this Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, representatives, successors and assigns.

(e) The validity, construction and interpretation of this Agreement shall be governed in all respects by the laws of the State of Arizona applicable to contracts made and to be performed wholly within that State.

(f) This Agreement may be executed simultaneously in two or more counterparts, each one of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(g) Except for indemnification as expressly provided in Section 13, nothing in this Agreement, expressed or implied, is intended to confer upon any person other than the parties hereto and their respective heirs, representatives, successors and assigns any rights or remedies under or by reason of this Agreement.

(h) In the event any party takes legal action to enforce any of the terms of this Agreement, the unsuccessful party to such action shall pay the successful party's expenses (including, but not limited to, reasonable attorneys' fees and costs) incurred in such action.

(i) Each party hereto shall, from time to time at and after the date hereof, execute and deliver such instruments, documents and assurances and take such further actions as the other parties reasonably may request to carry out the purpose and intent of this Agreement and the Definitive Documentation.

(j) Any controversy arising out of or relating to this Agreement or the transactions contemplated hereby shall be referred to arbitration before the American Arbitration Association strictly in accordance with the terms of this Agreement and the substantive law of the State of

Arizona. The board of arbitrators shall convene at a place mutually acceptable to the parties in the State of Arizona and, if the place of arbitration cannot be agreed upon, arbitration shall be conducted in Phoenix. The parties hereto agree to accept the decision of the board of arbitrators, and judgment upon any award rendered hereunder may be entered in any court having jurisdiction thereof. Neither party shall institute a proceeding hereunder until that party has furnished to the other party thereto, by registered mail, a least thirty (30) days prior written notice of its intent to do so.

(k) This Agreement was reviewed by legal counsel for each party hereto and is the product of informed negotiations between the parties hereto. If any part of this Agreement is deemed to be unclear or ambiguous, it shall be construed as if it were drafted jointly by the parties. Each party hereto acknowledges that no party was in a superior bargaining position regarding the substantive terms of this Agreement.

(l) Subject to Section 16(j), each party hereto, to the fullest extent it may effectively do so under applicable law, irrevocably (i) submits to the exclusive jurisdiction of any court of the State of Arizona or the United States of America sitting in the City of Phoenix over any suit, action or proceeding arising out of or relating to this Agreement, (ii) waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the establishment of the venue or any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum, (iii) agrees that a judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon such party and may be enforced in the courts of the United States of America or the State of Arizona (or any other courts to the jurisdiction of which such party is or may be subject) by a suit upon such judgment and (iv) consents to process being served in any such suit, action or proceeding by mailing a copy thereof by registered or certified air mail, postage prepaid, return receipt requested, to the address of such party specified in or designated pursuant to Section 16(a). Each party agrees that such service (i) shall be deemed in every respect effective service of process upon such party in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon the personal delivery to such party. **TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE DEFINITIVE DOCUMENTATION.**

(m) Each party shall bear the expenses incurred by it in connection with the negotiation, execution and delivery of this Agreement and the other Definitive Documentation and the consummation of the transactions contemplated thereby.

(n) The provisions of this Agreement are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

THE CHEESECAKE FACTORY INCORPORATED,
a Delaware corporation

By: /s/ David Overton

Name: David Overton,
Title: Chief Executive Officer
26901 Malibu Hills Road
Calabasas, California 91301

Address for Notice Purposes:

The Cheesecake Factory Incorporated
26901 Malibu Hills Road
Calabasas, California 91301
Attn: Debby Zurzolo, General Counsel

Telecopier: #####

TCF CALIFORNIA HOLDING COMPANY,
a California corporation.

By: /s/ David Overton

Name: David Overton
Title: Chief Executive Officer
26901 Malibu Hills Road
Calabasas, California 91301

Address for Notice Purposes:

The Cheesecake Factory Incorporated
26901 Malibu Hills Road
Calabasas, California 91301
Attn: Debby Zurzolo, General Counsel

Telecopier: #####

VILLA ENTERTAINMENT GROUP, LLC,
A California limited liability company

By /s/ Randy Delano
Name: Randy Delano
Title: Managing Member

Address for Notice Purposes:

Telecopier: #####
Email: #####

FRC ENTITIES:

The address for notice purposes of all of the FRC Entities shall be:

4455 East Camelback Road
Suite B100
Phoenix, Arizona 85018

Telecopier: #####
Email: #####

SIGNATURES OF THE FRC ENTITIES FOLLOW:

/s/ Samuel W. Fox
SAMUEL W. FOX

FOX RESTAURANT CONCEPTS LLC,
an Arizona limited liability company,

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

FRC MANAGEMENT LLC,
an Arizona limited liability company

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

NORTH INVESTORS LLC,
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

NORTH RESTAURANTS LLC,
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

NORTH LLCs:

FRC North-Italian (Tucson) LLC,
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

FRC North (KC 119)
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

FRC (North – 119) LLC
a Kansas limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

FRC (North-Cherry Creek) LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

FRC North-Italian LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

FRC 40th Street LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

FRC North Houston LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox
Samuel W. Fox, Manager

FRC (North-Domain Austin) LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By/s/ Samuel W. Fox

Samuel W. Fox, Manager

FRC - Austin Management LLC
a Texas limited liability company

By/s/ Samuel W. Fox

Samuel W. Fox, Manager

FRC Domain Beverages LLC
a Texas limited liability company

By: FRC- Austin Management LLC
Its: Member

By/s/ Samuel W. Fox

Samuel W. Fox, Manager

FRC North The Point LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By/s/ Samuel W. Fox

Samuel W. Fox, Manager

FRC North (Park Place) LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox

Samuel W. Fox, Manager

North Legacy West LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox

Samuel W. Fox, Manager

FRC North FV LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox

Samuel W. Fox, Manager

North 2nd Street LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox

Samuel W. Fox, Manager

FRC North One Paseo LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox

Samuel W. Fox, Manager

FRC North-Italian (Arrowhead) LLC
an Arizona limited liability company

By: FRC Management LLC
Its: Manager

By /s/ Samuel W. Fox

Samuel W. Fox, Manager

**FIRST AMENDMENT TO OPTION EXERCISE AGREEMENT AND SECOND AMENDMENT TO
PURCHASE AGREEMENT AND OPERATING AGREEMENT**

THIS FIRST AMENDMENT TO OPTION EXERCISE AGREEMENT AND SECOND AMENDMENT TO PURCHASE AGREEMENT AND OPERATING AGREEMENT (this “Agreement”) is entered into as of October 2, 2019, by and between (i) North Investors LLC, an Arizona limited liability company (“North Investors”), (ii) Villa Entertainment Group, LLC, a California limited liability company (“Villa”), (iii) TCF California Holding Company, a California corporation (“TCF”), (iv) The Cheesecake Factory Incorporated, a Delaware corporation (“Cake”), (v) Samuel W. Fox (“Fox”), (vi) Fox Restaurant Concepts LLC, an Arizona limited liability company (“FRC”), (vii) North Restaurants LLC, an Arizona limited liability company (“North Restaurants”), (viii) each of the Persons listed on Exhibit A (each, a “North LLC” and collectively, the “North LLCs”), (ix) FRC Management LLC, an Arizona limited liability company (“FRC Management”) and (x) SWF Posse LLC, an Arizona limited liability company (“Representative”). North Investors, Villa, TCF, Cake, Fox, FRC, North Restaurants and the North LLCs shall each be referred to herein as a “Party” and collectively, the “Parties.” Capitalized terms used, but not defined, in this Amendment shall have the meanings ascribed thereto in the Original Operating Agreement (as defined below).

RECITALS

WHEREAS, the Parties entered into an Amendment & Option Exercise Agreement, dated as of July 30, 2019 (the “Original Option Exercise Agreement” and, as amended hereby, the “Option Exercise Agreement”), pursuant to which (i) the Parties amended that certain Operating Agreement of North Restaurants, dated as of November 14, 2016 (as amended by the Original Option Exercise Agreement, the “Original Operating Agreement” and, as amended hereby, the “Operating Agreement”), (ii) the Parties amended that certain Purchase Agreement (North Italia), dated as of November 14, 2016 (as amended by the Original Option Exercise Agreement, the “Original Purchase Agreement” and, as amended hereby, the “Purchase Agreement”) and (iii) TCF exercised its option to acquire all outstanding interest in North Restaurants;

WHEREAS, the Parties desire that in lieu of establishing an escrow account with an escrow agent pursuant to the Original Operating Agreement, TCF shall retain \$12,000,000 (the “Indemnity Escrow Amount”) of the Initial Acquisition Price (as defined in the Original Option Exercise Agreement), for purposes of satisfying indemnification obligations of FRC Indemnitors (as defined in the Purchase Agreement) under Section 13 of the Purchase Agreement; and

WHEREAS, the Parties desire to amend the Original Option Exercise Agreement, the Original Operating Agreement and the Original Purchase Agreement as provided herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

Section 1 Amendment to Original Option Exercise Agreement. Section 1 of the Original Option Exercise Agreement is hereby amended by adding the following after Section 1(e) of the Original Option Exercise Agreement.

“(f) Indemnity Escrow Amount.

(i) At the Closing, TCF shall retain \$12,000,000 of the Initial Acquisition Price (the “Indemnity Escrow Amount”), solely to satisfy any indemnification claims against FRC Indemnitors (as defined in the Purchase Agreement) under Section 13 of the Purchase Agreement.

(ii) If TCF desires to make a claim against the Indemnity Escrow Amount pursuant to Section 13 of the Purchase Agreement, TCF shall provide written notice thereof (a “Claim Notice”) to Representative with a copy to Villa before the two-year anniversary of the Closing Date, which Claim Notice shall (i) in reasonable detail state the basis for such claim, and (ii) state the amount being claimed by TCF against the Indemnity Escrow Amount (the “Claim Amount”). If within thirty (30) business days of Representative receiving the Claim Notice, neither Representative nor Villa delivers written notice to TCF objecting to the Claim Notice (any such objection notice, an “Indemnity Objection”), TCF shall provide final written notice of its intent to exercise a set off against the Indemnity Escrow Amount with respect to the applicable claim (the “Second Notice”). If within ten (10) business days of Representative receiving the Second Notice, neither Representative nor Villa delivers an Indemnity Objection, TCF shall set off and apply the Claim Amount against the Indemnity Escrow Amount (and the amount so set off shall be retained by TCF for its own account). As appropriate, any Indemnity Objection to the Claim Notice will provide the amount not being contested, the amount contested and a reasonable basis for the portion being contested. In the event that TCF receives an Indemnity Objection, then TCF shall set off and apply the undisputed portion of the Claim Amount, if any, against the Indemnity Escrow Amount (and the amount so set off shall be retained by TCF for its own account), and TCF shall place any disputed portion of the Claim Amount into an escrow account (the “Escrow Account”) with Wells Fargo Corporate Trust Services (the “Escrow Agent”). The Escrow Agent shall hold the disputed portion of the Claim Amount in the Escrow Account until (i) the Escrow Agent receives joint instruction from TCF and Representative or (ii) the Escrow Agent receives a final and non-appealable judgment, order, decree, award, ruling, decision or verdict of a court of competent jurisdiction with respect thereto (“Final Order”). The Escrow Agent fee will be paid by TCF.

(iii) On the first anniversary of the Closing Date, TCF shall pay fifty percent (50%) of the balance of the Indemnity Escrow Amount (amount remaining after all set offs), less any outstanding and disputed Claim Amounts (including for the avoidance of doubt any amounts held in the Escrow Account), (the “First Remaining Indemnity Escrow Amount”) to Representative, for distribution to the members of North Investors as of the Closing Date in accordance with their pro rata ownership of North Investors (it being understood that Villa owns forty seven percent (47%) interest in North Investors, and owners of FRC immediately prior to Closing will collectively own the remaining fifty three percent (53%) interest in North Investors after Closing) by wire transfer of immediately available funds for deposit into the account designated by Representative.

(iv) On the second anniversary of the Closing Date, TCF shall pay the balance of the Indemnity Escrow Amount (amount remaining after the disbursement set forth in Section 1(f)(iii) above, plus all subsequent set offs), less any outstanding and disputed Claim Amounts (including for the avoidance of doubt any amounts held in the Escrow Account), (the “Final Remaining Indemnity Escrow Amount”) to Representative for distribution to the members of North Investors as of the Closing Date in accordance with their pro rata ownership of North Investors (it being understood that Villa owns forty seven percent (47%) interest in North Investors, and owners of FRC immediately prior to Closing will collectively own the remaining fifty three percent (53%) interest in North Investors after Closing) by wire transfer of immediately available funds for deposit into the account designated by Representative.

(g) Appointment and Authority of Representative.

(i) Each of North Investors, FRC and Villa hereby irrevocably appoints, designates and authorizes SWF Posse LLC to act on its behalf as Representative hereunder and authorizes Representative to take such actions on its behalf and to exercise such powers as are delegated to Representative by the terms hereof, together with such actions and powers as are reasonably incidental thereto.

(ii) The Person serving as Representative hereunder shall have the same rights, duties, and powers in its capacity as North Investors and FRC, and may exercise the same as though it were not Representative, and the terms “North Investors” and “FRC” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Representative hereunder in its individual capacity.

(iii) Representative shall not have any duties or obligations except those expressly set forth herein, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, Representative:

(A) shall not be subject to any fiduciary or other implied duties to FRC, North Investors or Villa;

(B) shall not have any duty to take any discretionary action or exercise any discretionary powers, except as expressly provided in this Agreement; and

(C) shall not, except as expressly provided in this Agreement, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to North Restaurants LLC, an Arizona limited liability company, or any of its Affiliates that is communicated to or obtained by Representative or any of its Affiliates in any capacity.

(iv) Neither Representative nor any of its Affiliates shall be liable to FRC, North Investors or Villa for any action taken or not taken by Representative under or in connection with this Agreement or the transactions contemplated hereby in the absence of its own fraud, gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

(v) Neither Representative nor any of its Affiliates shall have any duty or obligation to FRC, North Investors or Villa to ascertain or inquire into (i) any statement, warranty

or representation made in or in connection with this Agreement, (ii) the contents of any certificate, report or other document delivered hereunder or in connection herewith, or (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein.

(vi) Representative shall be entitled to rely upon any notice, request, certificate, communication, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Representative may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 2 Amendments to Original Operating Agreement.

(a) Amendment to Section 8.7(c)(v). Section 8.7(c)(v) of the Original Operating Agreement is hereby amended and restated as follows: “[Reserved]”.

(b) Amendment to Section 8.7(c)(vi). Section 8.7(c)(vi) of the Original Operating Agreement is hereby amended and restated as follows: “On the Closing Date, TCF shall pay 90% of the Initial Acquisition Price by wire transfer or immediately available funds to such account(s) and in such amounts as North Investors shall specify in writing to TCF”.

(c) Amendment to Exhibit F. Exhibit F of the Original Operating Agreement is hereby amended and restated as follows: “[Reserved]”.

Section 3 Amendment to Original Purchase Agreement. The final sentence of Section 13(b) of the Original Purchase Agreement is hereby amended and restated as follows: “Any Loss incurred by the TCF Indemnitors under this Section 13(b) shall be satisfied from the Indemnity Escrow Amount, and to the extent funds in the Indemnity Escrow Amount are not sufficient, shall be paid by the FRC Indemnitees directly to the TCF Indemnitees, subject to the limits in Section 13(c), within ten (10) Business Days of invoice from TCF.”.

Section 4 Representations and Warranties. Each Party represents and warrants to each other Party as follows:

(a) Organization, Standing and Power. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has full power and authority to own, lease or otherwise hold its properties and assets and to conduct its business as presently conducted.

(b) Authority; Execution and Delivery; Enforceability. Such Party has full power and authority to execute, deliver and perform its obligations under this Agreement and, if applicable, to consummate the Option Purchase. The execution, delivery and performance by such Party of this Agreement and, if applicable, the consummation by such Party of the Option Purchase have been duly authorized by all necessary corporate, limited liability company or other entity action of such Party. Such Party has duly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as limited by applicable laws affecting the enforcement of creditors’ rights generally or by general equitable principles.

Section 5 Miscellaneous.

(a) **Governing Law.** This Agreement and all actions (whether at law, in contract, in tort or otherwise) arising out of or relating to this Agreement will be governed by and construed according to the laws of the State of Arizona without regard to conflicts of law principles and will bind and inure to the benefit of the heirs, successors, assigns, and personal representatives of the Parties; **PROVIDED THAT, NOTWITHSTANDING THE FOREGOING, ANY DISPUTES INVOLVING THE TCF FINANCING SOURCES WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING REGARD TO CONFLICTS OR CHOICE OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.** Each Party hereto waives any objection based on forum non conveniens and waives any objection to venue of any action instituted hereunder. EACH PARTY HERETO IRREVOCABLY WAIVES (TO THE EXTENT PERMITTED BY LAW) ALL RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR OTHER PROCEEDING (WHETHER AT LAW, IN CONTRACT, IN TORT OR OTHERWISE) INSTITUTED BY OR AGAINST SUCH PARTY IN RESPECT OF ITS OBLIGATIONS HEREUNDER, INCLUDING IN ANY ACTION, PROCEEDING OR COUNTERCLAIM AGAINST ANY TCF FINANCING SOURCE.

(b) **Enforcement.** The Parties agree that irreparable damage could occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to seek to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity. Any requirements for the securing or posting of any bond in connection with such remedy are waived. Each of the Parties hereby irrevocably waives, and agrees not to assert or attempt to assert, by way of motion or other request for leave from the court, as a defense, counterclaim or otherwise, in any proceeding, any claim or argument that there is an adequate remedy at law or that an award of specific performance is not otherwise an available or appropriate remedy. Notwithstanding anything to the contrary in this Agreement or the Original Purchase Agreement, each Party agrees that nothing in this Agreement shall require TCF or any of its Affiliates to enforce and none of the Parties shall be entitled to seek specific performance, injunctive relief or other equitable remedies to cause TCF or any of its Affiliates to enforce their respective rights under the TCF Loan Agreement or cause TCF Financing to be funded.

(c) **Notices.** Notices may be delivered either by United States mail, electronic mail, hand delivery, recognized overnight air service (e.g., Federal Express) or facsimile. Any notice or document required or permitted hereunder shall be in writing and shall be deemed to be given on the date received by the recipient; provided, however, that all notices and documents mailed in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the recipient at its respective address as shown in the signature pages to this Agreement, shall be deemed to have been received five (5) days after mailing, and all notices and documents delivered by electronic mail or facsimile to a recipient at its respective electronic mail address or facsimile number, if any, as shown in the signature pages to this Agreement shall be deemed to have been received by the recipient upon the later of twenty-four (24) hours after transmission or 5:00 p.m. local time of the recipient on the next Business Day following the day

of transmission of such electronic mail or facsimile. The mailing address, electronic mail address and facsimile number of each of the Parties shall be for all purposes as set forth in the signature pages to this Agreement unless otherwise changed by such Party by notice to the Parties as provided herein. The addresses set forth in the signature pages to this Agreement shall apply for purposes of Section 7(c) of the Option Exercise Agreement and Section 1 of this Agreement. The mailing address, electronic mail address and facsimile number for the Representative shall be for all purposes the contact information as set forth for FRC in the signature pages to this Agreement unless otherwise changed by the Representative by notice to the Parties as provided herein.

(d) Interpretation; Captions. The headings contained herein and in any Exhibit hereto are for reference purposes only and shall not affect in any way the meaning or interpretation hereof. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part hereof as if set forth in full herein. Any capitalized terms used in any Exhibit, but not otherwise defined therein, shall have the meaning as defined herein. When a reference is made herein to a Section or Exhibit, such reference shall be to a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns. For all purposes of this Agreement, unless otherwise specified herein, (i) "or" shall be construed in the inclusive sense of "and/or"; (ii) words (including capitalized terms defined herein) in the singular shall be construed to include the plural and vice versa and words (including capitalized terms defined herein) of one gender shall be construed to include the other gender as the context requires; (iii) the terms "hereof" and "herein" and words of similar import shall be construed to refer to this Agreement as a whole (including all the Exhibits and Schedules) and not to any particular provision of this Agreement; (iv) the terms "including" and "include" mean "including, without limiting the generality of the foregoing"; and (v) all references herein to "\$" or dollars shall refer to United States dollars. Each representation, warranty, covenant and agreement contained herein shall have independent significance. Accordingly, if any representation, warranty, covenant or agreement contained herein is breached, the fact that there exists another representation, warranty, covenant or agreement relating to the same subject matter (regardless of the relative levels of specificity) shall not detract from or mitigate the breach of the first representation, warranty, covenant or agreement. Except to the extent a shorter time period is expressly set forth herein for a particular cause of action, actions hereunder may be brought at any time prior to the expiration of the longest time period permitted by applicable law. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is a non-business day, the period in question shall end on the next succeeding business day.

(e) Amendments. Except as otherwise provided in this Agreement, this Agreement shall not be altered, modified or changed except by a written amendment approved by each Party. Notwithstanding the foregoing, the provisions of Section 5(a), (b) (n) and this Section 5(e) (and any other provision of this Agreement to the extent an amendment, supplement, waiver or other modification of such provision would modify the substance of such sections) may not be

amended, supplemented, waived or otherwise modified in any manner that is materially adverse to the TCF Financing Sources without the prior written consent of each TCF Financing Source.

(f) The Original Agreements. Except as specifically amended hereby, the Original Operating Agreement, Original Purchase Agreement and Original Option Exercise Agreement (the “Original Agreements”) shall continue in full force and effect in accordance with the provisions thereof in existence on the date hereof. Unless the context otherwise requires, after the date hereof, any reference to either of the Original Agreements shall mean such Original Agreement as amended hereby.

(g) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Parties. The exchange of copies hereof, including signature pages hereto, by facsimile, e mail or other means of electronic transmission shall constitute effective execution and delivery hereof as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures transmitted by facsimile, e-mail or other means of electronic transmission shall be deemed to be original signatures for all purposes.

(h) Inconsistencies. In the event of any inconsistency between this Agreement and either of the Original Operating Agreement or the Original Purchase Agreement, this Agreement shall prevail.

(i) Expenses. Except as otherwise expressly set forth in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such expense.

(j) Attorneys’ Fees. If any proceeding relating to this Agreement or any of the transactions contemplated hereby or the enforcement thereof is brought against any Party, the prevailing Party, if any, shall be entitled to recover reasonable attorneys’ fees, costs and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

(k) Assignment. This Agreement and the rights and obligations hereunder shall not be assignable by any Party without the prior written consent of all other Parties. Notwithstanding the foregoing, TCF may, without the consent of any other Party, assign all or any portion of its rights and obligations hereunder to any Affiliate or Affiliates of TCF. No such assignment shall release TCF from any of its obligations hereunder without the consent of other Parties.

(l) Severability. If any provision hereof (or any portion thereof) or the application of any such provision (or any portion thereof) to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion thereof) or the application of such provision to any other persons or circumstances.

(m) Definitive Documentation. This agreement constitutes one of the Definitive Documentation (as defined in the Original Purchase Agreement).

(n) TCF Financing Sources. Notwithstanding anything to the contrary contained herein, each Party (other than TCF) hereby irrevocably and unconditionally agrees that none of the TCF Financing Sources shall have any liability or obligation to any Seller under or in connection with this Agreement, the Original Option Exercise Agreement, any commitment letter, engagement letter or definitive financing document (including the TCF Loan Agreement) or any of the transactions contemplated hereby or thereby (including with respect to the TCF Financing). Each Party (other than TCF) hereby waives any and all rights or claims and causes of action (whether at law, in equity, in contract, in tort or otherwise) against the TCF Financing Sources that may be based upon, arise out of or relate to this Agreement, the Original Option Exercise Agreement, any commitment letter, engagement letter or definitive financing document (including the TCF Loan Agreement) or any of the transactions contemplated hereby or thereby (including the TCF Financing), and each Seller agrees not to commence or support a proceeding against any TCF Financing Source in connection with this Agreement, the Original Option Exercise Agreement or any commitment letter, engagement letter or definitive financing document (including the TCF Loan Agreement) or any of the transactions contemplated hereby or thereby (including any proceeding related to the TCF Financing). Nothing in this Section 5(n) will limit the rights of TCF or its affiliates in respect of the TCF Financing under the TCF Loan Agreement. Without limiting the foregoing, no TCF Financing Source shall be subject to any special, consequential, punitive or indirect damages or damages of a tortious nature to any Seller. The TCF Financing Sources shall be express third party beneficiaries of this Section 5(n) and Sections 5(a), (b) and (e), each of such sections shall expressly enure to the benefit of the TCF Financing Sources and the TCF Financing Sources shall be entitled to rely on and enforce the provisions of such Sections. For purposes of this Section 5, the following capitalized terms shall have the following meanings:

“TCF Financing” means one or more loans or extensions of credit made under the TCF Loan Agreement in order to financing in part the payment of the Initial Acquisition Price.

“TCF Financing Sources” means the agents, arrangers, lenders, issuing banks and other persons that have committed to provide or arrange or otherwise entered into the TCF Loan Agreement or otherwise agreed to provide any portion of the TCF Financing, together with their respective Affiliates and their and such Affiliates’ respective direct or indirect, former, current or future general and limited partners, officers, directors, employees, controlling persons, agents, representatives, advisors and counsel and their respective successors and assigns.

“TCF Loan Agreement” means that certain Third Amended and Restated Loan Agreement, dated as of July 30, 2019, among The Cheesecake Factory Incorporated, the owner of 100% of the capital stock of TCF, as borrower, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent, as the same may be amended, restated or supplemented from time to time.

[Signature Page Follows]

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

THE CHEESECAKE FACTORY INCORPORATED

By: /s/ David Overton

Name: David Overton

Title: Chief Executive Officer

Contact Information:

TCF CALIFORNIA HOLDING COMPANY

By: /s/ David Overton

Name: David Overton

Title: President and Chief Executive Officer

Contact Information:

VILLA ENTERTAINMENT GROUP, LLC

By: /s/ Randy Delano

Name: Randy Delano

Title: Managing Member

Contact Information: #####

#####

#####

[Signature Page to Amendment and Option Exercise Agreement]

SWF POSSE LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

FOX RESTAURANT CONCEPTS LLC

By: FRC Management LLC
Its: Manager

By: /s/ Samuel Fox
Name: Samuel Fox
Title: Founder

Contact Information:
4455 East Camelback Road
Suite B100
Phoenix, Arizona 85018
Attn: General Counsel
Facsimile: #####
Email: #####

FRC MANAGEMENT LLC

By: /s/ Brian Stoll
Name: Brian Stoll
Title: Chief Financial Officer

Contact Information:
4455 East Camelback Road
Suite B100
Phoenix, Arizona 85018
Attn: General Counsel
Facsimile: #####
Email: #####

[Signature Page to Amendment and Option Exercise Agreement]

NORTH INVESTORS LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

Contact Information:
4455 East Camelback Road
Suite B100
Phoenix, Arizona 85018
Attn: General Counsel
Facsimile: #####
Email: #####

NORTH RESTAURANTS LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

Contact Information:
4455 East Camelback Road
Suite B100
Phoenix, Arizona 85018
Attn: General Counsel
Facsimile: #####
Email: #####

NORTH LLCs:

The contact information for notice purposes of all of the
North LLCs shall be:

4455 East Camelback Road
Suite B100
Phoenix, Arizona 85018
Attn: General Counsel
Facsimile: #####
Email: #####

[Signature Page to Amendment and Option Exercise Agreement]

FRC NORTH-ITALIAN (TUCSON) LLC

By: FRC Management LLC
Its: Manager

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

FRC NORTH (KC 119)

By: FRC Management LLC
Its: Manager

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

FRC (NORTH – 119) LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

FRC (NORTH-CHERRY CREEK) LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

FRC NORTH-ITALIAN LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

[Signature Page to Amendment and Option Exercise Agreement]

FRC 40TH STREET LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

FRC NORTH HOUSTON LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

FRC (NORTH-DOMAIN AUSTIN) LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

FRC – AUSTIN MANAGEMENT LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

FRC DOMAIN BEVERAGES LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

FRC NORTH THE POINT LLC

By: /s/ Sam Fox
Name: Sam Fox
Title: Founder

[Signature Page to Amendment and Option Exercise Agreement]

FRC NORTH (PARK PLACE) LLC

By: /s/ Sam Fox

Name: Sam Fox

Title: Founder

NORTH LEGACY WEST LLC

By: /s/ Sam Fox

Name: Sam Fox

Title: Founder

NORTH FV LLC

By: /s/ Sam Fox

Name: Sam Fox

Title: Founder

NORTH 2ND STREET LLC

By: /s/ Sam Fox

Name: Sam Fox

Title: Founder

FRC NORTH ONE PASEO LLC

By: /s/ Sam Fox

Name: Sam Fox

Title: Founder

FRC NORTH-ITALIAN (ARROWHEAD) LLC

By: /s/ Sam Fox

Name: Sam Fox

Title: Founder

[Signature Page to Amendment and Option Exercise Agreement]

Certain confidential information contained in this document, marked by brackets, has been omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

MEMBERSHIP INTEREST PURCHASE AGREEMENT

By and Among

The Cheesecake Factory Restaurants, Inc.,

Fox Restaurant Concepts LLC,

Sellers (as defined herein),

SWF Posse LLC, in its capacity as Sellers' Representative (as defined herein),

and

Solely for Limited Purposes Set Forth Herein,

The Cheesecake Factory Incorporated

Dated as of July 30, 2019

Table of Contents

	Page
ARTICLE I PURCHASE AND SALE OF MEMBERSHIP INTERESTS; CLOSING	1
Section 1.01 Purchase and Sale of the Membership Interests	1
Section 1.02 Closing Date	1
Section 1.03 Transactions To Be Effected at the Closing	2
Section 1.04 Deferred Payment Holdback Amount	3
Section 1.05 Closing Cash Consideration; Purchase Price Adjustment	3
Section 1.06 Contingent Consideration	6
Section 1.07 Brand Sale Consideration	10
ARTICLE II REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS RELATING TO EACH SELLER AND THE MEMBERSHIP INTERESTS	13
Section 2.01 Organization, Standing and Power	13
Section 2.02 Authority; Execution and Delivery; Enforceability	13
Section 2.03 No Conflicts; Consents	14
Section 2.04 The Membership Interests	14
Section 2.05 Legal Proceedings; Judgments	14
Section 2.06 No Brokers	15
Section 2.07 Fair Market Value	15
ARTICLE III REPRESENTATIONS AND WARRANTIES RELATING TO THE COMPANY	15
Section 3.01 Organization, Standing and Power; Books and Records	15
Section 3.02 Capitalization	15
Section 3.03 Authority; Execution and Delivery; Enforceability	17
Section 3.04 No Conflicts; Consents	17
Section 3.05 Financial Statements; Liabilities	17
Section 3.06 Absence of Changes or Events	18
Section 3.07 Assets	21
Section 3.08 Real Property	21
Section 3.09 Intellectual Property	22
Section 3.10 Information Technology; Security and Privacy	24
Section 3.11 Contracts	26
Section 3.12 Permits	29
Section 3.13 Insurance	29
Section 3.14 Taxes	30
Section 3.15 Proceedings	32
Section 3.16 Compliance with Laws; FCPA Matters; Americans with Disabilities Act; and Antiboycott Laws	32
Section 3.17 Environmental Matters	33
Section 3.18 Plans	34
Section 3.19 Employee and Labor Matters	35
Section 3.20 Transactions with Affiliates	37
Section 3.21 Suppliers	37
Section 3.22 Accounts Receivable	37
Section 3.23 Accounts; Safe Deposit Boxes; Powers of Attorney; Officers and Directors	37
Section 3.24 No Brokers	38

Section 3.25	No Other Agreements to Sell the Assets or Membership Interests of the Company	38
Section 3.26	Knowledge	38
Section 3.27	NO ADDITIONAL REPRESENTATIONS AND WARRANTIES	38
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER		39
Section 4.01	Organization, Standing and Power	39
Section 4.02	Authority; Execution and Delivery; Enforceability	39
Section 4.03	No Conflicts; Consents	39
Section 4.04	Legal Proceedings; Judgments	39
Section 4.05	Securities Act	40
Section 4.06	Availability of Funds	40
Section 4.07	No Brokers	40
ARTICLE V CERTAIN COVENANTS AND AGREEMENTS		40
Section 5.01	Conduct of Business by the Company and Sellers	40
Section 5.02	Inspection and Access to Information	44
Section 5.03	No Solicitation of Transactions	44
Section 5.04	Reasonable Efforts	45
Section 5.05	Confidentiality	46
Section 5.06	Expenses; Transfer Taxes	47
Section 5.07	Employee Matters	47
Section 5.08	Publicity	48
Section 5.09	Further Assurances	48
Section 5.10	Treatment of Certain Affiliate Agreements	48
Section 5.11	Drag-Along of Minority Investors	49
Section 5.12	Excluded Assets; Excluded Liabilities	49
Section 5.13	Governance Matters	49
Section 5.14	Spin Out	50
Section 5.15	GAAP Financial Statements	50
Section 5.16	Non-Dragged Subsidiaries	50
Section 5.17	Lien Release	50
ARTICLE VI CONDITIONS PRECEDENT		50
Section 6.01	Conditions to Each Party's Obligations	50
Section 6.02	Conditions to Obligations of Purchaser	51
Section 6.03	Conditions to Obligations of Sellers and the Company	52
ARTICLE VII TERMINATION, AMENDMENT AND WAIVER		53
Section 7.01	Termination	53
Section 7.02	Effect of Termination	54
ARTICLE VIII TAX MATTERS		54
Section 8.01	Liability for Taxes; Indemnification	54
Section 8.02	Tax Returns	55
Section 8.03	Allocation Schedule	56
Section 8.04	Tax Contests	57
Section 8.05	Tax Reimbursements	58
Section 8.06	Assistance and Cooperation	58
Section 8.07	Retention of Documents	59
Section 8.08	Termination of Tax Allocation Arrangements	59

Section 8.09	Limitation on Seller Rights	59
Section 8.10	Survival, Etc	59
Section 8.11	Withholding	60
Section 8.12	Contingent Consideration	60
Section 8.13	Seller Transaction Expenses	60
ARTICLE IX INDEMNIFICATION		60
Section 9.01	Indemnification by Sellers	60
Section 9.02	Indemnification by Purchaser	62
Section 9.03	Calculation of Losses	63
Section 9.04	Survival of Representations, Warranties, Covenants and Agreements; Termination of Indemnification	63
Section 9.05	Procedures	64
Section 9.06	Exclusive Remedy	67
Section 9.07	No Set Off	67
ARTICLE X GENERAL PROVISIONS		67
Section 10.01	Assignment	67
Section 10.02	No Third-Party Beneficiaries	67
Section 10.03	Notices	68
Section 10.04	Interpretation; Exhibits and Schedules; Certain Definitions	69
Section 10.05	Counterparts	89
Section 10.06	Amendments and Waivers	89
Section 10.07	Entire Agreement	89
Section 10.08	Severability	89
Section 10.09	Enforcement	89
Section 10.10	Consent to Jurisdiction	90
Section 10.11	GOVERNING LAW	90
Section 10.12	WAIVER OF JURY TRIAL	91
Section 10.13	Attorneys' Fees	91
Section 10.14	Release	91
Section 10.15	Company Disclosure Schedule	92
Section 10.16	Representation by Counsel	92
Section 10.17	Guarantee	92
Section 10.18	Sellers' Representative	93

Exhibits

Exhibit A	Sellers and Membership Interests
Exhibit B	Form of Restrictive Covenant Agreement
Exhibit C	Contingent Consideration Calculation and Payment Methodology
Exhibit D	Form of Assignment Agreement
Exhibit E	Form of Drag-Along Notice
Exhibit F	Form of Minority Subsidiary Investor Assignment
Exhibit G	Governance Matters
Exhibit H	Form of Invention Assignment Agreement

MEMBERSHIP INTEREST PURCHASE AGREEMENT

This MEMBERSHIP INTEREST PURCHASE AGREEMENT (this “Agreement”), dated as of July 30, 2019, is by and among (i) the Persons identified as Group A Sellers on the signature pages hereto (each, a “Group A Seller”, and collectively, “Group A Sellers”), (ii) the Persons identified as Group B Sellers on the signature pages hereto (each, a “Group B Seller”, and collectively, “Group B Sellers”, and together with Group A Sellers, each, a “Seller”, and collectively, “Sellers”), (iii) Fox Restaurant Concepts LLC, an Arizona limited liability company (the “Company”), (iv) The Cheesecake Factory Restaurants, Inc., a California corporation (“Purchaser”), (v) SWF Posse LLC, an Arizona limited liability company, as the appointed representative of Sellers (“Sellers’ Representative”), and (vi) solely for the limited purposes set forth herein, The Cheesecake Factory Incorporated, a Delaware corporation (“Guarantor”). Purchaser, the Company, Sellers, Sellers’ Representative and Guarantor shall each be referred to herein as a “Party” and collectively, the “Parties.”

RECITALS

A. Purchaser desires to purchase from Sellers, and Sellers desire to sell to Purchaser, all of the issued and outstanding Membership Interests, as set forth on Exhibit A.

B. The Parties acknowledge and agree that amounts payable hereunder to Group A Sellers and Group B Sellers in exchange for their respective Membership Interests reflect the fair market value of such Membership Interests in light of their varying rights and obligations set forth herein.

C. The Parties each desire to make certain representations, warranties, covenants and agreements in connection with the transactions contemplated hereby and to prescribe various conditions thereto.

Accordingly, in consideration of the mutual covenants and promises contained in this Agreement and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I

Purchase and Sale of Membership Interests; Closing

Section 1.01 Purchase and Sale of the Membership Interests. On the terms and subject to the conditions hereof, at the Closing, each Seller shall sell, convey, transfer and assign to Purchaser, free and clear of any Liens (other than restrictions imposed on transfer under applicable federal and/or state securities laws or regulations), and Purchaser shall purchase and acquire at the Closing from each Seller, all right, title and interest in and to the Membership Interests set forth opposite such Seller’s name on Exhibit A for an aggregate purchase price (the “Purchase Price”) payable to Sellers (collectively) equal to the sum of (a) the Closing Cash Consideration, plus (b) in the case of Group A Sellers, the Contingent Consideration (if any) payable pursuant to Section 1.06, plus (c) in the case of Group A Sellers, the Brand Sale Consideration (if any) payable pursuant to Section 1.07. The Closing Cash Consideration shall be payable as set forth below in Section 1.03(c) and, in the case of the portion thereof payable to Group A Sellers, shall be subject to adjustment as provided in Section 1.05. The purchase and sale of the Membership Interests is referred to herein as the “Acquisition”. The Acquisition and the other transactions contemplated by this Agreement and the Ancillary Agreements are referred to herein as the “Transactions.”

Section 1.02 Closing Date. Subject to the satisfaction of the conditions set forth in Article VI (or the waiver thereof by the party entitled to waive that condition), the closing of the Transactions (the “Closing”) shall be deemed to take place at the offices of Latham & Watkins LLP at 355 South Grand Avenue, Suite 100, Los Angeles, California 90071-1560 at 12:01 a.m. local time on October 2, 2019 (or, if such conditions are not satisfied on such date, November 6, 2019) (the “Closing Date”) (and adjusted across

time zones such that the Closing shall be deemed to have been effective as of 12:01 a.m. in each time zone), unless another time and/or date are agreed to in writing by the Parties. If the Closing occurs on the same date as the closing date under the North Italia Option Exercise Agreement, then the Closing shall be deemed to occur immediately after the closing under the North Italia Option Exercise Agreement.

Section 1.03 Transactions To Be Effected at the Closing.

(a) At the Closing, all of the existing and outstanding Funded Indebtedness shall be repaid in full in accordance with Section 1.03(c)(i).

(b) Subject to the terms and conditions of this Agreement, at the Closing, Sellers and the Company shall deliver or cause to be delivered to Purchaser all of the documents required to be delivered by them pursuant to Article VI.

(c) At the Closing, Purchaser shall make the following payments to the following recipients:

(i) on behalf of the Company, payment of the amount of the Funded Indebtedness by wire transfer of immediately available funds to an account or accounts of the applicable payees thereof designated in the Payoff Letters;

(ii) on behalf of Sellers or the Company, as applicable, payment of the Seller Transaction Expenses required to be paid at or around Closing by wire transfer of immediately available funds to an account or accounts of the applicable payees thereof, as designated in the Closing Consideration Certificate (it being understood that Sellers' Representative may elect for a portion of the Seller Transaction Expenses to be deposited in an account under its control for further disbursement by Sellers' Representative);

(iii) payment of the Group B Sellers Closing Payment by wire transfer of immediately available funds for deposit into the account designated by Sellers' Representative (subject to Section 1.03(d), to be distributed to Group B Sellers in accordance with their Group B Pro Rata Shares);

(iv) payment of the Group A Sellers Closing Payment by wire transfer or immediately available funds for deposit into the account designated by Sellers' Representative (subject to Section 1.03(d), to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares); and

(v) payment of the Minority Reorganization Payment by wire transfer of immediately available funds for deposit into the accounts designated by the Company for the account of the Minority Subsidiary Investors.

(d) Notwithstanding anything to the contrary contained herein (including any requirement that any amount shall be paid in accordance with the Pro Rata Shares of Sellers), Sellers' Representative may adjust any payment to be distributed to Sellers at Closing in accordance with this Agreement to allocate (i) the Group A Sellers Closing Payment and the Group B Sellers Closing Payment among Sellers in a manner that compensates Sellers that did not receive any distributions made by the Company on a non-pro rata basis prior to the Closing Date under the Organizational Documents of the Company, including Sections 4.1(b)(i) and 4.1(b)(ii) of the Company Operating Agreement, for the distribution such Sellers would have received had they been made on a pro rata basis under the Company Operating Agreement, (ii) responsibility for any of the Seller Transaction Expenses, and (iii) the economic

impact of the Closing Bonuses and the Closing Bonus Taxes, in any manner Sellers' Representative may determine in its sole discretion (it being understood by Sellers that any such expenses may be allocated among Sellers in a disproportionate manner). Any allocation of the Group A Sellers Closing Payment, the Group B Sellers Closing Payment, the Seller Transaction Expenses, the Closing Bonuses and the Closing Bonus Taxes, in accordance with this Section 1.03(d) shall be reflected in the Closing Consideration Certificate delivered pursuant to Section 1.05.

(e) Subject to the terms and conditions of this Agreement, at the Closing, Purchaser shall deliver or cause to be delivered to Sellers' Representative all of the documents required to be delivered by Purchaser pursuant to Section 6.03.

(f) Each Seller hereby agrees to the allocation of the Closing Cash Consideration, the Adjustment Amount (if any), the Deferred Payment Holdback Amount, the Contingent Consideration (if any) and the Brand Sale Consideration (if any) contemplated in this Agreement (including in the Closing Consideration Certificate), and each Seller forever waives and relinquishes any and all rights to have the Closing Cash Consideration, the Adjustment Amount (if any), the Deferred Payment Holdback Amount, the Contingent Consideration (if any), and the Brand Sale Consideration (if any) allocated or calculated in any other manner, whether pursuant to any provision of the Company Operating Agreement or any other Contract with, or for the benefit of, such Seller. Purchaser and the Company shall be entitled to rely solely on Exhibit A and the Closing Consideration Certificate with respect to the amounts allocated and payable to Sellers or the other payees set forth thereon. Neither Purchaser nor the Company shall be liable for any damages to any Person, including any Seller, for any inaccuracy, error or omission in Exhibit A or the Closing Consideration Certificate, or any action taken in reliance thereon.

Section 1.04 Deferred Payment Holdback Amount. Subject to Section 1.06(e), on each of the first, second, third and fourth year anniversaries of the Closing Date, Purchaser shall pay 25% of the Deferred Payment Holdback Amount, minus the amount of any Seller Transaction Expenses payable in connection therewith, to Sellers' Representative (to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares) by wire transfer of immediately available funds for deposit into the account designated by Sellers' Representative. For a period of three years after the Closing, the Indemnity Holdback Amount may be used by Purchaser to offset against Sellers' indemnification obligations under Article VIII and Article IX, and the other portion of the Deferred Payment Holdback Amount may be used by Purchaser to offset against Sellers' payment obligations under Section 1.05(g). On the third anniversary of the Closing Date, the Indemnity Holdback Amount less any outstanding and unresolved Claim Amounts, shall no longer be available to Purchaser to support Group A Sellers' indemnification obligations under Article VIII and Article IX, and shall be treated and released in the same manner as the rest of the Deferred Payment Holdback Amount (it being understood that if such Deferred Payment Holdback Amount has been paid to Sellers' Representative (to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares) in accordance with Section 1.06(e), such portion of the Indemnity Holdback Amount shall be released to Sellers' Representative (to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares) within five Business Days of such third anniversary). The portion of the Indemnity Holdback Amount equal to such Claim Amount shall be withheld by Purchaser and disbursed in accordance with Section 9.05(e).

Section 1.05 Closing Cash Consideration; Purchase Price Adjustment.

(a) Not less than five Business Days prior to the Closing Date, Sellers' Representative shall deliver or cause to be delivered to Purchaser a certificate duly executed by the Chief Executive Officer of the Company (the "Closing Consideration Certificate"), containing the following information (which shall be set forth on an accompanying spreadsheet):

(i) an estimate, prepared in good faith by the Company (and reasonably satisfactory to Purchaser) of (A) the Closing Cash Consideration, (B) the aggregate amount of all Indebtedness of the Company and its Subsidiaries as of 11:59 p.m. on the day immediately preceding the Closing Date (the “Estimated Indebtedness”), (C) the aggregate amount of all Seller Transaction Expenses that will have not been paid by the Company or its Subsidiaries as of 11:59 p.m. on the day immediately preceding the Closing Date (including, for the avoidance of doubt, any Seller Transaction Expenses payable on or after the Closing Date) (the “Estimated Seller Transaction Expenses”), in each case, together with reasonable supporting calculations for each component thereof and supporting documentation therefor. For purposes hereof, the “Closing Cash Consideration” means an amount equal to (1) \$220,000,000, minus (2) the Estimated Indebtedness, minus (3) the Estimated Seller Transaction Expenses, minus (4) the Minority Reorganization Payment, plus (5) \$3,000,000 (representing the amount of loans extended by Guarantor or its Subsidiaries to the Company or its Subsidiaries prior to the date hereof that will, at the election of Purchaser, be forgiven or remain outstanding after the Closing), plus (6) the amount outstanding under the Company Line of Credit, to the extent such amounts do not exceed the amount of cash in the bank accounts of the Company and its Subsidiaries as demonstrated with reasonable supporting information provided to Purchaser, in each case, as of 11:59 p.m. on the day immediately preceding the Closing Date, minus (7) the aggregate amount of Closing Bonuses and Closing Bonus Taxes;

(ii) the Group B Sellers Closing Payment (and the portion thereof payable to each Group B Seller) and the Group A Sellers Closing Payment (and the portion thereof payable to each Group A Seller); and

(iii) with respect to each Seller: (A) the gross amount of the Purchase Price that such Seller is entitled to receive at the Closing in exchange for the Membership Interests held by such Seller as reflected in Section 1.05(a)(ii) above; and (B) if applicable, the total amount of Taxes to be withheld from the consideration that such Seller is entitled to receive.

(b) Within 90 days after the Closing Date, Purchaser shall prepare and deliver to Sellers’ Representative a statement (the “Statement”) setting forth: (i) the aggregate amount of all Indebtedness of the Company and its Subsidiaries as of 11:59 p.m. on the day immediately preceding the Closing Date (the “Closing Indebtedness”), and (ii) the aggregate amount of all Seller Transaction Expenses that were not paid by the Company or its Subsidiaries as of 11:59 p.m. on the day immediately preceding the Closing Date (the “Closing Seller Transaction Expenses”), in each case, together with reasonable supporting calculations for each component thereof and supporting documentation therefor.

(c) During the 30-day period following Sellers’ Representative’s receipt of the Statement, Sellers’ Representative and its auditors and Representatives shall be permitted to review the working papers of the Company, Purchaser and their respective accountants relating to the Statement, together with all other reasonably requested materials relating to the Statement, including any materials prepared by Purchaser and/or its accountants; provided, that Sellers’ Representative and its auditors and Representatives shall have executed all release letters (if any) reasonably requested by Purchaser’s and the Company’s accountants in connection therewith. The Statement and the calculations of the Closing Indebtedness and the Closing Seller Transaction Expenses (collectively, the “Closing Calculations”) shall become final and binding upon the Parties on the 30th day following delivery thereof, unless Sellers’ Representative delivers written notice of its disagreement with the Statement and the Closing Calculations (a “Notice of Disagreement”) to Purchaser before such date. Any Notice of Disagreement shall (i) specify in reasonable detail the specific amount(s) disputed, Sellers’ Representative’s rationale for such dispute(s) and its proposed calculation for such disputed amount(s), and shall be accompanied by reasonably supporting documentation therefor, and (ii) only include disagreements (x) based on mathematical errors, or (y) based on the Closing Calculations not being calculated in accordance with this Agreement, including

any definitions in this Agreement used in such Closing Calculations. If a Notice of Disagreement is delivered to Purchaser in a timely manner, then the Statement and the Closing Calculations (as revised in accordance with this sentence) shall become final and binding upon the Parties on the earlier of (A) the date Sellers' Representative and Purchaser resolve in writing any differences they have with respect to the matters specified in the Notice of Disagreement (and the Statement and the Closing Calculations shall be final and binding to the extent any such matters are so resolved) or (B) the date any disputed matters are finally resolved in writing by the Accounting Firm (and the Statement and the Closing Calculations shall be final and binding to the extent any such matters are so resolved). Any items set forth in the Statement and the Closing Calculations that are not disputed in a Notice of Disagreement timely delivered in accordance with this Section 1.05(c) shall be deemed final and binding upon the Parties as set forth in the Statement. During the 30-day period following the delivery of a Notice of Disagreement, Sellers' Representative and Purchaser shall seek in good faith to resolve in writing any differences that they may have with respect to the matters specified in the Notice of Disagreement; provided, that, the Parties agree that each of the Closing Calculations shall not be outside the range established by the amounts, or the relative positions taken, by Purchaser, on the one hand, as set forth in the Statement with respect to such items, and by Sellers' Representative, on the other hand, as set forth in the Notice of Disagreement with respect to such items. During such period Purchaser and its auditors and Representatives shall have access to the working papers of Sellers' Representative and Sellers' Representative's accountants prepared in connection with the Notice of Disagreement, together with all other reasonably requested materials relating to the Notice of Disagreement; provided, that Purchaser and its auditors and Representatives shall have executed all release letters (if any) reasonably requested by Sellers' Representative's accountants in connection therewith. Neither Purchaser nor Sellers' Representative may change its calculations from the amounts proposed in the Statement (with respect to Purchaser) and the Notice of Disagreement (with respect to Sellers' Representative) without the other Party's consent.

(d) At the end of such 30-day period, to the extent Sellers' Representative and Purchaser are unable to resolve any dispute set forth in the Notice of Disagreement, Sellers' Representative and Purchaser shall jointly submit any such remaining disputes (the "Disputed Items") to the Accounting Firm. Purchaser and Sellers' Representative shall instruct the Accounting Firm to resolve, in accordance with this Agreement, only the Disputed Items. Within 30 days after retaining the Accounting Firm, each of Sellers' Representative and Purchaser shall deliver to the other Party and the Accounting Firm a report setting forth such party's determination and calculation of the Disputed Items; provided, that the Accounting Firm shall engage in no other ex parte communication with Sellers' Representative or Purchaser (or any of their respective Representatives) without the consent of both Sellers' Representative and Purchaser. No Party will disclose to the Accounting Firm, and the Accounting Firm will not consider for any purpose, any settlement discussions or settlement offer made by any Party, unless otherwise agreed to by Sellers' Representative and Purchaser. Sellers' Representative and Purchaser shall jointly request that the Accounting Firm render a decision resolving the matters submitted to the Accounting Firm as soon as practicable, but in no event later than 30 days after such submission. To the extent Sellers' Representative and Purchaser are unable to mutually agree on any procedure by which the Accounting Firm considers and resolves the Disputed Items within 10 Business Days of the engagement of the Accounting Firm, the Accounting Firm will determine the appropriate procedures. Any determination made by the Accounting Firm shall not be outside the range established by the amounts, or the relative positions taken, by Purchaser, on the one hand, as set forth in the Statement, and by Sellers' Representative, on the other hand, as set forth in the Notice of Disagreement. The Accounting Firm shall set forth its determination of all Disputed Items (as well as the Adjustment Amount) in a written report, which report shall include a worksheet setting forth the material calculations used in arriving at such determination and a calculation of the apportionment of the fees, costs and expenses of the Accounting Firm in accordance with Section 1.05(e). The Parties acknowledge and agree that, if any such dispute is submitted to the Accounting Firm pursuant to this Section 1.05, Closing Indebtedness and Closing Seller Transaction Expenses, as determined by the

Accounting Firm, shall constitute Closing Indebtedness and Closing Seller Transaction Expenses, and be final, binding, and conclusive on the Parties for purposes of this Agreement.

(e) If requested by the Accounting Firm, Purchaser and Sellers' Representative agree to execute a reasonable engagement letter. The cost of any review by the Accounting Firm (including the fees and expenses, including any retainer, of the Accounting Firm and reasonable attorney fees and expenses of the Parties) pursuant to this Section 1.05 shall be borne by Purchaser and Sellers' Representative in inverse proportion as they may prevail on matters resolved by the Accounting Firm, which proportionate allocations shall also be determined by the Accounting Firm at the time its determination is rendered on the merits of the matters submitted. However, initially, any retainer charged by the Accounting Firm shall be paid 50% by Purchaser and 50% by Sellers' Representative, with such amount to be reimbursed by the Party responsible for paying the cost of the review in accordance with the immediately preceding sentence. All other fees and expenses incurred by Purchaser or Sellers' Representative in connection with the preparation, review or certification of the Statement or the Notice of Disagreement shall be borne by the Party incurring such fees and expenses. A court of competent jurisdiction shall be permitted to enforce the determination of an Accounting Firm, as the case may be, pursuant to this Section 1.05.

(f) Adjustments.

(i) If Closing Indebtedness as finally determined pursuant to this Section 1.05 is less than Estimated Indebtedness, Purchaser shall pay to Sellers' Representative (to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares) such shortfall in accordance with Section 1.05(g). If Closing Indebtedness as finally determined pursuant to this Section 1.05 is greater than Estimated Indebtedness, such excess shall be paid to Purchaser in accordance with Section 1.05(g).

(ii) If Closing Seller Transaction Expenses as finally determined pursuant to this Section 1.05 is less than Estimated Seller Transaction Expenses, Purchaser shall pay to Sellers' Representative (to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares) such shortfall in accordance with Section 1.05(g). If Closing Seller Transaction Expenses as finally determined pursuant to this Section 1.05 is greater than Estimated Seller Transaction Expenses, such excess shall be paid to Purchaser in accordance with Section 1.05(g).

(g) Without duplication, the amounts owed pursuant to Section 1.05(f)(i) and Section 1.05(f)(ii) shall be aggregated, and the net amount (if any) payable by Purchaser to Sellers' Representative (to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares), on the one hand, or payable by Group A Sellers to Purchaser, on the other hand, is referred to as the "Adjustment Amount"; it being understood and agreed that (i) if the Adjustment Amount is payable by Purchaser to Group A Sellers, then Purchaser shall, within five Business Days after the Statement becomes final and binding on the Parties in accordance with this Section 1.05, pay by wire transfer of immediately available funds the Adjustment Amount to Sellers' Representative (to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares), and (ii) if the Adjustment Amount is payable to Purchaser, Purchaser shall receive the Adjustment Amount through setting off the Adjustment Amount against the portion of the Deferred Payment Holdback Amount that is not the Indemnity Holdback Amount (and withholding and retaining such amount for its own account). The Closing Cash Consideration, as increased or decreased by the Adjustment Amount, is referred to herein as the "Adjusted Closing Cash Consideration."

Section 1.06 Contingent Consideration.

(a) Contingent Consideration Statement. Within 60 days after the end of the Measurement Period, Purchaser shall prepare in good faith and deliver to Sellers' Representative an unaudited statement of Aggregate TTM Sales and the Aggregate TTM 4-Wall Margin for the Measurement Period (the "Contingent Consideration Statement"). The Contingent Consideration Statement also shall be accompanied by a calculation of the Contingent Consideration Amount, if any, payable with respect to the Measurement Period.

(b) Dispute Resolution.

(i) During the 30-day period following Sellers' Representative's receipt of the Contingent Consideration Statement, Sellers' Representative and its auditors and Representatives shall be permitted to review the working papers of Purchaser and its accountants relating to the Contingent Consideration Statement and the calculation of the Aggregate TTM Sales, Aggregate TTM 4-Wall Margin, together with all other reasonably requested materials relating thereto (the "Contingent Consideration Calculations"); provided, that Sellers' Representative and its auditors and Representatives shall have executed all release letters (if any) reasonably requested by Purchaser's and the Company's accountants in connection therewith. The Contingent Consideration Statement and the Contingent Consideration Calculations shall become final and binding upon the Parties hereto on the 30th day following delivery thereof, unless Sellers' Representative delivers written notice of its disagreement with the Contingent Consideration Calculations before such date. Any such notice of disagreement shall (X) specify in reasonable detail the specific amount(s) disputed, Sellers' Representative's rationale for such dispute(s) and its proposed calculation for such disputed amount(s), and shall be accompanied by reasonable supporting documentation therefor, and (Y) only include disagreements (x) based on mathematical errors, or (y) based on the Contingent Consideration Calculations not being calculated in accordance with this Agreement, including any definitions in this Agreement used in such Contingent Consideration Calculations (the "Contingent Consideration Objection Notice"). If a Contingent Consideration Objection Notice is delivered to Purchaser in a timely manner, then the Contingent Consideration Calculations (as revised in accordance with this sentence) shall become final and binding upon the Parties hereto on the earlier of (A) the date Sellers' Representative and Purchaser resolve in writing any differences they have with respect to the matters specified in the Contingent Consideration Objection Notice (and the Contingent Consideration Statement and the Contingent Consideration Calculations shall be final and binding to the extent any such matters are so resolved) or (B) the date any disputed matters are finally resolved in writing by the Accounting Firm (and the Contingent Consideration Statement and the Contingent Consideration Calculations shall be final and binding to the extent any such matters are so resolved). Any items set forth in the Contingent Consideration Statement and the Contingent Consideration Calculations that are not disputed in a Contingent Consideration Objection Notice timely delivered in accordance with this Section 1.06(b) shall be deemed final and binding upon the Parties hereto as set forth in the Contingent Consideration Statement and the Contingent Consideration Calculations. During the 30-day period following the delivery of a Contingent Consideration Objection Notice, Sellers' Representative and Purchaser shall seek in good faith to resolve in writing any differences that they may have with respect to the matters specified in the Contingent Consideration Objection Notice; provided, that the Parties hereto agree that each item of the Contingent Consideration Statement and Contingent Consideration Calculations shall not be outside the range established by the amounts, or the relative positions taken, by Purchaser, on the one hand, as set forth in the Contingent Consideration Statement and Contingent Consideration Calculations with respect to such items, and by Sellers' Representative, on the other hand, as set forth in the Contingent Consideration Objection Notice with respect to such items. During such period Purchaser and its auditors and Representatives shall have access to the working papers of Sellers' Representative and Sellers' Representative's accountants prepared in connection with the Contingent Consideration

Objection Notice, together with all other reasonably requested materials relating thereto; provided, that Purchaser and its auditors and Representatives shall have executed all release letters (if any) reasonably requested by Sellers' Representative's accountants in connection therewith. Neither Purchaser nor Sellers' Representative may change its calculations from the amounts proposed in the Contingent Consideration Statement and Contingent Consideration Calculations (with respect to Purchaser) and the Contingent Consideration Objection Notice (with respect to Sellers' Representative) without the other's consent.

(ii) At the end of such 30-day period, to the extent Purchaser and Sellers' Representative are unable to resolve any dispute set forth in the Contingent Consideration Objection Notice, Purchaser and Sellers' Representative shall jointly submit any such remaining disputes (the "Disputed Contingent Consideration Items") to the Accounting Firm. Purchaser and Sellers' Representative shall instruct the Accounting Firm to resolve, in accordance with this Agreement, only the Disputed Contingent Consideration Items. Within 30 days after retaining the Accounting Firm, each of Purchaser and Sellers' Representative shall deliver to the other and the Accounting Firm a report setting forth such party's determination and calculation of the Disputed Contingent Consideration Items; provided, that the Accounting Firm shall engage in no other ex parte communication with Purchaser or Sellers' Representative (or any of their respective Representatives) without the consent of both Purchaser and Sellers' Representative. No party will disclose to the Accounting Firm, and the Accounting Firm will not consider for any purpose, any settlement discussions or settlement offer made by any party, unless otherwise agreed to by Purchaser and Sellers' Representative. Purchaser and Sellers' Representative shall jointly request that the Accounting Firm render a decision resolving the matters submitted to the Accounting Firm as soon as practicable thereafter, but in no event later than 30 days after such submission. To the extent Purchaser and Sellers' Representative are unable to mutually agree on any procedure by which the Accounting Firm considers and resolves the Disputed Contingent Consideration Items within 10 Business Days of the engagement of the Accounting Firm, the Accounting Firm will determine the appropriate procedures. Any determination made by the Accounting Firm shall not be outside the range established by the amounts, or the relative positions taken, by Purchaser, on the one hand, as set forth in the Contingent Consideration Statement and Contingent Consideration Calculations, and by Sellers' Representative, on the other hand, as set forth in the Contingent Consideration Objection Notice. The Accounting Firm shall set forth its determination of all Disputed Contingent Consideration Items in a written report, which report shall include a worksheet setting forth the material calculations used in arriving at such determination and a calculation of the apportionment of the fees, costs and expenses of the Accounting Firm in accordance with Section 1.06(b)(iii). The Parties acknowledge and agree that, if any such dispute is submitted to the Accounting Firm pursuant to this Section 1.06(b), the Aggregate TTM Sales, Aggregate TTM 4-Wall Margin and Contingent Consideration Calculations, as determined by the Accounting Firm, shall constitute the Aggregate TTM Sales, Aggregate TTM 4-Wall Margin and Contingent Consideration Calculations and be final, binding, and conclusive on the Parties for purposes of this Agreement.

(iii) If requested by the Accounting Firm, Purchaser and Sellers' Representative agree to execute a reasonable engagement letter. The cost of any review by the Accounting Firm (including the fees and expenses, including any retainer, of the Accounting Firm and reasonable attorney fees and expenses of the Parties) pursuant to this Section 1.06(b) shall be borne by Purchaser and Sellers' Representative in inverse proportion as they may prevail on matters resolved by the Accounting Firm, which proportionate allocations shall also be determined by the Accounting Firm at the time its determination is rendered on the merits of the matters submitted. However, initially, any retainer charged by the Accounting Firm shall be paid 50% by Purchaser and 50% by Sellers' Representative, with such amount to be reimbursed by the Party responsible

for paying the cost of the review in accordance with the immediately preceding sentence. All other fees and expenses incurred by Purchaser or Sellers' Representative in connection with the preparation, review or certification of the Contingent Consideration Statement and Contingent Consideration Calculations or the Contingent Consideration Objection Notice shall be borne by the Party incurring such fees and expenses.

(iv) A court of competent jurisdiction shall be permitted to enforce the determination of the Accounting Firm, as the case may be, pursuant to this Section 1.06.

(c) Calculation of Contingent Consideration Amount; Payment of Contingent Consideration Amount.

(i) Following the Closing, the Contingent Consideration will be paid and calculated in accordance with Exhibit C.

(ii) For the avoidance of doubt, any payment made pursuant to or in connection with this Section 1.06 shall be deemed to be an adjustment to the Purchase Price to the extent permitted by applicable Law.

(iii) The Contingent Consideration payable hereunder reflects the difficulty in valuing the Membership Interests, is intended to be part of the total purchase price hereunder to Group A Sellers in exchange for their Membership Interests, is not intended to be compensatory in nature and the payment thereof is not dependent upon the continued employment or services of any Person or individual.

(d) Purchaser Discretion.

(i) Sellers understand and acknowledge that (A) except as provided in Exhibit G, Guarantor may operate its business and the business of its Affiliates (including the Company after the Closing) in the manner it deems appropriate in its sole discretion and (B) there are no implied duties under applicable Law or otherwise with respect to this Section 1.06.

(ii) Notwithstanding the foregoing, from and after Closing, none of Guarantor or Purchaser shall take any actions in bad faith with the specific purpose of avoiding or reducing the amount of Contingent Consideration payable hereunder.

(e) Termination Option. In the event of a Guarantor Change of Control, Purchaser shall deliver written notice thereof to Sellers' Representative no later than 30 days prior to the closing of such Guarantor Change of Control. Within 15 days after Sellers' Representative receives such written notice, Sellers' Representative or Purchaser may irrevocably elect by written notice delivered to the other party to require Purchaser, at the closing of such Guarantor Change of Control, to pay Sellers' Representative (to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares) (i) the remaining amount of the Deferred Payment Holdback Amount (other than the Indemnity Holdback Amount) and (ii) if no Contingent Consideration has been paid pursuant to Section 1.06 prior to the closing of such Guarantor Change of Control, an amount equal to [****], the "Termination Amount"); provided, however, that if either Sellers' Representative or Purchaser makes such written election, the payment of the Termination Amount shall be conditioned upon the closing of such Guarantor Change of Control. Upon payment of the Termination Amount, Purchaser shall not have any further obligation to pay the Deferred Payment Holdback Amount (other than the Indemnity Holdback Amount) or Contingent Consideration under this Agreement or otherwise (it being understood that the Indemnity Holdback Amount shall continue to be paid in accordance with Section 1.04).

[****]=[CONFIDENTIAL PORTION HAS BEEN OMITTED BECAUSE IT (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED]

Section 1.07 Brand Sale Consideration.

(a) Brand Sale Consideration Statement. Within 30 days after the consummation of any Brand Sale pursuant to a definitive purchase agreement entered into by Purchaser or its Affiliates (a "Brand Sale Agreement") at any time after the Closing and prior to the end of the Measurement Period, Purchaser shall prepare in good faith and deliver to Sellers' Representative an unaudited statement of Brand Sale Net Proceeds payable at the closing and anytime thereafter under the Brand Sale Agreement (the "Brand Sale Consideration Statement"). The Brand Sale Consideration Statement also shall be accompanied by a calculation of the Brand Sale Consideration payable with respect to the Brand Sale (the "Brand Sale Consideration Calculations").

(b) Dispute Resolution.

(i) During the 30-day period following Sellers' Representative's receipt of the Brand Sale Consideration Statement, Sellers' Representative and its auditors and Representatives shall be permitted to review the working papers of Purchaser and its accountants relating to the Brand Sale Consideration Statement and the calculation of the relevant Brand Sale Net Proceeds and Brand Sale Consideration, together with all other reasonably requested materials relating thereto; provided, that Sellers' Representative and its auditors and Representatives shall have executed all release letters (if any) reasonably requested by Purchaser's and the Company's accountants in connection therewith. The Brand Sale Consideration Statement and the Brand Sale Consideration Calculations shall become final and binding upon the Parties hereto on the 30th day following delivery thereof, unless Sellers' Representative delivers written notice of its disagreement with the Brand Sale Consideration Calculations before such date. Any such notice of disagreement shall (X) specify in reasonable detail the specific amount(s) disputed, Sellers' Representative's rationale for such dispute(s) and its proposed calculation for such disputed amount(s), and shall be accompanied by reasonable supporting documentation therefor, and (Y) only include disagreements (x) based on mathematical errors, or (y) based on the Brand Sale Consideration Calculations not being calculated in accordance with this Agreement, including any definitions in this Agreement used in such Brand Sale Consideration calculations (the "Brand Sale Consideration Objection Notice"). If a Brand Sale Consideration Objection Notice is delivered to Purchaser in a timely manner, then the Brand Sale Consideration Calculations (as revised in accordance with this sentence) shall become final and binding upon the Parties hereto on the earlier of (A) the date Sellers' Representative and Purchaser resolve in writing any differences they have with respect to the matters specified in the Brand Sale Consideration Objection Notice (and the Brand Sale Consideration Statement and the Brand Sale Consideration Calculations shall be final and binding to the extent any such matters are so resolved) or (B) the date any disputed matters are finally resolved in writing by the Accounting Firm (and the Brand Sale Consideration Statement and the Brand Sale Consideration Calculations shall be final and binding to the extent any such matters are so resolved). Any items set forth in the Brand Sale Consideration Statement and the Brand Sale Consideration Calculations that are not disputed in a Brand Sale Consideration Objection Notice timely delivered in accordance with this Section 1.07(b) shall be deemed final and binding upon the Parties hereto as set forth in the Brand Sale Consideration Statement and the Brand Sale Consideration Calculations. During the 30-day period following the delivery of a Brand Sale Consideration Objection Notice, Sellers' Representative and Purchaser shall seek in good faith to resolve in writing any differences that they may have with respect to the matters specified in the Brand Sale Consideration Objection Notice; provided, that the Parties hereto agree that each item of the Brand Sale Consideration Statement and Brand Sale Consideration Calculations shall not be

outside the range established by the amounts, or the relative positions taken, by Purchaser, on the one hand, as set forth in the Brand Sale Consideration Statement and Brand Sale Consideration Calculations with respect to such items, and by Sellers' Representative, on the other hand, as set forth in the Brand Sale Consideration Objection Notice with respect to such items. During such period Purchaser and its auditors and Representatives shall have access to the working papers of Sellers' Representative and Sellers' Representative's accountants prepared in connection with the Brand Sale Consideration Objection Notice, together with all other reasonably requested materials relating thereto; provided, that Purchaser and its auditors and Representatives shall have executed all release letters (if any) reasonably requested by Sellers' Representative's accountants in connection therewith. Neither Purchaser nor Sellers' Representative may change its calculations from the amounts proposed in the Brand Sale Consideration Statement and Brand Sale Consideration Calculations (with respect to Purchaser) and the Brand Sale Consideration Objection Notice (with respect Sellers' Representative) without the other's consent.

(ii) At the end of such 30-day period, to the extent Purchaser and Sellers' Representative are unable to resolve any dispute set forth in the Brand Sale Consideration Objection Notice, Purchaser and Sellers' Representative shall jointly submit any such remaining disputes (the "Disputed Brand Sale Consideration Items") to the Accounting Firm. Purchaser and Sellers' Representative shall instruct the Accounting Firm to resolve, in accordance with this Agreement, only the Disputed Brand Sale Consideration Items. Within 30 days after retaining the Accounting Firm, each of Purchaser and Sellers' Representative shall deliver to the other and the Accounting Firm a report setting forth such party's determination and calculation of the Disputed Brand Sale Consideration Items; provided, that the Accounting Firm shall engage in no other ex parte communication with Purchaser or Sellers' Representative (or any of their respective Representatives) without the consent of both Purchaser and Sellers' Representative. No party will disclose to the Accounting Firm, and the Accounting Firm will not consider for any purpose, any settlement discussions or settlement offer made by any party, unless otherwise agreed to by Purchaser and Sellers' Representative. Purchaser and Sellers' Representative shall jointly request that the Accounting Firm render a decision resolving the matters submitted to the Accounting Firm as soon as practicable thereafter, but in no event later than 30 days after such submission. To the extent Purchaser and Sellers' Representative are unable to mutually agree on any procedure by which the Accounting Firm considers and resolves the Disputed Brand Sale Consideration Items within 10 Business Days of the engagement of the Accounting Firm, the Accounting Firm will determine the appropriate procedures. Any determination made by the Accounting Firm shall not be outside the range established by the amounts, or the relative positions taken, by Purchaser, on the one hand, as set forth in the Brand Sale Consideration Statement and Brand Sale Consideration Calculations, and by Sellers' Representative, on the other hand, as set forth in the Brand Sale Consideration Objection Notice. The Accounting Firm shall set forth its determination of all Disputed Brand Sale Consideration Items in a written report, which report shall include a worksheet setting forth the material calculations used in arriving at such determination and a calculation of the apportionment of the fees, costs and expenses of the Accounting Firm in accordance with Section 1.07(b)(iii). The Parties acknowledge and agree that, if any such dispute is submitted to the Accounting Firm pursuant to this Section 1.07(b), the Brand Sale Consideration Calculations, as determined by the Accounting Firm, shall constitute the Brand Sale Consideration Calculations and be final, binding, and conclusive on the Parties for purposes of this Agreement.

(iii) If requested by the Accounting Firm, Purchaser and Sellers' Representative agree to execute a reasonable engagement letter. The cost of any review by the Accounting Firm (including the fees and expenses, including any retainer, of the Accounting Firm and reasonable attorney fees and expenses of the Parties) pursuant to this Section 1.07(b) shall be borne by Purchaser and Sellers' Representative in inverse proportion as they may prevail on matters

resolved by the Accounting Firm, which proportionate allocations shall also be determined by the Accounting Firm at the time its determination is rendered on the merits of the matters submitted. However, initially, any retainer charged by the Accounting Firm shall be paid 50% by Purchaser and 50% by Sellers' Representative, with such amount to be reimbursed by the Party responsible for paying the cost of the review in accordance with the immediately preceding sentence. All other fees and expenses incurred by Purchaser or Sellers' Representative in connection with the preparation, review or certification of the Brand Sale Consideration Statement and Brand Sale Consideration Calculations or the Brand Sale Consideration Objection Notice shall be borne by the Party incurring such fees and expenses.

(iv) A court of competent jurisdiction shall be permitted to enforce the determination of the Accounting Firm, as the case may be, pursuant to this Section 1.07.

(c) Calculation of Brand Sale Consideration; Payment of Brand Sale Consideration.

(i) Following the consummation of a Brand Sale pursuant to a Brand Sale Agreement, and after the relevant Brand Sale Consideration Calculations and the Brand Sale Consideration Statement have become final and binding upon the Parties in accordance with Section 1.07(b), Purchaser shall then within five Business Days following such final determination, pay the following to Sellers' Representative (to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares) (the "Brand Sale Consideration"):

(A) if after the Closing Date and before the end of the Measurement Period, Purchaser or any of its Affiliates enters into the applicable Brand Sale Agreement (other than a Brand Sale of the Zinburger or Blanco brands), then the Brand Sale Consideration with respect to such sale shall be an amount equal to [****]% of the Brand Sale Net Proceeds;

(B) if after the Closing Date and before the second anniversary of the Closing Date, Purchaser or any of its Affiliates enters into the applicable Brand Sale Agreement for a Brand Sale of the Zinburger or Blanco brands, then the Brand Sale Consideration with respect to such sale shall be an amount equal to [****]% of the Brand Sale Net Proceeds; and

(C) if on or after the second anniversary of the Closing Date and before the end of the Measurement Period, Purchaser or any of its Affiliates enters into the applicable Brand Sale Agreement for a Brand Sale of the Zinburger or Blanco brands, then the Brand Sale Consideration with respect to such sale shall be an amount equal to [****]% of the Brand Sale Net Proceeds.

(ii) In the event that Purchaser or its Affiliates are required to pay Brand Sale Consideration to Sellers' Representative under clause (A), (B) or (C) above and, after the closing of the applicable Brand Sale, Purchaser or its Affiliates actually receive additional Brand Sale Consideration (i.e., as a result of the payment of deferred consideration or contingent consideration) pursuant to such Brand Sale, the applicable percentage of such additional Brand Sale Consideration (as determined in accordance with such clause) shall be paid to Sellers' Representative (to be distributed to Group A Sellers in accordance with the Group A Pro Rata Shares). In the event that any such additional Brand Sale Consideration received by Purchaser or its Affiliates was not already reflected on the Brand Sale Consideration Statement delivered pursuant to Section 1.07(b), Purchaser shall prepare in good faith and deliver to Sellers' Representative an amended Brand Sale Consideration Statement and amended Brand Sale Consideration Calculations, and the procedures

[****]=[CONFIDENTIAL PORTION HAS BEEN OMITTED BECAUSE IT (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED]

set forth in Section 1.07(b) shall apply with respect to such amended Brand Sale Consideration Statement and such amended Brand Sale Consideration Calculations. After such amended Brand Sale Consideration Calculations and such amended Brand Sale Consideration Statement have become final and binding upon the Parties in accordance with Section 1.07(b), Purchaser shall then within five Business Days following such final determination, pay the applicable percentage of such additional Brand Sale Consideration to Sellers' Representative (to be distributed to Group A Sellers in accordance with the Group A Pro Rata Shares).

(iii) For the avoidance of doubt, any payment made pursuant to or in connection with this Section 1.07 shall be deemed to be an adjustment to the Purchase Price to the extent permitted by applicable Law.

(iv) The Brand Sale Consideration payable hereunder reflects the difficulty in valuing the Membership Interests, is intended to be part of the total purchase price hereunder to the Group A Sellers in exchange for their Membership Interests, is not intended to be compensatory in nature and the payment thereof is not dependent upon the continued employment or services of any Person or individual.

(d) Brand Sale Consent Right. Notwithstanding anything in this Section 1.07 to the contrary, Purchaser agrees that it shall not, and it shall not permit any of its Affiliates to, commit to a Brand Sale before the second anniversary of the Closing Date without the prior written consent of Fox (not to be unreasonably withheld, conditioned or delayed); provided, that the prior written consent of Fox shall not be required (i) to the extent the failure to conduct a Brand Sale would be inconsistent with the fiduciary duties of the board of directors of Guarantor under applicable Law or (ii) if the employment of Fox with Guarantor has ceased for any reason.

ARTICLE II

Representations, Warranties and Acknowledgments Relating to Each Seller and the Membership Interests

Except as set forth in the Company Disclosure Schedule, each Seller hereby represents and warrants to Purchaser, as to itself and not any other Seller, as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to another date (in which case as of such other date), as follows:

Section 2.01 Organization, Standing and Power. If such Seller is not an individual, such Seller is duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is organized and has full power and authority to own, lease or otherwise hold its properties and assets, including the Membership Interests, and to conduct its businesses as presently conducted.

Section 2.02 Authority, Execution and Delivery; Enforceability. Such Seller has full power and authority to execute, deliver and perform its obligations under this Agreement and the Ancillary Agreements to which it is, or is specified to be, a party and to consummate the Transactions. The execution, delivery and performance by such Seller of this Agreement and the Ancillary Agreements to which it is, or is specified to be, a party and the consummation by such Seller of the Transactions have been duly authorized by all necessary action. Such Seller has duly executed and delivered this Agreement and at or before the Closing will have duly executed and delivered each Ancillary Agreement to which it is, or is specified to be, a party, and this Agreement constitutes, and each Ancillary Agreement to which it is, or is specified to be, a party will as of the Closing constitute (assuming due authorization, execution and delivery by the other parties thereto), its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as limited by applicable Laws affecting the enforcement of creditors' rights generally

or by general equitable principles. If such Seller is an individual, the execution and delivery by such Seller hereof and the Ancillary Agreements to which such Seller is, or is specified to be, a party and the consummation by such Seller of the Transactions do not require any consent from any spouse or any Related Person of such Seller.

Section 2.03 No Conflicts; Consents. Except as set forth on Section 2.03 of the Company Disclosure Schedule, the execution and delivery by such Seller hereof do not, the execution and delivery by such Seller of each Ancillary Agreement to which it is, or is specified to be, a party will not, and the consummation of the Transactions and compliance by such Seller with the terms hereof and thereof will not contravene, conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, require any consent or approval under, or give rise to a right of termination, cancellation or acceleration of any obligation, to a right to challenge the Transactions, or to increased, additional, accelerated or guaranteed rights or entitlements of any Person under, or result in the creation of any Lien upon any of the properties or assets of such Seller under, any provision of (a) the certificate of incorporation or by-laws (or comparable documents) of such Seller (if applicable), (b) any written or verbal contract, lease (including the Leases), license, indenture, agreement, commitment, instrument, guaranty or other arrangement (a “Contract”) to which such Seller is a party or by which any of its properties or assets is bound or (c) any Judgment or Law applicable to such Seller or its properties or assets. No consent, Judgment, approval, waiver, license, permit, franchise, or authorization (“Consent”) of, or registration, declaration, notice, report, submission or other filing (“Filing”) with, any government or any arbitrator, tribunal, arbitral body or court of competent jurisdiction, regulatory or administrative agency or commission or other governmental authority, division, body, organization or instrumentality (in each case whether Federal, state, local, provincial, foreign, international, multinational or self-regulatory) (a “Governmental Entity”) is required to be obtained or made by or with respect to such Seller in connection with the execution, delivery and performance hereof or any Ancillary Agreement or the consummation of the Transactions, except for the pre-merger notification requirements of the HSR Act.

Section 2.04 The Membership Interests. Such Seller is the record and beneficial owner of and has good and valid title to the Membership Interests set forth next to such Seller’s name on Exhibit A, free and clear of all Liens (other than restrictions imposed on transfer under applicable federal and/or state securities laws or regulations). Other than as set forth on Exhibit A, such Seller does not own or have any beneficial interest in any limited liability company interests, other equity interests or Convertible Securities of the Company. Upon execution and delivery to Purchaser at the Closing by such Seller of the Assignment Agreement, good and marketable title to the Membership Interests will pass to Purchaser, free and clear of any Liens (other than restrictions imposed on transfer under applicable federal and/or state securities laws or regulations). Other than this Agreement and those agreements set forth on Section 2.04 of the Company Disclosure Schedule, such Membership Interests are not subject to any voting trust agreement or other Contract, including any Contract restricting or otherwise relating to the voting, dividend rights or disposition of such Membership Interests. Each Seller has included its allocable share of the income, gains, losses and deductions of the Company in its own Tax Return consistent with the Schedule K-1s delivered to such Seller by the Company.

Section 2.05 Legal Proceedings; Judgments. There are no Proceedings or Judgments pending or, to such Seller’s knowledge, threatened against or affecting such Seller, that (x) could reasonably be expected to adversely affect the ability of such Seller to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which such Seller is a party or (y) challenge or that could reasonably be expected to prevent, impede, hinder, delay, make illegal, impose limitations or conditions on, or otherwise interfere with, any of the Transactions. Such Seller is not subject to any Judgment that relates to the business of, or any assets owned or used by, the Company.

Section 2.06 No Brokers. Neither such Seller, nor any of such Seller's Representatives, has retained any Person to act as a broker or agreed or become obligated to pay, or has taken any action that might result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee, financial advisors' fee or similar commission or fee in connection with any of the Transactions.

Section 2.07 Fair Market Value. Each Seller acknowledges and agrees that the amounts payable to each Seller in exchange for their respective Membership Interests reflect the fair market value of such Membership Interests in light of their varying rights and obligations set forth herein.

ARTICLE III

Representations and Warranties Relating to the Company

Except as set forth in the Company Disclosure Schedule, the Company represents and warrants to Purchaser, as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to another date (in which case as of such other date), as follows:

Section 3.01 Organization, Standing and Power; Books and Records.

(a) The Company is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Arizona. The Company has full limited liability company power and authority and possesses all governmental franchises, licenses, permits, authorizations and approvals necessary to enable it to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted. The Company is duly qualified and in good standing to do business in each jurisdiction in which the conduct or nature of its business or the ownership, leasing or holding of its properties makes such qualification necessary except where the failure to so qualify would not be material to the Company or its business. A correct and complete list of the jurisdictions in which the Company is so qualified is set forth in Section 3.01(a) of the Company Disclosure Schedule.

(b) The Company and its Subsidiaries have delivered to Purchaser accurate and complete copies of the Company Articles of Organization, the Company Operating Agreement and the Organizational Documents of each of the Company's Subsidiaries, each as amended to-date. Neither the Company nor any of its Subsidiaries have or maintain membership interest transfer books or minute books.

(c) Section 3.01(c) of the Company Disclosure Schedule sets forth an accurate and complete list of the Company's Subsidiaries, and each of the Company's Subsidiaries is a corporation or limited liability company organized, validly existing and in good standing under the Laws of the State of Arizona, except as set forth in Section 3.01(c) of the Company Disclosure Schedule. Each of the Company's Subsidiaries has full entity power and authority and possesses all governmental franchises, licenses, permits, authorizations and approvals necessary to enable it to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted.

(d) The Dormant Subsidiaries (i) conduct no material operations and do not own any material properties, employ any employees, or hold any material assets and (ii) do not have any material Liabilities.

Section 3.02 Capitalization.

(a) Section 3.02(a) of the Company Disclosure Schedule correctly and completely sets forth, with respect to the Company and each of its Subsidiaries, each holder of Equity Securities of the Company and its Subsidiaries including such holder's (i) name (as listed in the record books of the Company or the Company's Subsidiaries, as applicable) and (ii) the class and ownership percentage of Equity Securities of the Company or the Company's Subsidiaries, as applicable, held by such holder. None of the Membership Interests are represented by certificates. Except as set forth on Section 3.02(a) of the Company Disclosure Schedule, there are no Equity Securities of the Company or any of its Subsidiaries issued, reserved for issuance or outstanding and there are no Convertible Securities of the Company or any of its Subsidiaries reserved for issuance or outstanding or promises to grant or issue any Equity Securities or rights to purchase or receive the same. All of the issued and outstanding Membership Interests are, and all of the Equity Securities of the Company's Subsidiaries will be as of immediately prior to the Closing, duly authorized, validly issued, fully paid and nonassessable and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right, right of first offer, co-sale or participation, registration right, subscription right, right of rescission or any similar right, including under any provision of applicable Law, the Company Certificate of Formation, the Company Operating Agreement or any other Organizational Documents of the Company or any of its Subsidiaries or any Contract to which the Company or any of its Subsidiaries is a party or otherwise bound. There is no Voting Debt of the Company or any of its Subsidiaries. There are not any outstanding contractual obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire or retire any limited liability company interests or other equity interests of the Company or any of its Subsidiaries. There are no accrued or declared but unpaid distributions on any Equity Securities of the Company or any of its Subsidiaries. No claim has been made or, to the Knowledge of the Company, threatened asserting that any Person other than a Person listed on Section 3.02(a) of the Company Disclosure Schedule is the holder or beneficial owner of, or has the right to acquire beneficial ownership of, any securities (including Convertible Securities) of, or any other voting, equity or ownership interest in the Company or any of its Subsidiaries.

(b) Section 3.02(b) of the Company Disclosure Schedule sets forth an accurate and complete list of all Persons in which the Company owns or holds, directly or indirectly, Equity Securities (whether controlling or not) other than its Subsidiaries and its Excluded Subsidiaries, including the percentage interest held in each such Person.

(c) Neither the Company nor any of its Subsidiaries has issued any outstanding incentive based Membership Interests or other Equity Securities or Convertible Securities with respect to such Membership Interests or Equity Securities and neither the Company nor any of its Subsidiaries has promised or has any obligation to issue any such Membership Interests, Equity Securities or Convertible Securities.

(d) Other than the Company Operating Agreement, there are no investors rights agreements, voting agreements, voting trusts, right of first refusal or co-sale agreements, rights of first negotiation, rights to notice of an acquisition proposal from a third party, management rights agreements or any other similar agreements or Contracts to which the Company is a party or by which it is bound relating to the transfer, voting or registration of any Membership Interests or any other securities of the Company.

(e) The Company has not violated any applicable Laws in connection with the offer, sale or issuance of any Equity Securities in the Company and its Subsidiaries, and all such Equity Securities have been offered, issued and granted in compliance with all requirements set forth in the Organizational Documents of the applicable entity.

(f) Except as set forth on Section 3.02(f) of the Company Disclosure Schedule, all of the Company's Subsidiaries either (i) are directly or indirectly wholly-owned by the Company, or (ii) have Organizational Documents, or other Contracts between such Subsidiaries and their respective holders of Equity Securities, including drag-along rights which will permit such Subsidiaries to become direct or indirect wholly-owned Subsidiaries of the Company at the Closing pursuant to Section 5.11. Upon the delivery of the Drag-Along Notices pursuant to Section 5.11, the Company or its applicable Subsidiary shall have validly exercised the drag-along rights with respect to all Minority Subsidiary Investors other than the Minority Subsidiary Investors of the Non-Dragged Subsidiaries pursuant to the requirements of the Organizational Documents of the non-wholly-owned Subsidiaries of the Company. The Company and its applicable Subsidiaries have received all necessary consents or other approvals required from the applicable Minority Subsidiary Investors to trigger the exercise of drag-along rights under the Organizational Documents of the Company's non-wholly owned Subsidiaries (other than the Non-Dragged Subsidiaries) pursuant to the Drag-Along Notices.

Section 3.03 Authority; Execution and Delivery; Enforceability. The Company has full power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is, or is specified to be, a party and to consummate the Transactions and perform its obligations hereunder and thereunder. The execution and delivery by the Company hereof and the Ancillary Agreements to which it is, or is specified to be, a party, the consummation by the Company of the Transactions and the performance of its obligations hereunder and thereunder have been duly authorized by all necessary limited liability company actions, and Purchaser has been provided with a written consent of the manager of the Company demonstrating the same. The Company has duly executed and delivered this Agreement and at or before the Closing will have duly executed and delivered each Ancillary Agreement to which it is, or is specified to be, a party, and this Agreement constitutes, and each Ancillary Agreement to which it is, or is specified to be, a party will as of the Closing constitute (assuming due authorization, execution and delivery by the other parties thereto), its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as limited by Laws affecting the enforcement of creditors' rights generally or by general equitable principles.

Section 3.04 No Conflicts; Consents. Except as set forth on Section 3.04 of the Company Disclosure Schedule, the execution, performance and delivery by the Company or any Seller of this Agreement does not, the execution and delivery by the Company or, to the Knowledge of the Company, any Seller of each Ancillary Agreement to which it is, or is specified to be, a party will not, and the consummation of the Transactions (including the sale of the Membership Interests and the change of control of the Company hereunder) and compliance by the Company or, to the Knowledge of the Company, any Seller with the terms hereof and thereof will not contravene, conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, require any notice to, declaration, filing or registration with, or authorization, consent or approval of, or Permit from, any Person under, or give rise to a right of termination, cancellation or acceleration of any obligation, to a right to challenge the Transactions, or to increased, additional, accelerated or guaranteed rights or entitlements of any Person under, or result in the creation of any Lien upon any of the properties or assets of the Company or any of its Subsidiaries under, any provision of (a) the Company Certificate of Formation, the Company Operating Agreement or the Organizational Documents of any of the Company's Subsidiaries, (b) any Contract or Plan to which the Company or any of its Subsidiaries is a party or by which any of their properties or assets is bound or (c) any Permit, Judgment or Law applicable to the Company or its Subsidiaries or their respective properties or assets. No Consent of, or Filing with, any Governmental Entity or other Person is required to be obtained or made by or with respect to the Company or any of its Subsidiaries in connection with the execution, delivery and performance hereof or any Ancillary Agreement or the consummation of the Transactions, except for the pre-merger notification requirements of the HSR Act.

Section 3.05 Financial Statements; Liabilities.

(a) Section 3.05(a) of the Company Disclosure Schedule sets forth (collectively, the “Financial Statements”): (i) the audited balance sheets of the Company, its Subsidiaries and its Excluded Subsidiaries as of January 2, 2018 and January 1, 2019 (such audited balance sheet as of January 1, 2019 is referred to as the “Audited Balance Sheet” and the date thereof the “Audited Balance Sheet Date”) and the related audited statements of operations, members’ capital and cash flows for the year then ended; and (ii) the unaudited balance sheet of the Company as of July 2, 2019 (the “Interim Balance Sheet” and the date thereof the “Interim Balance Sheet Date”) and the related unaudited statements of operations, members’ capital and cash flows for the six months then ended and the comparable prior year period. The Financial Statements, including in all cases the notes and schedules thereto, if any: (1) have been prepared from, and are consistent with, the books and records of the Company, its Subsidiaries and the Excluded Subsidiaries in accordance with Accounting Principles consistently applied during the periods covered thereby; (2) are accurate and complete in all material respects; and (3) fairly present in all material respects the financial condition and the results of operations, cash flows and changes in members’ capital of the Company, its Subsidiaries and the Excluded Subsidiaries as of the respective dates of and for the periods referred to in the Financial Statements. The books and records of the Company and its Subsidiaries are accurate and complete in all material respects, have been maintained in accordance with sound business practices and accurately present and reflect in all material respects all the transactions and actions therein described. At the Closing, all such books and records will be in the possession of the Company, its Subsidiaries and the Excluded Subsidiaries. No financial statements of any Person other than the Company, its Subsidiaries and the Excluded Subsidiaries are required by Accounting Principles to be included in the Financial Statements of the Company.

(b) The Company and its Subsidiaries have no material Liabilities, whether contingent or absolute, direct or indirect, or matured or unmatured, which are not shown or provided for on the Audited Balance Sheet or set forth on Section 3.05(b) of the Company Disclosure Schedule, except those Liabilities incurred in the Ordinary Course of Business since the Audited Balance Sheet Date or as otherwise reflected on the Interim Balance Sheet, and, to the Knowledge of the Company, there is no basis for the assertion of any such Liabilities.

(c) The Company and its Subsidiaries maintain accurate books and records reflecting their assets and liabilities and maintain proper and adequate internal accounting controls which provide assurance that (i) transactions are executed with management’s authorization; (ii) transactions are recorded as necessary to prepare financial statements and to maintain accountability for the Company’s and its Subsidiaries’ assets; (iii) access to the Company’s and its Subsidiaries’ assets is permitted only in accordance with management’s authorization; (iv) the reporting of the Company’s and its Subsidiaries’ assets is compared with existing assets at regular intervals; and (v) accounts, notes and other receivables and inventory are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. There are no significant deficiencies, including material weaknesses, in the design or operation of the internal control over financial reporting that could reasonably be expected to adversely affect the ability of the Company or any of its Subsidiaries to initiate, authorize, record, process, or report external financial data in accordance with Accounting Principles and which would reasonably be expected to result in a Company Material Adverse Effect. To the Knowledge of the Company, there is no fraud, suspected fraud or allegation of fraud affecting the Company or any of its Subsidiaries by management of the Company or any of its Subsidiaries, employees who have significant roles in the Company’s or any of its Subsidiary’s internal controls or other employees of the Company or any of its Subsidiaries whose fraud could have a material effect on the Financial Statements.

Section 3.06 Absence of Changes or Events. Since the Audited Balance Sheet Date there has not occurred any event that, individually or in the aggregate, has resulted in or would reasonably be expected to result in a Company Material Adverse Effect. Since the Audited Balance Sheet Date, the business of the Company and its Subsidiaries has been conducted in the Ordinary Course of Business and

has not suffered any material damage, destruction or loss (whether or not covered by insurance) adversely affecting the Company or any of its Subsidiaries. Except as set forth on Section 3.06 of the Company Disclosure Schedule, since the Audited Balance Sheet Date, there has not been:

- (i) any Indebtedness incurred or prepaid before its due date by the Company or any of its Subsidiaries or any Lien created or suffered to be incurred by the Company or any of its Subsidiaries, other than trade debt incurred in the Ordinary Course of Business and Purchaser Indebtedness;
- (ii) any Contract or commitments entered into by the Company or any of its Subsidiaries other than Contracts or commitments made in the Ordinary Course of Business or pursuant to this Agreement or any of the Ancillary Agreements;
- (iii) any sale, assignment, transfer or other disposition of any material assets or properties used in connection with the business of the Company or any of its Subsidiaries, other than inventory or supplies consumed or disposed of in the Ordinary Course of Business and the Excluded Assets;
- (iv) any damage, destruction or loss (whether or not covered by insurance) affecting the business, asset or property of the Company or any of its Subsidiaries;
- (v) any cancellation or waiver of any material claims or rights in respect of the business, asset or property of the Company or any of its Subsidiaries;
- (vi) any change in the authorized or issued Equity Securities of the Company or any of its Subsidiaries other than as contemplated by this Agreement;
- (vii) any declaration or payment of any dividends or other distributions in respect of any Equity Securities in the Company or any of its Subsidiaries, other than a tax distribution prior to the Closing Date as permitted by the Company Operating Agreement or as contemplated by this Agreement;
- (viii) any grant, purchase, redemption, retirement, transfer, assignment or other acquisition by any Person of any Equity Security, right, warrant or option to acquire any Equity Security, or any security convertible into equity of the Company or any of its Subsidiaries, other than as contemplated by this Agreement;
- (ix) any amendment or change in Organizational Documents of the Company or any of its Subsidiaries, except for amendments to the Organizational Documents of any non-wholly-owned Subsidiary of the Company as set forth Section 3.06(ix) of the Company Disclosure Schedule;
- (x) any material change in the Company's or any of its Subsidiaries' method of accounting or manner of keeping books, accounts or records, or accounting practices, except as may be required by reason of a concurrent change in GAAP or otherwise expressly required by this Agreement;
- (xi) any (A) hiring or termination of any employee, consultant, director or manager of the Company or any Subsidiary thereof, except in the Ordinary Course of Business with respect to non-management employees, (B) payment, announcement or promise or grant, whether orally or in writing, any increase in or establishment of (as applicable) any wages, base

pay, fees, salaries, compensation, bonuses, incentives, deferred compensation, pensions, severance or termination payments, retirement, profit sharing, fringe benefits, equity or equity-linked awards, employee benefit plans, or any other form of compensation or benefits payable by the Company of any of its Subsidiaries, other than increases to base pay made in the Ordinary Course of Business with respect to non-management employees or as required pursuant to applicable Law or the terms of any Plan as in effect on the date hereof, (C) acceleration of the vesting or payment of any compensation or benefits under any Plan, except as required pursuant to the terms of any Plan as in effect on the date hereof, or (D) entry into, adoption, termination or material amendment of any Plan;

(xii) any Judgment entered into against, or bankruptcy filing with respect to, the Company or any of its Subsidiaries;

(xiii) any entry into any collective bargaining agreement or other Contract with any labor organization, union or association;

(xiv) any incurrence or assumption of any Liabilities (including Indebtedness) or guarantee any such Liabilities, other than in the Ordinary Course of Business or as otherwise reflected on the Interim Balance Sheet;

(xv) any (w) acceleration or delay in any material respect of the creation or utilization of prepaid expenses in advance or beyond the due date for such utilization or the date such utilization would have been made in the Ordinary Course of Business, (x) acceleration or delay in any material respect of the collection of notes or accounts receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the Ordinary Course of Business; (y) delay or acceleration in any material respect payment of any accounts payable, gift cards payable or accrued expenses beyond or in advance of its due date or the date such liability would have been paid in the Ordinary Course of Business; or (z) acceleration or delay in any material respect in the purchase of equipment or other assets or properties beyond or in advance of the due date for such purchase or the date such purchase would have been made in the Ordinary Course of Business, in any such case, except as otherwise reflected in the Interim Balance Sheet;

(xvi) any making or incurrence of any capital expenditures that, in the aggregate, were in excess of \$250,000, other than capital expenditures (A) made in connection with new store openings set forth on Section 3.06(xvi) of the Company Disclosure Schedule, (B) made in connection with the Company Property under development set forth on Section 3.08(a) of the Company Disclosure Schedule, (C) made in connection with new restaurant openings for The Henry in Coronado, California and Flower Child in McLean, Virginia, or (D) included in the Capital Expenditures Budget;

(xvii) any opening, relocation or closing of any office or other facility, or making any application for such an opening, relocation or closing, other than in the Ordinary Course of Business;

(xviii) any (x) payment, discharge or satisfaction of any Liabilities, other than in the Ordinary Course of Business, or (y) failure to pay or satisfy when due any material Liability; or

(xix) authorized any of, or committed or agreed to take, whether in writing or otherwise, to do any of, the foregoing actions.

Section 3.07 Assets. Except as set forth on Section 3.07 of the Company Disclosure Schedule, the Company and its Subsidiaries own and hold good title to all of their respective assets and properties, excluding assets and properties sold or disposed of in the Ordinary Course of Business since the Audited Balance Sheet Date, in each case free and clear of all Liens other than Permitted Liens. The Company has provided Purchaser with a list of material assets (fixed) of the Company and its Subsidiaries prior to the date of this Agreement for Purchaser's review. All of the material assets of the Company and its Subsidiaries are physically identifiable and in the possession or control of the Company or its Subsidiaries (as applicable) and have been maintained consistent with industry practices in the Ordinary Course of Business, and are in reasonably good operating conditions and repair (subject to ordinary wear and tear), other than for replacements, repairs and maintenance that may be covered by the Capital Expenditures Budget. All leased equipment and other leased personal property of the Company is in all material respects in the condition required of such property by the terms of the lease applicable thereto. The assets and properties of the Company and its Subsidiaries are, and the condition of such assets and properties is, sufficient for the conduct of the business of the Company and its Subsidiaries as currently conducted. Notwithstanding anything to the contrary set forth in this Section 3.07, the Company makes no representation or warranty under this Section 3.07 with respect to any Excluded Asset.

Section 3.08 Real Property.

(a) Neither the Company nor any of its Subsidiaries owns a fee simple interest in any real property. Section 3.08(a) of the Company Disclosure Schedule sets forth a correct and complete list of all real property that the Company or any of its Subsidiaries occupies as a tenant, lessee or licensee or may occupy as a tenant, lessee or licensee prior to the Closing Date (collectively, the "Company Property"). Except as described in the leases set forth on Section 3.08(a) of the Company Disclosure Schedule (the "Leases") and otherwise set forth in Section 3.08(a) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has any rights, easement and privileges appertaining or relating to the Company Property. The Company Property constitutes all real property leased or used by the Company and the RP Subsidiaries in the Ordinary Course of Business. The Company or the RP Subsidiary identified as the tenant on Section 3.08(a) of the Company Disclosure Schedule has a valid leasehold interest in such Company Property pursuant to the Leases, free and clear of all Liens except Permitted Liens. The Company has made available to Purchaser a true, correct and complete copy of each of the Leases.

(b) With respect to each Lease, except as set forth on Section 3.08(b) of the Company Disclosure Schedule: (i) such Lease is a valid and binding obligation of the Company or the RP Subsidiary that is a party thereto (the "Company Lease Party"), and, to the Knowledge of the Company, each other party thereto, and each such Lease is in full force and effect; (ii) the Company Lease Party is not, and, to the Knowledge of the Company, all other parties thereto are not, in material breach or material default in any respect under the terms thereof and, to the Knowledge of the Company, no event has occurred that, with notice or lapse of time or both, would constitute a material breach or material default or permit termination, modification or acceleration thereunder; and (iii) the Company Lease Party has not assigned, transferred, conveyed, mortgaged, or deeded in trust any interest in the leasehold or sub-leasehold of any Lease; (iv) no landlord under a Lease has given notice of any material repairs, upgrades, or remodeling that the Company Lease Party must perform as tenant; (v) there are no material disputes, oral agreements or forbearance programs in effect as to any Lease.

(c) No Person other than the Company or the RP Subsidiary named as tenant under the applicable Lease is in possession of any portion of the Company Property, and, other than the Leases, there are no leases, tenancies, licenses, subleases, assignments and/or other rental or occupancy agreements encumbering the Company's or such RP Subsidiary's interest in the Company Property or any portion thereof. The Company Property is sufficient for the conduct of the business of the Company and the RP Subsidiaries as currently conducted.

(d) None of Sellers or the Company or any RP Subsidiary has received any written notice from any Governmental Entity of any condemnation, expropriation or other proceeding in eminent domain pending or threatened against any Company Property or any material portion thereof or material interest therein, and, to the Knowledge of the Company, no such pending or threatened proceedings exist. There are no pending or, to the Knowledge of the Company, threatened actions, proceedings or claims related to any Company Property. To the Knowledge of the Company, there are no present material violations of any legal requirements (including building, zoning or safety laws) related to any Company Property, and none of the Company nor any RP Subsidiary has received written notice of any such actual or claimed violation.

(e) None of the RP Subsidiaries' leasehold interests in the Company Property is subject to or encumbered by any purchase option, right of first-refusal or other contractual right or obligation of the Company to sell, assign or dispose of such Company Property.

(f) All structures, improvements, buildings and fixtures located on the Company Property and all systems and equipment related thereto (including HVAC, MEP and irrigation) that the Company or any RP Subsidiary is required to maintain under any Lease are structurally sound and in good condition and repair, and all other structures, improvements, buildings and fixtures located on the Company Property and all systems and equipment related thereto (including HVAC, MEP and irrigation) are, to the Knowledge of the Company, structurally sound and in good operating condition and repair, in each case, in all material respects, subject to ordinary wear and tear, and without material defect or deficiency, other than for replacements, repairs and maintenance covered by the Capital Expenditures Budget (as set forth on Section 3.08(f) of the Company Disclosure Schedule). To the extent that any one or more of the Leases requires the Company or an RP Subsidiary to perform maintenance obligations with respect to any of the Company Property, the Company and the RP Subsidiaries are in material compliance with such obligations.

(g) Each of the RP Subsidiaries has received all approvals and authorizations from Governmental Entities (including certificates of occupancy or other such certificates permitting lawful occupancy and use of the Company Property) required in connection with the Company's or such Subsidiaries' use of the Company Property at which it is a tenant, except for Company Property under development in the Ordinary Course of Business (as identified on Section 3.08(a) of the Company Disclosure Schedule) or potential future locations (as identified on Section 3.08(a) of the Company Disclosure Schedule).

(h) None of the Company nor any of its Subsidiaries owns, leases or operates any real property other than the Company Property. Neither the Company nor any of its Subsidiaries has owned any real property.

(i) Other than as set forth in Section 3.04 of the Company Disclosure Schedule, none of the rights of the Company or the applicable RP Subsidiary under any of the Leases will be subject to termination or modification as a result of the transactions contemplated by this Agreement.

Section 3.09 Intellectual Property.

(a) All Intellectual Property that is owned or purported to be owned by the Company or any of its Subsidiaries is referred to herein as "Company Intellectual Property". With respect to Company Intellectual Property that is registered or subject to an application for registration (such Company Intellectual Property, "Registered Company Intellectual Property"), Section 3.09(a) of the Company Disclosure Schedule correctly and completely identifies such Registered Company Intellectual Property, including all registered Marks, Domain Names, registered Copyrights, and Patents and all applications therefor, and sets forth a list of all jurisdictions in which such Company Intellectual Property is registered

or in which registrations have been applied for and all registration and application numbers (as well as the applicable registrar for domain names), as well as the legal and beneficial owner thereof, the issuance, application and expiration date for such Registered Company Intellectual Property, and all actions that must be taken by the Company within 90 days after the Closing Date, including the payment of any registration, maintenance or renewal fees or the filing of any documents for the purposes of maintaining or renewing any Registered Company Intellectual Property. The Registered Company Intellectual Property is subsisting and in good standing and, to the Knowledge of the Company, is not subject to any pending or threatened opposition, cancellation, interference or similar proceeding. The Company and its Subsidiaries have taken all steps reasonably necessary to prosecute and maintain registrations of all Registered Company Intellectual Property, including by payment of all filing, registration, examination, renewal, maintenance and other fees and annuities and the timely filing of all necessary renewals, statements and certifications to avoid lapse, expiration or abandonment, and the Company and its Subsidiaries are not aware of any facts, information, or circumstances that would render any of the Registered Company Intellectual Property invalid or unenforceable.

(b) Section 3.09(b) of the Company Disclosure Schedule correctly and completely identifies all material unregistered Marks owned by the Company and its Subsidiaries and used in connection with Company Products or Services.

(c) The Company and its Subsidiaries are the sole and exclusive owner of, and the Company and its Subsidiaries have valid and marketable title to, the Registered Company Intellectual Property and all other Company Intellectual Property, free and clear of any and all Liens (other than Permitted Liens). No Registered Company Intellectual Property has expired or been cancelled or abandoned or, to the Knowledge of the Company, is subject to any pending or threatened opposition, cancellation, interference or similar proceeding. The Company and its Subsidiaries have not received any written communication from any Person asserting any ownership interest in, or exclusive rights to, any Company Intellectual Property. Except as set forth on Section 3.09(c) of the Company Disclosure Schedule, the Company and its Subsidiaries have the right to use, execute, reproduce, display, perform, modify, enhance, distribute, prepare derivative works of and sublicense, all Company Intellectual Property necessary for or used or held for use in connection with the operation of the Company's and its Subsidiaries' business as currently conducted and as currently proposed to be conducted. The Company has a license to use Marks used in connection with the Company's and its Subsidiaries' Zinburger restaurants and facilities located in Arizona, including the "Zinburger" name and trademarks, in accordance with the Zinburger Area Development Agreement. Except as set forth on Section 3.09(c) of the Company Disclosure Schedule, the Company and its Subsidiaries are not bound by or a party to any option, license or similar Contract relating to the Intellectual Property of any other Person for the use of such Intellectual Property in the conduct of the business of the Company or any of its Subsidiaries, except non-exclusive inbound license agreements relating to commercially available off the shelf Software licensed to the Company and its Subsidiaries in object code form.

(d) The conduct of the business of the Company and each of its Subsidiaries has not and does not, and the Company Intellectual Property and the development or provision of the Company Products or Services, has not and does not (i) violate, dilute, infringe or misappropriate any Intellectual Property rights, privacy rights or publicity rights of any other Person in the United States or (ii) constitute a passing off or unfair competition or trade practices under the Laws of any jurisdiction to which the Company or its business is subject. No claims are pending or, to the Knowledge of the Company, threatened, against the Company or any of its Subsidiaries by any Person with respect to the ownership, validity, enforceability, effectiveness or use in the business of the Company and its Subsidiaries of any Intellectual Property. Except as set forth on Section 3.09(d) of the Company Disclosure Schedule, the Company and its Subsidiaries have not received any written invitation to license, cease and desist letter, or notice from any Person claiming that the Company, its Subsidiaries, the Company Intellectual Property, the

provision of Company Products or Services to other persons or the operation of business of the Company or any of its Subsidiaries (1) violates, dilutes, infringes or misappropriates the Intellectual Property rights, privacy rights, or publicity rights of any other Person or (2) constitutes a passing off or unfair competition or trade practices under the Laws of any jurisdiction to which the Company or any of its Subsidiaries or their business is subject. To the Knowledge of the Company, no third party is infringing, violating, diluting or misappropriating any Company Intellectual Property. No holding, decision, or judgment (except for those office actions issued in the ordinary course of prosecution) has been rendered in any action before any Governmental Entity denying the validity of, the Company's or any of its Subsidiaries' right to own or use, any Company Intellectual Property. The Company and its Subsidiaries are not subject to any proceeding or outstanding decree, order, judgment or stipulation restricting in any manner (a) the use, transfer or licensing by the Company or any of its Subsidiaries of the Company Intellectual Property, or (b) the use, manufacture, transfer, sale, importation or licensing of any Company Products or Services. The consummation of the transactions contemplated by this Agreement and any agreements related thereto will not result in the loss of the ownership, or any license of or other right to, any material Intellectual Property used in the business of the Company or any of its Subsidiaries, or result in a material breach, alteration, modification, cancellation, termination, non-renewal, suspension of, or acceleration of any payments of the terms and conditions related thereto.

(e) The Company and its Subsidiaries have reasonably maintained, policed and protected all material Company Intellectual Property that derives independent economic value, actual or potential, from not being generally known to the public or to other Persons who can obtain economic value from its disclosure or use, in confidence in accordance with protection procedures customarily used in the industry to protect rights of like importance. Since July 1, 2010, all former and current salaried management and key personnel of the Company, including all current employees, consultants and independent contractors who have contributed to or participated in the conception or development of material Company Intellectual Property for the Company or any of its Subsidiaries (collectively, "Key Personnel") have executed and delivered to the Company and its Subsidiaries customary non-disclosure or confidentiality agreements restricting such Person's right to disclose proprietary information of the Company. All former and current Key Personnel since July 1, 2010 have executed instruments of assignment in favor of the Company or its applicable Subsidiary as assignee in which they have expressly assigned to the Company or its applicable Subsidiary all of their rights in and to any material Intellectual Property developed for the Company or its applicable Subsidiary. To the Knowledge of the Company, no former or current Key Personnel have any claim against the Company or any of its Subsidiaries in connection with such Person's involvement in the conception or development of any Company Intellectual Property and no such claim has been asserted or threatened. None of the current officers and employees of the Company or any of its Subsidiaries has any Patents issued or applications pending for any device, process, design or invention of any kind now used or needed by the Company or any of its Subsidiaries in the furtherance of the business of the Company and its Subsidiaries, which Patents or applications have not been assigned to the Company or its applicable Subsidiary with such assignment duly recorded in the United States Patent and Trademark Office. At no time during the conception of or reduction to practice of any Company Intellectual Property was any Key Personnel operating under any grants from any Governmental Entity or educational institution, performing research sponsored by any Governmental Entity or educational institution, utilizing the facilities of any Governmental Entity or educational institution or subject to any employment agreement or invention assignment or nondisclosure agreement or other obligation with any third Person.

(f) Each of the Company and its Subsidiaries is registered to use its name as the name of a corporation in any jurisdiction in which it currently does business. The Company and its Subsidiaries have not received any written notice of conflict in the last three years with respect to the rights of others regarding the use of their name.

Section 3.10 Information Technology; Security and Privacy.

(a) The Company has taken commercially reasonable efforts to protect the information technology and computer systems, including Software, hardware, networks, interfaces, and related systems, relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information, whether or not in electronic format, used in or necessary to the conduct of the business of the Company and its Subsidiaries (collectively, “Company IT Systems”) from Contaminants. The Company IT Systems have been maintained substantially in accordance with standards set by the manufacturers thereof or otherwise in accordance with industry standards. The Company IT Systems meet the Company’s requirements for performing the information technology operations currently being performed by the Company and its Subsidiaries. None of the Software included in the Company Intellectual Property or Company IT Systems constitutes, contains or is considered “spyware” or “trackware” (as these terms are commonly understood in the software industry), records a user’s actions without the user’s knowledge or employs a user’s Internet connection without the user’s knowledge to gather or transmit information on the user or the user’s behavior, other than as described in the Company’s and its Subsidiaries’ current online privacy policies. The Company and its Subsidiaries take and have taken all reasonable steps, and implement and have implemented all reasonable procedures, intended to prevent the introduction of Contaminants into the Company IT Systems. The Company and its Subsidiaries have disaster recovery plans, procedures and facilities for the business of the Company and its Subsidiaries to help ensure the continued operation of the same to the extent reasonable, and take and have taken all reasonable steps to safeguard the Company IT Systems. In the past three years, there have been no unauthorized intrusions or breaches of the security of the Company IT Systems. The Company and its Subsidiaries have not developed material proprietary Software for the Company and its Subsidiaries that have been licensed or distributed to third Persons.

(b) (i) The Company and its Subsidiaries are in material compliance with applicable Privacy Laws to which Company and its Subsidiaries are subject; (ii) the Company and its Subsidiaries are in material compliance with all contractual obligations and all published policies of the Company and its Subsidiaries relating to privacy or Personal Data; (iii) the Company and its Subsidiaries maintain commercially reasonable policies, procedures and security measures with respect to the physical and electronic security and privacy of Personal Data, and the Company and its Subsidiaries are in material compliance with all such policies, procedures and security measures, and to the Knowledge of the Company there have been no material breaches or violations thereof; (iv) in the past three years, there has been no unauthorized access, use, loss, corruption, or theft of any Personal Data processed by the Company and its Subsidiaries, and, to the Knowledge of the Company, in the past three years, there has been no unauthorized access to or theft of any Personal Data processed on behalf of the Company and its Subsidiaries; (v) each online site and service owned by the Company and its Subsidiaries have posted terms of use and a privacy policy that materially complies with all applicable Privacy Laws to which the Company and its Subsidiaries are subject and substantially reflects the Company’s and its Subsidiaries’ practices concerning the processing of Personal Data by such Company-owned site or service; (vi) the Company and its Subsidiaries (and, to the Knowledge of the Company, all Persons processing Personal Data on behalf of the Company and its Subsidiaries) have not received any written notice or claim alleging a violation of any Privacy Law, contractual or fiduciary obligations relating to privacy or Personal Data or any policy of the Company and its Subsidiaries relating to privacy or Personal Data; (vii) in the past three years, no disclosure of any Personal Data breach or network security breach has been or to the Knowledge of the Company should have been made by the Company and its Subsidiaries under any applicable Privacy Law to any Governmental Entity, (viii) to the Knowledge of the Company the Company and its Subsidiaries have all necessary authority to receive, access, collect, use, transfer, store, handle and disclose the Personal Data in their possession or under their control in connection with the operation of the Company’s and its Subsidiaries’ business, and (ix) the Company and its Subsidiaries have not transferred Personal Data to countries outside of the European Economic Area unless in accordance with the applicable Privacy Laws.

(c) To the extent that the Company or any of its Subsidiaries receives, processes, transmits or stores any financial account numbers (such as credit cards, bank accounts, PayPal accounts, debit cards), passwords, CVV data, or other related data (“Cardholder Data”), the Company represents and warrants it has implemented reasonable information security procedures, processes and systems and is substantially in compliance with all applicable information security Laws, and requirements related to the collection, storage, processing and transmission of Cardholder Data established by the payment card industry.

Section 3.11 Contracts.

(a) Section 3.11(a)(i) of the Company Disclosure Schedule sets forth a correct and complete list of each of the Contracts with the Material Suppliers (including verbal agreements which shall be identified as such in Section 3.11(a)(i) of the Company Disclosure Schedule) to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their respective assets or properties are bound (and any amendments, supplements and modifications thereto) (collectively, the “Material Supplier Contracts”). Except as set forth on Section 3.11(a)(ii) or Section 3.11(b)(xix) of the Company Disclosure Schedule, there is no Material Supplier Contract, or to the Knowledge of the Company, any other Contract (including any binding purchase order) to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their respective assets or properties are bound, that has an aggregate future liability by the Company or any of its Subsidiaries to any Person in excess of \$375,000 per year and that is not terminable by the Company or any of its Subsidiaries by notice of not more than 30 days for a cost (including any premium, penalty, inventory purchase obligation or any other financial obligation) of not more than \$375,000.

(b) Section 3.11(b) of the Company Disclosure Schedule sets forth, by category, a correct and complete list of each of the following Contracts (including verbal agreements which shall be identified as such in Section 3.11(b) of the Company Disclosure Schedule) to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their respective assets or properties are bound (and any amendments, supplements and modifications thereto):

(i) collective bargaining agreement or other Contract with any labor organization, union or association;

(ii) Contract including any covenant not to compete or any other restriction that limits the freedom of the Company or any of its Subsidiaries to engage in any line of business or in any geographic area or location (excluding any radius based restrictions in any Leases), compete with any person, solicit or hire any person or that otherwise has the effect of restricting in any material respect the Company, any of its Subsidiaries or their respective Representatives (acting on behalf of the Company or any of its Subsidiaries) from the development, manufacture, marketing or distribution of the products and services of the Company or any of its Subsidiaries, including non-competition non-solicitation and standstill obligations, exclusivity rights and “most favored nation” provisions;

(iii) Contract that involves a license to (or a requirement to license to) or from a third person, or giving (or a requirement to give) or receiving a covenant not to sue or immunity to or from any third person, as to any Intellectual Property, including any Company Intellectual Property, or otherwise relating to the licensing, acquisition, development, disposition, appropriation, exploitation or the nondisclosure of any Intellectual Property, other than non-exclusive inbound license agreements relating to commercially available off the shelf Software licensed to the Company in object code form;

(iv) Contract between the Company or its Subsidiaries, on the one hand, and (A) any Seller or any Related Person of any Seller (other than the Company or any of its Subsidiaries) or (B) any officer, director, manager, or employee of the Company or any of its Subsidiaries, any Seller or any Related Person of any Seller, on the other hand;

(v) lease (including the Leases), sublease or similar Contract with any Person under which the Company or any of its Subsidiaries (A) is a lessee, sublessee, licensee, occupant or user of any property or premise or (B) is a lessor, sublessor or licensor of, or makes available for use to any Person, (1) any Company Property or (2) any portion of any premises otherwise occupied or used by the Company or any of its Subsidiaries in the current conduct of its business;

(vi) lease, sublease or similar Contract with any Person under which (A) the Company or any of its Subsidiaries is lessee of, or holds or uses, any machinery, equipment, vehicle or other tangible personal property owned by any Person or (B) the Company or any of its Subsidiaries is a lessor or sublessor of, or makes available for use by any Person, any tangible personal property owned or leased by the Company or any of its Subsidiaries in the operations of its business, in any such case under (A) or (B), that is not terminable by the Company or any of its Subsidiaries by notice of not more than 60 days for a cost (including any premium or penalty) of more than \$250,000;

(vii) Contract under which the Company or any of its Subsidiaries has borrowed any money from, or issued any note, bond, debenture or other evidence of Indebtedness to, any Person (other than the Company or any of its Subsidiaries) or any other note, bond or debenture (other than in favor of the Company or any of its Subsidiaries) to the extent outstanding as of the date of this Agreement;

(viii) Contract (including any so-called take-or-pay or keepwell agreements) under which (A) any Person including the Company or any of its Subsidiaries has directly or indirectly guaranteed Indebtedness, liabilities or obligations of the Company or any of its Subsidiaries or (B) the Company or any of its Subsidiaries has directly or indirectly guaranteed Indebtedness, liabilities or obligations of any Person, including the Company or any of its Subsidiaries (in each case other than endorsements for the purpose of collection in the Ordinary Course of Business, in each case, to the extent outstanding as of the date of this Agreement);

(ix) Contract under which the Company or any of its Subsidiaries has, directly or indirectly, made any advance, loan, extension of credit or capital contribution to, or other investment in, any Person (other than the Company or any of its Subsidiaries), other than advances to employees for travel and other business expenses in the Ordinary Course of Business;

(x) Contract relating to the mortgaging or pledging of, or otherwise granting a Lien upon any Company Property or any other asset or securities of the Company or any of its Subsidiaries other than a Permitted Lien;

(xi) (A) any indemnification agreement (i.e., an agreement with the primary purpose of providing indemnification to one or more counterparties); or (B) any other Contract (x) providing for indemnification by the Company or any of its Subsidiaries of one or more counterparties and (y) entered into outside the Ordinary Course of Business;

(xii) a power of attorney granted by the Company or any of its Subsidiaries with respect to the operation of the business of the Company or any of its Subsidiaries;

(xiii) a confidentiality or nondisclosure Contract between the Company or any of its Subsidiaries, on the one hand, and any other Person, on the other hand, which Contract was not made in the Ordinary Course of Business;

(xiv) a Contract (including a binding sales order or other Contract) involving the obligation of the Company or any of its Subsidiaries to deliver products or services for payment of more than \$250,000 or extending for a term more than 365 days from the Closing Date (unless terminable without payment or penalty upon no more than 60 days' notice);

(xv) a Contract for the sale of any material asset of the Company or any of its Subsidiaries or the grant of any preferential rights to purchase any such material asset, other than the sale of inventory by the Company or any of its Subsidiaries in the Ordinary Course of Business;

(xvi) a currency exchange, interest rate exchange, commodity exchange or similar Contract;

(xvii) a Contract for any joint venture, partnership or similar arrangement, or any Contract involving a sharing of profits, losses, costs, or liabilities by the Company or any of its Subsidiaries with any other Person;

(xviii) a Contract granting to any Person any options, rights of first refusal, first offer or co-sale or similar preferential rights to purchase any material assets, properties or securities of the Company or any of its Subsidiaries;

(xix) a Contract requiring the Company or any of its Subsidiaries to purchase all or substantially all of its requirements for a particular product or service from a vendor, supplier or subcontractor or to make periodic minimum purchases of a particular product or service from a vendor, supplier or subcontractor;

(xx) a Contract involving the settlement of any Proceeding or threatened Proceeding (A) that (i) involves payments by the Company or any of its Subsidiaries after the Closing Date or (ii) imposes monitoring or reporting obligations on the Company or any of its Subsidiaries to any other Person after the Closing Date or (B) with respect to which conditions precedent to the settlement thereof have not been satisfied as of the Closing Date;

(xxi) a Contract or other arrangement relating to any business acquisition or disposition by the Company or any of its Subsidiaries (whether by merger, asset sale, equity sale, option exercise or otherwise);

(xxii) a Contract by which the Company or any of its Subsidiaries has potential liability in respect of any purchase price adjustment, earn-out or contingent consideration price;

(xxiii) a Contract with any Governmental Entity;

(xxiv) a Contract with employees, agents, consultants or advisors not cancellable at will without cost or other liability by reason of such termination; or

(xxv) a direct Contract with a general contractor or a design professional for Company Property under development in the Ordinary Course of Business and identified on Section 3.08(a) of the Company Disclosure Schedule.

(c) All Contracts set forth or required to be set forth in Section 3.11(a) and Section 3.11(b) of the Company Disclosure Schedule (the “Company Contracts”) are valid, binding and in full force and effect and are enforceable by the Company in accordance with their terms, except as limited by applicable Laws affecting the enforcement of creditors’ rights generally or by general equitable principles. The Company has performed all material obligations required to be performed by it under the Company Contracts, and it is not (with or without notice or lapse of time, or both) in breach or default in any material respect thereunder and, to the Knowledge of the Company, no other party to any Company Contract is (with or without notice or lapse of time, or both) in breach or default in any material respect thereunder. In the past three years, the Company has not received written notice of any violation of, or failure to comply with, any term or requirement of any Company Contract. The Company has not received any written notice of the intention of any party to terminate or cancel any Company Contract. Accurate and complete copies of all Company Contracts, together with all amendments, supplements and modifications thereto, have been made available to Purchaser, except as set forth on Section 3.11(c) of the Company Disclosure Schedule. There are no ongoing renegotiations of, attempts to renegotiate, or outstanding rights to renegotiate any material amounts paid or payable to the Company under any Company Contracts with any Person, and no such Person has made written demand to the Company for such renegotiation.

Section 3.12 Permits. Other than any health permits, occupancy permits, tax licenses, sidewalk café permits and valet permits, Section 3.12 of the Company Disclosure Schedule sets forth a correct and complete list of all certificates, licenses, permits, registrations, filings, authorizations, clearances, exemptions, consents, waivers and approvals (“Permits”) which are required in connection with the operation of the business of the Company and its Subsidiaries. All material Permits held or required to be held by the Company or any of its Subsidiaries are currently and validly held by the Company or its applicable Subsidiary, and the Company or its applicable Subsidiary is in material compliance, and in the last three years has complied, in all material respects therewith. In the last three years, the Company and its Subsidiaries has not received written notice of any Proceeding relating to (a) any violation of, or failure to comply with, any term or requirement of any such material Permit or (b) any revocation, withdrawal, suspension, cancellation, termination, nonrenewal or detrimental modification of any such Permit. All applications required to have been filed for the renewal of each such Permit prior to the Closing Date have been duly filed on a timely basis with the appropriate Governmental Entity, and all other Filings required to have been made with respect to each such Permit have been duly made on a timely basis with the appropriate Governmental Entity. The Company and its Subsidiaries possesses all material Permits required for the Company and its Subsidiaries (i) to own or hold under lease their assets (including the Company Property) in the manner in which they currently own or hold under lease such assets, and (ii) to conduct their business lawfully as such business is currently conducted, except where the failure to hold such Permits would not have a Company Material Adverse Effect. No Permits used in the Company’s or its Subsidiaries’ business are held in the name of any Seller, any of their Related Persons or any of their Representatives.

Section 3.13 Insurance. Section 3.13 of the Company Disclosure Schedule sets forth a correct and complete description of all insurance policies maintained by the Company and its Subsidiaries as of the Closing Date with respect to the Company and its Subsidiaries, their respective assets and properties, or their respective directors, managers, officers or employees (in each case describing the insured, the insurer, the amount of coverage, the type of insurance, the policy number, the expiration date, the annual premium, and any pending claims thereunder), except that Section 3.13 of the Company Disclosure Schedule, and the statements in this Section 3.13, shall not include or apply to insurance policies with respect to any Plans. Accurate and complete copies of all such insurance policies and binders and all related applications, together with all modifications and amendments thereto, have been made available to Purchaser before the date hereof. Such policies provide coverage as is required by applicable Laws and by any and all Contracts to which the Company or any of its Subsidiaries is a party. All such policies are in full force and effect, all

premiums due and payable thereon have been paid, and no written notice of cancellation or termination, material reduction of coverage or material increase in premiums has been received with respect to any such policy that has not been replaced on substantially similar terms before the date of such cancellation. The Company and its Subsidiaries have performed all of their obligations and there is no default by the Company or any of its Subsidiaries under any policy to which the Company or any of its Subsidiaries is a party or that provides coverage to the Company, its Subsidiaries or any of their respective directors, managers, officers or employees. Section 3.13 of the Company Disclosure Schedule describes any self-insurance arrangement by or affecting the Company and any of its Subsidiaries, including any reserves established thereunder.

Section 3.14 Taxes.

(a) Tax Returns and Payments. All income Tax Returns and other material Tax Returns required to have been filed by, on behalf of, or with respect to, the Company or any of its Subsidiaries (the “Company Returns”) have been timely filed (taking into account the availability of extensions), are accurate and complete in all material respects, and disclose all material Taxes required to be paid by, or with respect to, the Company and its Subsidiaries for the periods covered thereby. All material Taxes (whether or not shown on any Tax Return) for which the Company and its Subsidiaries may be liable have been timely paid (taking into account the availability of extensions). The Company and its Subsidiaries have made available to Purchaser accurate and complete copies of all Tax Returns filed by, on behalf of, or with respect to, the Company or any of its Subsidiaries for all open taxable periods. No written claim has ever been made by a Governmental Entity in a jurisdiction where the Company and its Subsidiaries have not paid a Tax or filed a Tax Return asserting that it is or may be subject to such Tax or is required to file such a Tax Return. Except as set forth on Section 3.14(a) of the Company Disclosure Schedule, the Company and its Subsidiaries are not currently the beneficiary of any extension of time within which to file any Tax Return.

(b) Unpaid Taxes. The unpaid Taxes of the Company and its Subsidiaries did not, as of the Audited Balance Sheet Date, exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Audited Balance Sheet (rather than in any notes thereto). Since the date of the Audited Balance Sheet, the Company and its Subsidiaries have not incurred any liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and practice.

(c) Audits; Claims. Except as otherwise set forth on Section 3.14(c) of the Company Disclosure Schedules, within the past seven years, no Company Return has been audited by any Governmental Entity. Except as otherwise set forth on Section 3.14(c) of the Company Disclosure Schedules, within the past seven years, the Company and its Subsidiaries have not received from any Governmental Entity any: written (i) notice indicating an intent to open an audit or other review; or (ii) notice of deficiency or proposed Tax adjustment. No extension or waiver of the limitation period applicable to any Tax has been granted by the Company or any of its Subsidiaries or is the subject of a pending request of a Governmental Entity. No material assessment, claim or Proceeding is pending, proposed in writing or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries in respect of any Tax. There are no Liens for Taxes upon any of the assets of the Company or any of its Subsidiaries except Liens for current Taxes not yet due and payable (and for which there are adequate accruals, in accordance with GAAP). No power of attorney has been granted with respect to any matter related to Taxes of the Company or any of its Subsidiaries that on the Closing Date will be in effect.

(d) Tax Sharing Agreements; Etc. None of the Company and its Subsidiaries is a party to, or bound by, any Tax allocation, Tax indemnity or Tax sharing agreement, and will not have any liability or obligation pursuant to, or as a result of, any such agreement entered into prior to the Closing.

(e) Tax Holidays. The Company and its Subsidiaries are not now, and have never been, the beneficiary of any Tax exemption, Tax holiday, Tax concession, Tax credits, grants or similar amounts, or other Tax reduction agreement or arrangement.

(f) Foreign Tax. The Company and its Subsidiaries have never had an office or fixed place of business in a country other than the country in which it is organized. None of (1) the Company or any of its Subsidiaries, (2) any unit or division of the Company or any of its Subsidiaries, or (3) any operations of the Company or any of its Subsidiaries, is or has ever been subject to tax in any foreign country.

(g) Transaction Withholding. Except as set forth on the Closing Consideration Certificate, none of the Transactions will be subject to withholding under any Law (including under Sections 897, 1445 and 1446(f) of the Code).

(h) Tax Withholding. All Taxes which the Company and its Subsidiaries are, or have been, required by any Law to withhold or to collect for payment have been duly withheld and collected and have been timely paid to the appropriate Governmental Entity, and the Company and its Subsidiaries have complied in all material respects with all reporting and record retention requirements related to such Taxes.

(i) Tax Rulings; Etc. There are no Tax rulings, requests for rulings, or closing agreements relating to Taxes that could affect the Company's or any of its Subsidiaries' liability for Taxes for any taxable period ending after the Closing Date. The Company and its Subsidiaries have not entered into any written Contract or written arrangement with any Governmental Entity that requires it to take any action or to refrain from taking any action relating to Taxes.

(j) Tax Classification. Each of the Company and its Subsidiaries is classified as either a partnership or "disregarded entity" for United States federal and applicable state income tax purposes. All of the non-wholly-owned Subsidiaries of the Company identified on Section 3.02(f) of the Company Disclosure Schedule are classified as partnerships for United States federal income tax purposes.

(k) Miscellaneous.

(i) None of the assets owned by the Company or any of its Subsidiaries are "tax-exempt use property" within the meaning of Section 168(h) of the Code. None of the assets owned by the Company or any of its Subsidiaries are property required to be treated as owned by another person pursuant to the provisions of Section 168(f)(8) of the Internal Revenue Code of 1954, as in effect immediately prior to the enactment of the Tax Reform Act of 1986. None of the assets owned by the Company or any of its Subsidiaries are "tax-exempt bond financed property" within the meaning of Section 168(g) of the Code or is subject to a "section 467 rental agreement" within the meaning of Section 467 of the Code.

(ii) The Company and each of its Subsidiaries that is treated as a partnership for U.S. federal income tax purposes has not made any election under Section 1101(g)(4) of the Budget Act to have the amendments made by the Budget Act apply to such entity with respect to any taxable period ending on or before the Closing Date.

(iii) The Company and each of its Subsidiaries that is treated as a partnership for U.S. federal income tax purposes has made or will make a valid election under Section 754 of the Code, and such election will be valid and in effect as of the Closing.

(iv) The Company and its Subsidiaries have not been a party to a transaction that is or is substantially similar to a “reportable transaction,” as such term is defined in Treasury Regulations Section 1.6011-4(b)(1), or any other transaction requiring disclosure under analogous state, local or foreign Law.

Section 3.15 Proceedings. Section 3.15 of the Company Disclosure Schedule sets forth a correct and complete list of all material Proceedings pending, filed or, to the Knowledge of the Company, threatened by, against or affecting the Company or any of its Subsidiaries, any of their respective officers, directors, managers, employees or agents in their capacities as such, or any of their respective assets or businesses. To the Knowledge of the Company, there is no basis for the assertion of any such Proceeding against or affecting the Company or any of its Subsidiaries, other than as set forth on Section 3.15 of the Company Disclosure Schedule. The Company and its Subsidiaries are not a party to, subject to or in default under any material Judgment or any administrative order or settlement with a Governmental Entity, and there are no unsatisfied judgments against the Company, any of its Subsidiaries or the assets of the Company and its Subsidiaries. To the Knowledge of the Company, no officer, director, manager, agent or employee of the Company is subject to any Judgment that prohibits such officer, director, manager, agent or employee from engaging in or continuing any conduct, activity, or practice relating to the business of the Company. There is not any Proceeding by the Company pending, or that the Company presently intends to initiate, against any other Person. To the Knowledge of the Company, there is no pending or threatened investigation of or affecting the Company.

Section 3.16 Compliance with Laws; FCPA Matters; Americans with Disabilities Act; and Antiboycott Laws.

(a) The Company and its Subsidiaries and, to the Knowledge of the Company, the Company Property, are, and during the last three years have been, in material compliance with all applicable Laws, including those relating to occupational health, safety and food quality and safety. The Company and its Subsidiaries and, to the Knowledge of the Company, the Company Property, are, and during the last three years have been, in material compliance with all Judgments applicable to the Company, the business of the Company and its Subsidiaries or any assets owned or used by the Company or any of its Subsidiaries and with respect to all products sold by the Company or any of its Subsidiaries. The Company and its Subsidiaries have not received any written, or to the Knowledge of the Company verbal, notice in the last three years imposing any Judgment or that alleges that the Company or any of its Subsidiaries is not in compliance with any Law or any Judgment. Section 3.16(a) of the Company Disclosure Schedule sets forth a correct and complete list of all Judgments (including terminated Judgments) applicable to the Company or any of its Subsidiaries or any assets owned or used by the Company or any of its Subsidiaries. None of the Company, its Subsidiaries, or any of their respective current or former directors, managers, officers, employees or agents or any other Person authorized to act, or acting, on behalf of the Company or any of its Subsidiaries, has directly or indirectly made any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to or for the benefit of any government official, candidate for public office, political party, political campaign or other Person, private or public, regardless of form, whether in money, property, or services (i) for the purpose of (A) influencing any act or decision of such government official, candidate, party, campaign or other Person, (B) inducing such government official, candidate, party, campaign or other Person to do or omit to do any act in violation of a lawful duty, (C) obtaining, retaining or paying for business or special concessions for or with any Person, (D) expediting or securing the performance of official acts of a routine nature or (E) otherwise securing any improper advantage or (ii) in violation of the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1, et seq. or other Law. The Company and its Subsidiaries have not participated, directly or indirectly, in any boycotts or other similar practices affecting any of its customers, brokers or distributors.

(b) Each of the facilities of the Company and its Subsidiaries is in compliance in all material respects with the Americans with Disabilities Act of 1990, as amended, and other similar Laws applicable to such facilities.

(c) None of the Company nor any of its Subsidiaries has, during the last three years, been cited, fined or otherwise been notified by any Governmental Entity or third party of any material (i) failure to comply with any applicable Laws or Judgments related to the preparation, holding, offering for sale and sale of food and beverages, including any applicable Laws governing food and beverage safety and handling, nutrition labeling on menus or branding or (ii) investigation or review by any Governmental Entity regarding the foregoing.

Section 3.17 Environmental Matters.

(a) The Company and its Subsidiaries are, and during the last three years have been, in compliance in all material respects with all Environmental Laws, except where the failure to be in compliance would not have a Company Material Adverse Effect.

(b) The Company and its Subsidiaries hold all material Permits required to be held by the Company or any of its Subsidiaries under Environmental Laws to conduct their business as currently being conducted, and the Company and its Subsidiaries are now and during the last three (three) years have always been in material compliance with such Permits required to be held by the Company or any of its Subsidiaries.

(c) There are no Proceedings currently pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries under any Environmental Law, nor is the Company or any of its Subsidiaries aware of any information which is reasonably likely to form the basis of any such a Proceeding.

(d) The Company and its Subsidiaries have not received any notice of actual or threatened liability or responsibility for, or any inquiry or investigation regarding, any Release or threatened Release of Hazardous Materials or any actual or alleged violation of, non-compliance with, or responsibility under, any Environmental Laws on the part of the Company or any of its Subsidiaries or with respect to the Company Property, nor is the Company or any of its Subsidiaries aware of any information which is reasonably likely to form the basis of any such notice.

(e) The Company and its Subsidiaries have not Released any Hazardous Materials or engaged in the Handling of Hazardous Materials at the Company Property in any manner not in compliance with Environmental Laws in any material respect that would require reporting, investigation, cleanup or remediation under Environmental Laws.

(f) To the Knowledge of the Company, there are no asbestos-containing materials or polychlorinated biphenyls on, at or under the Company Property.

(g) The Company has made available to Purchaser true and correct copies of all environmental reports, audits and assessments in the Company's or any of its Subsidiaries' possession and relating to the Company Property, including any Phase I or Phase II environmental site assessments, sampling results, and all other written reports relating to human health or the environment.

Section 3.18 Plans.

(a) Section 3.18(a) of the Company Disclosure Schedule sets forth a correct and complete list of each material Plan. Neither the Company nor any of its Subsidiaries has any plan or commitment to adopt or enter into any additional Plans or to materially amend or terminate any existing Plan.

(b) The Company has made available to Purchaser a true and complete copy, as applicable, of (i) each material Plan (including any amendments thereto) and descriptions of all material terms of any such Plan that is not in writing, (ii) the three most recent annual reports with accompanying schedules and attachments, filed with respect to each Plan required to make such a filing, (iii) the most recent summary plan description for each Plan for which a summary plan description is required by applicable law, (iv) the most recently received determination letter, if any, issued by the Internal Revenue Service and each currently pending application for a determination letter with respect to any Plan that is intended to qualify under Section 401(a) of the Code, (v) the three most recently prepared actuarial reports, financial statements and trustee reports, if any, relating to the Plan, and (vi) all material records, notices and filings concerning Internal Revenue Service or U.S. Department of Labor audits or investigations with respect to any Plan.

(c) Each Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is the subject of a favorable opinion letter from the Internal Revenue Service on the form of such Plan and, to the Knowledge of the Company, there are no facts or circumstances that would be reasonably likely to adversely affect the qualified status of any such Plan. Each trust established in connection with any Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code is so exempt, and, to the Knowledge of the Company, no fact or event has occurred that would reasonably be expected to adversely affect the exempt status of any such trust.

(d) No Plan is, and none of the Company, any Subsidiary of the Company or any of their respective ERISA Affiliates contributes to, has within the past six years contributed to or has any liability or obligation, whether fixed or contingent, with respect to (i) a “multiemployer plan” (within the meaning of Section 3(37) of ERISA), (ii) a single employer plan or other pension plan that is subject to Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code, (iii) a “multiple employer plan” (within the meaning of Section 413(c) of the Code), or (iv) a multiple employer welfare arrangement (within the meaning of Section 3(40) of ERISA).

(e) Neither the Company nor any Subsidiary of the Company has any obligation to provide (whether under a Plan or otherwise) health, accident, disability, life or other welfare benefits to any current or former employees, directors or managers, or consultants of the Company or any of its Subsidiaries (or any spouse, beneficiary or dependent of the foregoing) beyond the termination of employment or other service of such employee, director, manager, or consultant, other than health continuation coverage pursuant to COBRA.

(f) Each Plan has been maintained, operated and administered in compliance in all material respects with its terms and the applicable requirements of ERISA, the Code and any other applicable Laws.

(g) No compensation has been or would reasonably be expected to be included in the gross income of any “service provider” (within the meaning of Section 409A of the Code) of the Company as a result of the operation of Section 409A of the Code. There is no Contract, Plan or arrangement to which the Company is a party which requires the Company to pay a Tax gross-up or reimbursement

payment to any employee or consultant, including without limitation, with respect to any additional Taxes arising under Section 409A of the Code or Section 280G of the Code.

(h) No Proceeding is pending or, to the Knowledge of the Company, threatened against, by or on behalf of any Plan or the assets, fiduciaries or administrators thereof (other than claims for benefits in the ordinary course). With respect to each Plan, (i) no breaches of fiduciary duty by the Company or, to the Knowledge of the Company, any other Person, in connection with the administration or investment of the assets of such Plan have occurred, (ii) no lien has been imposed under the Code, ERISA or any other applicable Law and (iii) to the Knowledge of the Company, to the extent applicable, there has not been any prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code). Neither the Company nor any of its Subsidiaries has, within the past three years, made any filing in respect of any Plan under the Employment Plans Compliance Resolutions Systems or the Department of Labor Delinquent Filer Program.

(i) No Plan, and none of the Company, its Subsidiaries or any Plan fiduciary with respect to any Plan, in any case, is currently the subject of an audit or investigation by the Internal Revenue Service, the Department of Labor, the Pension Benefit Guaranty Corporation or any other Governmental Entity, nor is any such audit or investigation pending or, to the Knowledge of the Company, threatened.

(j) Except as set forth on Section 3.18(j) of the Company Disclosure Schedule, neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, either alone or in combination with another event (whether contingent or otherwise) will (i) entitle any current or former employee, consultant, director, manager or other service provider of the Company or any of its Subsidiaries to any payment; (ii) increase the amount of compensation or benefits due to any such employee, consultant, director, manager or other service provider or any such group of employees, consultants, directors, managers or other service providers; (iii) accelerate the vesting, funding or time of payment of any compensation, equity award or other benefit; or (iv) result in any “parachute payment” under Section 280G of the Code (or any corresponding provision of state, local, or foreign Tax law).

(k) Each of the Company, its Subsidiaries and their respective ERISA Affiliates is, and during the last six years has been, in compliance in all material respects with the applicable requirements of (i) Section 4980B of the Code and any similar state Law, (ii) the applicable requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, and the Laws thereunder and (iii) the Patient Protection and Affordable Care Act of 2010, and all rules and official guidance promulgated thereunder, and, to the Knowledge of the Company, no circumstance exists or event has occurred, which reasonably could be expected to result in any material liability to the Company, its Subsidiaries or their respective ERISA Affiliates as a result of a material violation of, or material penalty or liability under, any of the foregoing. No Plan is maintained through a human resources and benefits outsourced entity, professional employer organization, or similar vendor or provider. Neither the Company nor any of its Subsidiaries has sponsored, maintained, contributed to, or has been required to sponsor, maintain or contribute to, any Plan providing benefits to any employee or former employee of the Company or its Subsidiaries (or any dependent thereof) which is, or would cause the Company or any Subsidiary thereof to be, subject to the Laws of any jurisdiction outside of the United States.

Section 3.19 Employee and Labor Matters.

(a) Neither the Company nor any Subsidiary thereof is or has at any time been bound by any collective bargaining or similar agreement with respect to its employees. There is no labor strike, work stoppage, picketing, lockout, walkout or other organized work interruption pending or, to the Knowledge of the Company, threatened against the Company or any Subsidiary thereof, and neither the Company nor any Subsidiary thereof has experienced any such labor strike, work stoppage, picketing,

lockout, walkout or other organized work interruption during the past three years. There are no labor unions or other organizations representing, and, to the Knowledge of the Company, no union organization campaign is in progress with respect to, any employees of the Company or any Subsidiary thereof. There are no unfair labor practice charges pending against the Company before the National Labor Relations Board or any other Governmental Entity, and there are no grievances, complaints, claims or judicial or administrative proceedings, in each case, which are pending or, to the Knowledge of the Company, threatened by or on behalf of any employees.

(b) Except as set forth on Section 3.19(b) of the Company Disclosure Schedule, the Company and its Subsidiaries are in compliance in all material respects with all applicable Laws, statutes, rules and regulations respecting employment and employment practices, terms and conditions of employment of employees, former employees and prospective employees, wages and hours, pay equity, discrimination in employment, wrongful discharge, collective bargaining, fair labor standards, occupational health and safety, employment eligibility verification, immigration, visa, work status, personal rights or any other labor and employment-related matters. Except as set forth on Section 3.19(b) of the Company Disclosure Schedule, the Company and its Subsidiaries have properly classified all of their respective service providers as either employees or independent contractors, employed or self-employed, and as exempt or non-exempt, for all purposes and has made all required filings in connection with services provided by, and compensation paid to, such service providers. Neither the Company nor any of its Subsidiaries are a party to, or otherwise bound by, any consent decree with, or citation any Governmental Entity relating to employees or employment practices. The Company and its Subsidiaries maintain accurate and complete Form I-9s with respect to each of its former and current employees in accordance with applicable Laws concerning immigration and employment eligibility verification obligations, except where the failure to be in compliance would not have a Company Material Adverse Effect. Except as set forth on Section 3.19(b) of the Company Disclosure Schedule, no Misconduct Claim is currently pending or, to the Knowledge of the Company, threatened against any service provider of the Company or any of its Subsidiaries with respect to conduct relating to the Company's workplace and, to the Knowledge of the Company, no Company service provider has engaged in any act that would reasonably be expected to give rise to a Misconduct Claim.

(c) The Company and each of its Subsidiaries has paid in full to all their respective employees or adequately accrued for all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees.

(d) During the three years prior to the Closing Date, neither the Company nor any Subsidiary thereof has engaged in or effectuated any "plant closing" or employee "mass layoff" (in each case, as defined in the Worker Adjustment Retraining and Notification Act of 1988, as amended, or any similar state or local statute, rule or regulation) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company or any of its Subsidiaries.

(e) No executive-level employee of the Company or any of its Subsidiaries has informed the Company or any of its Subsidiaries (whether orally or in writing) of any plan to terminate employment with or services for the Company, and, to the Knowledge of the Company or any of its Subsidiaries, no such Person or Persons has any present plans to terminate employment with or services for the Company or any of its Subsidiaries.

(f) The Company has not used the services of any temporary employees or "leased employees" (within the meaning of Section 414(n) of the Code).

(g) The Company and each of its Subsidiaries are in material compliance with and has not materially violated the terms and provisions of the Immigration Reform and Control Act of 1986, as

amended, and all related regulations promulgated thereunder (“Immigration Laws”). Neither the Company nor any of its Subsidiaries has been warned, fined, or otherwise penalized by reason of its failure to comply with the Immigration Laws, nor is any such proceeding pending or, to the Knowledge of the Company, threatened.

Section 3.20 Transactions with Affiliates.

(a) Except as set forth on Schedule 3.20 of the Company Disclosure Schedule, no Related Person of the Company, its Subsidiaries or their respective directors or officers (x) is a party to any transaction with the Company or its Subsidiaries, including any Contract (i) providing for the furnishing of goods or services by, (ii) providing for the rental of real or personal property from, or (iii) otherwise requiring payments to any such Person or such Person’s Affiliates; or (y) has had business dealings or a material financial interest in any transaction with the Company or any of its Subsidiaries, other than the Transactions (and the sale of food or related services at the restaurants of the Company or its Subsidiaries in the Ordinary Course of Business). Except as set forth on Schedule 3.20 of the Company Disclosure Schedule, immediately after the Closing, except as expressly set forth in this Agreement or the Ancillary Agreements, no Seller or any current or former Related Persons of any Seller will have any interest in any property or assets (real or personal, tangible or intangible) or Contract of the Company or used in or pertaining to its business.

(b) There are no account balances as of the Audited Balance Sheet Date, between any Seller or any of its current or former Related Persons, on the one hand, and the Company and its Subsidiaries, on the other hand. Since the Audited Balance Sheet Date, there has not been any incurrence or accrual of any Liability (as a result of allocations or otherwise) by the Company or any of its Subsidiaries to any Seller or any of their current or former Related Persons or other transaction between the Company and any Seller or any of their current or former Related Persons.

(c) All of the Contracts identified on Section 5.10 of the Company Disclosure Schedule are on arm’s length terms.

Section 3.21 Suppliers. Section 3.21 of the Company Disclosure Schedule sets forth a correct and complete list of the 25 largest suppliers or vendors of the Company and its Subsidiaries, as determined by the dollar amounts paid to all suppliers or vendors by the Company and its Subsidiaries in the most recent completed fiscal year, excluding suppliers or vendors of construction and design-related services, credit card processing services on restaurant sales or payroll service (each a “Material Supplier”), including the dollar amount of purchases for such fiscal year. None of the Material Suppliers have threatened in writing to terminate, or otherwise make any material adverse reductions to, their respective business relationships with the Company or any of its Subsidiaries.

Section 3.22 Accounts Receivable. The accounts receivable set forth on the Audited Balance Sheet, and all accounts receivable arising since the Interim Balance Sheet Date, represent *bona fide* claims of the Company and its Subsidiaries against debtors for goods provided or services performed or other charges, and all goods provided and services performed which gave rise to said accounts were delivered or performed in accordance with the applicable orders, Contracts and other customer requirements in all material respects. Such accounts receivable are current and collectible net of the respective reserves shown on the Interim Balance Sheet (which reserves, to the Knowledge of the Company, are adequate and consistent with past practices).

Section 3.23 Accounts; Safe Deposit Boxes; Powers of Attorney; Officers and Directors. Section 3.23 of the Company Disclosure Schedule sets forth (a) a correct and complete list of all bank and savings accounts, certificates of deposit and safe deposit boxes of the Company and those Persons

authorized to sign thereon, (b) a correct and complete list of all powers of attorney granted by the Company and those Persons authorized to act thereunder, and (c) an accurate and complete list of all officers, directors or managers of the Company.

Section 3.24 No Brokers. None of the Company, its Subsidiaries or their respective Representatives has retained any Person to act as a broker or agreed or become obligated to pay, or has taken any action that might result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee, financial advisors' fee or similar commission or fee in connection with any of the Transactions for which Purchaser could become liable or obligated.

Section 3.25 No Other Agreements to Sell the Assets or Membership Interests of the Company. Except as set forth on Section 3.25 of the Company Disclosure Schedules, none of the Company or Sellers has any commitment or legal obligation, absolute or contingent, to any other Person other than Purchaser to sell, assign, transfer or effect a sale of all or a substantial portion of the assets of the Company or its Subsidiaries (other than sales of inventory in the Ordinary Course of Business), to sell or effect a sale of any Equity Securities of the Company, to effect any merger, consolidation, liquidation, dissolution or other reorganization of the Company or any of its Subsidiaries, or to enter into any agreement or cause the entering into of an agreement with respect to any of the foregoing.

Section 3.26 Knowledge. The individuals set forth in the definition of "Knowledge of the Company," in the Ordinary Course of Business, given the organization, reporting procedures, and other controls in place at the Company and its Subsidiaries, are the individuals who would have the knowledge of the matters warranted and represented whenever so limited by the phrase to the "Knowledge of the Company".

Section 3.27 NO ADDITIONAL REPRESENTATIONS AND WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT (AS MODIFIED BY THE COMPANY DISCLOSURE SCHEDULE), THE COMPANY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE CONDITION, VALUE OR QUALITY OF THE UNITS, THE COMPANY, ITS SUBSIDIARIES OR THE COMPANY'S OR ITS SUBSIDIARIES' ASSETS, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE COMPANY'S OR ITS SUBSIDIARIES' ASSETS, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS AGREEMENT (AS MODIFIED BY THE DISCLOSURE SCHEDULE), THE COMPANY HEREBY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO PURCHASER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO PURCHASER BY ANY OFFICER, EMPLOYEE, AGENT, CONSULTANT, OR REPRESENTATIVE OF THE COMPANY OR ANY OF ITS AFFILIATES). WITHOUT LIMITING ANY OF THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, THE COMPANY HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES TO PURCHASER REGARDING ANY PROJECTION OR FORECAST REGARDING FUTURE RESULTS OR THE PROBABLE SUCCESS OR PROFITABILITY OF THE COMPANY. NOTWITHSTANDING ANYTHING IN THIS SECTION 3.27 TO THE CONTRARY, SECTION 3.27 DOES NOT LIMIT PURCHASER'S REMEDIES IN THE CASE OF FRAUD.

ARTICLE IV

Representations and Warranties of Purchaser

Purchaser hereby represents and warrants to each Seller, as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent such representations and warranties expressly relate to another date (in which case as of such other date), as follows:

Section 4.01 Organization, Standing and Power. Purchaser is a corporation, duly incorporated, validly existing and in good standing under the Laws of the State of California and has full corporate power and authority to own, lease or otherwise hold its properties and assets and to conduct its business as presently conducted. Guarantor is a corporation, duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and has full corporate power and authority to own, lease or otherwise hold its properties and assets and to conduct its business as presently conducted.

Section 4.02 Authority; Execution and Delivery; Enforceability. Purchaser and Guarantor have full power and authority to execute, deliver and perform its obligations under this Agreement and the Ancillary Agreements to which they are, or are specified to be, a party and to consummate the Transactions. The execution, delivery and performance by Purchaser and Guarantor hereof and the Ancillary Agreements to which they are, or are specified to be, a party and the consummation by Purchaser of the Transactions have been duly authorized by all necessary corporate action. Purchaser and Guarantor have duly executed and delivered this Agreement and at or before the Closing will have duly executed and delivered each Ancillary Agreement to which they are, or are specified to be, a party, and this Agreement constitutes, and each Ancillary Agreement to which they are, or are specified to be, a party will as of the Closing constitute (assuming due authorization, execution and delivery by the other parties thereto), their legal, valid and binding obligation, enforceable against them in accordance with its terms, except as limited by Laws affecting the enforcement of creditors' rights generally or by general equitable principles.

Section 4.03 No Conflicts; Consents. The execution and delivery by Purchaser and Guarantor hereof do not, the execution and delivery by Purchaser and Guarantor of each Ancillary Agreement to which they are, or are specified to be, a party will not, and the consummation of the Transactions and compliance by Purchaser and Guarantor with the terms hereof and thereof will not contravene, conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, require any consent or approval under, or give rise to a right of termination, cancellation or acceleration of any obligation, to a right to challenge the Transactions, or to increased, additional, accelerated or guaranteed rights or entitlements of any Person under, or result in the creation of any Lien upon any of the properties or assets of Purchaser, Guarantor or any of their respective Subsidiaries under, any provision of (a) the certificate of incorporation or by-laws (or comparable documents) of Purchaser, Guarantor or any of their respective Subsidiaries, (b) any Contract to which Purchaser, Guarantor or any of their respective Subsidiaries is a party or by which any of their respective properties or assets is bound or (c) any Judgment or Law applicable to Purchaser, Guarantor or any of their respective Subsidiaries or their respective properties or assets. No Consent of or Filing with any Governmental Entity or other Person is required to be obtained or made by or with respect to Purchaser, Guarantor or any of their respective Subsidiaries in connection with the execution, delivery and performance hereof or any Ancillary Agreement or the consummation of the Transactions or the ownership by Purchaser of the Company following the Closing, except for the pre-merger notification requirements of the HSR Act.

Section 4.04 Legal Proceedings; Judgments. There are no Proceedings or Judgments pending or, to the knowledge of Purchaser, threatened against or affecting Purchaser, that (x) could reasonably be expected to adversely affect the ability of Purchaser to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which Purchaser is a party or (y) challenge or that could

reasonably be expected to prevent, impede, hinder, delay, make illegal, impose limitations or conditions on, or otherwise interfere with, any of the Transactions.

Section 4.05 Securities Act. Purchaser has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of Purchaser's acquisition of the Membership Interests. Purchaser confirms that it can bear the economic risk of its investment in the Membership Interests. Purchaser is acquiring the Membership Interests for investment and not with a view toward or for sale in connection with any distribution thereof, or with any present intention of distributing or selling such Membership Interests. Purchaser agrees that the Membership Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act of 1933, as amended (the "Securities Act"), except pursuant to an exemption from such registration available under the Securities Act.

Section 4.06 Availability of Funds. The Guarantor has, and the Purchaser will have as of the Closing and the other times any obligations of Purchaser under this Agreement come due, sufficient cash and available lines of credit to enable it to consummate the Transactions and satisfy its obligations hereunder and under the Ancillary Agreements. Purchaser's obligation to consummate the Transactions is not contingent on the consummation of the Purchaser Financing.

Section 4.07 No Brokers. Neither Purchaser nor any of Purchaser's Representatives has retained any Person to act as a broker or agreed or become obligated to pay, or has taken any action that might result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee, financial advisors' fee or similar commission or fee in connection with any of the Transactions for which Sellers or the Company could become liable or obligated.

ARTICLE V

Certain Covenants and Agreements

Section 5.01 Conduct of Business by the Company and Sellers.

(a) Except for matters set forth in Section 5.01(a) of the Company Disclosure Schedule or otherwise expressly permitted or required hereby or as required by applicable Law, from the date hereof to the Closing, the Company shall, and shall cause each of its Subsidiaries to, conduct its businesses in the Ordinary Course of Business (including with respect to, advertising, promotions, capital expenditures and inventory levels) and shall use commercially reasonable efforts to keep intact its business, keep available the services of its current employees and preserve its relationships with customers, suppliers, licensors, licensees, distributors and others with whom it deals. Without limiting the foregoing, the Company shall, and shall cause each of its Subsidiaries to, not take any action that would, or that would reasonably be expected to, result in any of the conditions to the purchase and sale of the Membership Interests set forth in Article VI not being satisfied. In addition (and without limiting the generality of the foregoing), except as set forth in Section 5.01(a) of the Company Disclosure Schedule or otherwise contemplated, permitted or required by the terms of this Agreement (excluding the first sentence of this Section 5.01(a)) or as required by applicable Law, from the date hereof to the Closing, the Company shall not, and shall cause each of its Subsidiaries not to, do any of the following without the prior written consent of Purchaser:

(i) incur any Indebtedness, other than trade debt incurred in the Ordinary Course of Business or Purchaser Indebtedness, prepay any Indebtedness before its due date or create or suffer any Lien to be incurred by the Company or any of its Subsidiaries, other than Permitted Liens;

- (ii) enter into any Contract or commitments other than Contracts or commitments made in the Ordinary Course of Business or pursuant to this Agreement or any of the Ancillary Agreements;
- (iii) sell, assign, transfer or otherwise dispose of any assets or properties used in connection with the business of the Company or any of its Subsidiaries, other than inventory or supplies consumed or disposed of in the Ordinary Course of Business;
- (iv) allow to be suffered any damage, destruction or loss (whether or not covered by insurance) affecting the business, asset or property of the Company or any of its Subsidiaries that individually or in the aggregate exceeded \$250,000 in value;
- (v) cancel or waive any material claims or rights in respect of the business, asset or property of the Company or any of its Subsidiaries;
- (vi) change the authorized or issued Equity Securities of the Company or any of its Subsidiaries other than as contemplated by this Agreement;
- (vii) declare or pay any dividends or other distributions in respect of any Equity Securities in the Company or any of its Subsidiaries, other than a tax distribution prior to the Closing Date as permitted by the Company Operating Agreement or as contemplated by this Agreement;
- (viii) grant, purchase, redeem, retire, transfer, assign or otherwise permit any Person to acquire any Equity Securities of the Company or any of its Subsidiaries, other than as contemplated by this Agreement;
- (ix) except as set forth in Section 5.01(a)(ix) of the Company Disclosure Schedule, amend or change any Organizational Documents of the Company or any of its Subsidiaries;
- (x) materially change the Company's or any of its Subsidiaries' method of accounting or manner of keeping books, accounts or records, or accounting practices, except as may be required by reason of a concurrent change in GAAP or as expressly required by this Agreement;
- (xi) (A) hire or terminate any Key Employee, (B) pay, announce, promise or grant, whether orally or in writing, any increase in or establishment of (as applicable) any wages, base pay, fees, salaries, compensation, bonuses, incentives, deferred compensation, pensions, severance or termination payments, retirement, profit sharing, equity or equity-linked awards, employee benefit plans, or any other form of compensation or benefits payable by the Company or any of its Subsidiaries (except in the Ordinary Course of Business or as required by any applicable Law or the terms of any Plan as in effect on the date hereof), (C) accelerate the vesting or payment of any compensation or benefits under any Plan, except as required pursuant to the terms of such Plan as in effect on the date hereof or by any applicable Law, (D) enter into, adopt, terminate or materially amend any Plan, or (E) grant any equity or equity-linked awards or other bonus, commission or incentive compensation to any employee, consultant, director or manager;
- (xii) enter into any collective bargaining agreement or other Contract with any labor organization, union or association;

(xiii) incur or assume any Liabilities (including Indebtedness) or guarantee any such Liabilities, other than (A) in the Ordinary Course of Business (including any lease guarantee associated with potential new restaurant locations set forth on Section 3.08(a) of the Company Disclosure Schedule), (B) as otherwise reflected on the Interim Balance Sheet or (C) as permitted in Section 5.01(a)(i);

(xiv) (A) accelerate or delay in any material respect the creation or utilization of prepaid expenses in advance or beyond the due date for such utilization or the date such utilization would have been made in the Ordinary Course of Business, (B) accelerate or delay in any material respect the collection of notes or accounts receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the Ordinary Course of Business; (C) delay or accelerate in any material respect payment of any accounts payable, gift cards payable or accrued expenses beyond or in advance of its due date or the date such liability would have been paid in the Ordinary Course of Business, in either case, except as otherwise reflected on the Interim Balance Sheet; or (D) accelerate or delay in any material respect the purchase of equipment or other assets or properties beyond or in advance of the due date for such purchase or the date such purchase would have been made in the Ordinary Course of Business;

(xv) make or incur any capital expenditures that, in the aggregate, are in excess of \$250,000, other than capital expenditures (A) made in connection with the Company Property under development set forth on Section 3.08(a)(2) of the Company Disclosure Schedule; (B) made in connection with new restaurant openings for The Henry in Coronado, California and Flower Child in McLean, Virginia; or (C) included in the Capital Expenditures Budget;

(xvi) open, relocate or close any office or other facility, or make any application for such an opening, relocation or closing, other than in connection with the commencement or expiration of a Lease pursuant to its terms or new restaurant openings for The Henry in Coronado, California and Flower Child in McLean, Virginia;

(xvii) (x) pay, discharge or satisfy any material Liability, other than in the Ordinary Course of Business, or (y) fail to pay or satisfy when due any material Liability;

(xviii) enter into any Contract that would have been required to be set forth in Section 3.11(a) of the Company Disclosure Schedule if it were in effect on the date hereof, or materially modify, or amend, terminate or grant any Consent or waiver under any Company Contract or any Contract that would have been a Company Contract if it were in effect on the date hereof, other than any Contract renewal in the Ordinary Course of Business, or the entry into Leases for the potential new restaurant locations identified on Section 3.08(a) of the Company Disclosure Schedule;

(xix) pay, loan or advance any amount to, or sell, transfer or lease any of its assets to, or enter into any agreement or arrangement with, Sellers or any of their current or former Related Persons, other than as expressly contemplated by this Agreement or in the Ordinary Course of Business;

(xx) make any material change in internal accounting controls or disclosure controls and procedures or revalue any Company assets, including writing off notes or accounts receivable;

(xxi) prepare or file any material Tax Return, make any tax election, or adopt any accounting method, enter into a Tax allocation agreement, Tax sharing agreement, or Tax

indemnity agreement, amend a Company Return, settle or otherwise compromise any claim relating to Taxes, enter into any closing agreement or similar agreement relating to Taxes, otherwise settle any dispute relating to Taxes, request any ruling or similar guidance with respect to Taxes, or consent to an extension or waiver of the statutory limitation period applicable to a claim or assessment in respect of Taxes, in each case if the taking of such action would reasonably be expected to adversely impact the Purchaser or any of its Affiliates;

(xxii) acquire by merging or consolidating with, or by purchasing any Equity Securities or a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof or otherwise acquire any assets (other than inventory) that are material;

(xxiii) other than pursuant to the North Italia Purchase Agreement, sell, lease, transfer, abandon, permit to lapse, dedicate to the public, license or otherwise dispose of any material portion of the Company's or its Subsidiaries' assets, including any Intellectual Property of the Company or any of its Subsidiaries, except inventory sold in the Ordinary Course of Business;

(xxiv) fail to maintain or protect the confidentiality of any data or other information related to the Company's and its Subsidiaries' business other than in a commercially reasonable manner and consistent with past practices;

(xxv) enter into any lease, sublease or occupancy or use agreement of real property (including relating to the Company Property) or otherwise alienate, encumber, transfer, option, assign, sell, transfer or convey its interest in the Company Property or any portion thereof or enter into any agreement or understanding to do so, other than any Contract renewal in the Ordinary Course of Business, or the entry into Leases for the potential new restaurant locations identified on Section 3.08(a) of the Company Disclosure Schedule;

(xxvi) modify, amend, terminate or permit the lapse of any license, lease or sublease of, or reciprocal easement agreement, operating agreement or other material Contract relating to, real property (including the Company Property) to the extent the Company is party to or bound by any such license, lease, sublease, reciprocal easement agreement, operating agreement or other material Contract; or

(xxvii) commit or agree to do any of the foregoing actions.

(b) From the date hereof until the Closing, except as set forth in Section 5.01(b) of the Company Disclosure Schedule or otherwise expressly permitted or required hereby (excluding the first sentence of Section 5.01(a)) or required by applicable Law, the Company shall, and shall cause each of its Subsidiaries to:

(i) maintain its assets in the Ordinary Course of Business in substantially the same condition as of the date of this Agreement, reasonable wear and tear excepted;

(ii) upon any damage, destruction or loss to any material asset, apply any and all insurance proceeds received with respect thereto to the prompt repair, replacement and restoration thereof to the condition of such asset before such event or, if required, to such better condition as may be required by Law;

(iii) maintain its level and quality of inventory and supplies, and raw materials in the Ordinary Course of Business and in a manner consistent with its practices in place as of the Audited Balance Sheet Date;

(iv) furnish any other information reasonably requested by Purchaser in order to comply with the requirements of the Securities Act and the Exchange Act;

(v) make purchases of goods and services required for the normal operation of the business of the Company and its Subsidiaries and the construction of restaurants for then scheduled opening date, make replacements and repairs and otherwise perform maintenance in accordance with the Capital Expenditures Budget;

(vi) pay for accounts payables, gift cards payable, accrued expenses and other Liabilities in the Ordinary Course of Business;

(vii) collect notes and accounts receivable in the Ordinary Course of Business; and

(viii) following each Financial Month that ends during the period between the date hereof and the Closing, deliver to Purchaser an unaudited balance sheet, summary of capital expenditures and statements of operations, members' capital and cash flows for such Financial Month, within one Business Day after each becomes available.

(c) From the date hereof to the Closing, none of Sellers shall, without the prior written consent of Purchaser, sell, assign, transfer or alienate, encumber or otherwise dispose of any Equity Interests of the Company or, except pursuant to the exercise of drag-along rights as set forth in Section 5.11, any of its Subsidiaries.

Section 5.02 Inspection and Access to Information.

(a) The Company will, and will cause its Subsidiaries to, (i) provide Purchaser and its Representatives, upon reasonable prior notice, reasonable access, during normal business hours, to the personnel, properties, books and records of the Company and its Subsidiaries, and (ii) furnish to the Purchaser and its Representatives such financial and operating data and other information relating to the Company and its Subsidiaries as such Persons may reasonably request.

(b) All information provided or obtained in connection with the transactions contemplated by this Agreement or the Ancillary Agreements will be held by the Purchaser in accordance with the Confidentiality Letter Agreement, dated June 6, 2019, between Guarantor and the Company (the "Confidentiality Agreement"). In the event of a conflict or inconsistency between the terms hereof and the Confidentiality Agreement, the terms hereof will govern.

Section 5.03 No Solicitation of Transactions.

(a) The Company and each Seller shall not, and shall cause its respective Subsidiaries and Representatives not to, directly or indirectly, (i) discuss, negotiate, undertake, authorize, recommend, propose or enter into, either as the proposed surviving, merged, acquiring or acquired corporation, any actual or potential transaction involving a merger, consolidation, business combination, purchase or disposition of any amount of the assets of the Company or its Subsidiaries or any Equity Securities of the Company or its Subsidiaries other than the transactions contemplated by this Agreement or the Ancillary Agreements, or the sale of inventory in the Ordinary Course of Business (an "Acquisition Transaction"),

(ii) facilitate, encourage, solicit or initiate discussions, negotiations or submissions of proposals or offers in respect of an Acquisition Transaction, (iii) furnish or cause to be furnished, to any Person or entity, any information concerning the business, operations, properties or assets of the Company in connection with an Acquisition Transaction, or (iv) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person or entity to do or seek any of the foregoing; provided, however, that the Company may continue to market Zinburger for sale so long as the Company and its Subsidiaries do not enter into any Contracts or consummate any transactions related thereto without the prior written consent of Purchaser.

(b) The Company and each Seller shall, and shall cause its respective Subsidiaries and their respective Representatives to, (i) immediately cease and cause to be terminated any existing discussions or negotiations with any Persons (other than Purchaser) conducted heretofore with respect to any Acquisition Transaction, (ii) promptly notify Purchaser of any inquiry or contact with any Person with respect an Acquisition Transaction that is made subsequent to the date of this Agreement, and provide the details of such inquiry or contact (including the identity of the third party or third parties making the inquiry or contact and copies of any proposals and the specific terms and conditions discussed or proposed) and (iii) keep Purchaser fully informed with respect to the status of the foregoing.

Section 5.04 Reasonable Efforts.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use all commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary to consummate and make effective, as promptly as commercially practicable, the Transactions, including using commercially reasonable efforts to obtain all necessary actions or nonactions, waivers, consents and approvals from Governmental Entities and to make all necessary registrations and filings (including filings with Governmental Entities, which shall include filing the premerger notifications and related documentation required under the HSR Act no later than ten Business Days following the date hereof) and to take all commercially reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid a Proceeding by, any Governmental Entity. Each of Purchaser and the Company shall pay 50% of the HSR Act filing fees. Notwithstanding the foregoing, Purchaser shall not have any obligation to (and the Company and its Affiliates shall not without Purchaser's prior written request) (x) propose, negotiate, commit to or effect, by consent decree, hold separate order or otherwise, the sale, divestiture or disposition of any assets or businesses of Purchaser, the Company or any of their Subsidiaries or Affiliates or (y) otherwise take or commit to take any actions that would limit the freedom of Purchaser, the Company or any of their Subsidiaries or their Affiliates with respect to, or their ability to retain, one or more of their businesses, product lines or assets.

(b) Before the Closing, the Company shall use all commercially reasonable efforts to obtain, and to cooperate in obtaining, all Consents from third parties necessary or appropriate to permit the consummation of the Transactions; provided, however, that the Parties shall not be required to pay or commit to pay any amount to (or incur any obligation in favor of) any Person from whom any such Consent may be required (other than customary filing fees payable to Governmental Entities and nominal filing or application fees payable to other third parties) and no Party shall agree to any conditions or restrictions imposed by any third party that, individually or in the aggregate, would materially impair (or could reasonably be expected to materially impair) the ability of such Party to consummate the Transactions or would reasonably be expected to have a material adverse effect on the economic benefits to Purchaser arising therefrom.

(c) Prior to the Closing, subject to Laws relating to the sharing of information, each of Purchaser, the Company and Sellers' Representative shall have the right to review in advance, and to the

extent practicable each will consult the others on, any Filing made with, or written materials submitted to, any third party or any Governmental Entity in connection with the Transactions. Each of the Parties shall furnish to the other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of any such filing or submission. Furthermore, the Parties shall (i) keep each other fully informed of all communications received from, or made to, and any inquiries or requests for additional information or documents from, the United States Federal Trade Commission, the Antitrust Division of the United States Department of Justice or any other Governmental Entity in connection with the transactions contemplated hereby, (ii) not make any submission to a Governmental Entity related to the transactions contemplated hereby without first having provided the other party and its counsel a reasonable opportunity to provide comments on such submission, and having considered such comments in good faith and (iii) promptly and completely provide any information or documents requested by any Governmental Entity in connection with transactions contemplated hereby.

Section 5.05 Confidentiality.

(a) On the Closing Date, Guarantor and the Company hereby agree that the Confidentiality Agreement shall terminate. From and after the Closing Date, the terms of Section 5.05(b) shall apply.

(b) Each Seller acknowledges that he, she or it has knowledge of certain Confidential Information and that such Confidential Information is confidential and proprietary to the Company and its business and may constitute valuable Trade Secrets of the Company and its business, which affect, among other things, the successful conduct, furtherance and protection of the Company and its business and related goodwill. Each Seller acknowledges that the unauthorized use or disclosure of such Confidential Information has the potential to be highly prejudicial to the interests of Purchaser, the Company and their respective Affiliates or their respective customers, suppliers, vendors, advertisers, clients and patrons, an invasion of privacy, or an improper disclosure of Trade Secrets. Each Seller agrees that a substantial portion of the Purchase Price is being paid for such Confidential Information and that it represents a substantial investment having great economic and commercial value to Purchaser and its Affiliates, and constitutes a substantial part of the value to Purchaser and its Affiliates of the Company and its business. Each Seller further acknowledges that Purchaser and its Affiliates and, following the Closing, the Company, could be irreparably damaged if any of the Confidential Information was disclosed to, or used or exploited on behalf of, any Person other than Purchaser and its Affiliates and, following the Closing, the Company. Accordingly, each Seller covenants and agrees that it shall not, directly or indirectly, and shall cause any Representatives and any other persons acting on such Seller's behalf (each Seller and such Representatives and other persons with respect to such Seller being collectively referred to as the "Restricted Persons") not to, without the prior written consent of Purchaser, disclose, use, exploit, furnish or make accessible to anyone or any other entity, any such Confidential Information, for the benefit of any such Restricted Person or of any third party, at any time for so long as such information shall remain secret or confidential or otherwise remain wholly or partially protectable except that Seller and, prior to the Closing, the Company may disclose, use or exploit a particular item of Confidential Information if and to the extent (but only if and to the extent) (i) that such item is or becomes generally known on a non-confidential basis to persons in the industry, through no wrongful act of any Restricted Person, in which Purchaser or the Company is engaged and is part of the public domain or (ii) required by applicable Law or administrative process; provided, that, prior to any disclosure under this clause (ii), to the extent reasonably practicable, such Seller or the Company notifies Purchaser of such disclosure so that Purchaser may obtain (at its cost) an appropriate protective order or other protection from such disclosure. Notwithstanding anything to the contrary set forth herein, Confidential Information does not include Residuals retained in the memories of any Seller, which each such Seller may retain and use; provided, however, that the foregoing does not permit (A) the intentional memorization of Confidential Information for the purpose of evading obligations

contained in this Agreement or (B) the infringement (intentional or otherwise) of the Company Intellectual Property.

Section 5.06 Expenses; Transfer Taxes.

(a) Except as otherwise expressly set forth herein, all costs and expenses incurred in connection with this Agreement and the Ancillary Agreements and the Transactions shall be paid by the Party incurring such expense.

(b) Any real property transfer, transfer, documentary, sales, use, excise, stock transfer, value-added, stamp, recording, registration and other similar Taxes, and any conveyance fees or recording charges (including any penalties and interest and any reasonable costs related to the preparation and filing of any Tax Returns related to any such Taxes) (such amounts, the "Transfer Taxes"), imposed with respect to the transactions contemplated by this Agreement shall be borne by Sellers as a Seller Transaction Expense and (to the extent not included in the determination of Closing Seller Transaction Expenses) shall be paid by Group A Sellers (in accordance with their Group A Pro Rata Shares). In addition, Purchaser shall prepare, complete and file all Tax Returns required to be filed by the Company relating to such Transfer Taxes, which Tax Returns shall be subject to the approval of Sellers' Representative, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 5.07 Employee Matters.

(a) Effective as of the Closing Date and thereafter, for the purpose of determining eligibility and vesting under Purchaser's and its Affiliates' plans and programs providing employee benefits to each employee of the Company or its Subsidiaries who continues in employment with Purchaser and its Affiliates (including the Company) immediately following the closing (the "Continuing Employees") after the Closing Date, Purchaser and its Affiliates shall give credit, or shall cause the Company to give credit, to Continuing Employees for service with the Company, its Subsidiaries and any ERISA Affiliate prior to the Closing Date, to the same extent as such Continuing Employee was (or would have been) entitled for such service prior to the Closing Date, for purposes of eligibility and vesting under any program, policy or arrangement of Purchaser applicable to such Continuing Employees following the Closing Date (each a "Purchaser Plan"), except to the extent prohibited or impeded by Law or where such credit would result in a duplication of benefits or may be prohibited by the terms of any such program, policy or arrangement. In addition, Purchaser and its Affiliates shall or shall cause the Company to use commercially reasonable efforts to (i) cause any pre-existing conditions or limitations, eligibility waiting periods or actively at work requirements under any health or similar plan of the Company, Purchaser or an Affiliate of Purchaser to be waived with respect to Continuing Employees and their eligible dependents, except to the extent that any waiting period, exclusions or requirements still applied to such Continuing Employee under the comparable Company Plan in which such Continuing Employee participated immediately before the Closing, and (ii) fully credit each Continuing Employee with all deductible payments, co-payments and other out-of-pocket expenses incurred by such Continuing Employee and his or her covered dependents under the medical, dental, pharmaceutical or vision benefit plans of the Company prior to the Closing during the plan year in which the Closing occurs for the purpose of determining the extent to which such Continuing Employee has satisfied the deductible, co-payments, or maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for such plan year under any medical, dental, pharmaceutical or vision benefit plan of the Company, Purchaser or an Affiliate of Purchaser, as if such amounts had been paid in accordance with such plan.

(b) Notwithstanding anything herein to the contrary, Purchaser and the Company acknowledge and agree that all provisions contained in this Section 5.07 are included for the sole benefit of Purchaser and the Company, and that nothing in this Agreement, whether express or implied, (i) subject

to the terms of any applicable individual agreement between such individual and the Company or any of its Subsidiaries, shall prevent or restrict in any way the right of the Purchaser to terminate, reassign, promote or demote any director, manager, officer, employee or independent contractor of the Company (or to cause any of the foregoing actions) at any time following the Closing, or to change (or cause the change of) the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment or service of any such employee, consultant, director or manager at any time following the Closing; (ii) shall be treated as an amendment or other modification of any Plan, (iii) shall limit the right of Purchaser, the Company or their respective Affiliates to amend, terminate or otherwise modify any Plan or other employee benefit plan, agreement or other arrangement following the Closing Date, or (iv) shall confer upon any other Person (including any equityholder, any current or former director, manager, officer, employee or independent contractor of the Company, or any participant in any Plan or other employee benefit plan, agreement or other arrangement (or any dependent or beneficiary thereof)), any right to continued or resumed employment, any right to compensation or benefits, or any third-party beneficiary or other right of any kind or nature whatsoever.

(c) Not less than five Business Days prior to the Closing Date, the Company shall deliver a certificate duly executed by the Chief Executive Officer of the Company ("Closing Bonus Schedule"), which Closing Bonus Schedule shall set forth (i) the aggregate amount of discretionary bonuses to be paid by the Company or its Subsidiaries to current or former employees of the Company or its Subsidiaries (the "Closing Bonuses"), (ii) the employer portion of any employment Taxes that are incurred by the Company, its Subsidiaries or its Affiliates in connection with the payment of such Closing Bonuses (the "Closing Bonus Taxes"), and (iii) the name of, and the amount of Closing Bonus to be received by, each such recipient of a Closing Bonus; provided, however, that the aggregate amount of such Closing Bonuses and Closing Bonus Taxes shall not exceed \$5,000,000. The Parties acknowledge that the Purchase Price shall not include an amount equal to the sum of (x) the Closing Bonuses plus (y) the Closing Bonus Taxes. Promptly after the Closing, Purchaser shall cause the Company to pay the Closing Bonuses to the Persons specified in the Closing Bonus Schedule, and Purchaser shall pay the Closing Bonus Taxes to the applicable taxing authorities.

Section 5.08 Publicity. None of the Parties shall make any public announcement concerning the Transactions or otherwise reveal publicly the terms of this Agreement or any of the Ancillary Agreements without the prior written consents of Sellers' Representative and Purchaser in each instance, except as required by Law (including, if applicable, under applicable securities laws) or stock exchange requirements (in which case the disclosing Party shall advise the other Parties and the other Parties shall, if practicable, have the right to review such press release or announcement prior to its publication).

Section 5.09 Further Assurances. From time to time, as and when requested by any Party, each Party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions, as such other Party may reasonably deem necessary or desirable to evidence and confirm the Transactions, including, in the case of Sellers, executing and delivering to Purchaser such assignments, deeds, bills of sale, consents and other instruments as Purchaser or its counsel may reasonably request as necessary or desirable for such purpose.

Section 5.10 Treatment of Certain Affiliate Agreements. Except as set forth on Section 5.10 of the Company Disclosure Schedule, effective as of the Closing, the Company and its Subsidiaries shall cause all Contracts, transactions or arrangements between any of their Related Persons, on the one hand, and the Company or any of its Subsidiaries, on the other hand, to be terminated without any party having any continuing obligations thereunder and, other than pursuant to this Agreement or any of the Ancillary Agreements or pursuant to any such Related Person's continued status as an employee of the Company, there shall be no intercompany obligations between any such Related Persons, on the one hand, and the Company or any of its Subsidiaries, on the other hand.

Section 5.11 Drag-Along of Minority Investors. Except with respect to the Non-Dragged Subsidiaries, on or prior to the third Business Day immediately after the date hereof, the Company shall, or shall cause its Subsidiaries to, trigger the exercise of drag-along rights under the Organizational Documents of the Company's non-wholly owned Subsidiaries pursuant to drag-along notices substantially in the form attached hereto as Exhibit E (the "Drag-Along Notices"), which shall include the applicable bona fide offer amounts as mutually agreed by the Company and Purchaser in writing (the "Bona Fide Offer Amounts"). Purchaser hereby confirms that in connection with the Transactions, Purchaser agrees to purchase all of the outstanding Equity Securities of all of the Company's non-wholly owned Subsidiaries, other than the Non-Dragged Subsidiaries, as necessary to directly or indirectly acquire all of the Equity Securities held by the holders thereof. The Company shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to obtain the executed written consent of all holders of Equity Securities in its Subsidiaries (other than the Company or another of its Subsidiaries) (such holders, the "Minority Subsidiary Investors") in the form of Exhibit F (the "Minority Subsidiary Investor Assignments") prior to the Closing Date. The Company shall keep Purchaser reasonably apprised regarding the status of its solicitation of Minority Subsidiary Investor Assignments and, within two Business Days of receipt thereof, shall deliver copies of any signed Minority Subsidiary Investor Assignments received from the Minority Subsidiary Investors to Purchaser with the date of execution and name of assignee in blank. The Company shall promptly notify Purchaser if any Minority Subsidiary Investor refuses to execute a Minority Subsidiary Investors Assignment, or otherwise objects to or contests the Drag-Along Notices or the Transactions. In the event that a Minority Subsidiary Investor does not execute a Minority Subsidiary Investor Assignment prior to the Closing, in consultation with the Purchaser, the Company shall, or shall cause its applicable Subsidiaries to, execute such Minority Subsidiary Investor Assignment on behalf of such Minority Subsidiary Investor pursuant to any proxy or power-of-attorney under the Organizational Documents. To the extent that the Equity Securities held by Minority Subsidiary Investors with respect to a particular Subsidiary are acquired through Minority Subsidiary Investor Assignments to the relevant Subsidiary, such transaction shall be deemed to have taken place immediately following Closing, and the Purchase Price shall not include the purchase price for the Equity Securities held by the Minority Subsidiary Investors. To the extent that the Equity Securities held by Minority Subsidiary Investors with respect to a particular Subsidiary are acquired through Minority Subsidiary Investor Assignments to Purchaser, such transaction shall be deemed to have taken place immediately prior to Closing, and the Purchase Price shall not include the purchase price for all Equity Securities of the relevant Subsidiary (held by the Company or its Subsidiaries as well as by the Minority Subsidiary Investors). In the event that Purchaser directly acquires the Equity Interests of any non-wholly owned Subsidiary pursuant to the exercise of drag-along rights, Purchaser shall contribute all Equity Interests in such Subsidiary to the Company or a wholly-owned Subsidiary of the Company immediately after the Closing.

Section 5.12 Excluded Assets; Excluded Liabilities. The Company shall, or shall cause its Subsidiaries to, transfer all of the properties and assets set forth on Section 5.12 of the Company Disclosure Schedule ("Excluded Assets"), and any Liabilities associated therewith ("Excluded Liabilities") to a Person other than the Company or any of its Subsidiaries prior to the Closing Date, such that, following such transfer, neither the Company nor its Affiliates shall have any continuing Liability with respect to such property or assets or such transfer. The Company shall provide Purchaser a copy of all definitive documents concerning such transfer promptly after execution of such documents.

Section 5.13 Governance Matters. From the Closing Date until the earlier of (a) such time as Fox ceases to be an employee of Guarantor and (b) the end of the Measurement Period, the Company shall be required to comply with the governance provisions set forth in Exhibit G and the Amended and Restated Limited Liability Company Agreement of the Company as of the Closing (the "A&R LLC Agreement") shall include (or incorporate by reference) such provisions (the "Exhibit G Provisions"), and in the event of any conflict between the A&R LLC Agreement and the Exhibit G Provisions, the Exhibit G Provisions shall control; provided, however, that the Company's obligations with respect to Section 2.06 (Bonus Pool)

of the Exhibit G Provisions and the applicable Amended and Restated LLC Agreement provision(s) shall not terminate if Fox ceases to be an employee of Guarantor. From and after such time as the Company is no longer required to comply with such provisions as provided in the immediately preceding sentence, Purchaser may amend the A&R LLC Agreement to remove such provisions (and to make any other modifications) in its sole discretion.

Section 5.14 Spin Out. On or prior to the Closing, the Company shall transfer the Equity Securities in Flying Fox LLC, FRC Pizza Truck LLC, FRE LLC, SB Nashville LLC and North Investors LLC to an Affiliate that is not a Subsidiary of the Company such that, following such transfer, neither the Company nor its Subsidiaries shall have any continuing Liability with respect to such entities.

Section 5.15 GAAP Financial Statements. After the date of this Agreement, the Company and Sellers acknowledge that the Company will be required to prepare financial statements in accordance with GAAP to comply with Guarantor's obligations under the Exchange Act, and, if applicable, the Securities Act, and, in each case, the rules and regulations promulgated thereunder, including audited balance sheets of the Company, its Subsidiaries and its Excluded Subsidiaries as of January 1, 2019 and the related audited statements of operations', members' capital and cash flows for the year then ended and the unaudited balance sheet of the Company, its Subsidiaries and Excluded Subsidiaries as of October 1, 2019 and the related unaudited statements of operations, members' capital and cash flows for the nine months then ended and the comparable prior year period (collectively, the "GAAP Financial Statements"). The GAAP Financial Statements shall be prepared in compliance with Topic 2 of the Financial Reporting Manual Published by the U.S. Securities and Exchange Commission's Division of Corporate Finance ("FRM") and include the auditor's consent to the use of its reports in compliance with Topic 480 of the FRM. The Company shall cooperate with, and provide reasonable assistance to, Purchaser in connection with the preparation of such financial statements, including by changing the Company's accounting methods, practices, principles, policies and procedures to comply with GAAP.

Section 5.16 Non-Dragged Subsidiaries. At or prior to the Closing, the Company shall, or shall cause one of its Subsidiaries to (a) redeem the Equity Securities of Wildflower Holdings, LLC and FC Investors LLC (the "Redemption Subsidiaries") owned or held by any Minority Subsidiary Investor ("Subsidiary Redemptions"), and shall pay any consideration due for such redemption with a portion of the Minority Reorganization Payment and (b) dissolve FRC Cityscape II LLC and FRC Modern Steak Scottsdale LLC. The Company shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to obtain the executed written assignments of all Minority Subsidiary Investors in its Redemption Subsidiaries, in a form reasonably acceptable to Purchaser (the "Redeemed Investor Assignments") prior to the Closing Date.

Section 5.17 Lien Release. At or prior to the Closing, the Company shall, or shall cause one of its Subsidiaries to, obtain, and deliver to Purchaser, proof of Lien releases with respect to the Liens set forth on Section 3.14(c)(2) of the Company Disclosure Schedule.

ARTICLE VI

Conditions Precedent

Section 6.01 Conditions to Each Party's Obligations. The obligations of the Parties to consummate the Transactions is subject to the satisfaction (or waiver by Purchaser and Sellers' Representative, to the extent permitted by applicable Law) on or before the Closing Date of the following conditions:

(a) No Injunctions or Restraints. No Law, Judgment or other legal restraint preventing the consummation of the Transactions shall be in effect, nor shall any Proceeding (whether instituted by any Governmental Entity or any other Person) seeking the foregoing be pending.

(b) HSR Act. The expiration or termination of the waiting period applicable to the consummation of the Transactions under the HSR Act shall have occurred.

Section 6.02 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the Transactions is subject to the satisfaction (or waiver, in whole or in part, by Purchaser) on or before the Closing Date of the following conditions:

(a) Representations and Warranties. Each of the Fundamental Representations of Sellers and the Company set forth in Article II and Article III shall be true and correct, as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent such Fundamental Representation expressly relates to another date (in which case as of such other date). Each representation and warranty of Sellers and the Company set forth in Article II and Article III (other than any Fundamental Representations of Sellers and the Company) that is qualified as to materiality or Company Material Adverse Effect shall be true and correct, and each such representation and warranty not so qualified shall be true and correct in all material respects, in each case as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent such representation and warranty expressly relates to another date (in which case as of such other date).

(b) Performance of Obligations of Sellers and the Company. Each Seller and the Company, as applicable, shall have performed or complied in all material respects with each obligation and covenant required by this Agreement and the Ancillary Agreements to be performed or complied with by such Seller or the Company, as applicable, on or before the Closing Date.

(c) Absence of Company Material Adverse Effect. Since the date of this Agreement, no Company Material Adverse Effect shall have occurred.

(d) Minority Subsidiary Investors. Purchaser shall have received duly executed and delivered (i) Minority Subsidiary Investor Assignments from all Minority Subsidiary Investors in the non-wholly owned Subsidiaries of the Company (other than the Non-Dragged Subsidiaries) and (ii) Redeemed Investor Assignments from all Minority Subsidiary Investors in the Redemption Subsidiaries to effect the Subsidiary Redemptions, other than, in the case of the immediately foregoing clauses (i) and (ii), Minority Subsidiary Investors holding Equity Securities in such non-wholly owned-Subsidiaries or Redemption Subsidiaries valued according to their Bona Fide Offer Amounts at no more than 3% of the Bona Fide Offer Amounts in the aggregate (measured based on all Equity Securities not assigned or redeemed under such clauses (i) and (ii)).

(e) Agreements and Documents. Purchaser shall have received the following agreements and documents, each of which shall be in full force and effect:

(i) a “good standing” certificate for the Company issued as of a date not more than 10 days before the Closing Date by the Secretary of State of the State of Arizona;

(ii) an extended reporting period endorsement under the Company’s existing directors’ and officers’ liability insurance coverage (the “D&O Policy”) for the Company’s directors and officers in a form acceptable to Purchaser, which shall provide such directors and officers with coverage for six years following the Closing of not less than the existing coverage

under, and have other terms not materially less favorable to, the insured persons than the directors' and officers' liability insurance coverage presently maintained by the Company;

(iii) a certificate duly executed by each Seller certifying that each of the conditions specified in subsections (a) and (b) of this Section 6.02 (to the extent related to such Seller) has been satisfied;

(iv) a certificate duly executed by an officer of the Company certifying that (A) each of the conditions specified in subsections (a) and (b) of this Section 6.02 (to the extent related to the Company) and (B) subsection (c) of this Section 6.02, has been satisfied;

(v) payoff letters executed, as necessary, to evidence the full payment of any Funded Indebtedness, authorization to terminate any Liens associated therewith (the "Payoff Letters"), which Payoff Letters shall be in form and substance reasonably acceptable to Purchaser and shall have been provided by the Company to Purchaser at least five Business Days prior to the Closing;

(vi) statements, invoices or other documentation reasonably acceptable to Purchaser setting forth the amounts of all Seller Transaction Expenses required to be paid at Closing (which shall include the identity of each recipient, dollar amounts and wire instructions and any other information necessary for Purchaser and/or the Company to effect the final payment in full thereof at Closing);

(vii) dated as of the Closing Date, a duly completed and executed affidavit from each Seller, prepared in accordance with Treasury Regulations Section 1.1445-2(b) and Section 1446(f) of the Code, reasonably acceptable to Purchaser and certifying such Seller's non-foreign status;

(viii) a certificate of the secretary of the Company in form and substance reasonably satisfactory to Purchaser, certifying as to the terms and effectiveness of the Company Certificate of Formation and the Company Operating Agreement and the resolutions of the manager of the Company approving this Agreement and the transactions contemplated hereby;

(ix) an Assignment Agreement, duly executed by each Seller;

(x) the Invention Assignment Agreement, duly executed by Fox;

(xi) the Closing Consideration Certificate in accordance with Section 1.05; and

(xii) the Closing Bonus Schedule in accordance with Section 5.07(c).

Section 6.03 Conditions to Obligations of Sellers and the Company. The obligation of Sellers and the Company to consummate the Transactions is subject to the satisfaction (or waiver, in whole or in part, by Sellers' Representative) on or before the Closing Date of the following conditions:

(a) Representations and Warranties. Each Fundamental Representation of Purchaser shall be true and correct as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent such Fundamental Representation expressly relates to another date (in which case as of such other date). Each representation and warranty of Purchaser set forth in Article IV (other than any Fundamental Representations of Purchaser) that is qualified as to materiality shall be true and correct, and each such representation and warranty not so qualified shall be true and correct in all material respects,

in each case as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent such representation and warranty expressly relates to another date (in which case as of such other date).

(b) Performance of Obligations of Purchaser. Purchaser shall have performed or complied with in all material respects each obligation and covenant required by this Agreement and the Ancillary Agreements to be performed or complied with by Purchaser on or before the Closing Date.

(c) Agreements and Documents. Purchaser shall have delivered or caused to be delivered to Sellers and the Company or on Sellers' or the Company's behalf, as applicable:

- (i) the amounts set forth in, and in accordance with, clauses (i) through (v) of Section 1.03(c);
- (ii) the Assignment Agreements, duly executed by Purchaser; and
- (iii) a certificate duly executed by an officer of Purchaser certifying that each of the conditions specified in subsections (a) and (b) of this Section 6.03 has been satisfied.

ARTICLE VII

Termination, Amendment and Waiver

Section 7.01 Termination.

(a) Notwithstanding anything to the contrary contained herein, this Agreement may be terminated and the Transactions abandoned at any time before the Closing:

- (i) by mutual written consent of Sellers' Representative and Purchaser;
- (ii) by Sellers' Representative or Purchaser if the Transactions shall not have been consummated by November 6, 2019 (the "Outside Date"); provided, however, that the right to terminate this Agreement under this Section 7.01(a)(ii) shall not be available to Sellers' Representative (on behalf of Sellers and the Company) or Purchaser, as applicable, in the event that failure to fulfill any material obligation of such Party (including Sellers and the Company, in the case of Sellers) under this Agreement has been the principal cause of or resulted in the failure of the Closing to occur on or before the Outside Date;
- (iii) by either Purchaser or Sellers' Representative (on behalf of Sellers and the Company), if a Governmental Entity shall have issued a non-appealable final Judgment or taken any other action having the effect of permanently restraining, enjoining, or otherwise prohibiting the Transactions; provided, however, that the Party seeking to terminate pursuant to this Section 7.01(a)(iii) shall have complied in all material respects with its obligations under Section 5.04;
- (iv) by Purchaser, if there shall be any applicable Law or Judgment enacted, promulgated or issued or deemed applicable to the Transactions by any Governmental Entity, which would (i) prohibit Purchaser's ownership or operation of any material portion of the business of the Company or (ii) compel Purchaser or the Company to dispose of or hold separate all or any material portion of the business or assets of Purchaser, the Company or any of their respective Affiliates as a result of the Transactions;

(v) by Purchaser, if Sellers or the Company shall have breached or failed to perform any of their representations, warranties, covenants, or other agreements contained in this Agreement, which breach or failure to perform would cause the conditions to the obligations of Purchaser at the Closing to not be satisfied by the Outside Date and which breach or failure, if capable of being cured, shall not have been cured prior to the earlier of (i) the Outside Date and (ii) 10 calendar days following receipt by Sellers' Representative of written notice of such breach or failure from Purchaser, with specific reference to the alleged facts underlying such breach or failure and the conclusion it would lead to such conditions not being met; or

(vi) Sellers' Representative (on behalf of Sellers and the Company), if Purchaser shall have breached or failed to perform any of its representations, warranties, covenants, or other agreements contained in this Agreement, which breach or failure to perform would cause the conditions to the obligations of Sellers at the Closing to not be satisfied by the Outside Date and which breach or failure, if capable of being cured, shall not have been cured prior to the earlier of (i) the Outside Date or (ii) 10 calendar days following receipt by Purchaser of written notice of such breach or failure from Sellers' Representative, with specific reference to the alleged facts underlying such breach or failure and the conclusion it would lead to such conditions not being met.

Section 7.02 Effect of Termination. If this Agreement is terminated and the Transactions are abandoned as described in Section 7.01, then this Agreement shall become null and void and of no further force and effect, and all further obligations of the Parties under this Agreement will terminate, except (a) for Section 5.05, Section 5.06, Section 5.08, Section 7.01, Section 7.02, and, Article X, and (b) following the termination of this Agreement, nothing herein shall relieve any Party from liability for any breach of this Agreement occurring prior to the termination of this Agreement.

ARTICLE VIII

Tax Matters

Section 8.01 Liability for Taxes; Indemnification.

(a) Each Group A Seller shall be, severally (and not jointly), liable for, and shall indemnify and hold harmless each of Purchaser and its Affiliates (including, following the Closing, the Company) and each of their respective Representatives (the "Purchaser Indemnitees") against and hold it harmless from, its Group A Pro Rata Share of any Losses suffered or incurred by such Purchaser Indemnatee that are suffered or incurred at any time by any of the Purchaser Indemnitees or to which any of the Purchaser Indemnitees may otherwise become subject at any time (regardless of whether or not such Losses relate to any Third Party Claim) arising out of, resulting from, involving or otherwise in respect of: (i) Taxes imposed on the Company or any of its Subsidiaries, or for which the Company or any of its Subsidiaries may otherwise be liable, for any taxable year or period that ends on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending on and including the Closing Date; (ii) Taxes for which the Company or any of its Subsidiaries (or any predecessor of the foregoing) is held liable under Section 1.1502-6 of the United States Treasury Regulations (or any similar provision of state, local or foreign Law) by reason of such entity being included in any consolidated, affiliated, combined or unitary group at any time on or before the Closing Date; (iii) Taxes imposed on or payable by third parties with respect to which the Company or any of its Subsidiaries has an obligation to indemnify such third party pursuant to a transaction consummated on or prior to the Closing; and (iv) any breach of any covenant in this Article VIII or any representation or warranty included in Section 3.14; provided, however, that such Group A Seller shall have no liability under this Section 8.01(a) for any Taxes to the extent such Taxes were specifically included in Indebtedness, as finally determined pursuant to Section 1.05.

(b) Each Seller shall be, severally (and not jointly), liable for and shall indemnify and hold harmless from, any Losses suffered or incurred by such Purchaser Indemnitee that are suffered or incurred at any time by any of the Purchaser Indemnitees or to which any of the Purchaser Indemnitees may otherwise become subject at any time (regardless of whether or not such Losses relate to any Third Party Claim) arising out of, resulting from, involving or otherwise in respect of Taxes of such Seller for any period.

(c) For purposes of this Section 8.01, whenever it is necessary to determine the liability for Taxes of the Company or any of its Subsidiaries for a Straddle Period, the determination of the Taxes of the Company or such Subsidiary for the portion of the Straddle Period ending on and including the Closing Date shall be determined by assuming that the Straddle Period consisted of two taxable years or periods, one which ended at the close of the Closing Date and the other which began at the beginning of the day following the Closing Date, and items of income, gain, deduction, loss or credit of the Company or such Subsidiary for the Straddle Period shall be allocated between such two taxable years or periods on a "closing of the books basis" by assuming that the books of the Company or such Subsidiary were closed at the close of the Closing Date; provided, however, that exemptions, allowances, deductions or Taxes that are calculated on an annual basis, such as property Taxes and depreciation deductions, shall be apportioned between such two taxable years or periods on a daily basis. For the avoidance of doubt, any amount owed by a Group A Seller to a Purchaser Indemnitee pursuant to this Article VIII may, at the Purchaser Indemnitee's option, be set off against the Indemnity Holdback Amount.

Section 8.02 Tax Returns.

(a) Except for the Tax Returns described in Section 5.06(b) (relating to Transfer Taxes), with respect to Tax Returns required to be filed by, on behalf of, or with respect to, the Company and its Subsidiaries, the Company shall timely file or cause to be timely filed when due (taking into account all extensions validly obtained) all such Tax Returns that are required to be filed on, or prior to, the Closing Date, and Sellers shall remit or cause to be remitted any Taxes due in respect of such Tax Returns. The Company shall provide a copy of all such Tax Returns to Purchaser for its review at least 15 days prior to the due date thereof and shall make such revisions to any such Tax Return as are reasonably requested in writing by Purchaser.

(b) The Parties acknowledge and agree that the transaction contemplated by this Agreement is governed by Internal Revenue Service Rev. Rul. 99-6, Situation 2, and that for Tax purposes the Company will terminate on the Closing Date pursuant to Code Section 708(b)(1). Following the Closing, Sellers' Representative shall prepare or cause to be prepared at its own expense (and Purchaser and Sellers' Representative shall take such actions necessary to cause to file), when due (taking into account all extensions validly obtained) all Pass-Through Tax Returns of, or with respect to, the Company for any taxable period ending on or before the Closing Date, including the U.S. federal partnership income Tax Return of the Company for its taxable period that ends on the Closing Date. All such Pass-Through Tax Returns shall be prepared and filed in a manner consistent with past practice, unless otherwise required by applicable Law. Sellers' Representative shall deliver a draft of each such Pass-Through Tax Return to Purchaser for review and comment no less than 15 days before the due date thereof, and Sellers' Representative shall make such revisions to any such Tax Return as are reasonably requested in writing by Purchaser; provided that in the event that Purchaser and Sellers' Representative are unable to resolve any dispute regarding any such Tax Return, then Sellers' Representative shall file such Tax Return in accordance with its good faith belief as to the positions required by applicable Law and the terms of this Agreement.

(c) Purchaser shall file, or cause to be filed, when due (taking into account all extensions validly obtained) all other Tax Returns not described in Section 5.06(b), Section 8.02(a) or

Section 8.02(b) that are required to be filed by, or with respect to, the Company and its Subsidiaries that relate to a tax period (or portion thereof) ending on or before the Closing Date; provided, that Purchaser shall (i) provide any such Tax Return to Sellers' Representative for review and comment no less than 15 days prior to the due date for timely filing of such Tax Return, or, if the due date is within 30 days of the Closing Date, as promptly as practical after the Closing Date, and (ii) make such revisions to any such Tax Return as are reasonably requested in writing by Sellers' Representative; provided, further, that in the event that Purchaser and Sellers' Representative are unable to resolve any dispute regarding any such Tax Return, then Purchaser shall file such Tax Return in accordance with its good faith belief as to the positions required by applicable Law and the terms of this Agreement. Prior to the later of (x) five Business Days before the due date for timely filing of a Tax Return to be filed by Purchaser or (y) the date that is three days after the date that such Tax Return is submitted to Sellers' Representative for review and comment, each Group A Seller shall remit or cause to be remitted to the Company or Purchaser any Taxes due in respect of such Tax Returns for which such Group A Seller is liable pursuant to Section 8.01(a), net of any such Taxes that were specifically included in Indebtedness, as finally determined pursuant to Section 1.05. Tax Returns that the Company or any of its Subsidiaries is required to file or cause to be filed in accordance with this Section 8.02 shall be prepared and filed in a manner consistent with the most recent past practice of the Company and the terms of this Agreement, except to the extent otherwise required by Law. Notwithstanding the foregoing, the Company shall make reasonable accommodations (including, if appropriate, the compilation of relevant materials and the preparation of affected Tax Returns) to ensure that Purchaser is able to meet its obligation to timely file any applicable Tax Return that is required to be filed by or with respect to the Company and its Subsidiaries that is due in the 45 days following the Closing Date.

(d) Neither Purchaser nor any Affiliate thereof shall, and neither shall cause or permit the Company or any of its Subsidiaries to, (i) unless required by applicable Law, amend any Tax Returns of or with respect to the Company and its Subsidiaries filed with respect to any tax year ending on or before the Closing Date or with respect to any Straddle Period or (ii) make any Tax election that has retroactive effect to any such year or to any Straddle Period and would reasonably be expected to increase the liability of Sellers for Taxes under this Agreement, in each such case without the prior written consent of Sellers' Representative, which consent shall not be unreasonably conditioned, delayed or withheld.

Section 8.03 Allocation Schedule.

(a) Purchaser shall prepare a schedule in accordance with Sections 751 and 1060 of the Code (and any other applicable Law), of a purchase price allocation among the assets of the Company and each of its Subsidiaries that is either a partnership or disregarded as an entity separate from the Company for U.S. federal income tax purposes, which shall include a methodology for allocating any Contingent Consideration that may become payable pursuant to Section 1.05 (the "Allocation Schedule"). The primary, but not sole, use of the Allocation Schedule will be to serve as the basis for both Purchaser's and Sellers' disclosure statements which the Parties are required to file with the tax authorities by applicable income tax regulations, including, but not limited to, IRS Forms 8594 and 8308. Purchaser shall provide a copy of the Allocation Schedule to Sellers' Representative no later than March 16, 2020. By the Closing Date, Purchaser and Sellers shall reasonably cooperate with each other to prepare an estimate of the amount to be reported as Class V assets on IRS Form(s) 8594, 8308 or other applicable disclosure statement. Purchaser shall provide a preliminary draft of the Allocation Schedule to Sellers' Representative within 75 days after the Closing Date with the understanding that the amounts provided on such preliminary draft will be estimates only and subject to change.

(b) During the 30-day period following Sellers' Representative's receipt of the Allocation Schedule (and all supporting schedule, work papers and other materials reasonably requested by Sellers' Representative), Sellers' Representative and its auditors and Representatives shall be permitted to

review the working papers of the Company, Purchaser and their respective accountants relating to the Allocation Schedule, together with all other reasonably requested materials relating to the Allocation Schedule, including any materials prepared by Purchaser and/or its accountants; provided, that Sellers' Representative and its auditors and Representatives shall have executed all release letters reasonably requested by Purchaser's and the Company's accountants in connection therewith.

(c) Within 30 days of receipt of the Allocation Schedule prepared in accordance with Section 8.03(a), Sellers' Representative shall deliver to Purchaser written notice either accepting or objecting to the Allocation Schedule, and if Sellers' Representative shall not have timely delivered such written notice, Sellers' Representative shall be deemed to have agreed to the Allocation Schedule, which shall become final and binding upon the Parties. If Sellers' Representative timely objects to the Allocation Schedule, then Purchaser and Seller shall negotiate in good faith for a period of 30 days after Purchaser's receipt of Sellers' Representative's written notice of objection to resolve their differences with respect to the Allocation Schedule. Purchaser and Sellers' Representative shall each bear their own costs incurred in connection with such negotiations.

(d) If Purchaser and Sellers' Representative are unable to timely resolve their differences with respect to the Allocation Schedule, then the Parties shall prepare separate allocations.

(e) If Sellers' Representative accepts the Allocation Schedule, Sellers' Representative does not deliver timely notice to Purchaser of its objection to the Allocation Schedule or Purchaser and Sellers' Representative are able to timely resolve any differences with respect to the Allocation Schedule, then: (i) the Company, Sellers and Purchaser shall file any applicable IRS Form(s) 8594, 8308, and all other applicable federal, state and local income Tax Returns in accordance with the Allocation Schedule, and none of them shall thereafter take an income Tax Return position inconsistent with such allocation except as otherwise required by applicable Law or unless such inconsistent position shall arise out of or through an audit or other inquiry or examination by the IRS or other taxing authority, (ii) the Parties shall promptly advise one another of the existence of any Tax audit, controversy or litigation related to any allocation hereunder and (iii) the Allocation Schedule shall not establish any cap or other limitation on the indemnification obligations of the Parties.

Section 8.04 Tax Contests.

(a) Sellers' Representative shall, at the expense of Group A Sellers, control any audit, litigation, or other Proceeding in respect of a Pass-Through Tax Return that relates to a taxable period ending on or before the Closing Date; provided, that Sellers' Representative (i) shall keep Purchaser reasonably informed regarding such Proceeding and shall consider Purchaser's suggestions and comments in good faith; and (ii) shall not settle any such audit, litigation or Proceeding (or such portion thereof) that could have any adverse effect that is material on Purchaser, the Company or their Affiliates without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned or delayed). Purchaser shall, at its expense, control any other audit, litigation, or other Proceeding in respect of Taxes or Tax Returns of the Company and its Subsidiaries; provided, that if and solely to the extent that such audit, litigation or other Proceeding relates to Taxes for a taxable period (or portion thereof) ending on or before the Closing Date (including in regard to a Straddle Period) for which Group A Sellers would be required to indemnify the Purchaser Indemnitees pursuant to Section 8.01, Purchaser (A) shall keep Sellers' Representative reasonably informed regarding such proceeding, including by providing copies of all notices and other written correspondence received from a Governmental Entity in connection therewith, (B) shall allow Sellers' Representative to participate in such Proceeding, which participation rights shall include the right to review relevant material correspondence and to attend relevant material conference calls and meetings with the applicable Governmental Entity (to the extent permitted by applicable Law), (C) shall incorporate Sellers' Representative's reasonable suggestions and comments regarding such Proceeding, and

(D) shall not settle such audit, litigation or Proceeding (or a portion thereof, including any portion that would result in a material liability for Sellers) without the prior written consent of Sellers' Representative, which consent shall not be unreasonably conditioned, delayed or withheld.

(b) Neither the Company nor any Seller shall cause the Company or any of its Subsidiaries that are treated as a partnership for U.S. federal income tax purposes to elect under Section 1101(g)(4) of Title XI of the Bipartisan Budget Act of 2015, H.R. 1314, Public Law Number 114-74 (the "Budget Act") to have the amendments made by such provisions apply to any Tax Return of such entity relating to any taxable period ending on or before the Closing Date. With respect to any taxable period of the Company or any of its Subsidiaries that are treated as a partnership for U.S. federal income tax purposes to which Section 1101 of the Budget Act applies and that ends on or before the Closing Date, Sellers shall cause such entity to make an election pursuant to Section 6226 of the Code, and shall cause such entity to follow the procedures required in connection with such election, to make inapplicable to such entity the requirement in Section 6225 of the Code that such entity pay any "imputed underpayment" (within the meaning of Section 6225 of the Code).

(c) Sellers shall be entitled to the amount of any refund or credit in lieu of a cash refund of Taxes of the Company and its Subsidiaries with respect to any Tax periods or portions thereof ending on or before the Closing Date (to the extent such Taxes were paid by the Company or its Subsidiaries prior to the Closing or by Sellers after the Closing) which refund or credit is actually recognized by Purchaser or its Affiliates (including the Company and its Subsidiaries) after the Closing, net of any cost to Purchaser and its Affiliates attributable to the obtaining and receipt of such refund or credit, except to the extent such refund or credit arises as the result of a carryback of a loss or other tax benefit from a Tax period (or portion thereof) beginning after the Closing Date. Purchaser shall pay, or cause to be paid, to Sellers' Representative (to be distributed to Group A Sellers in accordance with their Group A Pro Rata Shares) any amount to which Group A Sellers are entitled pursuant to the prior sentence within 15 days after the receipt or recognition of the applicable refund or credit by Purchaser or its Affiliates. To the extent such refund or credit is subsequently disallowed or required to be returned to the applicable Governmental Entity, Sellers agree promptly to repay the amount of such refund or credit, together with any interest, penalties or other additional amounts imposed by such Governmental Entity, to Purchaser.

(d) For the avoidance of doubt, to the extent there is any conflict in this Section 8.04 and Section 9.05, this Section 8.04 shall govern.

Section 8.05 Tax Reimbursements. Each Seller shall reimburse any Purchaser Indemnitee for any Taxes for which such Seller is responsible pursuant to Section 8.01 upon written request setting forth in detail the computation of the amount owed by such Seller. Each such reimbursement shall be made no more than 10 days after the date upon which such request was made.

Section 8.06 Assistance and Cooperation. After the Closing Date, each of Sellers and Purchaser shall (and shall cause their respective Affiliates and Representatives to):

(a) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Taxes described in Section 5.06(b) (relating to Transfer Taxes);

(b) assist the other Party in preparing any Tax Returns which such other Party is responsible for preparing and filing in accordance with Section 8.02, which assistance shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by relevant Governmental Entities;

(c) cooperate as and to the extent reasonably requested by the other Party fully in preparing for and defending any audits of, or disputes with taxing authorities regarding, any Tax Returns of the Company and its Subsidiaries, which cooperation shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by relevant Governmental Entities;

(d) make available to the other Party as reasonably requested all information, records, and documents relating to Taxes of the Company and its Subsidiaries pertaining to a taxable period (or portion thereof) ending on or before the Closing Date; and

(e) furnish the other Party with copies of all correspondence received from any taxing authority in connection with any Tax audit or information request with respect to any Taxes or Tax Returns of the Company and its Subsidiaries; provided, that Purchaser shall only be obligated to furnish copies of such correspondence to Sellers' Representative to the extent such audit or information request relates to Taxes for which Sellers may be liable under the terms of this Agreement.

Section 8.07 Retention of Documents. Sellers' Representative and Purchaser shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company and its Subsidiaries for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by another party hereto in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company and its Subsidiaries for any taxable period beginning before the Closing Date, Sellers Representative or Purchaser (as the case may be) shall provide the other parties hereto with reasonable written notice and offer the other parties hereto the opportunity to take custody of such materials.

Section 8.08 Termination of Tax Allocation Arrangements. Any Tax allocation, Tax indemnity or Tax sharing agreement between the Company and its Subsidiaries, on the one hand, and any one or more Sellers or Affiliates of Sellers, on the other hand, shall be terminated as to the Company and its Subsidiaries on or prior to the Closing, and after the Closing the Company and its Subsidiaries shall not have any liability thereunder.

Section 8.09 Limitation on Seller Rights. Notwithstanding anything else in this Agreement to the contrary, nothing in this Agreement shall give any Seller any right to access or review any Tax Return or Tax information except to the extent such Tax Return or Tax information relates to the Company or any of its Subsidiaries. For the avoidance of doubt, no Seller (including Sellers' Representative) shall have any right to access or review any Tax Return or Tax information to the extent the same is not related to the Company or any of its Subsidiaries.

Section 8.10 Survival, Etc. Notwithstanding anything to the contrary in this Agreement (including Section 9.01 and Section 9.03 through Section 9.06): the obligations of the Parties set forth in this Article VIII shall survive the Closing until 45 days after the expiration of all applicable statutes of limitation (taking into account extensions thereof); provided, however, that if, at any time on or prior to the expiration date referred to in this sentence, any Purchaser Indemnitee delivers to Sellers' Representative a written notice asserting a claim for recovery under this Article VIII based on such alleged breach, then the claim asserted in such notice shall survive until such time as such claim is fully and finally resolved (for the avoidance of doubt, no claim made pursuant to this Article VIII shall be subject to the limitations in Section 9.04).

Section 8.11 Withholding. Notwithstanding anything herein to the contrary, Purchaser and any of Purchaser's Representatives (including, following the Closing, the Company) that has any withholding obligation with respect to any payment made pursuant to this Agreement or any Ancillary Agreement shall be entitled to deduct and withhold from any consideration payable pursuant to this Agreement or any Ancillary Agreement to any payee such amounts as Purchaser or any of its Representatives determines in good faith are required to be deducted or withheld therefrom or in connection therewith under the Code or any provision of state, local or foreign Tax law or under any other applicable Law. To the extent such amounts are so deducted or withheld, and provided that such amounts are remitted to the appropriate Tax authorities, such amounts shall be treated for all purposes under this Agreement as having been paid to the payee to whom such amounts would otherwise have been paid.

Section 8.12 Contingent Consideration. For U.S. federal and applicable state and local income tax purposes, Purchaser shall report the payment of the Contingent Consideration as an adjustment to the Purchase Price paid in exchange for Membership Interests (and not as compensation for services); provided, however, that the foregoing shall not apply if the applicable Tax authority determines that such reporting is not permitted.

Section 8.13 Seller Transaction Expenses. For the avoidance of doubt, all Seller Transaction Expenses that are paid or incurred at Closing pursuant to Section 1.03(c)(ii) will be allocated to Sellers or the Company to the taxable period that ends on or before the Closing Date and, to the extent allowed or allowable under the Code or other applicable Law, shall be deducted on the applicable federal and state income Tax Return(s) for the period ending on the Closing Date.

ARTICLE IX Indemnification

Section 9.01 Indemnification by Sellers.

(a) Subject to the limitations set forth herein, from and after the Closing, each Group A Seller shall be, severally (and not jointly), liable for, and shall indemnify and hold harmless each Purchaser Indemnitee against and hold it harmless from, any Losses suffered or incurred by such Purchaser Indemnitee arising out of, resulting from, involving or otherwise in respect of:

(i) any breach of any representation or warranty (x) contained in Article III or (y) in any certificate delivered by the Company pursuant to Section 6.02(e);

(ii) any breach by the Company prior to Closing of any covenant or other agreement contained in this Agreement;

(iii) any Indebtedness of the Company not paid and discharged in full on or prior to the Closing Date and not reflected in the calculation of the Adjusted Closing Cash Consideration;

(iv) any Seller Transaction Expenses not paid and discharged in full on or prior to the Closing Date and not reflected in the calculation of the Adjusted Closing Cash Consideration; or

(v) (A) any claim or allegation that any Minority Subsidiary Investor is entitled to any amount other than (x) the amount set forth in the applicable Minority Subsidiary Investor Assignment, (y) the Bona Fide Offer Amount set forth in the Drag-Along Notice sent to such Minority Subsidiary Investor in accordance with Section 5.11, as the case may be (and any

Proceedings related thereto) or (z) the amount set forth in the applicable Redeemed Investor Assignment; (B) any claim made by a Minority Subsidiary Investor contesting the validity of the drag-along thereof in accordance with this Agreement; or (C) any failure of Purchaser to hold, directly or indirectly, all of the issued and outstanding Equity Securities of the Subsidiaries of the Company (other than CDO Restaurant Associates LLC and Flowerchild Holding Company LLC) as of the Closing Date, including any claim or allegation by a Minority Subsidiary Investor of Wildflower Holdings, LLC, FRC Modern Steak Scottsdale LLC, FRC Cityscape II LLC and FC Investors LLC.

(b) Subject to the limitations set forth herein, from and after the Closing, each Seller shall be, severally (and not jointly), except as otherwise expressly set forth in Section 9.01(d)(i), liable for, and shall indemnify and hold harmless each Purchaser Indemnitee against and hold it harmless from, any Losses suffered or incurred by such Purchaser Indemnitee arising out of, resulting from, involving or otherwise in respect of:

(i) any breach of any representation or warranty (x) contained in Article II or (y) in any certificate delivered by such Seller pursuant to Section 6.02(e); or

(ii) any breach by such Seller of any covenant or other agreement contained in this Agreement.

(c) Without limiting the effect of any of the other limitations set forth in this Agreement and subject to Section 9.01(d), each Seller shall not have any liability:

(i) for claims for indemnification made exclusively pursuant to Section 9.01(a)(i) or Section 9.01(b)(i) for any individual or series of related Losses which do not exceed \$10,000 (which Losses shall not be counted toward the Deductible);

(ii) for claims for indemnification made exclusively pursuant to Section 9.01(a)(i) or Section 9.01(b)(i) unless the aggregate amount of all Losses for which Sellers would, but for this clause (ii), be liable thereunder exceeds on a cumulative basis an amount equal to \$1,000,000 (the “Deductible”), after which Sellers shall be liable for all such Losses in excess of the Deductible; or

(iii) for claims for indemnification made exclusively pursuant to Section 9.01(a)(i) or Section 9.01(b)(i) in excess of the sum of the aggregate balance in the Indemnity Holdback Amount (the “Cap”).

provided, however, that the limitations set forth in this clause (c) shall not apply to any claims of, or causes of action arising out of, involving or otherwise in respect of (x) any Fundamental Representation of Sellers or the Company (other than Section 3.18 (Plans), to which the limitations set forth in this clause (c) shall apply), or (y) fraud. Without limiting the effect of any of the other limitations set forth in this Agreement (including those set forth above), the aggregate liability of a Seller for Losses under Article VIII and Section 9.01 shall not exceed an amount equal to the Purchase Price actually received by such Seller, provided that such limitation shall not apply to any claims of, or causes of action arising out of, involving or otherwise in respect of fraud.

(d) The amounts available in the Indemnity Holdback Amount shall be security for the indemnity or other payment obligations set forth in Section 8.01(a), Section 8.01(b) (solely with respect to the indemnity or other payment obligations of Group A Sellers), Section 9.01(a) and Section 9.01(b), and the amounts available in the other portion of the Deferred Payment Holdback Amount shall be security for

the payment obligations set forth in Section 1.05(g). The indemnity or other payment obligations set forth in Section 8.01(a), Section 9.01(a) and Section 9.01(b) shall be deemed made on (i) a joint and several basis solely to the extent of (x) the Indemnity Holdback Amount and (y) fraud of the Company and (ii) on a several but not joint basis based on each such Seller's Pro Rata Share thereof to the extent such obligations are in excess of the amounts referenced in the foregoing clause (x) (and in cases in which the foregoing clause (y) does not apply). The indemnity or other payment obligations set forth in Section 8.01(b) of each Group A Seller may be satisfied from the Indemnity Holdback Amount in an amount up to such Group A Seller's Group A Pro Rata Share of the Indemnity Holdback Amount, and such indemnity or other payment obligation of each Seller otherwise shall be satisfied by such Seller individually in an amount equal to such Seller's indemnity or other payment obligations thereunder. Notwithstanding the immediately two preceding sentences, in the case of (A) any claim for indemnification made pursuant to Section 9.01(b)(i) for a breach of a representation or warranty of any particular Seller set forth in Article II, including, without limitation, as applicable to such Seller(s) obligations under any Ancillary Agreement, or in any certificate delivered by such Seller(s) pursuant to this Agreement, (B) any claim for indemnification pursuant to Section 9.01(b)(ii) for a breach of a covenant by any particular Seller or (C) any claim for indemnification pursuant to Section 8.01(b) for Taxes of any Seller for any period (in any such case, such Seller being referred to herein as the "Responsible Seller" and such claims being referred to herein as the "Seller Specific Claims"), the applicable Purchaser Indemnitee(s) will have the right to (x) except for any claim for indemnification pursuant to Section 8.01(b) for Taxes of any Group B Seller for any period, receive the Losses from the Indemnity Holdback Amount in accordance with Section 9.05(e), in which case each applicable Responsible Seller will be obligated to promptly contribute to the Indemnity Holdback Amount the amount of Losses arising from the breach that are allocable to such Responsible Seller to replenish such portion of the Indemnity Holdback Amount or provide additional funds to the Indemnity Holdback Amount, and (y) pursue the indemnification claim directly against each Responsible Seller responsible for the breach or other claim in accordance with the terms of this Agreement (and each Responsible Seller will be required to indemnify the Purchaser Indemnitees for all Losses arising from such claim against such Responsible Seller for indemnification), in each case subject to the limitations set forth in this Article IX, including Section 9.01(c) (as applicable).

Section 9.02 Indemnification by Purchaser.

(a) From and after the Closing, Purchaser shall be liable for and shall indemnify and hold harmless each Seller and their respective Representatives (collectively, the "Seller Indemnitees") against and hold each of them harmless from any Loss suffered or incurred by such Seller Indemnitee arising out of, resulting from, involving or otherwise in respect of:

(i) any breach of any representation or warranty of Purchaser contained in Article IV or in any certificate delivered by Purchaser pursuant to this Agreement; or

(ii) any breach by Purchaser or by the Company from and after Closing of any covenant or other agreement contained herein.

(b) Purchaser shall not have any liability or claims for indemnification made exclusively pursuant to Section 9.02(a)(i):

(i) unless the aggregate of all Losses for which Purchaser would, but for this clause (i), be liable thereunder exceeds on a cumulative basis an amount equal to the Deductible, in which event Purchaser shall be liable for all such Losses in excess of the Deductible; or

(ii) in excess of the Cap;

provided, however, that the limitations set forth in this clause (b) shall not apply to any claims of, or causes of action arising out of, involving or otherwise in respect of (x) any Fundamental Representation of Purchaser, and for which liability of Purchaser (together with all other liabilities of Purchaser under this Article IX) shall not exceed an amount equal to the Purchase Price, or (y) fraud.

Section 9.03 Calculation of Losses.

(a) The amount of any Loss for which indemnification is provided under Article VIII or this Article IX shall be net of any amounts actually recovered by the Indemnified Party under any insurance policy with respect to such Loss (net of any related deductible, expenses incurred in securing such recovery or retroactive or other premium adjustments directly attributable thereto) or any indemnity, contribution or other similar payment with respect to such Loss. The Indemnified Parties shall use its commercially reasonable efforts to seek any such insurance recoveries or indemnity, contribution or other similar payments, but seeking such recovery shall not be a condition to indemnification under this Agreement.

(b) Purchaser and Sellers agree to report each indemnification payment made in respect of any Losses as an adjustment to the Purchase Price for U.S. federal income Tax purposes unless the Indemnified Party determines in good faith that such reporting position is incorrect.

(c) No Purchaser Indemnitee or Seller Indemnitee, as the case may be, shall be entitled to recover any Losses relating to any matter arising under one provision of this Agreement to the extent that the Purchaser Indemnitees or Seller Indemnitees, respectively, have already recovered Losses with respect to such matter pursuant to third party insurance policies, or any indemnity, contribution or other similar agreements, as provided in Section 9.03(a) and/or other provisions of this Agreement.

(d) For purposes of Article VIII or this Article IX, any qualifications in the representations, warranties and covenants with respect to a Company Material Adverse Effect, materiality, material or similar terms (except to the extent such terms are used to qualify descriptions or lists of assets and liabilities and other items required to be disclosed on the Company Disclosure Schedule) shall be disregarded and will not have any effect with respect to the determination of whether or not a breach has, in fact, occurred, or the calculation of the amount of any Losses attributable to a breach of any representation, warranty or covenant set forth in this Agreement (including the Company Disclosure Schedule).

(e) The amount of any Loss for which indemnification is provided under Article VIII or this Article IX shall be reduced by an amount equal to any Tax benefit actually realized as a result of such Loss in the taxable year in which such Loss occurs by the Indemnified Party.

(f) Each Indemnified Party shall take, and cause its Affiliates to take, reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only as commercially reasonable to remedy the breach that gives rise to such Loss.

Section 9.04 Survival of Representations, Warranties, Covenants and Agreements; Termination of Indemnification. Except in the case of fraud, the representations, warranties, covenants and agreements contained herein shall survive the Closing as follows: (a) the Fundamental Representations shall survive for 45 days after the expiration of the applicable statute of limitations; (b) all other representations and warranties in Article II, Article III and Article IV shall survive until the date that is three (3) years after the Closing Date; and (c) the covenants to be performed prior to, at or following the Closing shall survive the Closing and remain in full force and effect until performed in accordance with their terms. Except in the

case of fraud, the obligations to indemnify and hold harmless any Party (i) pursuant to Section 9.01(a)(i), Section 9.01(b)(i) or Section 9.02(a)(i) shall terminate when the applicable representation or warranty terminates in accordance with this Section 9.04, (ii) pursuant to Section 9.01(a)(ii), Section 9.01(b)(ii) or Section 9.02(a)(ii) shall terminate when the applicable covenant terminates in accordance with this Section 9.04, and (iii) pursuant to the other clauses of Section 9.01(a), Section 9.01(b) and Section 9.02(a) shall terminate when satisfied or performed in accordance with their terms; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which the Indemnified Party shall have in good faith, before the expiration of the applicable survival period set forth in this Section 9.04, made a claim by delivering a notice of such claim in accordance with Section 9.05 to the Indemnifying Party (and, for the avoidance of doubt, such claim need not be filed in a court or other tribunal prior to the expiration of the applicable survival period).

Section 9.05 Procedures.

(a) In order for a Purchaser Indemnitee or Seller Indemnitee (as the case may be, the “Indemnified Party”) to assert any claim for indemnification provided for under Section 8.01, Section 9.01(a), Section 9.01(b) or Section 9.02(a) in respect of, arising out of or involving a claim made by any Person not a party hereto against the Indemnified Party (a “Third Party Claim”), such Indemnified Party must notify the indemnifying party (the “Indemnifying Party”) promptly in writing of such Third Party Claim (the “Third Party Claim Notice”) (setting forth in reasonable detail the facts giving rise to such Third Party Claim (to the extent known by the Indemnified Party) and the amount or estimated amount (to the extent reasonably estimable) of Losses arising out of, involving or otherwise in respect of such Third Party Claim); provided, however, that (i) failure to give such Third Party Claim Notice shall not affect the indemnification rights and obligations provided hereunder except to the extent that the Indemnifying Party shall have forfeited rights or defenses by reason of such failure, in which case such failure shall constitute a waiver of the rights of the Indemnified Party under this Section 9.05(a) only to the extent of such forfeiture, and (ii) the Indemnified Party shall not be bound by or limited to any estimate of Losses set forth in the Third Party Claim Notice and shall not lose any right to indemnification for any failure to provide such reasonable detail.

(b) Except for any Special Third Party Claim, if the Indemnifying Party provides written notice to the Indemnified Party within 10 Business Days after receipt of a Third Party Claim Notice in respect of a Third Party Claim, then the Indemnifying Party shall be entitled if it so elects, at its own cost and expense, to participate in the defense thereof and (unless (i) a conflict of interest exists and the Indemnified Party determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend such Third Party Claim), if it so chooses, to assume the defense thereof with counsel selected by the Indemnifying Party and reasonably acceptable to the Indemnified Party. If the Indemnifying Party assumes the defense of a Third Party Claim in accordance with this Section 9.05(b), (A) the Indemnified Party shall have the right to consult in the defense thereof and to employ counsel, separate from the counsel employed by the Indemnifying Party, at the Indemnified Party’s cost and expense; provided, however, that the Indemnifying Party shall be liable for the fees, costs and expenses of counsel employed by the Indemnified Party (x) for any period during which the Indemnifying Party has not assumed the defense of such Third Party Claim, or (y) if the joint representation of the Indemnifying Party and the Indemnified Party by a single law firm with respect to such Third Party Claim involves conflicts of interest and the Indemnified Party determines in good faith that joint representation would be inappropriate, (B) the Indemnified Party shall make available to the Indemnifying Party all non-privileged books, records, and other documents and materials that are under the direct or indirect control of the Indemnified Party or any of the Indemnified Party’s Representatives and that the Indemnifying Party reasonably requests for the defense of such Third Party Claim, (C) the Indemnified Party shall otherwise reasonably cooperate as requested by the Indemnifying Party in the defense of such Third Party Claim, and (D) the Indemnifying

Party shall not enter into any agreement providing for the settlement or compromise of such Third Party Claim or consent to the entry of a judgment with respect to such Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed) unless such settlement (1) does not involve any finding or admission of any violation of Law or any violation of the rights of any Person, (2) does not involve any relief other than monetary damages that are paid in full by the Indemnifying Party and does not restrict the Indemnified Party or the conduct of any of its or its Affiliates' businesses or operations, (3) does not involve or relate to Taxes and (4) completely, finally and unconditionally releases the Indemnified Party and its Representatives in connection with such Third Party Claim. Any such participation or assumption shall not constitute a waiver by any Party of any attorney-client privilege in connection with such Third Party Claim. If the consent of Indemnified Party is required pursuant to the foregoing clause (D) and the Indemnified Party fails to provide such consent within ten Business Days after the Indemnifying Party provides a written request therefor, then the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, unless the Indemnified Party's consent has been reasonably withheld, conditioned or delayed, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If notice is given to an Indemnifying Party of a Third Party Claim in accordance with this Section 9.05(b) and the Indemnifying Party does not, within ten Business Days after such Third Party Claim Notice is given, give notice to the Indemnified Party of its election to assume the defense of such Third Party Claim in accordance with this Section 9.05, then the Indemnified Party shall control the defense of such Third Party Claim with counsel selected by the Indemnified Party (and the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel incurred by the Indemnified Party in defending such Third Party Claim, but not in duplication of any such amounts claimed by such Indemnified Party as Losses in connection therewith); provided, however, that the Indemnified Party shall not enter into any agreement providing for the settlement or compromise of such Third Party Claim or consent to the entry of a judgment with respect to such Third Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed) unless such settlement (1) does not lead to any liability or the creation of a financial or other obligation on the part of the Indemnified Party and (2) completely, finally and unconditionally releases the Indemnified Party and its Representatives in connection with such Third Party Claim. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume the defense of any Third Party Claim (and shall be liable for the reasonable fees and expenses of counsel incurred by the Indemnified Party in defending such Third Party Claim, but not in duplication of any such amounts claimed by such Indemnified Party as Losses in connection therewith) if (w) the Third Party Claim involves monetary damages in excess of the amount then available as part of the Indemnity Holdback Amount, (x) the Third Party Claim seeks an injunction or other equitable relief or relief other than monetary damages (including a Third Party Claim that would, if adversely determined, restrict such Indemnified Party or the conduct of its or its Affiliates' business or operations or that would, if adversely determined, be reasonably likely to establish an adverse precedential effect or negative publicity for such Indemnified Party or its Affiliates), (y) the Third Party Claim relates to Taxes that pertains to any Straddle Period or any Tax Period beginning after the Closing Date, or (z) the Third Party Claim is a criminal Proceeding brought by a Governmental Entity or other Person or otherwise involves or seeks any potential criminal liability (each such Third Party Claim described in the preceding clauses (w), (x), (y) and (z) constituting a "Special Third Party Claim").

(c) If the Indemnifying Party chooses and is permitted hereunder to defend any Third Party Claim, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed) cause, or agree to, the waiver of the attorney-client privilege, attorney work-product immunity or any other privilege or protection in respect of confidential legal memoranda and other privileged materials drafted by, or otherwise reflecting the legal advice of, internal or outside counsel of an Indemnified Party (the "Subject Materials") relating to such Third Party Claim. Each Party mutually acknowledges and agrees, on behalf of itself and its Affiliates, that (i) each shares a common legal interest in preparing for the defense of legal proceedings, or potential

legal proceedings, arising out of, relating to or in respect of any actual or threatened Third Party Claim or any related claim or counterclaim, (ii) the sharing of Subject Materials will further such common legal interest and (iii) by disclosing any Subject Materials to and/or sharing any Subject Materials with the Indemnifying Party, the Indemnified Party shall not waive the attorney-client privilege, attorney work-product immunity or any other privilege or protection. The Indemnified Party shall not be required to make available to the Indemnifying Party any information that is subject to an attorney-client or other applicable legal privilege that based on the advice of outside counsel would be impaired by such disclosure or any confidentiality restriction under applicable Law.

(d) In the event any Indemnified Party has a claim against any Indemnifying Party under Section 9.01(a), Section 9.01(b) or Section 9.02(a) that does not involve a Third Party Claim, the Indemnified Party shall deliver written notice of such claim to the Indemnifying Party (setting forth in reasonable detail the facts giving rise to such claim (to the extent known by the Indemnified Party), including the specific representation, warranty or covenant alleged to be the basis of such claim, and the amount or estimated amount (to the extent reasonably estimable) of Losses arising out of, involving or otherwise in respect of such claim) with reasonable promptness after becoming aware of such claim but such to the limitations set forth in Section 9.04; provided, however, that (i) failure to give such notice shall not affect the indemnification rights and obligations provided hereunder except to the extent that the Indemnifying Party shall have forfeited rights or defenses by reason of such failure, in which case such failure shall constitute a waiver of the rights of the Indemnified Party under this Section 9.05(d) only to the extent of such forfeiture, and (ii) the Indemnified Party shall not be bound by or limited to any estimate of Losses set forth in such notice and shall not lose any right to indemnification for any failure to provide such reasonable detail.

(e) If Purchaser desires to make a claim against the Indemnity Holdback Amount pursuant to Article VIII or this Article IX, Purchaser shall provide written notice thereof to Sellers' Representative (a "Claim Notice") before the three-year anniversary of the Closing Date (the "Final Release Date"), which Claim Notice shall (i) in reasonable detail state the basis for such claim, and (ii) state the amount being claimed by Purchaser against the Indemnity Holdback Amount (the "Claim Amount"). Purchaser may set off and apply the Claim Amount against the Indemnity Holdback Amount 30 days following the date on which Purchaser provided Sellers' Representative the Claim Notice, unless, within such 30-day period, Sellers' Representative delivers written notice to Purchaser objecting to the Claim Notice and identifying the amount of the Claim Amount which Sellers' Representative disputes (any such objection notice, an "Indemnity Objection"). In the event that Purchaser receives an Indemnity Objection, then Purchaser shall set off and apply the portion of the Claim Amount, if any, which is not subject to dispute in the Indemnity Objection against the Indemnity Holdback Amount, and the portion of the Claim Amount that is subject to a dispute in the Indemnity Objection (the "Disputed Portion") shall remain part of the Indemnity Holdback Amount (and shall not be disbursed to Sellers' Representative pursuant to Section 1.04) until (x) Purchaser and Sellers' Representative mutually resolve the Indemnity Objection pursuant to a written agreement, or (y) Purchaser or Sellers' Representative receives a Final Order with respect thereto.

(f) The funds included in the Indemnity Holdback Amount shall be distributed as set forth in this Agreement. Notwithstanding the foregoing, if a Purchaser Indemnitee recovers Losses from the Indemnity Holdback Amount in accordance with the last sentence of Section 9.01(d) and the applicable Responsible Seller fails to replenish the Indemnity Holdback Amount in accordance with such sentence, then the amount of any payment that would otherwise be made to the Responsible Seller in accordance with this Agreement will be reduced dollar for dollar based on the amount of Losses relating thereto that were recovered by the Purchaser Indemnitee against the Indemnity Holdback Amount. Any other indemnification pursuant to Article VIII and this Article IX shall be effected by wire transfer of immediately available funds by the applicable Indemnifying Party(ies) to an account designated by

Purchaser (with respect to any Purchaser Indemnitee) and Sellers' Representative (with respect to any Seller Indemnitee) after the determination of the amount thereof, whether pursuant to a Final Order, settlement or agreement among the Parties. All indemnification payments made (or deemed made) under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price to the extent permitted by applicable Law.

(g) No Seller will have any right to reimbursement or contribution from, subrogation to or indemnification from the Company with respect to any indemnification claim of a Purchaser Indemnitee against any Seller under this Agreement or otherwise in connection with this Agreement. Payments by a Party of amounts for which such Party is indemnified under this Agreement will not be a condition precedent to recovery.

Section 9.06 Exclusive Remedy. Except (a) in the case of fraud (the Parties' rights and remedies for which shall not be restricted or otherwise limited hereunder), and (b) the rights and remedies set forth in Section 1.04, Section 1.05, and Section 10.09, the right of each Party hereto to assert indemnification claims and receive indemnification payments pursuant to Article VIII and this Article IX shall, from and after the Closing Date, be the sole and exclusive right and remedy exercisable by such Party with respect to any breach by any other Party of any covenant, representation, warranty, or otherwise under or relating to this Agreement; provided, that for the avoidance of doubt, nothing in this Agreement (including clause (a) of this Section 9.06) shall be deemed to restrict any Indemnified Party from asserting any indemnification claims and receiving indemnification payments (without giving effect to any limits set forth in Article VIII and this Article IX) pursuant to Article VIII and this Article IX in respect of any claims for fraud.

Section 9.07 No Set Off. Purchaser shall not have the right to set off the Contingent Consideration Amount, and Brand Sale Consideration or any Adjustment Amount owed to Group A Sellers against any amounts then subject to a pending indemnification claim by a Purchaser Indemnitee pursuant to Article VIII or this Article IX.

ARTICLE X

General Provisions

Section 10.01 Assignment. This Agreement and the rights and obligations hereunder shall not be assignable by Purchaser, the Company, or any Seller without the prior written consent of Purchaser (in the case of assignment by the Company, or any Seller) or Sellers' Representative (in the case of an assignment by Purchaser). Notwithstanding the foregoing, Purchaser may, without the consent of any other Party, assign all or any portion of its rights and obligations hereunder to any Affiliate or Affiliates of Purchaser. No such assignment shall release Purchaser from any of its obligations hereunder without the consent of Sellers' Representative.

Section 10.02 No Third-Party Beneficiaries.

(a) Except as provided in Article VIII and Article IX (including with respect to any Indemnified Party, who shall be considered a third party beneficiary of this Agreement) and the last two sentences of this Section 10.02, this Agreement is for the sole benefit of the Parties hereto and their permitted successors and assigns and nothing herein expressed or implied shall give or be construed to give to any Person, other than the Parties hereto and such successors and assigns, any legal or equitable rights hereunder. No provision of this Agreement shall create any third party beneficiary or other rights in any employee or former employee (including any beneficiary or dependent thereof) of the Company or its Subsidiaries in respect of continued employment (or resumed employment) with Guarantor or its

Subsidiaries, and no provision of this Agreement shall create any such rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any Plan, and nothing in this Agreement will constitute an amendment of any Plan or impose any obligations on Purchaser under any Plan. The Purchaser Financing Sources shall be express third party beneficiaries of this Section 10.02 and Section 10.06, Section 10.09, Section 10.10, Section 10.11 and Section 10.12, each of such Sections shall expressly inure to the benefit of the Purchaser Financing Sources and the Purchaser Financing Sources shall be entitled to rely on and enforce the provisions of such Sections.

(b) Notwithstanding anything to the contrary contained herein, each Seller hereby irrevocably and unconditionally agrees that none of the Purchaser Financing Sources shall have any liability or obligation to any Seller under or in connection with this Agreement, any commitment letter, engagement letter or definitive financing document (including the Purchaser Loan Agreement) or any of the transactions contemplated hereby or thereby (including with respect to the Purchaser Financing). Each Seller hereby waives any and all rights or claims and causes of action (whether at law, in equity, in contract, in tort or otherwise) against the Purchaser Financing Sources that may be based upon, arise out of or relate to this Agreement, any commitment letter, engagement letter or definitive financing document (including the Purchaser Loan Agreement) or any of the transactions contemplated hereby or thereby (including the Purchaser Financing), and each Seller agrees not to commence or support a proceeding against any Purchaser Financing Source in connection with this Agreement or any commitment letter, engagement letter or definitive financing document (including the Purchaser Loan Agreement) or any of the transactions contemplated hereby or thereby (including any proceeding related to the Purchaser Financing). Nothing in this Section 10.02 will limit the rights of Purchaser in respect of the Purchaser Financing under the Purchaser Loan Agreement. Without limiting the foregoing, no Purchaser Financing Source shall be subject to any special, consequential, punitive or indirect damages or damages of a tortious nature to any Seller.

Section 10.03 Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by electronic mail (upon confirmation of receipt by recipient) or sent, postage prepaid, by registered, certified or express mail or overnight courier service and shall be deemed given when received as follows:

- (i) if to Purchaser or Guarantor or, following the Closing, the Company,

The Cheesecake Factory Incorporated
26901 Malibu Hills Road
Calabasas Hills, California 91301
Attention: General Counsel
E-mail: smay@thecheesecakefactory.com

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

Latham & Watkins LLP
355 South Grand Avenue, Suite 100
Los Angeles, California 90071
Attention: David Zaheer
Kathleen Wells
E-mail: david.zaheer@lw.com
kathleen.wells@lw.com

- (ii) if to any Seller, Sellers' Representative or, prior to Closing, the Company,

Fox Restaurant Concepts LLC
4455 E Camelback Rd, Ste B100
Phoenix, AZ 85018
Attention: General Counsel
E-mail: lkim@foxrc.net

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

Quarles & Brady LLP
Two North Central Avenue
Phoenix, AZ 85004
Attention: Leonardo Loo
E-mail: leonardo.loo@quarles.com

Any Party may change the address to which notices, requests, demands, claims and other communications required or permitted hereunder are to be delivered by providing the other Parties with notice thereof in the manner set forth herein.

Section 10.04 Interpretation; Exhibits and Schedules; Certain Definitions.

(a) The headings contained herein and in any Exhibit or Schedule hereto, the table of contents hereto and the index of defined terms are for reference purposes only and shall not affect in any way the meaning or interpretation hereof. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part hereof as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit, but not otherwise defined therein, shall have the meaning as defined herein. When a reference is made herein to a Section, Exhibit or Schedule, such reference shall be to a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns. For all purposes of this Agreement, unless otherwise specified herein, (i) "or" shall be construed in the inclusive sense of "and/or"; (ii) words (including capitalized terms defined herein) in the singular shall be construed to include the plural and vice versa and words (including capitalized terms defined herein) of one gender shall be construed to include the other gender as the context requires; (iii) the terms "hereof" and "herein" and words of similar import shall be construed to refer to this Agreement as a whole (including all the Exhibits and Schedules) and not to any particular provision of this Agreement; (iv) the terms "including" and "include" mean "including, without limiting the generality of the foregoing"; and (v) all references herein to "\$" or dollars shall refer to United States dollars. Each representation, warranty, covenant and agreement contained herein shall have independent significance. Accordingly, if any representation, warranty, covenant or agreement contained herein is breached, the fact that there exists another representation, warranty, covenant or agreement relating to the same subject matter (regardless of the relative levels of specificity) shall not detract from or mitigate the breach of the first representation, warranty, covenant or agreement. Except to the extent a shorter time period is expressly set forth herein for a particular cause of action, actions hereunder may be brought at any time prior to the expiration of the longest time period permitted by applicable Law. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is a non-Business Day, the period in question

shall end on the next succeeding Business Day. Any document, list or other item shall be deemed to have been “made available” or “provided” to Purchaser for all purposes of this Agreement only if such document, list or other item was posted no later than two Business Days before the date hereof in the electronic datarooms established by the Company in connection with the Transactions.

(b) For all purposes hereof:

“4-Wall EBITDA” means, with respect to the Eligible Restaurants open and operating during the Measurement Period, the aggregate earnings before interest, taxes, depreciation and amortization, management fees and general and administrative expenses of such Eligible Restaurants for the Measurement Period. Notwithstanding the foregoing, if Sellers’ Representative uses a portion of the Deferred Payment Holdback Amount to pay bonuses to the employees of the Company or its Subsidiaries and such bonuses are deducted from 4-Wall EBITDA as a compensation expense, then the amount of such compensation expenses so deducted shall be added back to 4-Wall EBITDA (without duplication of any other amount added back to 4-Wall EBITDA).

“Accounting Firm” means an independent accounting firm of national recognition reasonably acceptable to both Purchaser and Sellers’ Representative.

“Accounting Principles” means the fair presentation and accurate presentation, in all material respects, of the balance sheet and statements of operations, members’ capital and cash flows of the Company in accordance with GAAP but with potential deviations from GAAP in the following areas: minority interest, leases, revenue classification, gift cards and asset impairment.

“Acquisition” has the meaning set forth in Section 1.01.

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

“Adjustment Amount” has the meaning set forth in Section 1.05(g).

“Affiliate” of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person. For purposes of this definition, the term “control” (including its correlative meanings “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

“Aggregate TTM 4-Wall Margin” means the quotient of (i) the 4-Wall EBITDA of all Eligible Restaurants for the Measurement Period (or, for purposes of Section 4.03 of Exhibit G, the final day of the applicable Financial Month), divided by (ii) the aggregate Sales of such Eligible Restaurants for the Measurement Period (or, for purposes of Section 4.03 of Exhibit G, the trailing twelve Financial Months ending with the applicable Financial Month). Aggregate TTM 4-Wall Margin shall be adjusted for new store performances (i.e., reduced by each store’s operating results between the opening of each store and the end of its sixth full Financial Month).

“Aggregate TTM 4-Wall Margin Floor” means 14%; provided, however, that if the Aggregate TTM 4-Wall Margin for the Company’s fiscal year ended January 1, 2019 (as calculated based on the GAAP Financial Statements) differs from the Aggregate TTM 4-Wall Margin for such fiscal year (as calculated based on the Financial Statements) and the difference between the two is greater than 50 basis points, then “Aggregate TTM 4-Wall Margin” shall be correspondingly adjusted based on the

application of the accounting methods, practices, principles, policies and procedures applied in the GAAP Financial Statements (as opposed to those applied in the Financial Statements).

“Aggregate TTM Sales” means the sum of (i) with respect to Eligible Restaurants open and operating for all of the Measurement Period, the aggregate amount of Sales of such Eligible Restaurants for the Measurement Period and (ii) with respect to Eligible Restaurants that are not open and operating for all of the Measurement Period, the AUV of such Eligible Restaurants.

“Agreement” has the meaning set forth in the Introductory Paragraph.

“Airport License Agreement” means the Supply and License Agreement for Phoenix Sky Harbor International Airport, dated as of December 21, 2011, by and between the Company and Host International, Inc., as amended, modified or supplemented from time to time.

“Allocation Schedule” has the meaning set forth in Section 8.01(a).

“Ancillary Agreements” means the Assignment Agreement, the Minority Subsidiary Investor Assignments, the Restrictive Covenant Agreement, the Invention Assignment Agreement and the other agreements and instruments executed and delivered pursuant to this Agreement.

“Annual Plan” has the meaning set forth in Exhibit G.

“Approving Party” has the meaning set forth in Exhibit G.

“A&R LLC Agreement” has the meaning set forth in Section 5.13.

“Assignment Agreement” means the Assignment Agreement to be executed and delivered by Purchaser and each of Sellers at the Closing in the form attached hereto as Exhibit D.

“Audited Balance Sheet” has the meaning set forth in Section 3.05(a).

“Audited Balance Sheet Date” has the meaning set forth in Section 3.05(a).

“AUV” means, for each Eligible Restaurant that is open and operating for some (but not all of) the Measurement Period: (i) if such Eligible Restaurant is open and operating for more than three Financial Months during the Measurement Period, the annualized Sales of such Eligible Restaurant based on the average Sales per week of such Eligible Restaurant for the Financial Months it was open and operating during the Measurement Period, or (ii) if such Eligible Restaurant is open and operating for no more than three Financial Months during the Measurement Period, either (A) the average amount of annual Sales per Eligible Restaurant for all Eligible Restaurants of the same brand that are open for the full Measurement Period, or (B) if none of the Eligible Restaurants for such brand are open for the full Measurement Period, the average amount of annual Sales per Eligible Restaurant for all Eligible Restaurants that are open for the full Measurement Period.

“Board Member” has the meaning set forth in Exhibit G.

“Bona Fide Offer Amounts” has the meaning set forth in Section 5.11.

“Brand Sale” means the closing of a transaction or series of related transactions involving the sale of any brand or brands of the Company or any of its Subsidiaries to a third party (including, for the avoidance of doubt, any brand or brands not in existence as of the Closing), excluding the North Italia or

Flower Child brands, including pursuant to (i) any merger, consolidation or business combination; (ii) any sale, transfer or disposition of all or substantially all of the assets related to such brand; or (iii) any other transaction, including the sale of new Equity Securities or a transfer of Equity Securities, of the Company or such Subsidiary, the result of which is that any Person or group (within the meaning of Section 13(d)(3) of the Exchange Act) directly or indirectly acquires or holds greater than 50% of the total voting power in the Company or such Subsidiary. Notwithstanding the foregoing, a “Brand Sale” shall not include (A) a Guarantor Change of Control or (B) any license or franchise agreement or arrangement entered into in the Ordinary Course of Business.

“Brand Sale Agreement” has the meaning set forth in Section 1.07(a).

“Brand Sale Consideration” has the meaning set forth in Section 1.07(c).

“Brand Sale Consideration Calculations” has the meaning set forth in Section 1.07(b).

“Brand Sale Consideration Objection Notice” has the meaning set forth in Section 1.07(b).

“Brand Sale Consideration Statement” has the meaning set forth in Section 1.07(a).

“Brand Sale Net Proceeds” means, with respect to any Brand Sale, the sale purchase price proceeds for such Brand Sale actually received by Purchaser or its Affiliates at, or after, the closing under a Brand Sale Agreement, net of transaction costs for such Brand Sale, but without regard to holdbacks or escrows. “Brand Sale Net Proceeds” shall include deferred or contingent consideration (other than holdbacks and escrows) only to the extent actually received by Purchaser or its Affiliates.

“Budget Act” has the meaning set forth in Section 8.04(b).

“Business Day” means any day, other than a Saturday or a Sunday, that is neither a legal holiday nor a day on which banking institutions are generally authorized or required by Law to close in the State of Texas.

“Cake Board Members” has the meaning set forth in Exhibit G.

“Cap” has the meaning set forth in Section 9.01(c)(iii).

“Capital Expenditures Budget” means the budget for replacement, repairs and maintenance set forth on Section 3.08(f) of the Company Disclosure Schedule.

“Cardholder Data” has the meaning set forth in Section 3.10(c).

“Chairman” has the meaning set forth in Exhibit G.

“Claim Amount” has the meaning set forth in Section 9.05(e).

“Claim Notice” has the meaning set forth in Section 9.05(e).

“Closing” has the meaning set forth in Section 1.02.

“Closing Bonus Schedule” has the meaning set forth in Section 5.07(c).

“Closing Bonus Taxes” has the meaning set forth in Section 5.07(c).

“Closing Bonuses” has the meaning set forth in Section 5.07(c).

“Closing Calculations” has the meaning set forth in Section 1.05(c).

“Closing Cash Consideration” has the meaning set forth in Section 1.05(a)(i).

“Closing Consideration Certificate” has the meaning set forth in Section 1.05(a).

“Closing Date” has the meaning set forth in Section 1.02.

“Closing Indebtedness” has the meaning set forth in Section 1.05(b).

“Closing Seller Transaction Expenses” has the meaning set forth in Section 1.05(b).

“Code” means the Internal Revenue Code of 1986, as amended and all regulations or other governmental pronouncements thereunder. All references to the Code, regulations or other governmental pronouncements shall be deemed to include references to any applicable successor statute, regulations or pronouncements.

“Committee Member” has the meaning set forth in Exhibit G.

“Company” has the meaning set forth in the Introductory Paragraph.

“Company Articles of Organization” means the Articles of Organization of the Company, as filed with the Arizona Corporation Commission pursuant to the Arizona Limited Liability Company Act, as amended from time to time (or any corresponding provision of succeeding Law).

“Company Contracts” has the meaning set forth in Section 3.11(c).

“Company Operating Agreement” means the Amended and Restated Operating Agreement of the Company, effective as of January 1, 2012.

“Company Disclosure Schedule” means the disclosure schedule delivered by Sellers and the Company to Purchaser as of the date hereof which sets forth the exceptions to the representations and warranties contained in Article II and Article III hereof and certain other information called for by this Agreement.

“Company Intellectual Property” has the meaning set forth in Section 3.09(a).

“Company IT Systems” has the meaning set forth in Section 3.10(a).

“Company Lease Party” has the meaning set forth in Section 3.08(b).

“Company Line of Credit” means that certain revolving line of credit by Zions Bancorporation, N.A., d.b.a. National Bank of Arizona available to the Company in an aggregate amount not to exceed \$7,000,000.

“Company Material Adverse Effect” means any change, effect, development or circumstance that, individually or when taken together with all other changes, effects, or circumstances that have occurred prior to the date of determination of the occurrence of such change, effect, development or circumstance: (i) is or will, with the passage of time, be reasonably likely to be materially adverse to the business, assets, liabilities, financial condition or results of operations of the Company and its Subsidiaries

(taken as a whole); provided, however, that this clause (i) shall not include changes, effects, developments or circumstances to the extent they result from (A) changes in general political, financial market or economic conditions or in the industry in which the Company or any of its Subsidiaries operates generally, (B) natural or man-made disaster or acts of God, sabotage, acts of terrorism or war (whether or not declared) or other outbreak of hostilities or the escalation thereof, (C) changes in Law after the date of this Agreement, (D) changes in GAAP after the date of this Agreement, (E) changes in financial, banking or securities markets in general, including any disruption thereof and, after the date of this Agreement, any decline in the price of any security or any market index or any change in prevailing interest rates, (F) any action required by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Purchaser or (G) any failure by the Company and its Subsidiaries to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded), but any changes, effects, developments or circumstances resulting from the matters referred to in the foregoing clauses (A) through (E) shall be excluded only to the extent that any change, effect, development or circumstances referred to in such clause would not reasonably be expected to have a materially disproportionate impact on the Company and its Subsidiaries (taken as a whole), as compared to its competitors operating in the same industry; or (ii) would reasonably be expected to prevent or materially impair the consummation of the Transactions.

“Company Products or Services” means all products and services (including restaurant services), including products and services underdevelopment and related documentation developed, manufactured, produced, provided, distributed, marketed, imported for resale, sold, leased, franchised or licensed out by or on behalf of the Company and its Subsidiaries since inception or which the Company and its Subsidiaries intend to develop, manufacture, produce, provide, distribute, market, import for resell, sell, lease, franchise or license out in the future.

“Company Property” has the meaning set forth in Section 3.08(a).

“Company Returns” has the meaning set forth in Section 3.14(a).

“Confidential Information” means all information (whether or not specifically identified as confidential), in any form or medium, of or relating to the Company or any of its Subsidiaries, including: (i) internal business information of the Company or any of its Subsidiaries (including information relating to strategic plans and practices, business, accounting, financial or marketing plans, practices or programs, and accounting and business methods); (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, the Company, any of its Subsidiaries or any of their respective customers, distributors, brokers, suppliers and their respective confidential information; (iii) any confidential or proprietary information of any third party that the Company or any of its Subsidiaries has a duty to maintain confidentiality of, or use only for certain limited purposes; (iv) industry research compiled by, or on behalf of the Company or any of its Subsidiaries, including identities of potential target companies, management teams, and transaction sources identified by, or on behalf of, the Company or any of its Subsidiaries; (v) compilations of data and analyses, processes, recipes, methods, track and performance records, data and data bases relating thereto; and (vi) information related to the Company Intellectual Property.

“Confidentiality Agreement” has the meaning set forth in Section 5.02(b).

“Consent” has the meaning set forth in Section 2.03.

“Contaminant” means (i) any critical defects, including without limitation any critical error or critical omission in the processing of any transactions, or (ii) any disabling codes or instructions and any

“back door,” “time bomb,” “Trojan horse,” “worm,” “drop dead device,” “virus” or other software routines or hardware components that permit unauthorized access or the unauthorized disruption, impairment, disablement or erasure of such information technology systems, computers, proprietary information or Company Business Intellectual Property (or any parts thereof) or data or other Software of users.

“Contingent Consideration” has the meaning set forth in Exhibit C.

“Contingent Consideration Amount” has the meaning set forth in Exhibit C.

“Contingent Consideration Calculations” has the meaning set forth in Section 1.06(b)(i).

“Contingent Consideration Objection Notice” has the meaning set forth in Section 1.06(b)(i).

“Contingent Consideration Statement” has the meaning set forth in Section 1.06(a).

“Continuing Employees” has the meaning set forth in Section 5.07(a).

“Contract” has the meaning set forth in Section 2.03.

“Convertible Securities” of any Person means any options, warrants, rights, convertible or exchangeable securities, “phantom” unit rights, unit appreciation rights, unit-based performance units, commitments, Contracts, arrangements or undertakings of any kind to which any such Person or any of its Subsidiaries is a party or by which such Person or any of its assets is bound (i) obligating such Person to issue, deliver or sell, or cause to be issued, delivered or sold, additional limited liability company interests or other equity interests in, or any security convertible or exercisable for or exchangeable into any limited liability company interests of or other equity interest in, such Person or into any Voting Debt of such Person, (ii) obligating such Person to issue, grant, extend or enter into any such option, warrant, call, right, security, commitment, Contract, arrangement or undertaking or (iii) that give any Person the right to receive any economic benefit or right similar to or derived from the economic benefits and rights accruing to holders of limited liability company interests or other equity interests in such Person.

“D&O Policy” has the meaning set forth in Section 6.02(e)(ii).

“Deductible” has the meaning set forth in Section 9.01(c)(i).

“Deferred Payment Holdback Amount” means an amount equal to \$45,000,000, less any amounts set off against the Indemnity Holdback Amount under Section 1.05(g).

“Designating Party” has the meaning set forth in Exhibit G.

“Disputed Brand Sale Consideration Items” has the meaning set forth in Section 1.07(b)(ii).

“Disputed Contingent Consideration Items” has the meaning set forth in Section 1.06(b)(ii).

“Disputed Items” has the meaning set forth in Section 1.05(d).

“Disputed Portion” has the meaning set forth in Section 9.05(e).

“Dormant Subsidiaries” means CDO Restaurant Associates LLC, FRC Modern Steak Scottsdale LLC, FRC Cityscape II LLC, Blanco Guys LLC, FRC 7TH ST III LLC, FRC Blanco LLC, FRC 44TH ST II LLC, FC Wade Park LLC, FC 3RD Street LLC, Project Orange LLC, FRC Balance Lite LLC, FRC BarFly LLC, FRC HR LLC, FRC Boutique – Flatiron LLC, FRC Boutique – Gainey LLC and FRC 7TH ST II LLC.

“Drag-Along Notice” has the meaning set forth in Section 5.11.

“Eligible Restaurants” means the restaurants owned and operated by the Company and its Subsidiaries that are open and operating during the Measurement Period, except for restaurants (i) owned or operated by North Restaurants LLC, Flowerchild Holding Company LLC or their respective Subsidiaries, (ii) otherwise operating under the “North Italia” or “Flower Child” brands, (iii) operating under a brand that is the subject of a Brand Sale for which Purchaser has paid, or is required to pay, Brand Sale Consideration under Section 1.07 or (iii) owned or operated pursuant to the Airport License Agreement.

“Environmental Laws” means any and all Laws relating to: (i) pollution or the protection of natural resources or the environment (including ambient air, surface water, ground water, soils, land surface or subsurface strata); (ii) human health and safety, including occupational health and safety; or (iii) any Release or Handling of Hazardous Materials. The term “Environmental Law” includes, without limitation, the following: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.; and, with respect to the Company Property in the state of California only, the California Safe Drinking Water and Toxic Enforcement Act of 1986.

“Equity Securities” means (i) in the case of a corporation, capital stock; (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock; (iii) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and (iv) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” of the Company or any Subsidiary thereof shall mean any entity (whether or not incorporated) that, together with the Company or such Subsidiary, is required to be treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

“Estimated Indebtedness” has the meaning set forth in Section 1.05(a)(i).

“Estimated Seller Transaction Expenses” has the meaning set forth in Section 1.05(a)(i).

“Exchange Act” means Securities Exchange Act of 1934, as amended.

“Excluded Assets” has the meaning set forth in Section 5.12.

“Excluded Liabilities” has the meaning set forth in Section 5.12.

“Excluded Subsidiaries” means (i) North Investors LLC and its Subsidiaries, (ii) Flying Fox LLC, (iii) FRC Pizza Truck LLC, (iv) FRE LLC and (v) 5B Nashville LLC.

“Exhibit G Provisions” has the meaning set forth in Section 5.13.

“Family” means, with respect to an individual, (i) the individual’s spouse or domestic partner and any former spouses and domestic partners, and (ii) any other individual who is related to the individual or the individual’s spouse (or any former spouse) within the second degree.

“Filing” has the meaning set forth in Section 2.03.

“Final Order” means a final and non-appealable Judgment of a court of competent jurisdiction.

“Final Release Date” has the meaning set forth in Section 9.05(e).

“Financial Month” means the twelve financial reporting periods of the Company in any given Fiscal Year.

“Financial Statements” has the meaning set forth in Section 3.05(a).

“Fiscal Year” means the fiscal year of Guarantor.

“Fox” means Sam Fox.

“Fox Board Members” has the meaning set forth in Exhibit G.

“FRM” has the meaning set forth in Section 5.15.

“Fundamental Representations” means the representations and warranties set forth in Section 2.01 (Organization, Standing and Power), Section 2.02 (Authority; Execution and Delivery; Enforceability), Section 2.03 (No Conflicts; Consents), Section 2.04 (The Membership Interests), Section 2.06 (No Brokers), Section 3.01(a), (c) and (d) (Organization, Standing and Power; Books and Records), Section 3.02(a), (b), (c), and (f) (Capitalization), Section 3.03 (Authority; Execution and Delivery; Enforceability), Section 3.04 (No Conflicts; Consents), Section 3.14 (Taxes), Section 3.18 (Plans), Section 3.24 (No Brokers), Section 4.01 (Organization, Standing and Power), Section 4.02 (Authority; Execution and Delivery; Enforceability), Section 4.03 (No Conflicts; Consents) and Section 4.07 (No Brokers).

“Funded Indebtedness” means, at any specified time, with respect to the Company or any of its Subsidiaries, all Indebtedness of such Person, other than (i) \$3,000,000 of loans extended by Purchaser or its Subsidiaries to the Company or its Subsidiaries prior to the date hereof that will, at the election of Purchaser, be forgiven or remain outstanding after the Closing, and (ii) any amount outstanding under the Company Line of Credit, to the extent such amounts do not exceed the amount of cash in the bank accounts of the Company and its Subsidiaries as demonstrated with reasonable supporting information provided to Purchaser, in each case, as of 11:59 p.m. on the day immediately preceding the Closing Date.

“Funding Period” has the meaning set forth in Exhibit G.

“GAAP” means United States generally accepted accounting principles as in effect on the date of this Agreement.

“GAAP Financial Statements” has the meaning set forth in Section 5.15.

“Governing Board” has the meaning set forth in Exhibit G.

“Governmental Entity” has the meaning set forth in Section 2.03.

“Group A Pro Rata Share” means, with respect to a Group A Seller, the percentage to be mutually agreed by Purchaser and the Company and set forth opposite the name of such Seller on an updated version of Exhibit A delivered prior to the Closing Date under the heading “Group A Pro Rata Share”.

“Group A Seller” has the meaning set forth in the Introductory Paragraph.

“Group A Seller Proceeding” has the meaning set forth in Section 8.04(a).

“Group A Sellers Closing Payment” means an amount equal to (i) subject to Section 1.03(d), the product of the Closing Cash Consideration and the aggregate Pro Rata Shares of the Group A Sellers, minus (ii) the Deferred Payment Holdback Amount.

“Group B Seller” and “Group B Sellers” has the meaning set forth in the Introductory Paragraph.

“Group B Pro Rata Share” means, with respect to a Group B Seller, the percentage to be mutually agreed by Purchaser and the Company and set forth opposite the name of such Seller on an updated version of Exhibit A delivered prior to the Closing Date under the heading “Group B Pro Rata Share”.

“Group B Sellers Closing Payment” means an amount equal to, subject to Section 1.03(d), the product of the Closing Cash Consideration and the aggregate Pro Rata Shares of the Group B Sellers.

“Guarantor” has the meaning set forth in the Introductory Paragraph.

“Guarantor Change of Control” means the closing of a transaction or series of transactions, with respect to (i) any merger, consolidation or business combination of Guarantor in which the stockholders of Guarantor immediately prior to such transaction own less than 50% of the total voting power of all voting securities of the surviving entity (or its ultimate parent) outstanding immediately after such transaction; (ii) any sale, transfer or disposition of all or substantially all of the assets of Guarantor and its Subsidiaries (taken as a whole) to another Person that is not an Affiliate of Guarantor; or (iii) any other transaction, including the sale by Guarantor of new Equity Securities or a transfer of Equity Securities of Guarantor, the result of which any Person or group (within the meaning of Section 13(d)(3) of the Exchange Act) directly or indirectly acquire or hold greater than a 50% of the total voting power in Guarantor.

“Handling of Hazardous Materials” means the production, use, reuse, generation, Release, storage, treatment, formulation, processing, labeling, distribution, introduction into commerce, registration, transportation, reclamation, recycling, disposal, arranging for disposal, discharge or other handling or disposition of Hazardous Materials.

“Hazardous Materials” means: (i) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or

man-made, that is described as hazardous, acutely hazardous, or toxic, or using words of similar import or regulatory effect, or is otherwise regulated, under Environmental Laws; and (ii) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, mold, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“HSR Act” means the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Immigration Laws” has the meaning set forth in Section 3.19(g).

“Indebtedness” means, at any specified time, with respect to a Person, without duplication, any of the following (whether or not contingent and including in each case any and all principal, accrued and unpaid interest, prepayment premiums or penalties, related expenses, commitment and other fees, sale or liquidity participation amounts, reimbursements, indemnities and other amounts which would be payable in connection therewith): (i) all indebtedness for borrowed money or in respect of loans or advances, (ii) all obligations to pay the deferred purchase price of property or services, (iii) all obligations evidenced by notes, bonds, debentures or other similar instruments (including all sums due on early termination and repayment or redemption calculated to such date of determination), (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (v) any unpaid costs and expenses, net of tenant improvement allowances not yet received and rent credit not yet used, for “The Henry” located at Coronado, California, (vi) all reimbursement, payment or similar obligations, contingent or otherwise, under acceptance, letters of credit or similar facilities, (vii) all liabilities arising out of interest rate and currency swap arrangements and any other arrangements designed to provide protection against fluctuations in interest or currency rates, (viii) to the extent it is a positive number, an amount equal to the unpaid Tax liability of the Company or any of its Subsidiaries with respect to any taxable year or period (or portion thereof) that ends on or before the Closing Date, (ix) any accounts payable or accrued expenses in excess of \$15,000 individually or \$50,000 in the aggregate that, as of the Closing Date, were more than sixty days past due and (x) any liability of others described in clauses (i) through (viii) above that the Person has guaranteed or that is otherwise its legal liability or secured by any Lien on its assets. Notwithstanding the foregoing, the “Indebtedness” of the Company and its Subsidiaries shall not include any Indebtedness of any Excluded Subsidiary.

“Indemnified Party” has the meaning set forth in Section 9.05(a)

“Indemnifying Party” has the meaning set forth in Section 9.05(a).

“Indemnity Holdback Amount” means an amount equal to \$13,000,000 from the Deferred Payment Holdback Amount, less any amounts set off against the Indemnity Holdback Amount under Article VIII or Article IX.

“Indemnity Objection” has the meaning set forth in Section 9.05(e).

“Intellectual Property” means Intellectual Property Rights.

“Intellectual Property Rights” means any and all intellectual property rights or other rights in or affecting intellectual or industrial property or other proprietary rights, including any and all of the following and all rights in, arising out of, or associated therewith, throughout the world:

(i) patents, utility models, and applications therefor and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof and equivalent or similar rights in inventions and discoveries anywhere in the world, including invention disclosures, common law and statutory rights associated with trade secrets, confidential and proprietary information and know-how, industrial designs and any registrations and applications therefor (collectively, “Patents”);

(ii) trade names, logos, trade dress, trademarks and service marks, trademark, service mark, trade name, logo, and trade dress registrations, trademark, service mark, trade name, logo and trade dress applications and any and all goodwill associated with and symbolized by the foregoing items (collectively, “Marks”);

(iii) Internet domain name applications and registrations, Internet and World Wide Web URLs or addresses (collectively, “Domain Names”);

(iv) copyrights or other rights related to works of authorship, copyright registrations and applications therefor and all other rights corresponding thereto, database rights, mask works, mask work registrations and applications therefor and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology, moral and economic rights of authors and inventors, however denominated and any similar or equivalent rights to any of the foregoing (collectively, “Copyrights”);

(v) other intellectual property rights and/or industrial property rights with respect to Software, including registrations of such rights and applications to register such rights;

(vi) intellectual property rights and/or industrial property rights with respect to Marks, and all registrations for Marks and applications to register Marks;

(vii) rights of publicity and personality, including all rights with respect to use of any person’s name, signature, likeness, image, photograph, voice, identity, personality, and biographical and personal information and materials;

(viii) all proprietary information and materials, whether or not patentable or copyrightable, and whether or not reduced to practice, including without limitation all technology, ideas, research and development, inventions, designs, manufacturing and operating specifications and processes, know-how, formulae, recipes, customer and supplier lists, shop rights, designs, drawings, patterns, trade secrets, confidential information, technical data, databases, data compilations and collections, computer programs, and all hardware, Software and processes;

(ix) all other intangible assets, properties and rights; and

(x) all claims, causes of action and rights to sue for past, present and future infringement or unconsented use of any of the foregoing intellectual and other proprietary rights set forth in the foregoing paragraphs (i) through (ix), the right to file applications and obtain registrations, and all rights arising therefrom and pertaining thereto and all products, proceeds and revenues arising from or relating to any and all of the foregoing.

“Interim Balance Sheet” has the meaning set forth in Section 3.05(a).

“Interim Balance Sheet Date” has the meaning set forth in Section 3.05(a).

“Invention Assignment Agreement” means the Invention Assignment Agreement to be executed and delivered by Purchaser and Fox at the Closing in the form attached hereto as Exhibit H.

“Judgment” means any judgment, order, decree, award, ruling, decision, verdict, subpoena, injunction, assessment, arbitration award or settlement entered, issued, made or rendered by, or any consent agreement, memorandum of understanding or other Contract with, any Governmental Entity or arbitrator (in each case whether temporary, preliminary or permanent).

“Key Employees” means any employee with a role equivalent or senior to vice president of the Company or any of its Subsidiaries.

“Key Personnel” has the meaning set forth in Section 3.09(e).

“Knowledge of the Company” means the actual knowledge of Fox, Russell Owens, Leezie Kim, Brian Stoll, Amber Haddad, and Alain Ane.

“Law” means any law, statute, rule, code, regulation, restriction, ordinance, Judgment, approval, policy, Permit and license of, or issued by, any Governmental Entity, including, without limitation Environmental Laws, energy, motor vehicle safety, public utility, zoning, building, occupational safety and health codes and laws respecting employment practices, employee documentation, terms and conditions of employment and wages and hours.

“Lease” has the meaning set forth in Section 3.08(a).

“Liability” means any direct or indirect liability, Indebtedness, responsibility, obligation, commitment, expense, fine, penalty, claim, deficiency, deferred income, guaranty or endorsement of or by any Person of any type, whether accrued, absolute, contingent, matured, unmatured or other.

“Lien” means any mortgage, lien, security interest, pledge, bailment (in the nature of a pledge or for purposes of security), deed of trust, reservation, equitable interest, charge, easement, lease, sublease, the grant of a power to confess judgment, conditional sale or other title retention agreement, right of first refusal, hypothecation, covenant, condition, restriction, servitude, right of way, variance, option, warrant, claim, community property interest, restriction (including any restriction on use, voting, transfer, alienation, receipt of income or exercise of any other attribute of ownership), encumbrance of any kind, or other similar arrangement or interest in real or personal property.

“Loss” means any loss, Liability, claim, damage, diminution in value, cost or expense, including Taxes and documented legal and other professional fees and expenses and other amounts paid in investigation, defense or settlement of any of the foregoing, whether involving a Third Party Claim or a claim solely between the Parties; provided, however, that punitive damages are excluded from the definition of Loss, except for amounts actually incurred and due or payable to a third party pursuant to a Third Party Claim.

“Material Supplier” has the meaning set forth in Section 3.21.

“Material Supplier Contracts” has the meaning set forth in Section 3.11(a).

“Measurement Period” means the twelve Financial Months commencing with the Financial Month immediately after the four year anniversary of the Closing Date.

“Membership Interests” means any and all limited liability company interests in the Company, including all of the “Membership Interests” as defined in the Company Operating Agreement.

“Minority Reorganization Payment” means (i) the amount to be paid to the Minority Subsidiary Investors to effect the indirect acquisition by Purchaser of the Equity Securities held by the Minority Subsidiary Investors in the Company’s non-wholly owned Subsidiaries other than the Non-Dragged Subsidiaries as set forth in Section 5.11, plus (ii) if applicable, the amount to be paid to all holders of Equity Securities of the relevant Subsidiary (such holders including the Company or its applicable Subsidiary as well as the Minority Subsidiary Investors) pursuant to the exercise of drag-along rights as set forth in Section 5.11, plus (iii) the amount to be paid to holders of Equity Securities to be redeemed at Closing pursuant to the Subsidiary Redemptions.

“Minority Subsidiary Investors” has the meaning set forth in Section 5.11.

“Minority Subsidiary Investor Assignments” has the meaning set forth in Section 5.11.

“Misconduct Claim” shall include, without limitation: (i) sexual harassment or any other unlawful act of a similar nature; (ii) other acts of a similar nature, whether or not meeting the legal definition of actionable harassment, that could reasonably be expected to bring the Company or any Subsidiary thereof into public contempt or ridicule or be materially injurious to the business or reputation of the Company, its Subsidiaries or any of their respective executives; (iii) if made to a subordinate service provider of the Company or any Subsidiary thereof: (A) sexual advances, (B) lewd or sexually explicit comments, or (C) the sending of sexually explicit images or messages (excluding sexually explicit images or messages that are part of programing of legitimate works for the Company or such Subsidiary); (iv) if made to a person who has not invited such conduct and, at the time, could reasonably regard the maker of the advances or comments as having the power to influence or impair the recipient’s career advancement or the success of the recipient’s business projects: (A) sexual advances or (B) sexually explicit comments; or (v) retaliatory act for refusing or opposing any of the above.

“Nashville Restaurant Project” means the new restaurant concept whose first location is currently in development at 5th and Broadway in Nashville, Tennessee.

“Non-Dragged Subsidiaries” means, collectively, North Investors LLC, CDO Restaurant Associates LLC, FRC Modern Steak Scottsdale LLC, FRC Cityscape II LLC, Wildflower Holdings, LLC, FC Investors LLC, Host Fox PHX F&B LLC and Flowerchild Holding Company LLC.

“North Italia Escrow Agreement” means the Escrow Agreement, dated of the date hereof, by and among Wells Fargo Corporate Trust Services, the Company, North Investors LLC and TCF California Holding Company, as amended, modified or supplemented from time to time.

“North Italia Operating Agreement” means the Operating Agreement of North Restaurants LLC, dated as of November 14, 2016, by and among the Company, Villa Entertainment Group, LLC, North Investors LLC and TCF California Holding Company, as amended, modified or supplemented from time to time.

“North Italia Option Exercise Agreement” means the Amendment & Option Exercise Agreement, dated as of the date hereof, by and among, North Investors LLC, Villa Entertainment Group, LLC, TCF California Holding Company, Guarantor, Fox, the Company, North Restaurants, LLC, FRC Management, LLC and each of the Persons listed on Exhibit A thereof, as amended, modified or supplemented from time to time.

“North Italia Purchase Agreement” means the Purchase Agreement (North Italia), dated as of November 14, 2016, by and among TCF California Holding Company, Fox, the Company, FRC Management LLC, Villa Entertainment Group, LLC, North Investors LLC, North Restaurants LLC, and each of the Persons listed on Exhibit A thereof, as amended, modified or supplemented from time to time.

“Notice of Disagreement” has the meaning set forth in Section 1.05(c).

“Officer” means each Person designated as an officer of the Company to whom authority and duties have been delegated pursuant to Exhibit G.

“Ordinary Course of Business” means, with respect to an action taken by any Person, an action that is in compliance with applicable Laws and (i) is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of the business of such Person; and (ii) is not required to be authorized by the board of directors of such Person (or by any Person or group of Persons exercising similar authority) and is not required to be specifically authorized by the parent company (if any) or the holders of Equity Securities of such Person.

“Operating Earnings” means, for any period, the earnings before interest, taxes, depreciation and amortization and general and administrative expenses of the Company and its Subsidiaries (determined on a consolidated basis).

“Organizational Documents” means the legal document(s) by which any Person (other than an individual) establishes its legal existence or which govern its internal affairs, in each case, as amended to date. For example, the “Organizational Documents” of a corporation are its articles of incorporation and by-laws, the “Organizational Documents” of a limited liability company are its articles of organization or certificate of formation and its operating agreement or limited liability company agreement and the “Organizational Documents” of a partnership are its certificate of limited partnership and its partnership agreement.

“Outside Date” has the meaning set forth in Section 7.01(a)(ii).

“Party” (collectively, the “Parties”) has the meaning set forth in the Introductory Paragraph.

“Pass-Through Tax Return” means any income Tax Return filed by, or with respect to, the Company to the extent that (i) the Company is treated as a partnership for purposes of such Tax Return and (ii) the results of the operations reflected on such Tax Return are also reflected on the income Tax Return of the Company’s members or the direct or indirect owners (if any) of the Company’s members.

“Payoff Letters” has the meaning set forth in Section 6.02(e)(v).

“Permits” has the meaning set forth in Section 3.12.

“Permitted Lien” means (i) such Liens as are set forth in Section 3.07 of the Company Disclosure Schedule (all of which, other than leases, subleases and similar Contracts, shall be discharged before or at the Closing), (ii) mechanics’, carriers’, workmen’s, landlords’, repairmen’s or other similar statutory Liens arising or incurred in the Ordinary Course of Business not yet due and payable or that are being contested in good faith and which are not, individually or in the aggregate, material to the business, operations and financial condition of the assets so encumbered of the Company, (iii) Liens for Taxes that are not due and payable, (iv) zoning, building and other similar restrictions regulating the use and occupancy of such Company Property which are not violated by the current use and operation of the Company

Property, (v) Liens in favor of landlords under the Leases that secure the payment of rent and other tenant obligations thereunder, (vi) Liens securing any Purchaser Indebtedness; and (vii) Liens encumbering any Excluded Asset (and no other assets of the Company or its Subsidiaries).

“Person” means any individual, firm, corporation, partnership, limited liability company, trust, joint venture, Governmental Entity or other entity.

“Personal Data” means, in addition to any definition for any similar term (e.g., “personally identifiable information” or “PII”) provided by applicable Law or any policy of the Company relating to privacy or personal data, any data or information relating to an identified or identifiable individual natural Person, including any data or information, in any form or media that, alone or in combination with other data or information, can, directly or indirectly, be associated with or used to identify an individual natural Person (e.g., name, physical address, telephone number, email address, financial account number or credit card number, government issued identifier (including social security number and driver’s license number), user identification number and password, billing and transactional information, contact preferences, medical, health or insurance information, gender, date of birth, educational or employment information, and marital or other status, behavioral information, vehicle identification number, IP address, cookie identifier, or any other number, data or identifier that would identify an individual natural Person, or such Person’s vehicle, browser, device or activities online).

“Phoenix Boutique Hotel Project” means a boutique hotel company, the first hotel of which Fox is currently developing at the intersection of 44th Street and Camelback in Phoenix, Arizona.

“Plan” means each (i) “employee benefit plan” (as such term is defined in Section 3(3) of ERISA or any similar plan subject to laws of a jurisdiction outside of the United States), (ii) employment, consulting, advisor or other service agreement or arrangement, (iii) noncompetition, nondisclosure, nonsolicitation, severance, termination, pension, retirement, supplemental retirement, excess benefit, profit sharing, bonus, incentive, deferred compensation, retention, transaction, change in control and similar plan, program, arrangement, agreement, policy or commitment, (iv) profits interest unit and each other compensatory unit option, restricted unit, performance unit, unit appreciation, deferred unit or other equity or equity-based plan, program, arrangement, agreement, policy or commitment, (v) savings, life, health, disability, accident, medical, dental, vision, cafeteria, insurance, flex spending, adoption/dependent/employee assistance, tuition, vacation, paid-time-off, other welfare fringe benefit and each other employee benefit plan, program or arrangement maintained, sponsored or contributed to by the Company or any of Subsidiary thereof or under which the Company or any Subsidiary thereof has any obligation or liability, whether actual or contingent, direct or indirect, to provide compensation or benefits to or for the benefit of any of its current or former employees, consultants, managers or directors, or the spouses, beneficiaries or other dependents thereof.

“Privacy Laws” means all applicable Laws, all binding guidance thereunder issued by a Governmental Entity (including of any applicable foreign jurisdiction) relating to the receipt, collection, compilation, use, storage, processing, sharing, safeguarding, security (both technical and physical), disposal, destruction, disclosure or transfer (including cross-border) of Personal Data, including the Federal Trade Commission Act, the Fair Credit Reporting Act (as amended by the Fair and Accurate Credit Transactions Act), the CAN-SPAM Act, Children’s Online Privacy Protection Act, the Payment Card Industry Data Security Standard (PCI DSS), the General Data Protection Regulation (GDPR), the EU-U.S. Privacy Shield, the Swiss-U.S. Privacy Shield, the California Consumer Privacy Act of 2018 (as applicable), state data breach notification Laws, state data security Laws, state social security number protection Laws, and any Law concerning requirements for website and mobile application privacy policies and practices, or any outbound communications (including e-mail marketing, telemarketing and text

messaging), tracking and marketing and any and all applicable Laws relating to breach notification in connection with Personal Data.

“Proceeding” means any suit, action (including bankruptcy actions, whether voluntary or involuntary), claim, proceeding, assessment, arbitration, audit, hearing, charge, complaint, demand, dispute, grievance, litigation or investigation (in each case, whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Entity or arbitrator.

“Pro Rata Share” means, with respect to a Seller, the percentage to be mutually agreed by Purchaser and the Company and set forth opposite the name of such Seller on an updated version of Exhibit A delivered prior to the Closing Date under the heading “Pro Rata Share”.

“Purchase Price” has the meaning set forth in Section 1.01.

“Purchaser” has the meaning set forth in the Introductory Paragraph.

“Purchaser Financing” means one or more loans or extensions of credit made under the Purchaser Loan Agreement in order to finance in part the payment of the Purchase Price.

“Purchaser Financing Sources” means the agents, arrangers, lenders, issuing banks and other persons that have committed to provide or arrange or otherwise entered into the Purchaser Loan Agreement or otherwise agreed to provide any portion of the Purchaser Financing, together with their respective Affiliates and their and such Affiliates’ respective direct or indirect, former, current or future general and limited partners, officers, directors, employees, controlling persons, agents, representatives, advisors and counsel and their respective successors and assigns.

“Purchaser Indebtedness” means any Indebtedness owed by the Company or any of its Subsidiaries to Purchaser, Guarantor or their respective Affiliates, including Indebtedness of Flowerchild Holding Company LLC or North Restaurants LLC owing to Purchaser, Guarantor or their respective Affiliates pursuant to the Operating Agreement for Flowerchild Holding Company LLC and North Restaurants LLC, respectively.

“Purchaser Indemnitees” has the meaning set forth in Section 8.01.

“Purchaser Loan Agreement” means that certain Third Amended and Restated Loan Agreement, dated as of July 30, 2019, among Purchaser, as borrower, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent, as the same may be amended, restated or supplemented from time to time.

“Purchaser Obligations” has the meaning set forth in Section 10.17(a).

“Redeemed Investor Assignments” has the meaning set forth in Section 5.16.

“Redemption Subsidiaries” has the meaning set forth in Section 5.16.

“Registered Company Intellectual Property” has the meaning set forth in Section 3.09(a).

“Related Person” means (i) with respect to any Person that is not an individual, (A) any Affiliate of such Person, (B) any Person that serves as a director, manager, officer, partner, executor, or trustee of such Person or an Affiliate of such Person (or in any other similar capacity), (C) any Person with

respect to which such Person or an Affiliate of such Person serves as a general partner or trustee (or in any other similar capacity), (D) any Person that has direct or indirect beneficial ownership (as defined in Rule 13d-3 of the Exchange Act) of voting securities or other voting interests representing at least 10% of the outstanding voting power or equity securities or other equity interests representing at least 10% of the outstanding equity interests (a “Material Interest”) in such Person and (E) any Person in which such Person or an Affiliate of such Person holds a Material Interest and (ii) with respect to any Person that is an individual (A) each other member of such individual’s Family, (B) any Affiliate of such Person, (C) any Person in which such Person or members of such Person’s Family hold (individually or in the aggregate) a Material Interest and (D) any Person with respect to which such Person or one or more members of such Person’s Family serves as a director, manager, officer, partner, executor, or trustee (or in any other similar capacity).

“Release” means any active or passive spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, dumping, pouring, emanation or migration of any Hazardous Material in, into, onto or through the environment (including ambient air, surface water, ground water, soils, land surface or subsurface strata) or within any building, structure, facility or fixture.

“Released Claims” has the meaning set forth in Section 10.14(a).

“Releasee” (collectively, the “Releasees”) has the meaning set forth in Section 10.14(a).

“Representative” means, with respect to any Person, any director, manager, officer, partner, member, stockholder, Affiliate, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

“Residuals” means information in non-tangible form retained in the unaided memory of Sellers who have had access to or worked with Company Confidential Information without conscious attempt by such individual to memorize such information, including ideas, concepts, specifications, processes, formulae, recipes, customers, suppliers, vendors, know-how or techniques contained therein.

“Responsible Seller” has the meaning set forth in Section 9.01(d).

“Restricted Persons” has the meaning set forth in Section 5.05(b).

“Restrictive Covenant Agreement” means those certain Non-Competition, Non-Solicitation and Confidentiality Agreements, dated as of the date hereof, between Guarantor, on the one hand, and each of Fox, Russell Owens, Brian Stoll, Leezie Kim, Elaine Ane, Regan Jasper, and Clint Woods, on the other hand, as each may be amended, modified or supplemented in accordance with its terms.

“RP Subsidiary” means any Subsidiary of the Company identified as a tenant under a Lease on Section 3.08(a) of the Company Disclosure Schedule.

“Sale of the Company” means, other than the Transactions, (i) any sale, lease, transfer, exclusive license or other disposition in a single transaction or series of related transactions of all or substantially all of the assets of the Company and its Subsidiaries taken as a whole or the sale or disposition (whether by merger, consolidation or otherwise) of one or more Subsidiaries of the Company if substantially all of the assets of the Company and its Subsidiaries taken as a whole are held by such Subsidiary or Subsidiaries, (ii) any merger or consolidation in which the Company is a constituent party or a Subsidiary of the Company is a constituent party and the Company issues Equity Securities pursuant to such merger or consolidation; or (iii) any transaction or series of related transactions in which in excess of 50% of the Company’s then-outstanding Equity Securities or any of the Company’s Subsidiaries’ then-

outstanding Equity Securities (if substantially all of the assets of the Company and its Subsidiaries taken as a whole are held by such Subsidiary or Subsidiaries) are transferred to a third party.

“Sales” means the gross sales revenue less promotions and discounts, including promotional gift cards distributed without consideration. The term “gross sales” does not include (i) the amount of any sales Taxes, gross receipt Taxes and other similar Taxes collected from customers with respect to the selling price of goods, merchandise and services and remitted to Governmental Entities, (ii) tips and gratuities payable to, or collected and retained directly by, employees, or collected on behalf of employees and then paid to such employees (i.e., credit card tips and banquet service charges) and (iii) sales of gift certificates, gift or debit cards or electronic certificates.

“Securities Act” has the meaning set forth in Section 4.05.

“Seller” or “Sellers” has the meaning set forth in the Introductory Paragraph.

“Seller Indemnitees” has the meaning set forth in Section 9.02(a).

“Seller Specific Claims” has the meaning set forth in Section 9.01(d).

“Seller Transaction Expenses” means all costs, fees and expenses incurred in connection with or in anticipation of the negotiation, execution, delivery and performance of this Agreement and the Ancillary Agreements or the consummation of the Transactions or in connection with or in anticipation of any alternative transactions considered by the Company and its Subsidiaries to the extent such costs, fees and expenses are payable or reimbursable by the Company or its Subsidiaries, in each case irrespective of whether any such costs, fees and expenses have been billed prior to the Closing Date or will become payable or be billed on or after the Closing Date, including (i) all brokerage fees, commissions, finders’ fees or financial advisory fees so incurred, (ii) fees and expenses of legal counsel, accountants, consultants and other experts and advisors so incurred, (iii) 50% of the fees and expenses associated with the D&O Policy, (iv) Sellers’ liability for Transfer Taxes as described in Section 5.06(b), (v) 50% of the HSR Act filing fees, (vi) the Sellers’ Representative Expense Fund, (vii) any transaction bonuses, retention payments, or change of control payments payable by the Company or any of its Subsidiaries, any of its Subsidiaries or any Seller to a service provider of the Company or any Subsidiary thereof as a result of the consummation of the Closing, and (viii) the employer portion of any employment Taxes that are incurred by the Company, its Subsidiaries or its Affiliates in connection with the payment of any amounts described in (vii).

“Sellers’ Representative” has the meaning set forth in the Preamble.

“Sellers’ Representative Expense Fund” has the meaning set forth in Section 10.18(d).

“Software” means all: (a) computer programs, including all software implementations of algorithms, models and methodologies, whether in source code or object code; (b) databases and other compilations and collections of data or information; (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons; and (d) documentation, including user manuals and other training documentation, related to any of the foregoing.

“Special Third Party Claim” has the meaning set forth in Section 9.05(b).

“Statement” has the meaning set forth in Section 1.05(b).

“Straddle Period” means any taxable year or period beginning on or before and ending after the Closing Date.

“Subject Materials” has the meaning set forth in Section 9.05(c).

“Subsidiary” of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or managers or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person or by another Subsidiary of such first Person; provided, that with respect to the Company for purposes of this Agreement (excluding Section 5.03, Section 5.07 and Section 5.10), the Excluded Subsidiaries shall not constitute Subsidiaries of the Company.

“Subsidiary Redemptions” has the meaning set forth in Section 5.16

“Tax” (and, with correlative meaning, “Taxes”) includes (i) any federal, state, local, foreign, supra-governmental or supranational net income, gross income, gross receipts, windfall profit, severance, real or personal property, production, sales, use, license, excise, franchise, employment, payroll, employee contribution, withholding on amounts paid to or by any Person, alternative or add-on minimum, ad valorem, value-added, estimated, documentary, transfer, stamp, or environmental tax, fee or emissions credits (including taxes under Code Section 59A), escheat payments or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any Governmental Entity and (ii) any liability for the payment of amounts determined by reference to amounts described in clause (i) as a result of being or having been a member of any group of entities that files, will file, or has filed Tax Returns on a combined, consolidated or unitary basis, as a result of any obligation under any agreement or arrangement (including any Tax allocation, Tax indemnity or Tax sharing agreement), as a result of being a transferee or successor, or otherwise.

“Tax Return” means any return (including any information return, claim for refund, Tax credit, incentive or benefit, or amended return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Entity in connection with the determination, assessment, collection or payment of any Tax (including any attached schedule) or in connection with the administration, implementation or enforcement of or compliance with any applicable Law relating to any Tax.

“Termination Amount” has the meaning set forth in Section 1.06(e).

“Third Party Claim” has the meaning set forth in Section 9.05(a).

“Third Party Claim Notice” has the meaning set forth in Section 9.05(a).

“Trade Secrets” means trade secrets (including those trade secrets defined in the Uniform Trade Secrets Act and under corresponding foreign statutory and common law) and confidential information, including all source code, documentation, know how, processes, technology, recipes, formulae, customer lists or data, business and marketing plans, inventions (whether or not patentable) and marketing information.

“Transactions” has the meaning set forth in Section 1.01.

“Transfer Taxes” has the meaning set forth in Section 5.06(b).

“Voting Debt” of any Person, means any bonds, debentures, notes or other Indebtedness of such Person or any of its Subsidiaries having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which holders of Equity Securities of such Person or holders of equity interests in such Person may vote.

“Zinburger Area Development Agreement” means that certain Area Development Agreement, dated as of March 1, 2016, by and between FRC Restaurant Concepts LLC and Bovine Ventures, LLC, as made available to Purchaser.

Section 10.05 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Parties. The exchange of copies hereof, including signature pages hereto, by facsimile, e-mail or other means of electronic transmission shall constitute effective execution and delivery hereof as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures transmitted by facsimile, e-mail or other means of electronic transmission shall be deemed to be original signatures for all purposes.

Section 10.06 Amendments and Waivers. This Agreement may not be amended except by an instrument in writing signed by Purchaser, the Company and Sellers’ Representative (on behalf of each of Sellers). By an instrument in writing, Purchaser, Sellers’ Representative (on behalf of any Seller), or the Company may waive compliance by the others with any term or provision hereof that such other Parties were or are obligated to comply with or perform. No delay or omission by any Party hereto to exercise any right or power under this Agreement or pursuant to Law shall impair such right or power or be construed as a waiver thereof. A waiver by any Party of any representation, warranty, covenant or condition shall not be construed to be a waiver of any succeeding breach or of any other representation, warranty, covenant or condition. Notwithstanding the foregoing, the provisions of Section 10.02, Section 10.06, Section 10.09, Section 10.10, Section 10.11 and Section 10.12 (and any other provision of this Agreement to the extent an amendment, supplement, waiver or other modification of such provision would modify the substance of Section 10.02, Section 10.06, Section 10.09, Section 10.10, Section 10.11 and Section 10.12) may not be amended, supplemented, waived or otherwise modified in any manner that is materially adverse to the Purchaser Financing Sources without the prior written consent of each Purchaser Financing Source.

Section 10.07 Entire Agreement. This Agreement, the Ancillary Agreements and the Confidentiality Agreement, along with the Schedules and Exhibits hereto and thereto, contain the entire agreement of the parties hereto with respect to the Transactions and supersede all prior agreements among the parties with respect to the Transactions.

Section 10.08 Severability. If any provision hereof (or any portion thereof) or the application of any such provision (or any portion thereof) to any Person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion thereof) or the application of such provision to any other Persons or circumstances.

Section 10.09 Enforcement. The Parties agree that irreparable damage could occur in the event that any of the provisions of this Agreement or any Ancillary Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement or any Ancillary Agreement and to seek to enforce specifically the terms and provisions of this Agreement or any Ancillary Agreement, this being in addition to any other remedy to which they are entitled at law or in equity. Without

limiting the generality of the foregoing and notwithstanding Section 9.06, (a) Sellers and the Company shall be entitled to seek specific performance against Purchaser to enforce and to prevent any breach by Purchaser of its covenants under this Agreement, and (b) Purchaser shall be entitled to seek specific performance against Sellers and the Company to enforce and to prevent any breach by Sellers or the Company of their respective covenants under this Agreement. Any requirements for the securing or posting of any bond in connection with such remedy are waived. Each of the Parties hereby irrevocably waives, and agrees not to assert or attempt to assert, by way of motion or other request for leave from the court, as a defense, counterclaim or otherwise, in any Proceeding, any claim or argument that there is an adequate remedy at law or that an award of specific performance is not otherwise an available or appropriate remedy. Notwithstanding anything to the contrary in this Agreement or the Ancillary Agreements, each Seller and the parties hereto hereby explicitly agree that nothing in this Agreement shall require the Purchaser or any of its Affiliates and none of Sellers shall be entitled to seek specific performance, injunctive relief or other equitable remedies to cause Purchaser or any of its Affiliates to enforce their respective rights under the Purchaser Loan Agreement or cause the Purchaser Financing to be funded.

Section 10.10 Consent to Jurisdiction. Except as otherwise provided in Section 1.05 and Section 1.06, each Party irrevocably submits to the exclusive jurisdiction of the Delaware Court of Chancery within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any court of the United States located in the State of Delaware, or, if any such court of the United States located in the State of Delaware declines to accept jurisdiction over a particular matter, any state court located in the State of Delaware), for the purposes of any suit, action or other Proceeding arising out of this Agreement, any Ancillary Agreement, any certificate delivered pursuant hereto or thereto or any Transaction. Except as otherwise provided in Section 1.05 and Section 1.06, each Party agrees to commence any such action, suit or Proceeding in the Delaware Court of Chancery within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any court of the United States located in the State of Delaware, or, if any such court of the United States located in the State of Delaware declines to accept jurisdiction over a particular matter, any state court located in the State of Delaware). Notwithstanding the foregoing, any Party hereto may commence an action, suit or Proceeding with any Governmental Entity anywhere in the world for the sole purpose of seeking recognition and enforcement of a judgment of any court referred to in the first sentence of this Section 10.10. Each Party further agrees that service of any process, summons, notice or document in the manner described in Section 10.03 (other than by electronic mail) shall be effective service of process for any action, suit or Proceeding in Delaware with respect to any matters to which it has submitted to jurisdiction in this Section 10.10. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of this Agreement, any Ancillary Agreement or the Transactions in the Delaware Court of Chancery within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any court of the United States located in the State of Delaware, or, if any such court of the United States located in the State of Delaware declines to accept jurisdiction over a particular matter, any state court located in the State of Delaware), and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum.

Section 10.11 GOVERNING LAW. THIS AGREEMENT, AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE TO THIS AGREEMENT, OR THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS AGREEMENT (INCLUDING ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO ANY REPRESENTATION OR WARRANTY MADE IN OR IN CONNECTION WITH THIS AGREEMENT OR AS AN INDUCEMENT TO ENTER INTO THIS AGREEMENT) SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF DELAWARE APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO THE CONFLICTS OR CHOICE OF LAW

PRINCIPLES OF SUCH STATE; PROVIDED, THAT, NOTWITHSTANDING THE FOREGOING, ANY DISPUTES INVOLVING THE PURCHASER FINANCING SOURCES WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING REGARD TO CONFLICTS OR CHOICE OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

Section 10.12 WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, INVOLVING OR OTHERWISE IN RESPECT OF THIS AGREEMENT, ANY ANCILLARY AGREEMENT, THE PURCHASER FINANCING OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY, INCLUDING IN ANY ACTION, PROCEEDING OR COUNTERCLAIM AGAINST ANY PURCHASER FINANCING SOURCE. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE ANCILLARY AGREEMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.12.

Section 10.13 Attorneys' Fees. If any Proceeding relating to this Agreement or any of the Transactions or the enforcement thereof is brought against any Party, the prevailing Party, if any, shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

Section 10.14 Release.

(a) Effective as of the Closing, each Seller, on behalf of such Seller and each of such Seller's current or former Related Persons, hereby releases and forever discharges Purchaser, the Company, each other Seller and each of their respective individual, joint or mutual, past, present and future Representatives, successors and assigns (individually, a "Releasee" and collectively, "Releasees") from any and all claims, demands, Proceedings, causes of action and Judgments that any Seller or any of their respective current or former Related Persons now have, have ever had or may hereafter have against the respective Releasees, and from any and all obligations, Contracts, debts, liabilities and obligations that any Releasee now has, has ever had or may hereafter have in favor of any Seller or any of their respective current or former Related Persons, in each case of any nature (whether absolute or contingent, asserted or unasserted, known or unknown, primary or secondary, direct or indirect, and whether or not accrued) arising contemporaneously with or before the Closing Date or on account of or arising out of any matter, cause or event occurring contemporaneously with or before the Closing Date, including any rights or remedies pursuant to the Company Operating Agreement and any rights to indemnification or reimbursement from the Company or any of its Subsidiaries, whether pursuant to the Company Certificate of Formation, Company Operating Agreement, Contract or otherwise and whether or not relating to claims pending on, or asserted after, the Closing Date (in each case, other than (i) any obligation of the Company to be performed following the Closing and (A) arising under this Agreement or any Ancillary Agreement or (B) that has been identified as continuing in effect subsequent to the Closing in Section 5.10(a) of the Company Disclosure Schedule, (ii) any obligations of Purchaser and Guarantor arising under this Agreement or any Ancillary Agreement, or (iii) any obligations of any Seller arising under this Agreement or any Ancillary Agreement) (collectively, the "Released Claims"). Each Seller hereby irrevocably covenants to refrain from, directly or indirectly, asserting any claim or demand, or commencing, instituting or causing to be commenced, any Proceeding of any kind against any Releasee, based upon any Released Claim. For the

avoidance of doubt, no release of any Seller by any other Seller under this Section 10.14 shall impact the rights or remedies of any Purchaser Indemnitee.

(b) In the event that any provision of this Section 10.14 is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Section 10.14 will remain in full force and effect. Any provision of this Section 10.14 held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 10.15 Company Disclosure Schedule. Any disclosure set forth in any section of the Company Disclosure Schedule shall be deemed set forth for purposes of any other section of the Company Disclosure Schedule to which such disclosure is relevant to the extent that it is readily apparent on its face that such disclosure is relevant to such other section of the Company Disclosure Schedule. The Company Disclosure Schedule is qualified in its entirety by reference to specific provisions of the Agreement, and are not intended to constitute, and shall not be construed as constituting, any representation or warranty or covenant of Sellers, except as and to the extent expressly provided in this Agreement. Inclusion of information in the Company Disclosure Schedule shall not be construed as an admission that such information is material to Sellers, the Company or their respective assets, liabilities, financial condition, results, business and/or operations. The fact that any item of information is contained in the Company Disclosure Schedule shall not be construed to mean that such information is required to be disclosed by the Agreement. Such information shall not be used as a basis for interpreting the term “material,” “materially” or “materiality” in the Agreement. Capitalized terms used but not defined in the Company Disclosure Schedule shall have the same meanings given them in this Agreement.

Section 10.16 Representation by Counsel. Each party hereby represents and agrees that it has been represented by or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s), that to the extent, if any, that it desired, it availed itself of this right and opportunity, that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement in its entirety and have had it fully explained to them by such party’s respective counsel, that each is fully aware of the contents thereof and its meaning, intent and legal effect, and that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

Section 10.17 Guarantee.

(a) As material inducement to the Company and Sellers to enter into this Agreement, the Ancillary Agreements and the Transactions, Guarantor hereby irrevocably and unconditionally guarantees to the Company and each Seller the full and timely payment, performance and satisfaction of each covenant, agreement, obligation and liability of Purchaser arising under this Agreement and each of the Ancillary Agreements (collectively, the “Purchaser Obligations”). To the fullest extent permitted by applicable Law, Guarantor hereby expressly waives any and all rights and defenses arising by reason of any Law that would otherwise require any election of remedies by the Company or any Seller. Without limiting the generality of the foregoing, Guarantor hereby expressly waives: (i) notice of the acceptance by the Company or an Seller of this guarantee; (ii) notice of the non-performance of all or any of the Purchaser Obligations; (iii) presentment, demand, notice of dishonor, protest, notice of protest and all other notices whatsoever, either in respect of Purchaser’s obligations under this Section 10.17(a) or any or all of the Purchaser Obligations; (iv) any defense arising by reason of any claim or defense based upon an election of remedies, including the failure or delay in exercising remedies against Purchaser, by the Company or any Seller which in any manner affects any of its rights to proceed against Guarantor; (v) any defense arising by reason of any modification, termination or release of any of the Purchaser Obligations pursuant to applicable Law; and (vi) any defense arising from the bankruptcy or insolvency of Purchaser. Guarantor agrees that its liability hereunder shall be primary and direct, not merely of collection and not merely that

of a surety, and that neither the Company nor any Seller shall be required to pursue any right or remedy it may have against Guarantor under this Agreement, any of the Ancillary Agreements or otherwise or to first commence any proceeding or obtain any judgment against Purchaser in order to enforce this Section 10.17(a). In the event that any payment to the Company or any Seller in respect of the Purchaser Obligations is rescinded or must otherwise be returned for any reason whatsoever, Guarantor shall remain liable hereunder with respect to the Purchaser Obligations as if such payment had not been made. This Section 10.17(a) represents a continuing guarantee and shall be binding upon Guarantor until the Purchaser Obligations have been satisfied and (if applicable) indefeasibly paid in full.

(b) Notwithstanding anything to the contrary contained in Section 10.17(a), the Company and Sellers hereby agree that (i) to the extent Purchaser is relieved of all or any portion of the Purchaser Obligations by full satisfaction thereof on the terms and subject to the conditions set forth in this Agreement or pursuant to any other written agreement with the Company and Sellers, Guarantor shall be similarly relieved of its corresponding obligations under Section 10.17(a), and (ii) Guarantor shall have all defenses to the payment of its obligations under Section 10.17(a) that would otherwise be available to Purchaser under the terms of this Agreement with respect to the Purchaser Obligations.

Section 10.18 Sellers' Representative.

(a) Each Seller hereby appoints SWF Posse LLC as Sellers' Representative of such Seller to act as the agent and on behalf of such Seller for all purposes under this Agreement, including for the purposes of: (i) delivery of wire instructions of such Seller to Purchaser in connection with the payments hereunder or under any Ancillary Agreement to Sellers; (ii) review of the Statement, the Contingent Consideration Statement, and the Brand Sale Consideration Statement; (iii) delivering any funds hereunder or under any Ancillary Agreement; (iv) determining whether the conditions to closing in Article VI have been satisfied and supervising the Closing, including waiving any such condition if Sellers' Representative, in its sole discretion, determines that such waiver is appropriate; (v) taking any action that may be necessary or desirable, as determined by Sellers' Representative in its sole discretion, in connection with the termination hereof in accordance with Article VII; (vi) taking any and all actions that may be necessary or desirable, as determined by Sellers' Representative in its sole discretion, in connection with the amendment hereof in accordance with Section 10.06; (vii) accepting notices on behalf of such Seller in accordance with Section 10.03; (viii) taking any and all actions that may be necessary or desirable, as determined by Sellers' Representative in its sole discretion, in connection with the payment of the costs and expenses incurred with respect to the Company or such Seller in accordance with Section 5.06; (ix) executing and delivering, in Sellers' Representative's capacity as the representative of such Seller, any and all notices, documents or certificates to be executed by Sellers' Representative, on behalf of such Seller, in connection with this Agreement, the Ancillary Agreements and the Transactions; (x) granting any consent or approval on behalf of such Seller under this Agreement, including any amendment, waiver or modification under this Agreement; (xi) allocating Seller Transaction Expenses in accordance with Section 1.03(d); (xii) (A) disputing or refraining from disputing, on behalf of such Seller, any claim made by Purchaser under this Agreement or any Ancillary Agreement, (B) negotiating and compromising, on behalf of such Seller, any dispute that may arise under, and exercise or refrain from exercising any remedies available under, this Agreement or any Ancillary Agreement, and (C) executing, on behalf of such Seller, any settlement agreement, release or other document with respect to such dispute or remedy; (xiii) engaging attorneys, accountants, agents or consultants on behalf of such Seller in connection with this Agreement Ancillary Agreement, and paying any fees related thereto; and (xiv) taking any and all other actions and doing any and all other things provided in or contemplated by this Agreement or any Ancillary Agreement to be performed by such Seller or by Sellers' Representative on behalf of such Seller. As the representative of Sellers, Sellers' Representative shall act as the agent for all Sellers and shall have authority to bind each Seller in accordance with this Agreement, and Purchaser may rely on such appointment and authority until the receipt of notice of the appointment of a successor upon 10 days' prior written notice to Purchaser.

(b) Each Seller hereby appoints Sellers' Representative as such Seller's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, in such Seller's name, place and stead, in any and all capacities, in connection with the Transactions, granting unto said attorney-in-fact and agent full power and authority to make, execute or sign, acknowledge, deliver, record, file and/or publish any and all documents, agreements, instruments and certificates contemplated by this Agreement, the Ancillary Agreements and the Transactions and to do and perform each and every act and thing requisite and necessary to be done in connection with the sale of such Seller's Membership Interests and the other Transactions as fully to all intents and purposes as such Seller might or could do in person. This special power of attorney is a special power of attorney coupled with an interest, is irrevocable, and shall survive the death or legal incapacity of such Seller. The undersigned hereby empowers Sellers' Representative acting pursuant hereto to determine in its sole discretion the time when, purpose for and manner in which any power herein conferred upon it shall be exercised, and the conditions, provisions and covenants of any instruments or documents that may be executed by it pursuant hereto.

(c) Neither Sellers' Representative nor any agent employed by it shall incur any liability to any Seller relating to the performance of its duties under this Agreement for any error of judgment, or any action taken, suffered or omitted to be taken on behalf of Sellers (or any of them), except in the case of Sellers' Representative's gross negligence, actual fraud or willful misconduct. Sellers' Representative may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by Sellers' Representative hereunder in good faith and in accordance with the advice of such counsel.

(d) Each Seller hereby irrevocably agrees, severally and not jointly, to indemnify, defend and hold Sellers' Representative harmless from, and to bear such Seller's Pro Rata Share of, any Loss, liability or expense, including reasonable attorneys' fees and expenses, incurred by Sellers' Representative without gross negligence or fraud on the part of Sellers' Representative, in connection with the performance of its duties, or arising out of, or in connection with, any action or decision taken or made on behalf of any Seller by Sellers' Representative within the scope of Sellers' Representative's duties under this Section 10.18, and to be bound by all actions taken by Sellers' Representative in its capacity as such within the scope of Sellers' Representative's duties under this Section 10.18; provided, however, that only the Group A Sellers shall bear their respective Group A Pro Rata Share of any Accounting Firm fees or expenses incurred by Sellers' Representative pursuant to Section 1.06(b)(iii) or Section 1.07(b)(iii). In no event will Sellers' Representative be required to advance its own funds on behalf of Sellers or otherwise. Sellers acknowledge and agree that the foregoing indemnities will survive the resignation or disqualification of Sellers' Representative or the termination of this Agreement. Upon the Closing, Purchaser will wire \$250,000 (the "Sellers' Representative Expense Fund") to Sellers' Representative, which will be used for the purposes of paying directly, or reimbursing Sellers' Representative for, any third party expenses pursuant to this Agreement and any agreements ancillary hereto. Sellers will not receive any interest or earnings on the Sellers' Representative Expense Fund and irrevocably transfer and assign to Sellers' Representative any ownership right that they may otherwise have had in any such interest or earnings. Sellers' Representative will not be liable for any loss of principal of the Expense Fund other than as a result of its gross negligence or fraud. Sellers' Representative will hold these funds separate from its corporate funds, will not use these funds for its operating expenses or any other corporate purposes and will not voluntarily make these funds available to its creditors in the event of bankruptcy. Contemporaneous with or as soon as practicable following the completion of Sellers' Representative's duties, Sellers' Representative will deliver the balance of the Expense Fund to Sellers in accordance with this Agreement. Sellers' Representative may resign from its capacity as Sellers' Representative at any time by no less than 10 days' prior written notice delivered to Purchaser. Upon the disqualification or resignation of Sellers' Representative, a successor Sellers' Representative shall be promptly appointed (and in no event later than 15 days) by Sellers who, together, constitute a majority of the aggregate Pro Rata Shares of Sellers who shall succeed Sellers' Representative as "Sellers' Representative" hereunder.

(e) Each Seller hereby acknowledges and agrees that it shall have no right to enforce any provision of this Agreement or bring a claim hereunder directly, and all such rights of enforcement or claims may be brought solely by Sellers' Representative (on behalf of any Seller).

* * *

[Signature Pages to Follow]

IN WITNESS WHEREOF, Sellers, the Company, Guarantor, Purchaser and Sellers' Representative have duly executed this Agreement as of the date first written above.

PURCHASER:

The Cheesecake Factory Restaurants, Inc.

By: /s/ David Overton

Name: David Overton

Title: President and Chief Executive Officer

COMPANY:

Fox Restaurant Concepts LLC

By: FRC Management LLC

Its: Manager

By: /s/ Samuel Fox

Name: Samuel Fox

Title: Manager

[Signature Page to Membership Interest Purchase Agreement]

GROUP A SELLERS:

/s/ Leezie Kim

Name: Leezie Kim

[Signature Page to Membership Interest Purchase Agreement]

GROUP A SELLERS:

/s/ Clint Woods

Name: Clint Woods

[Signature Page to Membership Interest Purchase Agreement]

GROUP A SELLERS:

/s/ Samuel Fox

Name: Samuel Fox

[Signature Page to Membership Interest Purchase Agreement]

GROUP A SELLERS:

/s/ Emily Fox

Name: Emily Fox

[Signature Page to Membership Interest Purchase Agreement]

GROUP A SELLERS:

Russell Owens Revocable Trust

By: /s/ Russell Owens

Name: Russell Owens

Title: Trustee

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

/s/ Robert Affholder

Name: Robert Affholder

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

Burton & Nancy Kinerk Revocable Trust

By: /s/ Burton Kinerk

Name: Burton Kinerk

Title: Trustee

By: /s/ Nancy Kinerk

Name: Nancy Kinerk

Title: Trustee

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

/s/ Ronald Stoll

Name: Ronald Stoll

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

/s/ Brian Stoll

Name: Brian Stoll

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

Robert Staley Trust DTD March 14, 1980

By: /s/ Robert Staley

Name: Robert Staley

Title: Trustee

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

/s/ Peter Evans

Name: Peter Evans

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

/s/ Michael Franks

Name: Michael Franks

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

/s/ Pamela Affholder

Name: Pamela Affholder

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

/s/ Dan Clay

Name: Dan Clay

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

/s/ Alain Ane

Name: Alain Ane

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

/s/ Christopher Christian

Name: Christopher Christian

[Signature Page to Membership Interest Purchase Agreement]

GROUP B SELLERS:

/s/ Regan Jasper

Name: Regan Jasper

[Signature Page to Membership Interest Purchase Agreement]

Solely for the limited purposes set forth herein,
GUARANTOR:

The Cheesecake Factory Incorporated

By: /s/ David Overton

Name: David Overton

Title: Chief Executive Officer

Solely in its capacity as SELLERS'
REPRESENTATIVE:

SWF Posse LLC

By: /s/ Samuel Fox

Name: Samuel Fox

Title: Manager

[Signature Page to Membership Interest Purchase Agreement]

FIRST AMENDMENT TO MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO MEMBERSHIP INTEREST PURCHASE AGREEMENT (this “Amendment” and, together with the Original Agreement (as defined below), the “Agreement”) is entered into as of October 2, 2019, by and among (i) Fox Restaurant Concepts LLC, an Arizona limited liability company (the “Company”), (ii) The Cheesecake Factory Restaurants, Inc., a California corporation (“Purchaser”), and (iii) SWF Posse LLC, an Arizona limited liability company, as the appointed representative of Sellers (“Sellers’ Representative”). Purchaser, the Company and Sellers’ Representative shall each be referred to herein as a “Party” and collectively, the “Parties”. Capitalized terms used, but not defined, in this Amendment shall have the meanings ascribed thereto in the Original Agreement.

RECITALS

WHEREAS, Sellers, the Company, Purchaser, Sellers’ Representative and Guarantor entered into a Membership Interest Purchase Agreement, dated as of July 30, 2019 (the “Original Agreement”); and

WHEREAS, pursuant to Section 10.06 of the Original Agreement, Purchaser, the Company and Sellers’ Representative (on behalf of each Seller) desire to amend the Original Agreement as provided herein.

NOW, THEREFORE, in consideration of the premises and for the other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

Section 1 Amendment to Section 1.05(a)(i) and “Funded Indebtedness”. Section 1.05(a)(i) of the Original Agreement is hereby amended to delete the parenthetical in clause (5) thereof. The definition of “Funded Indebtedness” in Section 10.04(b) of the Original Agreement is hereby amended to delete clause (i) thereof.

Section 2 Amendment to Exhibit G. Exhibit G of the Original Agreement is hereby amended and restated in its entirety to read as set forth in Exhibit A hereof.

Section 3 Supplements to Disclosure Schedules. The Parties agree that Disclosure Schedules to the Original Agreement, dated as of July 30, 2019, are hereby amended by Supplements to Disclosure Schedules, dated as of October 2, 2019 (the “Supplements”), attached hereto as Exhibit B, which Supplements shall be deemed a part of the Company Disclosure Schedule for all purposes under the Original Agreement.

Section 4 Representations and Warranties. Each Party represents and warrants to each other Party as follows:

(a) **Organization, Standing and Power**. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has

full power and authority to own, lease or otherwise hold its properties and assets and to conduct its business as presently conducted.

(b) Authority; Execution and Delivery; Enforceability. Such Party has full power and authority to execute, deliver and perform its obligations under this Amendment. The execution, delivery and performance by such Party of this Amendment and, if applicable, the consummation by such Party of the Option Purchase have been duly authorized by all necessary corporate, limited liability company or other entity action of such Party. Such Party has duly executed and delivered this Amendment, and this Amendment constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as limited by applicable laws affecting the enforcement of creditors' rights generally or by general equitable principles.

Section 5 Miscellaneous.

(a) Governing Law. THIS AMENDMENT, AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE TO THIS AMENDMENT, OR THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS AMENDMENT (INCLUDING ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO ANY REPRESENTATION OR WARRANTY MADE IN OR IN CONNECTION WITH THIS AMENDMENT OR AS AN INDUCEMENT TO ENTER INTO THIS AMENDMENT) SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF DELAWARE APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO THE CONFLICTS OR CHOICE OF LAW PRINCIPLES OF SUCH STATE; PROVIDED, THAT, NOTWITHSTANDING THE FOREGOING, ANY DISPUTES INVOLVING THE PURCHASER FINANCING SOURCES WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING REGARD TO CONFLICTS OR CHOICE OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

(b) The Original Agreements. Except as specifically amended hereby, the Original Agreement shall continue in full force and effect in accordance with the provisions thereof in existence on the date hereof. Unless the context otherwise requires, after the date hereof, any reference to the Original Agreements shall mean such Original Agreement as amended hereby.

(c) Counterparts. This Amendment may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Parties. The exchange of copies hereof, including signature pages hereto, by facsimile, e mail or other means of electronic transmission shall constitute effective execution and delivery hereof as to the Parties and may be used in lieu of the original Amendment for all purposes.

Signatures transmitted by facsimile, e-mail or other means of electronic transmission shall be deemed to be original signatures for all purposes.

(d) Purchaser Financing Sources. Notwithstanding anything to the contrary contained herein, Sellers' Representative (on behalf of each Seller) hereby irrevocably and unconditionally agrees that none of the Purchaser Financing Sources shall have any liability or obligation to any Seller under or in connection with this Amendment, any commitment letter, engagement letter or definitive financing document (including the Purchaser Loan Agreement) or any of the transactions contemplated hereby or thereby (including with respect to the Purchaser Financing). Each Seller hereby waives any and all rights or claims and causes of action (whether at law, in equity, in contract, in tort or otherwise) against the Purchaser Financing Sources that may be based upon, arise out of or relate to this Amendment, any commitment letter, engagement letter or definitive financing document (including the Purchaser Loan Agreement) or any of the transactions contemplated hereby or thereby (including the Purchaser Financing), and each Seller agrees not to commence or support a proceeding against any Purchaser Financing Source in connection with this Amendment or any commitment letter, engagement letter or definitive financing document (including the Purchaser Loan Agreement) or any of the transactions contemplated hereby or thereby (including any proceeding related to the Purchaser Financing). Nothing in this Section 6(e) will limit the rights of Purchaser in respect of the Purchaser Financing under the Purchaser Loan Agreement. Without limiting the foregoing, no Purchaser Financing Source shall be subject to any special, consequential, punitive or indirect damages or damages of a tortious nature to any Seller.

[Signature Page Follows]

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

**THE CHEESECAKE FACTORY RESTAURANTS,
INC.**

By: /s/ David Overton

Name: David Overton

Title: Chief Executive Officer

Contact Information:

FOX RESTAURANT CONCEPTS LLC

By: FRC Management LLC

Its: Manager

By: /s/ Samuel Fox

Name: Samuel Fox

Title: Manager

Contact Information:

[Signature Page to Amendment]

Solely in its capacity as Sellers' Representative:

SWF POSSE LLC

By: /s/ Samuel Fox

Name: Samuel Fox

Title: Manager

[Signature Page to Amendment]



THIRD AMENDED AND RESTATED LOAN AGREEMENT

dated as of

July 30, 2019

among

THE CHEESECAKE FACTORY INCORPORATED,

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent,

BANK OF AMERICA, N.A.,
and

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Co-Syndication Agents

and

BANK OF THE WEST,
as Documentation Agent

JPMORGAN CHASE BANK, N.A.,
as Sole Bookrunner and Sole Lead Arranger

	Page
ARTICLE I DEFINITIONS	1
SECTION 1.01. Defined Terms	1
SECTION 1.02. Classification of Loans and Borrowings	24
SECTION 1.03. Terms Generally	24
SECTION 1.04. Accounting Terms; GAAP	24
SECTION 1.05. Interest Rates; LIBOR Notification	25
SECTION 1.06. Letter of Credit Amounts	25
SECTION 1.07. Divisions	26
ARTICLE II THE CREDITS	26
SECTION 2.01. Commitments	26
SECTION 2.02. Loans and Borrowings	26
SECTION 2.03. Requests for Revolving Borrowings	27
SECTION 2.04. Swingline Loans	27
SECTION 2.05. Letters of Credit	28
SECTION 2.06. Funding of Borrowings	33
SECTION 2.07. Interest Elections	34
SECTION 2.08. Termination and Reduction of Commitments	35
SECTION 2.09. Repayment of Loans; Evidence of Debt	36
SECTION 2.10. Prepayment of Loans	36
SECTION 2.11. Fees	37
SECTION 2.12. Interest	38
SECTION 2.13. Alternate Rate of Interest	39
SECTION 2.14. Increased Costs	40
SECTION 2.15. Break Funding Payments	41
SECTION 2.16. Withholding of Taxes; Gross-Up	42
SECTION 2.17. Payments Generally; Pro Rata Treatment; Sharing of Set-offs	46
SECTION 2.18. Mitigation Obligations; Replacement of Lenders	48
SECTION 2.19. Defaulting Lenders	49
SECTION 2.20. Increase in Commitments	51
ARTICLE III REPRESENTATIONS AND WARRANTIES	52

	Page
SECTION 3.01. Organization; Powers	52
SECTION 3.02. Authorization; Enforceability	52
SECTION 3.03. Governmental Approvals; No Conflicts	52
SECTION 3.04. Financial Condition; No Material Adverse Change	53
SECTION 3.05. Properties; Liens	53
SECTION 3.06. Litigation and Environmental Matters	53
SECTION 3.07. Compliance with Laws and Agreements	54
SECTION 3.08. Margin Regulations; Investment Company Status	54
SECTION 3.09. Taxes	54
SECTION 3.10. ERISA	54
SECTION 3.11. Subsidiaries; Equity Interests	54
SECTION 3.12. Labor Matters	55
SECTION 3.13. Disclosure	55
SECTION 3.14. Anti-Corruption Laws and Sanctions	55
SECTION 3.15. EEA Financial Institutions	55
ARTICLE IV CONDITIONS	56
SECTION 4.01. Effective Date	56
SECTION 4.02. Each Credit Event	57
ARTICLE V AFFIRMATIVE COVENANTS	58
SECTION 5.01. Financial Statements and Other Information	58
SECTION 5.02. Notices of Material Events	60
SECTION 5.03. Existence; Conduct of Business	60
SECTION 5.04. Payment of Obligations	60
SECTION 5.05. Maintenance of Properties; Insurance	60
SECTION 5.06. Books and Records; Inspection Rights	60
SECTION 5.07. Compliance with Laws	61
SECTION 5.08. Use of Proceeds and Letters of Credit	61
SECTION 5.09. Additional Guarantors	61
SECTION 5.10. Post-Closing Covenant	62
ARTICLE VI NEGATIVE COVENANTS	62

	Page
SECTION 6.01. Indebtedness	62
SECTION 6.02. Liens	63
SECTION 6.03. Fundamental Changes	64
SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions	64
SECTION 6.05. Hedge Agreements	66
SECTION 6.06. Restricted Payments	66
SECTION 6.07. Transactions with Affiliates	67
SECTION 6.08. Restrictive Agreements	67
SECTION 6.09. Financial Covenants	67
SECTION 6.10. Sale and Leaseback	67
SECTION 6.11. Sale of Assets	68
ARTICLE VII EVENTS OF DEFAULT	68
ARTICLE VIII THE ADMINISTRATIVE AGENT	71
SECTION 8.01. Authorization and Action	71
SECTION 8.02. Administrative Agent's Reliance, Indemnification, Etc	73
SECTION 8.03. Posting of Communications	74
SECTION 8.04. The Administrative Agent Individually	76
SECTION 8.05. Successor Administrative Agent	76
SECTION 8.06. Acknowledgements of Lenders and Issuing Banks	77
SECTION 8.07. Certain ERISA Matters	78
SECTION 8.08. Guarantee Matters	79
ARTICLE IX MISCELLANEOUS	79
SECTION 9.01. Notices	79
SECTION 9.02. Waivers; Amendments	80
SECTION 9.03. Expenses; Indemnity; Damage Waiver	82
SECTION 9.04. Successors and Assigns	83
SECTION 9.05. Survival	87
SECTION 9.06. Counterparts; Integration; Effectiveness; Electronic Execution	87
SECTION 9.07. Severability	88
SECTION 9.08. Right of Setoff	88

	Page
SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process	89
SECTION 9.10. WAIVER OF JURY TRIAL	90
SECTION 9.11. Headings	90
SECTION 9.12. Confidentiality	90
SECTION 9.13. Interest Rate Limitation	91
SECTION 9.14. USA PATRIOT Act	91
SECTION 9.15. California Judicial Reference	92
SECTION 9.16. Judgment Currency	92
SECTION 9.17. No Fiduciary Duty, etc	92
SECTION 9.18. Acknowledgement and Consent to Bail-In of EEA Financial Institutions	93
SECTION 9.19. Acknowledgement Regarding Any Supported QFCs	94
SECTION 9.20. Amendment and Restatement	94

SCHEDULES:

Schedule 2.01 – Commitments
Schedule 2.05 – Existing Letters of Credit
Schedule 3.06 – Disclosed Matters
Schedule 3.11 – Subsidiaries and Equity Interests
Schedule 6.01 – Existing Indebtedness
Schedule 6.02 – Existing Liens
Schedule 6.08 – Existing Restrictions

EXHIBITS:

Exhibit A – Form of Assignment and Assumption
Exhibit B – Form of Compliance Certificate
Exhibit C – Form of U.S. Tax Compliance Certificates
Exhibit D – Form of Acknowledgment and Reaffirmation Agreement

THIRD AMENDED AND RESTATED LOAN AGREEMENT dated as of July 30, 2019, among THE CHEESECAKE FACTORY INCORPORATED, a Delaware corporation, the LENDERS party hereto, and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

The Borrower, certain lenders and the Administrative Agent are parties to that certain Second Amended and Restated Loan Agreement dated as of December 22, 2015 (as amended, restated, supplemented or otherwise modified from time to time, the “Existing Loan Agreement”). The parties hereto agree that the Existing Loan Agreement is hereby amended and restated in its entirety as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, is or are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Acknowledgment and Reaffirmation Agreement” means the Acknowledgment and Reaffirmation Agreement made by the Guarantors in favor of the Administrative Agent and the Lenders, substantially in the form of Exhibit D.

“Acquisition” means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which the Borrower or any of its Subsidiaries (a) acquires any ongoing business or all or substantially all of the assets of any Person, or division thereof, whether through purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority (by percentage of voting power) of the outstanding Equity Interests of a Person.

“Act” has the meaning assigned to such term in Section 9.14.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Administrative Agent” means JPMorgan in its capacity as administrative agent for the Lenders hereunder.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agreement” means this Third Amended and Restated Loan Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Alternate Base Rate” means, for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that, for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14, then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“Alternative Currency” means any currency other than dollars that is a lawful currency that is readily available, freely transferable and not restricted, able to be converted into dollars and available in the London interbank deposit market.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Percentage” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment; provided that in the case of Section 2.19 when a Defaulting Lender shall exist, “Applicable Percentage” shall mean the percentage of the total Commitments (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments and to any Lender’s status as a Defaulting Lender at the time of determination.

“Applicable Rate” means, for any day, with respect to any ABR Loan or Eurodollar Revolving Loan, or with respect to the Unused Fees payable hereunder, as the case may be, (i) from the Effective Date to the date on which the Administrative Agent receives a certificate pursuant to Section 5.01(c) for the fiscal quarter ending July 2, 2019, 0.375% per annum for any ABR Loan, 1.375% per annum for Eurodollar Revolving Loans and 0.20% for the Unused Fee and (ii) thereafter, the applicable rate per annum set forth below under the caption “ABR Spread”, “Eurodollar Spread” or “Unused Fee”, as the case may be, based upon the Net Adjusted Leverage

Ratio as set forth in the most recent certificate received by the Administrative Agent pursuant to Section 5.01(c):

APPLICABLE RATE

Net Adjusted Leverage Ratio	Eurodollar Spread	ABR Spread	Unused Fee
< 2.75 to 1.00	1.00%	0.00%	0.125%
2.75 to $1.00 \leq x < 3.50$ to 1.00	1.125%	0.125%	0.15%
3.50 to $1.00 \leq x < 4.25$ to 1.00	1.375%	0.375%	0.20%
≥ 4.25 to 1.0	1.75%	0.75%	0.25%

“Approved Electronic Platform” has the meaning assigned to it in Section 8.03(a).

“Approved Fund” has the meaning assigned to such term in Section 9.04.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, so long as such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit

such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means The Cheesecake Factory Incorporated, a Delaware corporation.

“Borrowing” means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, or (b) a Swingline Loan.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Canadian Dollar” means lawful money of Canada.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the Issuing Bank or Swingline Lender (as applicable) and the Lenders, as collateral for LC Exposure, Obligations in respect of Swingline Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the Administrative Agent, the Issuing Bank or Swingline Lender shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent and (b) the

Issuing Bank or Swingline Lender (as applicable). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody’s;
- (c) investments in certificates of deposit, banker’s acceptances and time deposits maturing within 1 year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;
- (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; or
- (e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody’s and (iii) have portfolio assets of at least \$5,000,000,000.

“Cash Interest Expense” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, Interest Expense, minus the portion thereof which is not payable in cash.

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), of Equity Interests representing more than 35.0% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower; (b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were not (i) directors of the Borrower on the Effective Date, (ii) nominated or appointed by the board of directors of the Borrower or (iii) approved (which approval may or may not include an endorsement) by a majority of the board of directors of the Borrower as director candidates prior to their election; or (c) the acquisition of direct or indirect Control of the Borrower by any Person or group.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in

any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Charges" has the meaning assigned to such term in Section 9.13.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Commitment" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08, (b) increased from time to time pursuant to Section 2.20 and (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Lenders' Commitments is \$400,000,000.

"Communications" has the meaning assigned to it in Section 8.03(c).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated Total Assets" means at any time the total assets of the Borrower and its Subsidiaries calculated on a consolidated basis as of such time.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Co-Syndication Agents" means each of Bank of America, N.A. and Wells Fargo Bank, National Association.

“Credit Party” means the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender.

“Debt” means the outstanding principal amount of Indebtedness of the Borrower and its Subsidiaries of the nature referred to in clauses (a), (b), (c), (d), (e), (f), (g) and (h) of the definition of “Indebtedness”; provided, that for the purpose of this definition and for the avoidance of doubt, clause (e) of the definition shall not include any earn-out obligations or similar deferred obligations of the Borrower or any Subsidiary incurred or created in connection with either of the Project North Acquisitions in accordance with the Project North Acquisition Agreements (based upon such agreements as set forth in the closing certificate delivered pursuant to Section 4.01(f)). The Debt of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For the avoidance of doubt, it is understood and agreed that any amounts classified as Deemed Landlord Financing Liabilities shall not be deemed to be Debt for purposes hereof.

“Deemed Landlord Financing Liabilities” means any deemed landlord financing liabilities as determined in accordance with GAAP so long as such liabilities are not evidenced by a note or similar instrument and are repayable solely through the payment of Rental Expense (or the Borrower is not required to repay such liability).

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means any Lender that (a) has failed, within three Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a Credit Party or the Borrower, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party’s or the Borrower’s, as applicable, receipt of such certification in form and substance satisfactory to it and the

Administrative Agent, or (d) has become the subject of (A) a Bankruptcy Event or (B) a Bail-In Action.

“Denomination Date” means each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any Letter of Credit denominated in an Alternative Currency having the effect of increasing the amount thereof, (iii) each date of any LC Disbursement with respect to any Letter of Credit denominated in an Alternative Currency, and (iv) such additional dates as the Administrative Agent or the Issuing Bank shall determine.

“Designated Alternative Currency” means Canadian Dollars and any other Alternative Currency that has been designated by the Administrative Agent and the Issuing Bank as a Designated Alternative Currency at the request of the Borrower.

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed by the Borrower in its periodic reports filed with the Securities and Exchange Commission prior to the Effective Date or such matters that have occurred prior to the Effective Date and are expected to be disclosed in such a report to be filed after the Effective Date, which are described in Schedule 3.06.

“Documentation Agent” means Bank of the West.

“dollars” or “\$” refers to lawful money of the United States of America.

“EBITDA” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to Net Income for such period plus (a) the following to the extent deducted in calculating such Net Income, without duplication: (i) Interest Expense for such period, (ii) the net provision for Federal, state, local and foreign income taxes payable by the Borrower and its Subsidiaries for such period, (iii) depreciation and amortization expense for such period, (iv) the amount of noncash stock option expense for such period, (v) other non-recurring expenses of the Borrower and its Subsidiaries reducing such Net Income for such period which do not represent a cash item in such period or any future period, (vi) to the extent paid in cash or accrued during such period, reasonable and documented costs and expenses incurred in connection with any Permitted Acquisition (whether or not such Permitted Acquisition is consummated) and supported by documentation provided to the Administrative Agent, (vii) non-cash Rental Expense for such period, (viii) non-recurring integration costs for such period and (ix) pre-opening expenses in connection with Permitted Acquisitions and expenses relating to business restructuring and strategic initiatives for such period, provided that the aggregate amount added back to EBITDA pursuant to this clause (ix) shall not exceed 15% of EBITDA for such period (calculated after giving effect to such add-backs), and minus (b) to the extent included in calculating such Net Income, without duplication, (i) all noncash items increasing Net Income for such period, (ii) all EBITDA of any joint venture or other non-wholly owned Subsidiary of the Borrower for such period, except to the extent of any amounts distributed to the Borrower in cash and (iii) cash payments made during such period in respect of non-cash Rental Expenses added back pursuant to clause (a)(vii) above for a prior period.

“EBITDAR” means, for any period, EBITDA for such period plus, to the extent deducted from Net Income, the Rental Expense of the Borrower and its Subsidiaries for such period.

“EEA Financial Institution” means (a) any institution established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“EITF” has the meaning assigned to such term in Section 6.10.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (a) the environment, (b) preservation or reclamation of natural resources, (c) the management, release or threatened release of any Hazardous Material or (d) health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(a)(14) of ERISA or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of the Borrower or any of its ERISA Affiliates from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition upon the Borrower or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Article VII.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.18(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.16, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.16(f) and (d) any withholding Taxes imposed under FATCA.

“Existing Letters of Credit” means the letters of credit listed on Schedule 2.05 that were issued by the Issuing Bank (as defined in the Existing Loan Agreement) for the account of the Borrower.

“Existing Loan Agreement” has the meaning assigned to such term in the preamble to this Agreement.

“FATCA” means Sections 1471 through 1474 of the Code, known as the Foreign Account Tax Compliance Act, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that, if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“Foreign Lender” means a Lender that is not a U.S. Person.

“FRC Acquisition” means the Acquisition by The Cheesecake Factory Restaurants, Inc. of any and all limited liability company interests in Fox Restaurant Concepts LLC pursuant to the Project North MIPA.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security

for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantors” means, collectively, The Cheesecake Factory Restaurants, Inc., The Cheesecake Factory Bakery Incorporated, TCF Co. LLC, Grand Lux Café, LLC, TCF California Holding Company, Middle East IP Corporation and any other Subsidiary that executes a joinder to the Guaranty pursuant to Section 5.09.

“Guaranty” means the Second Amended and Restated Guaranty, dated as of December 22, 2015 made by the Guarantors in favor of the Administrative Agent and the Lenders.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedge Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Hedge Agreement.

“Holdout Lender” has the meaning assigned to such term in Section 9.02(c).

“Impacted Interest Period” has the meaning assigned to it in the definition of “LIBO Rate.”

“Increase Effective Date” has the meaning assigned to such term in Section 2.20(c).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (w) trade accounts payable in the ordinary course of business, (x) any earn-out obligation until such obligation becomes or would constitute a liability on the balance sheet of such Person in accordance with GAAP, (y) expenses accrued in the ordinary course of business and (z) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller, unless such amounts or

obligations would constitute a liability on the balance sheet of such Person in accordance with GAAP), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, as applicable, except to the extent (i) such Indebtedness is expressly made non-recourse to such Person or (ii) such Person's liability for such Indebtedness is otherwise limited in recourse or amount, but only up to the amount of the value of the assets to which recourse is limited or the amount of such limit.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a) above, Other Taxes.

"Indemnatee" has the meaning assigned to such term in Section 9.03(b).

"Ineligible Institution" has the meaning assigned to such term in Section 9.04(b).

"Information Memorandum" means the Confidential Information Memorandum dated July 2019 relating to the Borrower and the Transactions.

"Interest Election Request" means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.07.

"Interest Expense" means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the sum of all interest (including that attributable to Capital Lease Obligations), premium payments, debt discount, fees, charges and related expenses of the Borrower and its Subsidiaries in connection with borrowed money or in connection with the deferred purchase price of assets, in each case to the extent treated as interest expense in accordance with GAAP.

"Interest Payment Date" means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December and the Maturity Date, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and the Maturity Date and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid and the Maturity Date.

"Interest Period" means with respect to the initial Interest Period hereunder, the period commencing on the date of the initial Borrowing and continuing for such number of days as the Borrower and Administrative Agent may agree and with respect to any subsequent Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding date in the calendar month that is one, two, three or six months thereafter, as the

Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available for the applicable currency that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available for the applicable currency) that exceeds the Impacted Interest Period, in each case, at such time.

“IRS” means the United States Internal Revenue Service.

“Issuing Bank” means Bank of the West in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.05(i). The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. Each reference herein to the “Issuing Bank” in connection with a Letter of Credit or other matter shall be deemed to be a reference to the relevant Issuing Bank with respect thereto.

“JPMorgan” means JPMorgan Chase Bank, N.A.

“LC Disbursement” means a payment made by the Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the LC Exposure at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have

been presented but not yet honored, such Letter of Credit shall be deemed to be “outstanding” and “undrawn” in the amount so remaining available to be paid, and the obligations of the Borrower and each Lender shall remain in full force and effect until the Issuing Bank and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

“LC Sublimit” means \$40,000,000.

“Lender Parent” means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender and the Issuing Bank.

“Letter of Credit” means the Existing Letters of Credit and any letter of credit issued pursuant to this Agreement.

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any applicable currency and for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) with respect to the applicable currency then the LIBO Rate shall be the Interpolated Rate.

“LIBO Screen Rate” means, for any day and time, with respect to any Eurodollar Borrowing for any applicable currency and for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars/the relevant currency for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion)); provided that if the LIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of calculating such rate.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset or (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Guaranty, (c) the Acknowledgment and Reaffirmation Agreement and (d) any other agreement or certificate executed by a Loan Party from time to time in connection with this Agreement, including, in each case, all appendices, exhibits and schedules thereto, and all amendments, restatements,

supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Parties” means, collectively, the Borrower, the Guarantors and their respective successors and assigns, and the term “Loan Party” shall mean any one of them or all of them individually, as the context may require.

“Loans” means the loans and advances made by the Lenders to the Borrower pursuant to this Agreement, including Swingline Loans.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, property or financial condition of the Borrower and the Subsidiaries taken as a whole, (b) the validity or enforceability of any of the Loan Documents or (c) any of the material rights of or remedies available to the Lenders under any of the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit) or obligations in respect of one or more Hedge Agreements, of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding \$20,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Hedge Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Hedge Agreement were terminated at such time.

“Maturity Date” means July 30, 2024.

“Maximum Rate” has the meaning assigned to such term in Section 9.13.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Adjusted Leverage Ratio” means, as of the last day of any fiscal quarter, the ratio of (a) the sum of (i) Debt as of such measurement date plus (ii) the product of (x) eight times (y) Rental Expense for the four fiscal quarter period ending on such measurement date (other than non-cash Rental Expense for such period, but including cash payments made during such period in respect of non-cash Rental Expense for a prior period) minus (iii) unrestricted domestic cash and Cash Equivalents of the Borrower and its Subsidiaries in excess of \$25,000,000 as of the measurement date to (b) EBITDAR for the four fiscal quarter period ending on such measurement date.

“Net Income” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the net income of the Borrower and its Subsidiaries (in accordance with GAAP but excluding extraordinary gains and extraordinary losses) for that period.

“North Italia Acquisition” means the Acquisition by TCF California Holding Company of any and all limited liability company interests in or North Restaurants LLC pursuant to the Project North Option Exercise Agreements.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.18).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.–managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Participant” has the meaning set forth in Section 9.04.

“Participant Register” has the meaning assigned to such term in Section 9.04(c).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition” has the meaning assigned to such term in Section 6.04(e).

“Permitted Encumbrances” means:

(a) Liens imposed by law for Taxes, assessments or governmental charges that are not yet due and delinquent or are being contested in compliance with Section 5.04;

(b) carriers’, warehousemen’s, mechanics’, suppliers’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business

and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) pledges and deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;

(f) precautionary financing statements regarding leases (other than capital leases), subleases, licenses or consignments entered into by Borrower or any other Loan Party;

(g) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

(h) Liens on any cash earnest money deposits made in connection with any letter of intent or purchase agreement in connection with an Acquisition or investment; and

(i) customary rights of first refusal, "tag-along" and "drag-along" rights, and put and call arrangements under joint venture agreements for joint ventures permitted hereunder.

"Permitted Investments" means any of:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 1 year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000; or

(f) other investments to the extent permitted under the Borrower's Investment Policy dated May 31, 2006 (without giving effect to any amendments thereto).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Asset Regulations" means 29 CFR § 2510.3-101 *et seq.*, as modified by Section 3(42) of ERISA, as amended from time to time.

"Prime Rate" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Project North Acquisitions" means the FRC Acquisition and/or the North Italia Acquisition.

"Project North Acquisition Agreements" means (i) the Project North MIPA and (ii) the Project North Option Exercise Agreements.

"Project North MIPA" means that certain Membership Interest Purchase Agreement by and among Fox Restaurant Concepts LLC, the Sellers party thereto, SWF Posse LLC, as Sellers' Representative, The Cheesecake Factory Restaurants, Inc., and, solely for the limited purposes set forth therein, the Borrower, in substantially the form delivered to the Lenders prior to the date hereof, as amended, modified or supplemented in accordance with its terms.

"Project North Option Exercise Agreements" means (i) that certain Amendment & Option Exercise Agreement, by and among North Investors LLC, Villa Entertainment Group, LLC, TCF California Holding Company, Borrower, Samuel W. Fox, Fox Restaurant Concepts LLC, North

Restaurants LLC, each of the Persons listed on Exhibit A thereof and FRC Management LLC, in substantially the form delivered to the Lenders prior to the date hereof, as amended, modified or supplemented in accordance with its terms, and (ii) that certain Operating Agreement of North Restaurants LLC, by and among Fox Restaurant Concepts LLC, Villa Entertainment Group, LLC, North Investors LLC and TCF California Holding Company, dated as of November 14, 2016, as amended, modified or supplemented in accordance with its terms.

“Projected Project North Borrowings” has the meaning set forth in Section 6.04(f).

“Property” of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning assigned to it in Section 9.19.

“Recipient” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

“Register” has the meaning set forth in Section 9.04(b).

“Regulation D” means Regulation D of the Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Rental Expense” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, total rental expense as calculated in accordance with GAAP.

“Replacement Lender” has the meaning assigned to such term in Section 9.02(c).

“Required Lenders” means, at any time, Lenders having Revolving Credit Exposures and unused Commitments representing at least 50.1% of the sum of the total Revolving Credit Exposures and unused Commitments at such time (but subject to Section 2.19(b) with respect to Defaulting Lenders).

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any option, warrant or other right to acquire any such Equity Interests in the Borrower.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the sum of the aggregate outstanding principal amount of such Lender’s Revolving Loans, its LC Exposure and its Swingline Exposure at such time.

“Revolving Loan” means a Loan made pursuant to Section 2.03.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the date of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b) or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union or any European Union member state, Her Majesty’s Treasury or other relevant sanctions authority.

“Significant Subsidiary” means each Subsidiary (including such Subsidiary’s interest in its direct and indirect Subsidiaries) of the Borrower that:

(a) accounted for at least 5% of consolidated revenues of the Borrower and its Subsidiaries or 5% of EBITDA of the Borrower and its Subsidiaries, in each case for the four fiscal quarters of the Borrower ending on the last day of the last fiscal quarter of the Borrower immediately preceding the date as of which any such determination is made; or

(b) has total assets which represent at least 5% of the consolidated assets of the Borrower and its Subsidiaries as of the last day of the last fiscal quarter of the Borrower immediately preceding the date as of which any such determination is made;

provided that in no event shall the Subsidiaries of the Borrower that are not Significant Subsidiaries (i) account for more than 20% of consolidated revenues of the Borrower and its Subsidiaries or more than 20% of EBITDA of the Borrower and its Subsidiaries, in each case for the four fiscal quarters of the Borrower ending on the last day of the last fiscal quarter of the Borrower immediately preceding the date as of which any such determination is made; or (ii) have total assets which represent more than 20% of the consolidated assets of the Borrower and its Subsidiaries as of the last day of the last fiscal quarter of the Borrower immediately preceding the date as of which any such determination is made. In the event that any Subsidiaries would not constitute Significant Subsidiaries but for this proviso, the Borrower shall designate which such Subsidiaries shall be Significant Subsidiaries in order to comply with this proviso.

“Specified Acquisition Agreement Representations” shall mean such of the representations and warranties made by the Sellers or the Company (as each term is defined in the Project North MIPA) or the Company in the Project North MIPA as are material to the interests of the Lenders, but only to the extent that The Cheesecake Factory Restaurants, Inc. has the right to terminate its obligations under the Project North MIPA or otherwise decline to consummate the Project North MIPA as a result of a breach of such representations and warranties in the Project North MIPA.

“Specified Currency” has the meaning assigned to such term in Section 9.16.

“Specified Representations” shall mean the representations and warranties set forth in Sections 3.01(a) (solely with respect to the valid existence of the Loan Parties), 3.02, 3.03, 3.04(b) (solely with respect to the North Italia Acquisition), 3.08 and 3.14.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Supported QFC” has the meaning assigned to it in Section 9.19.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

“Swingline Lender” means JPMorgan, in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” means a Loan made pursuant to Section 2.04.

“Target Material Adverse Effect” means a “Company Material Adverse Effect” as defined in the Project North MIPA.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Transactions” means the execution, delivery and performance by the Borrower and the Guarantors of the Loan Documents, the borrowing of Loans and the use of the proceeds thereof, and the issuance of Letters of Credit hereunder.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

“Unused Fee” means the fee payable by the Borrower pursuant to Section 2.11(a).

“U.S. Dollar Equivalent” means, on any Denomination Date, (a) with respect to any amount in dollars, such amount and (b) with respect to any amount in an Alternative Currency, the equivalent of such amount in dollars determined by using the rate of exchange for the purchase of dollars with the Alternative Currency last provided (either by publication or otherwise provided to the Administrative Agent) by the applicable Thomson Reuters Corp., Refinitiv, or any successor thereto (“Reuters”) source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of dollars with the Alternative Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion.

“U.S. Person” means a “United States Person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.16(f)(ii)(B)(3).

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”), or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”).

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law, rule or regulation herein shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified or supplemented from time to time and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP. (a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (i) any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value”, as defined therein and (ii) any treatment of Indebtedness under Accounting Standards Codification 470-20 or 2015-03 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of “Capital Lease Obligations,” any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) (“FAS 842”), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease or a financing lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2018, such lease shall not be considered a capital lease or a financing lease for purposes of this Agreement, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

(c) Notwithstanding anything to the contrary contained in Section 1.04(a) or otherwise in this Agreement, for purposes of calculating non-cash Rental Expense for any period of four fiscal quarters, the Borrower shall be permitted to assume that the portion of such non-cash Rental Expense for such period resulting from adjustments related to the adoption of FAS 842 is \$21,000,000, so long as the Borrower reasonably believes that the actual amount of such adjustments for such period is within \$5,000,000 of such amount.

SECTION 1.05. Interest Rates; LIBOR Notification. The interest rate on Eurodollar Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate is no longer available or in certain other circumstances as set forth in Section 2.13(b) of this Agreement, such Section 2.13(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower, pursuant to Section 2.13, in advance of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of “LIBO Rate” or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate, as it may or may not be adjusted pursuant to Section 2.13(b), will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

SECTION 1.06. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms,

provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

SECTION 1.07. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans denominated in dollars to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.09) in (a) such Lender's Revolving Credit Exposure exceeding such Lender's Commitment or (b) the sum of the total Revolving Credit Exposures exceeding the total Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02. Loans and Borrowings. (a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.13, each Revolving Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$2,500,000 and not less than \$5,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000; provided that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.05(e). Each

Swingline Loan shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$2,000,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of five Eurodollar Revolving Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.06.

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. Swingline Loans. (a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$10,000,000, (ii) the Swingline Lender's Revolving Credit Exposure exceeding its Commitment; or (iii) the sum of the total Revolving Credit Exposures exceeding the total Commitments; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance

an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 12:00 noon, New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a wire transfer to the account designated by the Borrower on the requested date of such Swingline Loan.

(c) The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

SECTION 2.05. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for its own account denominated in dollars or, to the extent the Issuing Bank then issues letters of credit in any Designated Alternative Currency, in such Designated Alternative Currency, in a form reasonably

acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Issuing Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any Sanctioned Country or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Effective Date shall be subject to and governed by the terms and conditions hereof.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than three Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the currency thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed the LC Sublimit and (ii) the sum of the total Revolving Credit Exposures shall not exceed the total Commitments.

The Issuing Bank shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to the Issuing Bank shall prohibit, or require that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense that was not applicable on the Effective Date and that the Issuing Bank in good faith deems material to it; or

(ii) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) unless such Letter of Credit is cash collateralized as provided in paragraph (j) hereof, the date that is five Business Days prior to the Maturity Date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason, including after the Maturity Date. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 2:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 12:00 noon, New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 2:00 p.m., New York City time, on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 12:00 noon, New York City time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, if such LC Disbursement is not less than \$1,000,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. In the case of a Letter of Credit denominated in any Alternative Currency, the Borrower shall reimburse the Issuing Bank in such currency, unless (A) the Issuing Bank (at its option) shall have specified in the notice of such LC Disbursement that it will require reimbursement in dollars, (B) in the absence of any such requirement for reimbursement in dollars, the Borrower shall have notified the Issuing Bank promptly following receipt of the notice of drawing that the Borrower will reimburse the Issuing Bank in dollars or (C) the Borrower shall have requested that such payment be financed with an ABR Revolving Borrowing or Swingline Loan. In the case of any such reimbursement in dollars of a drawing under a Letter of Credit denominated in any Alternative Currency, the Issuing Bank shall notify

the Borrower of the U.S. Dollar Equivalent of the amount of the drawing promptly following the determination thereof. If the Borrower fails to make any such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof (which in the case of any payment in any Alternative Currency shall be the U.S. Dollar Equivalent thereof) and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower (which in the case of any payment in any Alternative Currency shall be the U.S. Dollar Equivalent thereof), in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement. In the event that (A) a drawing denominated in any Alternative Currency is to be reimbursed in dollars and (B) the dollar amount paid by the Borrower, including pursuant to an ABR Revolving Borrowing or Swingline Loan, shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in such Alternative Currency equal to the drawing, the Borrower agrees, as a separate and independent obligation, to indemnify the Issuing Bank for the loss resulting from its inability on that date to purchase such Alternative Currency in the full amount of the drawing.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, (iv) any adverse change in the relevant exchange rates or in the availability of any Alternative Currency to the Borrower or in the relevant currency markets generally or (v) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be

construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, within the time allowed by applicable law or the specific terms of the Letter of Credit, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly after such examination notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy or electronic mail) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable, at the rate per annum then applicable to ABR Revolving Loans and such interest shall be due and payable on the date when such reimbursement is payable; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.12(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement or Resignation of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.11(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall

remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit or extend or otherwise amend any existing Letter of Credit. Subject to the appointment and acceptance of a successor Issuing Bank, the Issuing Bank may resign as Issuing Bank at any time upon thirty days' prior written notice to the Administrative Agent, the Borrower and the Lenders, in which case, the Issuing Bank shall be replaced in accordance with this Section 2.05(i).

(j) Cash Collateralization. If (i) any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50.1% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph or (ii) the Borrower shall request the issuance of a Letter of Credit with an expiry date subsequent to the fifth Business Day prior to the Maturity Date, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date (or, in the case of clause (ji), in the face amount of such Letter of Credit) plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed, together with related fees, costs and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50.1% of the total LC Exposure), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

SECTION 2.06. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; provided that Swingline Loans shall be made as provided in Section 2.04. The Administrative Agent will make such Loans available to the Borrower by wire transfer to the account designated by the Borrower in the applicable Borrowing Request; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.05(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.07. Interest Elections. (a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Revolving Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Revolving Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “Interest Period”.

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Revolving Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Revolving Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Revolving Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08. Termination and Reduction of Commitments. (a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.10, the Revolving Credit Exposures would exceed the total Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or other pending transaction, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.09. Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date, and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Loan is made; provided that on each date that a Revolving Borrowing is made, the Borrower shall repay all Swingline Loans then outstanding and the proceeds of any such Borrowing shall be applied by the Administrative Agent to repay any Swingline Loans outstanding.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

SECTION 2.10. Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy or electronic mail) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Revolving Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Revolving Borrowing, not later than 12:00 noon, New York City time, one Business Day before the date of prepayment, or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 a.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date

and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.08, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.08. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.12.

(c) If the Administrative Agent notifies the Borrower at any time that the sum of the total Revolving Credit Exposures exceed an amount equal to 105% of the total Commitments then in effect, then, within two Business Days after receipt of such notice, the Borrower shall prepay Loans and/or Cash Collateralize the LC Exposure in an aggregate amount sufficient to cause the total Revolving Credit Exposures to be less than or equal to the total Commitments then in effect. The Administrative Agent may, at any time and from time to time after the initial deposit of such Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of exchange rate fluctuations.

(d) If the Administrative Agent notifies the Borrower at any time that the LC Exposure exceeds an amount equal to 105% of the LC Sublimit, then, within two Business Days after receipt of such notice, the Borrower shall Cash Collateralize the LC Exposure in an aggregate amount sufficient to cause the LC Exposure to be less than or equal to the LC Sublimit. The Administrative Agent may, at any time and from time to time after the initial deposit of such Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of exchange rate fluctuations

SECTION 2.11. Fees. (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender an Unused Fee, which shall accrue at the Applicable Rate on the daily unused amount of the Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which such Commitment terminates; provided that Swingline Loans shall not be considered utilization of the Commitment for purposes of any calculation made pursuant to this Section 2.11(a). Accrued Unused Fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof. All Unused Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rate of 0.125% per annum on the average

daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings or other standard costs and charges thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in dollars in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of Unused Fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.12. Interest. (a) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.13. Alternate Rate of Interest. (a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including because the LIBO Screen Rate is not available or published on a current basis), for the applicable currency and such Interest Period; or

(ii) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for the applicable currency and such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for the applicable currency and such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (x) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Eurodollar Borrowing shall be ineffective and (y) if any Borrowing Request requests a Eurodollar Revolving Borrowing, such Borrowing shall be made as an ABR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) have not arisen but either (w) the supervisor for the administrator of the LIBO Screen Rate has made a public statement that the administrator of the LIBO Screen Rate is insolvent (and there is no successor administrator that will continue publication of the LIBO Screen Rate), (x) the administrator of the LIBO Screen Rate has made a public statement identifying a specific date after which the LIBO Screen Rate will permanently or indefinitely cease to be published by it (and there is no successor administrator that will continue publication of the LIBO Screen Rate), (y) the supervisor for the administrator of the LIBO Screen Rate has made a public statement identifying a specific date after which the LIBO Screen Rate will permanently or indefinitely cease to be published or (z) the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Screen Rate may no longer be used for

determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Rate); provided that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 9.02, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii)(w), clause (ii)(x) or clause (ii)(y) of the first sentence of this Section 2.13(b), only to the extent the LIBO Screen Rate for the applicable currency and such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Eurodollar Borrowing shall be ineffective, and (y) if any Borrowing Request requests a Eurodollar Revolving Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.14. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank;

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto,

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or any other amount), then, upon the request of such Lender, the Issuing Bank or such other Recipient, the Borrower will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case

may be, for such additional costs incurred or reduction suffered as reasonably determined by such Lender, the Issuing Bank or such other Recipient (which determination shall be made in good faith (and not in an arbitrary or capricious basis) and substantially consistent with similarly situated customers of such Person under agreements having provisions similar to this Section 2.14(a) after consideration of such factors as such Person then reasonably determines to be relevant).

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered as reasonably determined by such Lender, the Issuing Bank or such other Recipient (which determination shall be made in good faith (and not in an arbitrary or capricious basis) and substantially consistent with similarly situated customers of such Person under agreements having provisions similar to this Section 2.14(a) after consideration of such factors as such Person then reasonably determines to be relevant).

(c) A certificate of a Lender or the Issuing Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or the Issuing Bank or the Lender's or the Issuing Bank's holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.15. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of

whether such notice may be revoked under Section 2.10(b) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.18, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.16. Withholding of Taxes; Gross-Up. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.16) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.16, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent

(d) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant

Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.16(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an executed copy of IRS

Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, an executed copy of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit C-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, an executed copy of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-2 or Exhibit C-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a

U.S. Tax Compliance Certificate substantially in the form of Exhibit C-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.16 (including by the payment of additional amounts pursuant to this Section 2.16), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.16 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant

to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.16 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) FATCA. For purposes of determining withholding Taxes imposed under FATCA, from and after the Effective Date the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(j) Defined Terms. For purposes of this Section 2.16, the term "applicable law" includes FATCA.

SECTION 2.17. Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (a) The Borrower shall make each payment or prepayment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.14, 2.15 or 2.16, or otherwise) prior to 1:00 p.m., New York City time, on the date when due or the date fixed for any prepayment hereunder, in immediately available funds, without set off, recoupment or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 10 South Dearborn, Chicago, Illinois 60606, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.14, 2.15, 2.16 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Unless otherwise provided for herein, if any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) At any time that payments are not required to be applied in the manner required by Section 12 of the Guaranty, if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards expenses and indemnities of the Credit Parties then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of expenses and indemnities then due to such parties, (ii) second, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (iii) third, towards

payment of principal and unreimbursed LC Disbursements, then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements, then due to such parties.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or Participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder (including any date that is fixed for prepayment by notice from the Borrower to the Administrative Agent pursuant to Section 2.10(b)) that the Borrower will not make such payment or prepayment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(c), 2.05(d), 2.06(b), 2.17(d) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender and for the benefit of the Administrative Agent, the Swingline Lender or the Issuing Bank to satisfy such Lender's

obligations under such Sections until all such unsatisfied obligations are fully paid, and/or (ii) hold any such amounts in a segregated account over which the Administrative Agent has exclusive control as cash collateral for, and application to, any future funding obligations of such Lender under such Sections; in the case of each of clauses (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

SECTION 2.18. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.14 or 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, or if any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Sections 2.14 or 2.16) and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Bank and the Swingline Lender), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that (i) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment

as reasonably requested by the applicable Lender; provided that any such documents shall be without recourse to or warranty by the parties thereto.

SECTION 2.19. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Lender pursuant to Section 2.11(a);

(b) any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.17(b) or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Bank or the Swingline Lender hereunder; *third*, to cash collateralize LC Exposure with respect to such Defaulting Lender in accordance with this Section; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Bank or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (d) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral

pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto;

(c) the Commitment and Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02), provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender;

(d) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of such Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent (x) the sum of all non-Defaulting Lenders' Revolving Credit Exposures plus such Defaulting Lender's Swingline Exposure and LC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments and (y) the conditions set forth in Section 4.02 are satisfied at such time; and

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize for the benefit of the Issuing Bank only the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.05(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to Section 2.19(d)(ii), the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.11(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to Section 2.19(d)(i), then the fees payable to the Lenders pursuant to Section 2.11(a) and Section 2.11(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; or

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to Section 2.19(d)(i) or (ii), then, without prejudice to any rights or remedies of the Issuing Bank or any Lender hereunder, all Unused Fees that otherwise would have been payable to such Defaulting Lender under Section 2.11(a) (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and letter of credit fees payable under Section 2.11(b)

with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until such LC Exposure is cash collateralized and/or reallocated; and

(e) so long as any Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.19(d)(ii), and participating interests in any such newly issued or increased Letter of Credit or newly made Swingline Loan shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.19(d)(i) (and Defaulting Lenders shall not participate therein).

If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent shall occur following the date hereof and for so long as such event shall continue or (ii) the Swingline Lender or the Issuing Bank has a good faith reasonable belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Swingline Lender shall not be required to fund the Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Swingline Lender or the Issuing Bank, as the case may be, shall have entered into arrangements with the Borrower or such Lender, satisfactory to the Swingline Lender or the Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that the Administrative Agent, the Borrower, the Issuing Bank and the Swingline Lender each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall (i) purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage and (ii) reimburse the other Lenders for any amounts that would be owing to such Lenders under Section 2.15 if such purchase were a repayment by the Borrower.

SECTION 2.20. Increase in Commitments. (a) Increase. Provided there exists no Default, the Borrower may from time to time request an increase in the Commitments by an amount (for all such increases) not exceeding \$200,000,000; provided that (i) any such request for an increase shall be in a minimum amount of \$10,000,000, (ii) the Borrower may make a maximum of three such requests and (iii) the consent of the Lenders shall not be required for such an increase.

(b) Additional Lenders. Subject to the approval of the Administrative Agent, the Issuing Bank and the Swingline Lender (which approvals shall not be unreasonably withheld), the Borrower may (i) invite existing Lenders to increase the amount of their Commitments and/or (ii) invite additional proposed lenders to become Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel. Notwithstanding anything herein to the contrary, no Lender shall have any obligation to increase its Commitment and no Lender's Commitment shall be increased without its consent thereto, and each Lender may at its option, unconditionally and without cause, decline to increase its Commitment.

(c) Effective Date and Allocations. If the Commitments are increased in accordance with this Section, the Administrative Agent and the Borrower shall determine the effective date (the “Increase Effective Date”) and the Borrower shall (subject to clause (b) above) determine final allocation of such increase. The Administrative Agent shall promptly notify the Lenders of the final allocation of such increase and the Increase Effective Date.

(d) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by an authorized officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrower, certifying that, before and after giving effect to such increase, the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date. The Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 2.15) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this Section.

(e) Conflicting Provisions. This Section shall supersede any provisions in Section 9.02 to the contrary.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each of the Borrower and its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions are within the Borrower’s corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action. This Agreement and each other Loan Document has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower and each other Loan Party party thereto, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and

effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any material indenture, agreement or other instrument binding upon the Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries.

SECTION 3.04. Financial Condition; No Material Adverse Change. (a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended December 30, 2018, reported on by Pricewaterhouse Coopers LLP, independent public accountants and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended April 2, 2019, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since December 30, 2018, there has been no material adverse change in the business, assets, property, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries, taken as a whole.

SECTION 3.05. Properties; Liens. (a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each of the Borrower and its Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) The property of the Borrower and its Subsidiaries is subject to no Liens, other than Liens permitted by Section 6.02.

SECTION 3.06. Litigation and Environmental Matters. (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse

Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements. Each of the Borrower and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.08. Margin Regulations; Investment Company Status. (a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board), or extending credit for the purpose of purchasing or carrying margin stock.

(b) Neither the Borrower nor any of its Subsidiaries is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$20,000,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$20,000,000 the fair market value of the assets of all such underfunded Plans.

SECTION 3.11. Subsidiaries; Equity Interests. As of the Effective Date, the Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 3.11, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and

nonassessable and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 3.11 free and clear of all Liens. As of the Effective Date, the Borrower has no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 3.11.

SECTION 3.12. Labor Matters. There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower or any of its Subsidiaries as of the Effective Date and neither the Borrower nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years, in each case, which could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.13. Disclosure. (a) Except as set forth in the financial statements referred to in Section 3.04 and the Disclosed Matters, there are no agreements, restrictions or liabilities of the Borrower and its Subsidiaries of any kind which could reasonably be expected to result in a Material Adverse Effect. The Information Memorandum and the other reports, financial statements, certificates or other information (other than projected financial information) furnished by or on behalf of the Borrower or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken as a whole, do not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading as of the date such information was dated or certified; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions and estimates believed to be reasonable at the time made (it being understood that any such projected financial information is subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and that actual results may differ from any such projected financial information and such differences may be material).

(b) As of the Effective Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification (if any) provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.14. Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

SECTION 3.15. EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

ARTICLE IV

Conditions

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement, (ii) a duly executed copy of the Acknowledgement and Reaffirmation Agreement, by and among the Guarantors, and (iii) evidence that Middle East IP Corporation shall have become party to the Guaranty as a Guarantor in form and substance reasonably satisfactory to the Administrative Agent.

(b) Opinions. The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Latham & Watkins LLP, counsel for the Loan Parties, covering such matters relating to the Loan Parties, this Agreement or the Transactions as the Administrative Agent shall reasonably request. The Borrower hereby requests such counsel to deliver such opinion.

(c) Secretary's Certificates; Certified Charters; Good Standing Certificates. The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Loan Parties, the authorization of the Transactions and any other legal matters relating to such Loan Parties, this Agreement or the Transactions, all in form and substance satisfactory to the Administrative Agent and its counsel.

(d) Approvals. All governmental and third party approvals necessary or, in the discretion of the Administrative Agent, advisable in connection with the financing contemplated hereby and the continuing operations of the Borrower and its Subsidiaries shall have been obtained and be in full force and effect.

(e) Financials. The Administrative Agent shall have received (i) satisfactory audited consolidated financial statements of the Borrower for the three most recent fiscal years ended prior to the Effective Date as to which such financial statements are available and (ii) satisfactory unaudited interim consolidated financial statements of the Borrower for each quarterly period ended subsequent to the date of the latest financial statements delivered pursuant to clause (i) of this paragraph as to which such financial statements are available.

(f) Closing Certificate. The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02 and attaching substantially final execution copies of each of the Project North Acquisition Agreements (including all schedules and exhibits thereto).

(g) Fees. The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out of pocket expenses required to be reimbursed or paid by the Borrower hereunder.

(h) Beneficial Ownership. To the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, at least five days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrower at least 10 days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (h) shall be deemed to be satisfied).

(i) KYC. The Administrative Agent shall have received, at least five days prior to the Effective Date, all documentation and other information regarding the Borrower requested in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, to the extent requested in writing of the Borrower at least 10 days prior to the Effective Date.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 12:00 noon, Los Angeles time, on July 31, 2019 (or such later date acceptable to the Administrative Agent) (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal, extension of such Letter of Credit, as applicable (other than the representations and warranties that specifically refer to an earlier date); and

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing;

provided that, for any Borrowing made to finance the North Italia Acquisition or the FRC Acquisition, at the Borrower’s election, so long as (i) the North Italia Acquisition or the FRC Acquisition, as applicable, shall have been consummated, or substantially simultaneously with such Borrowing, shall be consummated, in all material respects in accordance with the terms of the applicable Project North Acquisition Agreement, without giving effect to any amendments, consents or waivers by the Borrower, The Cheesecake Factory Restaurants, Inc. or TCF California Holding Company, as applicable, that are materially adverse to the interests of the Lenders, without

the prior consent of the Required Lenders (it being understood that (x) any increase by 10% or more in the purchase price of, or consideration for, the North Italia Acquisition or the FRC Acquisition, as applicable, and (y) any waivers, modifications, consents or amendments to, or in respect of, the definition of “Company Material Adverse Effect” (as set forth in the Project North MIPA as of the date hereof) in each case shall be deemed materially adverse to the interests of the Lenders), (ii) the amount of such Borrowing does not exceed the applicable Projected Project North Borrowings, (iii) in the case of the FRC Acquisition, no Target Material Adverse Effect shall have occurred since the date of execution of the Project North MIPA, (iv) such Borrowing is made within six months of the Effective Date and (v) the Administrative Agent shall have received written notice of the Borrower’s election to invoke the provisions of this proviso together with a certificate of a Financial Officer of the Borrower as to the matters set forth in clauses (i), (ii) and (iii) above, as applicable, and the following clauses (A) and (B):

(A) the condition described in clause (a) above shall not be required to be satisfied in connection with such Borrowing; provided that as a condition to such Borrowing, the Specified Acquisition Agreement Representations shall be true and correct in all material respects and the Specified Representations shall be true and correct in all material respects (other than any Specified Representations which are qualified by materiality, material adverse effect or similar language, which Specified Representations shall be true and correct in all respects after giving effect to such qualification); and

(B) the condition described in clause (b) above shall not be required to be satisfied in connection with such Borrowing so long as no Event of Default under clause (a), (b), (h) or (i) of Article VII shall have occurred and be continuing as of such date.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in clauses (a) and (b) of this Section to the extent such conditions are required to be satisfied pursuant to this Section.

ARTICLE V

Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated or been cash collateralized pursuant to Section 2.05(j) and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) within 90 days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, stockholders’ equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Pricewaterhouse Coopers LLP or other independent

public accountants of recognized national standing (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations, stockholders’ equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a compliance certificate of a Financial Officer of the Borrower substantially in the form of Exhibit B (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Sections 6.01, 6.04, 6.06 and 6.09 and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be;

(e) as soon as available but not less than 60 days after the beginning of each fiscal year of the Borrower, a copy of the projected consolidated and consolidating balance sheet, income statement and cash flow statement of the Borrower for such fiscal year; and

(f) promptly following any request therefor, (x) copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by independent accountants in connection with the accounts or books of the Borrower or any Subsidiary or any audit thereof, (y) any other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request and (z) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation (if applicable).

SECTION 5.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Affiliate thereof that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$20,000,000;
- (d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect; and
- (e) any change in the information provided in the Beneficial Ownership Certification (if any) delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Existence; Conduct of Business. The Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04. Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest will not have a Material Adverse Effect.

SECTION 5.05. Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 5.06. Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct

entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided, however, that unless a Default shall have occurred and be continuing the Administrative Agent may not exercise its inspection rights more than two times in any year.

SECTION 5.07. Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including, without limitation, all Environmental Laws), except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.08. Use of Proceeds and Letters of Credit. The proceeds of the Loans will be used (i) to refinance existing Indebtedness and (ii) for other general corporate purposes of the Borrower and its Subsidiaries, including, without limitation, the repurchase or redemption of the Borrower's Equity Interests and the funding of Permitted Acquisitions and other investments and Restricted Payments permitted hereunder. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Board, including Regulations T, U and X. Letters of Credit will be issued only to support the general corporate purposes of the Borrower and its Subsidiaries. The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit directly or indirectly (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.09. Additional Guarantors. The Borrower will notify the Administrative Agent at the time that any domestic Subsidiary becomes a Significant Subsidiary or of the acquisition or formation of any new domestic Subsidiary that is a Significant Subsidiary and, promptly thereafter (and in any event within 30 days), cause such Person to (a) become a Guarantor by executing and delivering to the Administrative Agent a counterpart of the Guaranty or such other document as the Administrative Agent shall deem appropriate for such purpose and (b) deliver to the Administrative Agent documents of the types referred to in Section 4.01(d) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), all in form, content and scope reasonably satisfactory to the Administrative Agent. In addition, the Borrower may at any time upon notice to the Administrative Agent cause any Subsidiary that is not a Significant Subsidiary to take the actions described in clauses (a) and (b) above.

SECTION 5.10. Post-Closing Covenant. By not later than 15 days after the Effective Date (or such later date as the Administrative Agent may agree in its reasonable discretion), the Borrower shall deliver copies of the Articles of Incorporation (or equivalent) for each Loan Party, certified as of a recent date by the Secretary of State of such Loan Party's jurisdiction of organization, to the Administrative Agent.

ARTICLE VI

Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated or been cash collateralized pursuant to Section 2.05(j) and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Indebtedness. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

- (a) Indebtedness created hereunder;
- (b) Indebtedness existing on the date hereof and set forth in Schedule 6.01, and any extensions, renewals or replacements of any such Indebtedness;
- (c) Indebtedness of the Borrower to any Guarantor and of any Subsidiary to the Borrower or any Guarantor;
- (d) Guarantees by the Borrower of Indebtedness of any Guarantor and by any Subsidiary of Indebtedness of the Borrower or any Guarantor;
- (e) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed \$50,000,000 at any time outstanding;
- (f) Indebtedness of the Borrower or any Subsidiary (in addition to that permitted under clause (e) above) in an aggregate principal amount not to exceed \$15,000,000;
- (g) Deemed Landlord Financing Liabilities of the Borrower or any Subsidiary;
- (h) Indebtedness of any Subsidiary to the Borrower or any Guarantor as a result of an investment permitted under Section 6.04(f);

(i) earn-out obligations or similar deferred obligation of the Borrower or any Subsidiary incurred or created in connection with either of the Project North Acquisitions;

(j) Indebtedness of the Borrower or any Subsidiary in the form of earn-outs, indemnification, incentive, non-compete, consulting or other similar arrangements and other contingent obligations in respect of Permitted Acquisitions (both before and after any liability associated therewith becomes fixed) in an aggregate principal amount not to exceed \$50,000,000;

(k) Indebtedness assumed in connection with a Permitted Acquisition; provided that (i) such Indebtedness exists at the time such Permitted Acquisition is consummated and is not created or incurred in connection therewith or in contemplation thereof, (ii) at the time of execution of the definitive documentation governing such Permitted Acquisition, no Event of Default exists or would result therefrom, (iii) no Loan Party (other than such Person so acquired in such Permitted Acquisition or any other Person that such Person merges with or that acquires the assets of such Person in connection with such Permitted Acquisition) shall have any liability or other obligation with respect to such Indebtedness and (iv) if such Indebtedness is secured, no Lien thereon shall extend to or cover any other assets other than the assets acquired in such Permitted Acquisition (other than the proceeds or products thereof, accessions or additions thereto and improvements thereon) or attach to any other property of any Loan Party; and

(l) other unsecured Indebtedness of the Borrower (including, without limitation, unsecured Indebtedness that is convertible into equity) in an aggregate principal amount not to exceed \$300,000,000 at any time outstanding so long as (i) the Borrower is in compliance with Section 6.02 as set forth in the most recent Compliance Certificate received by the Administrative Agent, adjusted to give pro forma effect to the actual amount of Debt outstanding after the incurrence of such Indebtedness, (ii) such Indebtedness does not restrict the right of the Borrower or any of its Subsidiaries to grant Liens on their assets to the Credit Parties, (iii) such Indebtedness does not require any repayment of the principal thereof prior to the date that is six months after the Maturity Date and (iv) such Indebtedness has covenants, if any, that are no more restrictive than those included in this Agreement as in effect at the time of incurrence thereof.

SECTION 6.02. Liens. The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such

Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 90% of the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Subsidiary;

(e) Liens securing Indebtedness permitted by clause (f) of Section 6.01; and

(f) Liens on property acquired pursuant to a Permitted Acquisition (and the proceeds thereof) or assets of a Subsidiary in existence at the time such Subsidiary is acquired pursuant to a Permitted Acquisition; provided that (i) such Lien was not created in contemplation of such Permitted Acquisition, (ii) such Lien does not extend to or cover any additional assets, (iii) the amount of any Indebtedness secured thereby is not increased and (iv) any Indebtedness secured thereby is permitted under Section 6.01(k).

SECTION 6.03. Fundamental Changes. (a) The Borrower will not, and will not permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or any substantial part of its assets, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) any Subsidiary may merge into or consolidate with any other Person and any other Person may merge into or consolidate with the Borrower or any Subsidiary if such merger or consolidation is consummated as part of a Permitted Acquisition, (ii) any Subsidiary may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (iii) any Subsidiary may merge into any other Subsidiary in a transaction in which the surviving entity is a Subsidiary, (iv) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to another Subsidiary and (v) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; provided that any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date of execution of this Agreement and businesses reasonably related or incidental thereto.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire

(including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit, except:

- (a) Permitted Investments;
- (b) investments by the Borrower existing on the date hereof in the capital stock of its Subsidiaries;
- (c) loans or advances made by the Borrower to any Guarantor and made by any Subsidiary to the Borrower or any Guarantor;
- (d) (i) Guarantees constituting Indebtedness permitted by Section 6.01 or Guarantees by the Borrower or any of its Subsidiaries of obligations of the Borrower or any Guarantor (or, in the case of any such Guarantee by a Subsidiary that is not a Guarantor, any other Subsidiary) and (ii) Guarantees by the Borrower or any Subsidiary of obligations of the Borrower or any Subsidiary that do not constitute Indebtedness;
- (e) Acquisitions meeting the following requirements or otherwise approved by the Required Lenders (each such Acquisition constituting a "Permitted Acquisition"):
 - (i) as of the date of the consummation of such Acquisition, no Default shall have occurred and be continuing or would result from such Acquisition, and the representation and warranty contained in Section 5.08 shall be true both before and after giving effect to such Acquisition;
 - (ii) such Acquisition is consummated on a non-hostile basis pursuant to a negotiated acquisition agreement approved by the board of directors or other applicable governing body of the seller or entity to be acquired, and no material and credible challenge to such Acquisition (excluding the exercise of appraisal rights) by any shareholder or director of the seller or entity to be acquired shall be pending;
 - (iii) the business to be acquired in such Acquisition is similar or related to one or more of the lines of business in which the Borrower and its Subsidiaries are engaged on the Effective Date;
 - (iv) as of the date of the consummation of such Acquisition, all material approvals required in connection therewith shall have been obtained; and
 - (v) after giving pro forma effect to such Acquisition, the Net Adjusted Leverage Ratio shall not exceed 4.25 to 1.00; and
- (f) any other purchases, acquisitions, loans, advances, Guarantees or other investments, provided that (i) at the time of any such investment (other than either of the Project North Acquisitions), the aggregate outstanding amount of investments (net of return of capital)

made pursuant to this clause (f) after the Effective Date shall not exceed \$300,000,000 and (ii) after giving pro forma effect to such investment, the Net Adjusted Leverage Ratio shall not exceed 4.25 to 1.00; provided further that in the case of either of the Project North Acquisitions, the requirement described in this clause (ii) shall not apply so long as (x) at or about the time the applicable Project North Acquisition Agreement is executed, the Net Adjusted Leverage Ratio as of such time (but calculated giving pro forma effect to the consummation of such Project North Acquisition and any anticipated Borrowings in connection with such Project North Acquisition (as applicable, the “Projected Project North Borrowings”) and other incurrences of Indebtedness expected to be made in connection with such Project North Acquisition) does not exceed 4.25 to 1.00, (y) such Project North Acquisition is consummated within six months of the Effective Date and (z) the purchase price of, or consideration for, the applicable Project North Acquisition does not increase from that set forth in the applicable Project North Acquisition Agreement by more than 10%.

For purposes of determining compliance with this Section 6.04, in the event that a transaction or investment meets the criteria of more than one of the categories described in clauses (a) through (f) above, the Borrower shall, in its discretion, be permitted to classify and reclassify such item of transaction or investment (or any portion thereof) and will only be required to include the amount and type of such transaction or investment in one or more of the above clauses.

SECTION 6.05. Hedge Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Hedge Agreement, except (a) Hedge Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of the Borrower or any of its Subsidiaries), and (b) Hedge Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary.

SECTION 6.06. Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, except (a) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of the same class of Equity Interests; (b) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests; (c) the Borrower may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrower and its Subsidiaries; (d) the Borrower may declare and make additional Restricted Payments in the form of dividends or other distributions (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or in the form of redemptions or repurchases of Equity Interests in the Borrower, so long as at the time of such making or declaration (i) no Default or Event of Default shall be then continuing and (ii) after giving pro forma effect thereto, the Net Adjusted Leverage Ratio shall not exceed 4.25 to 1.00; (e) the Borrower may make any other Restricted Payments in an aggregate amount not to exceed \$100,000,000; and (f) the Borrower may make any Restricted Payment within 60 days after the date of declaration thereof, if at the date of such declaration such Restricted Payment would have complied with the provisions of clause (d) hereof, provided that the calculation contemplated in clause (d)(ii) hereof shall for such purpose be calculated as of the date of such declaration but giving effect on a pro forma basis to any incurrence of Debt on and after

such date and prior to (and after giving pro forma effect to) the making of such Restricted Payment (including any such Debt incurred to finance such Restricted Payment).

SECTION 6.07. Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that are at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its wholly owned Subsidiaries not involving any other Affiliate and (c) any Restricted Payment permitted by Section 6.06.

SECTION 6.08. Restrictive Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets in favor of the Credit Parties, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.08 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases restricting the assignment thereof.

SECTION 6.09. Financial Covenants. (a) Net Adjusted Leverage Ratio. The Net Adjusted Leverage Ratio shall not exceed 4.75 to 1.00 as of the last day of any fiscal quarter.

(b) EBITDAR to Interest and Rental Expense. The ratio of EBITDAR for the four fiscal quarter period ending on the applicable measurement date to the sum of (i) Cash Interest Expense for the four fiscal quarter period ending on such measurement date plus (ii) Rental Expense for the four fiscal quarter period ending on such measurement date (other than non-cash Rental Expense for such period, but including cash payments made during such period in respect of non-cash Rental Expense for a prior period) shall not be less than 1.90 to 1.00 as of the last day of any fiscal quarter.

SECTION 6.10. Sale and Leaseback. Except for leases that, upon completion of construction by the Borrower, meet the criteria of Emerging Issues Task Force ("EITF") 97-10 and that qualify for sale-leaseback treatment in accordance with Statement of Financial Accounting Standards No. 98, the Borrower will not, and will not permit any of its Subsidiaries to, enter into any agreement or arrangement with any other Person providing for the leasing by the

Borrower or any of its Subsidiaries of real or personal property which has been or is to be sold or transferred by the Borrower or any of its Subsidiaries to such other Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of the Borrower or any of its Subsidiaries.

SECTION 6.11. Sale of Assets. The Borrower will not, nor will it permit any Subsidiary to, lease, sell, transfer or otherwise dispose of its Property to any other Person, except:

- (a) sales of inventory and obsolete or excess assets in the ordinary course of business;
- (b) sales, leases and transfers of Property (a) from the Borrower to any Guarantor, and (b) from any Subsidiary of the Borrower to the Borrower or any Guarantor;
- (c) (i) one or more transfers to a wholly-owned Subsidiary or wholly-owned Subsidiaries organized under the laws of a jurisdiction other than the United States, any state or territory thereof or the District of Columbia, of the right to license or use certain intellectual property assets of the Borrower and its Subsidiaries exclusively outside of the United States and (ii) the subsequent licensing by such Subsidiary or Subsidiaries of such intellectual property assets to third Persons that have contracted with the Borrower or its Subsidiaries to develop and operate restaurants and related businesses under the trademarks of the Borrower and its Subsidiaries outside of the United States;
- (d) terminations of real property leases in connection with closing underperforming restaurants; and
- (e) other sales, assignments, transfers, leases, conveyances or other dispositions of its Property, provided that (i) such disposition is for consideration consisting of cash or a combination of cash and notes, the principal amount of which notes shall not exceed \$25,000,000 in the aggregate, (ii) such disposition is for not less than fair market value (as determined in good faith by the Borrower's board of directors if the total consideration for such disposition is equal to or greater than \$20,000,000), (iii) after giving effect to such disposition, no Default shall exist, and (iv) such Property, together with all other Property of the Borrower and its Subsidiaries previously leased, sold or disposed of (other than Property leased, sold or disposed of under clauses (a), (b) or (c) above) calculated at book value (A) during the immediately preceding twelve-month period, represents the disposition of not greater than 5% of the Borrower's Consolidated Total Assets at the end of the fiscal year immediately preceding that in which such transaction is proposed to be entered into, and (B) during the period from the Effective Date to the date of such proposed transaction, represents the disposition of not greater than 15% of the Borrower's Consolidated Total Assets at the end of the fiscal year immediately preceding that in which such transaction is proposed to be entered into.

ARTICLE VII

Events of Default

If any of the following events ("Events of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in this Agreement, any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement, any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), 5.03 (with respect to the Borrower's existence) or 5.08 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article) or in any other Loan Document, and such failure shall continue unremedied for a period of 30 days after written notice thereof from the Administrative Agent to such Person (which notice will be given at the request of any Lender);

(f) the Borrower or any Significant Subsidiary shall fail to make any payment (whether of principal or interest) in respect of any Material Indebtedness, when and as the same shall become due and payable (after the expiration of any applicable grace period);

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Significant Subsidiary or its debts, or of a substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Significant Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Significant Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Significant Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Significant Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money not paid or fully covered by insurance (subject to any applicable deductible) as to which the insurer has not disputed or otherwise contested coverage in writing in an aggregate amount in excess of \$25,000,000 shall be rendered against the Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed (by reason of a pending appeal or otherwise), or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$20,000,000 in any year; or

(m) a Change in Control shall occur;

then, and in every such event (other than an event with respect to the Borrower or a Significant Subsidiary described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately; (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder and under any other Loan Document, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; (iii) require that the Borrower provide cash collateral as required in Section 2.05(j); and (iv) exercise on behalf of itself, the Lenders and the Issuing Bank all rights and remedies available to it, the Lenders and the Issuing Bank under the Loan Documents and applicable law; provided that, in the case of any event with respect to the Borrower or a Significant Subsidiary described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder and under any other Loan

Document, shall automatically become due and payable, and the obligation of the Borrower to cash collateralize the LC Exposure as provided in clause (iii) above shall automatically become effective, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

ARTICLE VIII

The Administrative Agent

SECTION 8.01. Authorization and Action. (a) Each Lender and each Issuing Bank hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent under the Loan Documents and each Lender and each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. Without limiting the foregoing, each Lender and each Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents.

(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Bank; provided, however, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and the Issuing Banks with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any Subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

- (i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, Issuing Bank or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term “agent” (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby; and
- (ii) nothing in this Agreement or any Loan Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account;

(d) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities pursuant to this Agreement. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(e) None of any Co-Syndication Agent, any Documentation Agent or any Arranger shall have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Loan Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement shall then be due and payable as

herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

- (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Disbursements and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim under Sections 2.12, 2.13, 2.15, 2.17 and 9.03) allowed in such judicial proceeding; and
- (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender, each Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, the Issuing Banks, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03). Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(g) The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and, except solely to the extent of the Borrower's rights to consent pursuant to and subject to the conditions set forth in this Article, none of the Borrower or any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions.

SECTION 8.02. Administrative Agent's Reliance, Indemnification, Etc (a) Neither the Administrative Agent nor any of its Related Parties shall be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of

this Agreement or any other Loan Document or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(b) The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof (stating that it is a “notice of default”) is given to the Administrative Agent by the Borrower, a Lender or an Issuing Bank, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent. Notwithstanding anything herein to the contrary, the Administrative Agent shall not be liable for, or be responsible for any claim, liability, loss, cost or expense suffered by the Borrower, any Subsidiary, any Lender or any Issuing Bank as a result of, any determination of the Revolving Credit Exposure, any of the component amounts thereof or any portion thereof attributable to each Lender or Issuing Bank, or any U.S. Dollar Equivalent.

(c) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.04, (ii) may rely on the Register to the extent set forth in Section 9.04(b), (iii) may consult with legal counsel (including counsel to the Borrower), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and shall not be responsible to any Lender or Issuing Bank for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

SECTION 8.03. Posting of Communications (a) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Communications available to

the Lenders and the Issuing Banks by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic platform chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”).

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, each of the Issuing Banks and the Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, each of the Issuing Banks and the Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, ANY ARRANGER, ANY DOCUMENTATION AGENT, ANY CO-SYNDICATION AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, “APPLICABLE PARTIES”) HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

“Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(d) Each Lender and each Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or Issuing Bank's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, each of the Issuing Banks and the Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or any Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

SECTION 8.04. The Administrative Agent Individually With respect to its Commitment, Loans (including Swingline Loans), Letter of Credit Commitments and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms "Issuing Banks", "Lenders", "Required Lenders" and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Bank or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with, the Borrower, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Banks.

SECTION 8.05. Successor Administrative Agent (a) The Administrative Agent may resign at any time by giving 30 days' prior written notice thereof to the Lenders, the Issuing Banks and the Borrower, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, such appointment shall be subject to the prior written approval of the Borrower (which approval may not be unreasonably withheld and shall not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor

Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Banks and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall directly be given or made to each Lender and each Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

SECTION 8.06. Acknowledgements of Lenders and Issuing Banks (a) Each Lender represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and that it has, independently and without reliance upon the Administrative Agent, any Arranger, any Co-Syndication Agent, any Documentation Agent or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, any Co-Syndication Agent, any Documentation Agent or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other

document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

SECTION 8.07. Certain ERISA Matters (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger

and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or any Arranger, any Co-Syndication Agent, any Documentation Agent or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent, and each Arranger, Co-Syndication Agent and Documentation Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 8.08. Guarantee Matters The Lenders irrevocably authorize the Administrative Agent to release any Guarantor from its obligations under the Guaranty in the event that such Guarantor ceases to be a Significant Subsidiary. The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding such Guarantor's status as a Subsidiary or a Significant Subsidiary, or any certificate prepared by any Loan Party in connection therewith.

ARTICLE IX

Miscellaneous

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at 26901 Malibu Hills Road, Calabasas Hills, CA 91301, Attention of Matthew Clark (Telecopy No. (866) 788-8849); with a copy of any notice of the occurrence of a Default to be also delivered to 26901 Malibu Hills Road, Calabasas Hills, CA 91301, Attention of General Counsel (Telecopy No. (818) 871-3110);

(ii) if to the Administrative Agent, Issuing Bank or Swingline Lender, to JPMorgan Loan Services, JPMorgan Chase Bank, 10 South Dearborn, L2 Floor, Chicago, Illinois 60603, Attention of Michael Stevens (Facsimile No. (844) 490-5663), with a copy

to JPMorgan Chase Bank, 2029 Century Park East, 38th Floor, Los Angeles, California 90067, Attention of Tim Martin;

(iii) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through Approved Electronic Platforms, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by using Approved Electronic Platforms pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address in accordance with this Section 9.01 shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website in accordance with this Section 9.01 shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative

Agent, the Issuing Bank or any Lender may have had notice or knowledge of such Default at the time.

(b) Subject to Section 2.13(b) and Section 9.02(c) below, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.08(c) or 2.17(b) or (c) in a manner that would alter the ratable reduction of Commitments or the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) release all or substantially all of the value of the Guaranty, except to the extent permitted by Section 8.08, or (vi) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder (including any amendments or modifications to Section 2.19) without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be; and provided further that no such agreement shall amend or modify the provisions of Section 2.05 without the prior written consent of the Administrative Agent and the Issuing Bank.

(c) If the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

(d) If any action to be taken by the Lenders or the Administrative Agent hereunder requires the unanimous consent, authorization, or agreement of all Lenders and if such action has received the consent, authorization, or agreement of the Required Lenders but not all of the Lenders, then the Administrative Agent (after receipt of a request from the Borrower), upon at least 5 Business Days prior irrevocable notice, may permanently replace any Lender (a "Holdout Lender") that failed to give its consent, authorization, or agreement with one or more other Lenders willing to provide such consent, authorization or agreement (each, a "Replacement Lender") reasonably acceptable to the Administrative Agent, and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than 10 Business Days after the date such notice is given and no more than 60 days after the date such consent, authorization or agreement was sought. Prior to the effective date of such replacement, the Holdout Lender and

each Replacement Lender shall execute and deliver an Assignment and Assumption, subject only to the Holdout Lender being repaid the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Assumption prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Assumption. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 9.04.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable and documented or invoiced out-of-pocket fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable documented or invoiced out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all documented or invoiced out-of-pocket expenses incurred by the Administrative Agent, the Lenders or the Issuing Bank, including the documented or invoiced fees, charges and disbursements of counsel for the Administrative Agent, the Issuing Bank or any one counsel retained on behalf of the Lenders, in connection with the enforcement or protection of its or their rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrower shall indemnify the Administrative Agent, each Co-Syndication Agent, each Documentation Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or any Environmental Liability resulting from the handling of Hazardous Materials or violation of Environmental Laws, related in any way to the Borrower or any of its Subsidiaries or (iv) any actual or prospective claim, litigation, investigation, arbitration, or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation, arbitration or proceeding is brought by the Borrower or its equity holders, Affiliates, creditors or any other third Person and

whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, the Issuing Bank or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Issuing Bank or the Swingline Lender in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that nothing in this clause (d) shall relieve the Borrower of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(e) All amounts due under this Section shall be payable not later than ten days after written demand therefor.

SECTION 9.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than any Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment,

participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(A) the Borrower; provided that the Borrower shall be deemed to have consented to an assignment unless it shall have objected thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; provided further that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default under clause (a), (b), (h) or (i) of Article VII has occurred and is continuing, any other assignee;

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of any Commitment to an assignee that is a Lender (other than a Defaulting Lender) with a Commitment immediately prior to giving effect to such assignment;

(C) the Issuing Bank; and

(D) the Swingline Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their related parties or their respective securities) will be made available

and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Ineligible Institution" means (a) a natural person, (b) a Defaulting Lender, (c) the Borrower or any of its Affiliates, or (d) a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, such holding company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than \$25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.16 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.06(b), 2.17(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of, or notice to, the Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender sell participations to one or more banks or other entities (a "Participant"), other than an Ineligible Institution, in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 (subject to the requirements and limitations therein, including the requirements under 2.16(f) (it being understood that the documentation required under Section 2.16(f) shall be delivered to the participating Lender and the information and documentation required under Section 2.16(g) will be delivered to the Borrower and the Administrative Agent)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided that such Participant (A) agrees to be subject to the provisions of Section 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.14 or 2.16, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.18(b) with respect to any Participant. To the extent permitted by law, each

Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.17(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the other Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Documents shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.14, 2.15, 2.16 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06. Counterparts; Integration; Effectiveness; Electronic Execution. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous

agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Administrative Agent to accept electronic signatures in any form or format without its prior written consent.

SECTION 9.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender, the Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, the Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, the Issuing Bank or any such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch office or Affiliate of such Lender or the Issuing Bank different from the branch office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so setoff shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.19 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank or their respective Affiliates may have. Each Lender and the Issuing Bank agrees to notify

the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement and the other Loan Documents shall be construed in accordance with and governed by the law of the State of New York; provided that (i) the determination of the accuracy of any Specified Acquisition Agreement Representation and whether as a result of any inaccuracy thereof The Cheesecake Factory Restaurants, Inc. or the Borrower has the right to terminate its obligations pursuant to the Project North MIPA or otherwise decline to consummate the FRC Acquisition pursuant to the Project North MIPA as a result of a breach of such representations and warranties in the Project North MIPA, (ii) the interpretation of whether a Target Material Adverse Effect has occurred and (iii) the determination of whether either of the Project North Acquisitions has been consummated in accordance with the terms of the applicable Project North Acquisition Agreement shall (x) in the case of the Project North MIPA, be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof and (y) in the case of the Project North Option Exercise Agreements, be governed by, and construed in accordance with, the laws of the State of Arizona, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan), and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may (and any such claims, cross-claims or third party claims brought against the Administrative Agent or any of its Related Parties may only) be heard and determined in such federal court (to the extent permitted by law) or New York State court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. (a) Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement or under any other Loan Document, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (B) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (vii) with the consent of the Borrower or (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section, "Information" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Borrower and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any

Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) **EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

(c) **ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.**

SECTION 9.13. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.14. USA PATRIOT Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”) hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

SECTION 9.15. California Judicial Reference. If any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Loan Document, (a) the parties agree, and hereby agree to advise the applicable court, that the adjudication of any such action or proceeding (and all related claims) shall be made pursuant to California Code of Civil Procedure Section 638 by a referee (who shall be a single active or retired judge) who shall hear and determine all of the issues in such action or proceeding (whether of fact or of law) and report a statement of decision, provided that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of Section 9.03, the Borrower shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

SECTION 9.16. Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from the Borrower hereunder in the currency expressed to be payable herein (the “Specified Currency”) into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the Specified Currency with such other currency at the Administrative Agent’s New York office on the Business Day preceding that on which final judgment is given. The obligations of the Borrower in respect of any sum due to any Lender, the Issuing Bank or the Administrative Agent hereunder shall, notwithstanding any judgment in a currency other than the Specified Currency, be discharged only to the extent that on the Business Day following receipt by such Lender, the Issuing Bank or the Administrative Agent (as the case may be) of any sum adjudged to be so due in such other currency such Lender or the Administrative Agent (as the case may be) may in accordance with normal banking procedures purchase the Specified Currency with such other currency; if the amount of the Specified Currency so purchased is less than the sum originally due to such Lender, the Issuing Bank or the Administrative Agent, as the case may be, in the Specified Currency, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender, the Issuing Bank or the Administrative Agent, as the case may be, against such loss.

SECTION 9.17. No Fiduciary Duty, etc. (a) The Borrower acknowledges and agrees, and acknowledges its Subsidiaries’ understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm’s length contractual counterparty to the Borrower with respect to the Loan Documents and the transactions contemplated herein and therein and not as a financial advisor or a fiduciary to, or an agent of, the Borrower or any other Person. The Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, the Borrower acknowledges and agrees that no Credit Party is advising the Borrower as to any legal, tax, investment, accounting, regulatory or any other matters in any jurisdiction. The Borrower shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated herein or in the other Loan Documents, and the Credit Parties shall have no responsibility or liability to the Borrower with respect thereto.

(b) The Borrower further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, the Borrower and other companies with which the Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion.

(c) In addition, the Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which the Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from the Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with the Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. The Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to the Borrower, confidential information obtained from other companies.

SECTION 9.18. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 9.19. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support “QFC Credit Support” and each such QFC a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 9.20. Amendment and Restatement. The Existing Loan Agreement shall, as of the Effective Date, be deemed to be amended and restated in its entirety in the form of, and pursuant to, this Agreement, and the Existing Loan Agreement shall thereafter be of no further force or effect except to evidence (i) the representations and warranties of the parties hereto prior to the Effective Date and (ii) any agreement to be performed or required to be performed pursuant to the Existing Loan Agreement prior to the Effective Date. Notwithstanding the foregoing, this Agreement and the documents executed and delivered in connection herewith and the transactions contemplated hereby do not constitute a novation, payment and reborrowing or termination of any of the obligations of the Loan Parties under the Existing Loan Agreement or the other Loan Documents (as defined in the Existing Loan Agreement) as in effect prior to the Effective Date or a novation or payment and reborrowing of any amount owing under the Existing Loan Agreement as in effect prior to the Effective Date.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the day and year first above written.

THE CHEESECAKE FACTORY INCORPORATED

By /s/ David Overton

Name: David Overton

Title: Chief Executive Officer

Signature Page to Credit Agreement

JPMORGAN CHASE BANK, N.A., individually and as
Administrative Agent, Issuing Bank and Swingline
Lender

By /s/ Lynn M. Braun

Name: Lynn M. Braun

Title: Executive Director

Signature Page to Credit Agreement

JPMORGAN CHASE BANK, N.A., as a Lender

By /s/ Lynn M. Braun

Name: Lynn M. Braun

Title: Executive Director

Signature Page to Credit Agreement

TD BANK, N.A., as a Lender

By /s/ Alan Garson

Name: Alan Garson

Title: Senior Vice President

Signature Page to Credit Agreement

BANK OF AMERICA, N.A., as a Lender

By /s/ Sharad C Bhatt

Name: Sharad C Bhatt

Title: Senior Vice President

Signature Page to Credit Agreement

BANK OF THE WEST, as a Lender

By /s/ Nabil B. Khoury

Name: Nabil B. Khoury

Title: Vice President, Commercial Banking

Signature Page to Credit Agreement

COÖPERATIEVE RABOBANK U.A.,
NEW YORK BRANCH, as a Lender

By /s/ Olivia Leong

Name: Olivia Leong

Title: Executive Director

By /s/ Matthew Plominski

Name: Matthew Plominski

Title: Vice President

Signature Page to Credit Agreement

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By /s/ Glenn Leyrer

Name: Glenn Leyrer

Title: Vice President

Signature Page to Credit Agreement

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as a Lender

By /s/ Jason Boone

Name: Jason Boone

Title: Senior Vice President

Signature Page to Credit Agreement

SCHEDULE 2.01

Commitments and Applicable Percentages

Revolving Lenders	Commitment	Applicable Percentage
JPMorgan Chase Bank, N.A.	\$75,000,000	18.75%
Bank of America, N.A.	\$65,000,000	16.25%
Wells Fargo Bank, National Association	\$65,000,000	16.25%
Bank of the West	\$60,000,000	15.00%
U.S. Bank, National Association	\$45,000,000	11.25%
COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH	\$45,000,000	11.25%
TD Bank, N.A.	\$45,000,000	11.25%
	\$400,000,000	100.0%

Schedule 2.05

Existing Letters of Credit

BOTW Reference Number	Currency	L/C Available Amount	Release Date	Expiry / Maturity Date	Beneficiary Name	Notification Date	Auto Extension Period	Final Expiry Date
MB60516559	USD	\$17,753,399.00	7/11/2007	5/28/2020	ACE American Insurance Company	30 Days	12 Months	-
MB60516247	USD	\$1,550,000.00	7/11/2007	5/26/2020	Zurich American Insurance Company	30 Days	12 Months	-
MB60516257	USD	\$60,503.00	6/2/2016	5/26/2020	Traveler's Indemnity Company	30 Days	12 Months	-

Schedule 3.06

Disclosed Matters

None.

Schedule 3.11

Subsidiaries and Equity Interests

(a) List of Subsidiaries¹

- The Cheesecake Factory Restaurants, Inc., a California Corporation
- The Cheesecake Factory Bakery Incorporated, a California corporation
- TCF Co. LLC, a Nevada limited liability company (formerly The Cheesecake Factory Assets Co. LLC)
- The Houston Cheesecake Factory Corporation, a Texas corporation
- Cheesecake Factory Restaurants of Kansas LLC, a Kansas limited liability company
- Grand Lux Café LLC, a Nevada limited liability company
- Hawaii Cheesecake Factory Restaurants Inc., a Hawaii corporation
- Rock Sugar Incorporated, a California corporation
- Cherry Hill One, LLC, a New Jersey limited liability company
- The Cheesecake Factory of Howard County LLC, a Maryland limited liability company
(restaurants is 90% Managing Member)
- Middle East T.C.F. Corporation, a California corporation
- Middle East IP Corporation, a California corporation
- C.F.I. Promotions Co., LLC, a California limited liability company
- CCF Latin America Corporation, a California corporation
- CCF Latin America IP Corporation, a California corporation
- CCF China Operating Corporation, a California corporation
- CCF Asia Operating Corporation, a California corporation
- CCF Asia IP Corporation, a California corporation
- TCF California Holding Company, a California corporation
- CCF Mexico LLC, a Nevada limited liability company
- Special Monk Incorporated, a California corporation
- TCF Canada, Inc., a Canadian corporation
- CCF International LLC, a California limited liability company

(b) Equity Investments in Other Corporations or Entities: None.

¹ Unless otherwise indicated, Subsidiary is wholly-owned by the Borrower.

Schedule 6.01
Existing Indebtedness

1. Promissory Note in the original principal amount of \$1,000,000 dated September 12, 2007, issued by The Cheesecake Factory Restaurants, Inc., to the order of Raceway Two, LLC, a New Jersey limited liability company.
2. Promissory Note in the original principal amount of \$600,000 dated August 21, 2012, issued by The Cheesecake Factory Restaurants, Inc., to the order of Lawrence Associates, a New Jersey limited partnership.
3. Promissory Note in the original principal amount of \$500,000 dated 2010, issued by The Cheesecake Factory Restaurants, Inc. to the order of BC Mall Restaurant, Inc., a Maryland corporation.

Schedule 6.02**Existing Liens**

Filing Office	Financing Statement Filing No.	Filing Date	Debtor	Secured Party
Delaware Secretary of State	2010 0747240	03/05/2010	The Cheesecake Factory Incorporated	United Rentals Northwest, Inc.
Delaware Secretary of State	2011 3956573	10/14/2011	The Cheesecake Factory Incorporated	United Rentals (North America), Inc.
Delaware Secretary of State	2011 4021336	10/19/2011	The Cheesecake Factory Incorporated	United Rentals (North America), Inc.
Delaware Secretary of State	2011 4438407	11/18/2011	The Cheesecake Factory Incorporated	United Rentals (North America), Inc.
Delaware Secretary of State	2011 4438415	11/18/2011	The Cheesecake Factory Incorporated	United Rentals (North America), Inc.
Delaware Secretary of State	2013 4163904	10/23/2013	The Cheesecake Factory Incorporated	Wells Fargo Bank N.A.
Delaware Secretary of State	2013 4182862	10/24/2013	The Cheesecake Factory Incorporated	Wells Fargo Bank N.A.
Delaware Secretary of State	2013 4182870	10/24/2013	The Cheesecake Factory Incorporated	Wells Fargo Bank N.A.
Delaware Secretary of State	2013 4237278	10/29/2013	The Cheesecake Factory Incorporated	Wells Fargo Bank N.A.
Delaware Secretary of State	2014 1611896	4/24/2014	The Cheesecake Factory Incorporated	Wells Fargo Bank N.A.
Delaware Secretary of State	2014 2958916	7/24/2014	The Cheesecake Factory Incorporated	Wells Fargo Bank N.A.
California Secretary of State	07-7101267829	02/02/2007	The Cheesecake Factory Restaurants, Inc.	CIT Technologies Corporation

Filing Office	Financing Statement Filing No.	Filing Date	Debtor	Secured Party
California Secretary of State	07-7110328978	04/16/2007	The Cheesecake Factory Restaurants, Inc.	CIT Technologies Corporation
California Secretary of State	07-7122565873	07/24/2007	The Cheesecake Factory Restaurants, Inc.	CIT Technologies Corporation
California Secretary of State	09-7206488478	08/25/2009	The Cheesecake Factory Restaurants, Inc.	Macquarie Equipment Finance LLC
California Secretary of State	10-7225261975	03/11/2010	The Cheesecake Factory Restaurants, Inc.	Macquarie Equipment Finance LLC
California Secretary of State	11-7269849532	05/16/2011	The Cheesecake Factory Bakery Incorporated	Wells Fargo Bank N.A.
California Secretary of State	11-7272259824	06/07/2011	The Cheesecake Factory Bakery Incorporated	Wells Fargo Bank N.A.
California Secretary of State	12-7330332024	09/25/2012	The Cheesecake Factory Bakery Incorporated	U.S. Bank Equipment Finance
California Secretary of State	13-7348087899	02/11/2013	The Cheesecake Factory Bakery Incorporated	U.S. Bank Equipment Finance, a division of U.S. Bank National Association
California Secretary of State	15-7485084426	09/16/2015	The Cheesecake Factory Bakery Incorporated	U.S. Bank Equipment Finance, a division of U.S. Bank National Association
California Secretary of State	16-7512503656	03/04/2016	The Cheesecake Factory Bakery Incorporated	Raymond Leasing Corporation
California Secretary of State	18-7687135127	12/12/2018	The Cheesecake Factory Bakery Incorporated	U.S. Bank Equipment Finance, a division of U.S. Bank National Association

Schedule 6.08

Existing Restrictions

None.

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the “Assignor”) and [*Insert name of Assignee*] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (as amended, supplemented or otherwise modified from time to time, the “Loan Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____
[and is an Affiliate/Approved Fund of [identify Lender]²]
3. Borrower(s): The Cheesecake Factory Incorporated, a Delaware corporation
4. Administrative Agent: JPMorgan Chase Bank, N.A., as the administrative agent under the Loan Agreement
5. Loan Agreement: The \$400,000,000 Third Amended and Restated Loan Agreement dated as of July 30, 2019 among the Borrower, the Lenders parties

² Select as applicable

thereto, the Administrative Agent, and the other agents parties thereto

6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans ³
Revolving Commitment	\$	\$	%
	\$	\$	%
	\$	\$	%

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By _____
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By _____
Title:

³ Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[Consented to and]⁴ Accepted:

JPMORGAN CHASE BANK, N.A., as Administrative
Agent

By _____
Title:

[Consented to:]⁵

THE CHEESECAKE FACTORY INCORPORATED

By _____
Title:

⁴ To be added only if the consent of the Administrative Agent is required by the terms of the Loan Agreement.

⁵ To be added only if the consent of the Borrower is required by the terms of the Loan Agreement.

THE CHEESECAKE FACTORY INCORPORATED

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, (iv) any requirements under applicable law for the Assignee to become a lender under the Loan Agreement or to charge interest at the rate set forth therein from time to time, or (v) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement and under applicable law, (ii) it satisfies the requirements, if any, specified in the Loan Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender or any of their respective Related Parties, and (vi) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, any Co-Syndication Agent or Documentation Agent, the Assignor or any other Lender or any of their respective Related Parties, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform

in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: _____, _____

To: JPMorgan Chase Bank, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Third Amended and Restated Loan Agreement, dated as of July 30, 2019 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement”, the terms defined therein being used herein as therein defined), among The Cheesecake Factory Incorporated, a Delaware corporation (the “Borrower”), the Lenders from time to time party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent.

The undersigned Financial Officer hereby certifies as of the date hereof that he/she is the _____ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of the Borrower, and that:

[Use following paragraph 1 for fiscal year-end financial statements]

1. The Borrower has delivered to the Administrative Agent the year-end audited financial statements required by Section 5.01(a) of the Agreement for the fiscal year of the Borrower ended as of the above date, together with the report and opinion of an independent public accountant required by such section.

[Use following paragraph 1 for fiscal quarter-end financial statements]

1. The Borrower has delivered to the Administrative Agent the unaudited financial statements required by Section 5.01(b) of the Agreement for the fiscal quarter of the Borrower ended as of the above date (the “Subject Quarter”). Such financial statements fairly present in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries in accordance with GAAP as at such date and for such period, subject to normal year-end audit adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of the Borrower during the accounting period covered by the attached financial statements.

3. A review of the activities of the Borrower during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Borrower performed and observed all its obligations under the Loan Documents, and

[select one:]

[to the best knowledge of the undersigned during such fiscal period, the Borrower performed and observed each covenant and condition of the Loan Documents applicable to it.]

--or--

[the following covenants or conditions have not been performed or observed and the following is a list of each such Default and its nature and status:]

4. The representations and warranties of the Borrower contained in the Agreement are true and correct as of the date of this Certificate, other than the representations and warranties that specifically refer to an earlier date.

5. No change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 of the Loan Agreement[, except:

[if any such change has occurred, describe the change and specify the effect of the change on the financial statements accompanying this Certificate]].

6. The covenant analyses and information set forth on Schedules 1, 2 and 3 attached hereto are true and accurate on and as of the date of this Certificate.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of _____.

THE CHEESECAKE FACTORY INCORPORATED

By: _____

Name: _____

Title: _____

For the Quarter/Year ended _____ (“Statement Date”)

SCHEDULE 1
to the Compliance Certificate
(\$ in 000’s)

I. Section 6.09(a) – Net Adjusted Leverage Ratio.

- A. Debt at Statement Date as set forth on Schedule 2: \$ _____
- B. Rental Expense for four consecutive fiscal quarters ending on Statement Date (“Subject Period”), other than non-cash Rental Expense but including cash payments in respect of non-cash Rental Expense for a prior period: \$ _____
- C. Unrestricted domestic cash and Cash Equivalents of the Borrower and its Subsidiaries on Statement Date: \$ _____
- D. EBITDAR for Subject Period as set forth on Schedule 2: \$ _____
- E. Net Adjusted Leverage Ratio (((i) sum of (x) Line I.A + (y) 8 x Line I.B – (z) Line I.C - \$25 million) ÷ (ii) Line I.D): _____ to 1.00
Maximum permitted: 4.75 to 1.00

II. Section 6.09(b) – EBITDAR to Interest and Rental Expense.

- A. EBITDAR for the Subject Period as set forth on Schedule 2: \$ _____
- B. Cash Interest Expense for the Subject Period: \$ _____
- C. Rental Expense for Subject Period, other than non-cash Rental Expense but including cash payments in respect of non-cash Rental Expense for a prior period: \$ _____
- D. EBITDAR to Interest and Rental Expense
((i) Line II.A ÷ (ii) sum of Line II.B + Line II.C): _____ to 1.00
Minimum required: 1.90 to 1.00
-

For the Quarter/Year ended _____ (“Statement Date”)

SCHEDULE 2
to the Compliance Certificate
(\$ in 000’s)

DEBT

(in accordance with the definition of Debt as set forth in the Agreement)

Type of Debt ⁶	Amount at Statement Date
all obligations for borrowed money or with respect to deposits or advances of any kind	
all obligations evidenced by bonds, debentures, notes or similar instruments	
all obligations upon which interest charges are customarily paid	
all obligations under conditional sale or other title retention agreements relating to property acquired by such Person	
all obligations in respect of the deferred purchase price of property or services (excluding (w) trade accounts payable in the ordinary course of business, (x) any earn-out obligation until such obligation becomes or would constitute a liability on the balance sheet of such Person in accordance with GAAP, (y) expenses accrued in the ordinary course of business and (z) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller, unless such amounts or obligations would constitute a liability on the balance sheet of such Person in accordance with GAAP) ⁷	

⁶ The Debt of any Person of any partnership or joint venture in which such Person is a general partner or a joint venturer, as applicable, except to the extent (i) such Debt is expressly made non-recourse to such Person or (ii) such Person’s liability for such Debt is otherwise limited in recourse or amount, but only up to the amount of the value of the assets to which recourse is limited or the amount of such limit. For the avoidance of doubt, it is understood and agreed that any amounts classified as Deemed Landlord Financing Liabilities shall not be deemed to be Debt for purposes hereof.

⁷ Not to include any earn-out obligations or similar deferred obligations of the Borrower or any Subsidiary incurred or created in connection with either of the Project North Acquisitions.

all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed	
Guarantees of Indebtedness of others	
Capital Lease Obligations	
= Debt	

EBITDA

(in accordance with the definition of EBITDA as set forth in the Agreement)

EBITDA	Quarter Ended	Quarter Ended	Quarter Ended	Quarter Ended	Twelve Months Ended
Net Income					
+ Interest Expense					
+ net provision for income taxes payable					
+ depreciation expense					
+ amortization expense					
+ non-cash stock option expense					
+ non-recurring, non-cash charges or losses					
+ reasonable and documented costs and expenses incurred in connection with any Permitted Acquisition (whether or not consummated) and supported by documentation provided to the Administrative Agent					
+ pre-opening expenses related to Permitted Acquisitions and expenses relating to business restructuring and strategic initiatives ⁸					
+ non-cash Rental Expense ⁹					
- non-recurring integration costs					
- non-cash gains					

⁸ Provided that such adjustments and add-backs shall not exceed an aggregate amount equal to 15% of total EBITDA (calculated after giving effect to EBITDA adjustments/add-backs).

⁹ Note: assumed that the portion of such non-cash Rental Expense for such period resulting from adjustments related to the adoption of FAS 842 is \$21,000,000, so long as the Borrower reasonably believes that the actual amount of such adjustments for such period is within \$5,000,000 of such amount.

- all EBITDA of any joint venture or other non-wholly owned Subsidiary of the Borrower, except to the extent of any amounts distributed to the Borrower in cash					
- cash payments representing non-cash Rental Expense added back in prior periods					
= EBITDA					

EBITDAR

(in accordance with the definition of EBITDAR as set forth in the Agreement)

EBITDAR	Quarter Ended	Quarter Ended	Quarter Ended	Quarter Ended	Twelve Months Ended
EBITDA					
+ Rental Expense ¹⁰					
= EBITDAR					

For the Quarter/Year ended _____ (“Statement Date”)

SCHEDULE 3

to the Compliance Certificate
(\$ in 000’s)

I. Section 6.01 – Indebtedness.

- a. Section 6.01 (e): As of the Statement Date, aggregate amount of Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof (provided that such Indebtedness is

¹⁰ Other than non-cash Rental Expense but including cash payments in respect of non-cash Rental Expense for a prior period.

incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement): \$ _____
Maximum permitted: \$50,000,000

b. Section 6.01(f): As of the Statement Date, aggregate amount of secured Indebtedness of the Borrower or any Subsidiary (in addition to that permitted under Section 6.01(e)): \$ _____
Maximum permitted: \$15,000,000

c. Section 6.01(j): As of the Statement Date, aggregate amount of Indebtedness in the form of earn-outs (in addition to those permitted under Section 6.01(i)), indemnification, incentive, non-compete, consulting or other similar arrangements and other contingent obligations in respect of Permitted Acquisitions (both before and after any liability associated therewith becomes fixed): \$ _____
Maximum permitted: \$50,000,000

c. Section 6.01(i): As of the Statement Date, aggregate amount of unsecured Indebtedness of the Borrower, other than unsecured indebtedness of Borrower permitted pursuant to Sections 6.01(a) through and including Section 6.01(k) (including, without limitation, unsecured Indebtedness that is convertible into equity) (Note: permitted so long as (i) the Borrower is in compliance with Section 6.09 of the Loan Agreement as set forth in the most recent Compliance Certificate received by the Administrative Agent, adjusted to give pro forma effect to the actual amount of Debt outstanding after the incurrence of such Indebtedness, (ii) such Indebtedness does not restrict the right of the Borrower or any Subsidiary to grant Liens on their assets to the Credit Parties, (iii) such Indebtedness does not require any repayment thereof prior to the date that is six months after the Maturity Date and (iv) such Indebtedness has covenants, if any, that are no more restrictive than those included in this Agreement as in effect at the time of incurrence thereof): \$ _____
Maximum permitted: \$300,000,000

II. Section 6.04 – Investments, Loans, Advances, Guarantees and Acquisitions.

a. Section 6.04(f): Aggregate investments by the Borrower or any Subsidiary pursuant to Section 6.04(f) (other than the Project North Acquisitions subject to the conditions set forth in such clause (f) since the Effective Date): \$ _____
Maximum permitted: \$300,000,000

III. Section 6.06 – Restricted Payments.

- a. Section 6.06(d)/(e)/(f): Aggregate amount of Restricted Payments declared and/or made by the Borrower (in the case of clauses (d) and (f), in the form of dividends or other distributions made since Effective Date (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or in the form of redemptions or repurchases of Equity Interests in the Borrower): \$_____

Portion of such Restricted Payments made pursuant to clause (e) (at a time when (i) no Default was then continuing and (ii) after giving pro forma effect thereto, the Net Adjusted Leverage Ratio did not exceed 4.25 to 1.00, or subject to clause (f) when declared at such time): \$_____

Maximum permitted pursuant to clause (e): \$100,000,000

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Loan Agreement dated as of July 30, 2019 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), among The Cheesecake Factory Incorporated, a Delaware corporation, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, the other agents parties thereto, and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.16 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF LENDER]

By: _____

Name:

Title:

Date: _____, 20[]

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Loan Agreement dated as of July 30, 2019 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), among The Cheesecake Factory Incorporated, a Delaware corporation, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, the other agents parties thereto, and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.16 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, 20[]

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Loan Agreement dated as of July 30, 2019 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), among The Cheesecake Factory Incorporated, a Delaware corporation, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, the other agents parties thereto, and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.16 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, 20[]

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Loan Agreement dated as of July 30, 2019 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"), among The Cheesecake Factory Incorporated, a Delaware corporation, as borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, the other agents parties thereto, and each lender from time to time party thereto.

Pursuant to the provisions of Section 2.16 of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Loan Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____, 20[]

[FORM OF]

ACKNOWLEDGMENT AND REAFFIRMATION AGREEMENT

This Acknowledgement and Reaffirmation Agreement (as amended, restated, supplemented or otherwise modified from time to time, this "Reaffirmation") is entered into as of July 30, 2019, by and among The Cheesecake Factory Restaurants, Inc., The Cheesecake Factory Bakery Incorporated, TCF Co. LLC, Grand Lux Café, LLC, Middle East IP Corporation and TCF California Holding Company (collectively, the "Reaffirming Parties"), and JPMorgan Chase Bank, N.A., as Administrative Agent (the "Administrative Agent").

RECITALS

A. Reference is made to (i) that certain Second Amended and Restated Guaranty, dated as of December 22, 2015 (as amended, supplemented or otherwise modified from time to time, the "Guaranty"), executed by the Reaffirming Parties in favor of the Administrative Agent, for the ratable benefit of the holders of the Guaranteed Obligations (as defined therein), and (ii) that certain Third Amended and Restated Loan Agreement, dated as of the date hereof (the "Loan Agreement"), among The Cheesecake Factory Incorporated, as the borrower, the lenders party thereto and the Administrative Agent, which, upon satisfaction of the terms and conditions set forth therein, will amend and restate the Existing Loan Agreement in its entirety as set forth therein. Unless otherwise defined herein or the context otherwise requires, terms used in this Reaffirmation have the meanings provided in the Loan Agreement.

B. As a condition precedent to entering into the Loan Agreement, the Administrative Agent and the Lenders have required that the Reaffirming Parties enter into this Reaffirmation.

AGREEMENT

NOW, THEREFORE, in order to induce the Administrative Agent and the Lenders to enter into the Loan Agreement and for other good and valuable consideration, the receipt and adequacy of which hereby is acknowledged, the Reaffirming Parties hereby agree as follows:

(a) Each of the Reaffirming Parties:

(i) expressly and knowingly ratifies and reaffirms its respective liability under each of the Loan Documents (including, without limitation, the Guaranty) to which it is a party and expressly agrees to be and remain liable under the terms of each such Loan Document to which it is a party, in each case, in accordance with the terms thereof, and that, as of the date hereof, it has no defense, offset, deduction or counterclaim whatsoever against any Lender or with respect to the obligations of such Reaffirming Party relating to any such Loan Document;

(ii) agrees that, except as expressly contemplated by the Loan Agreement or any other Loan Document executed in connection therewith, each Loan Document (including, without limitation, the Guaranty) to which it is a party shall remain in full force and effect and is hereby ratified and confirmed;

(iii) agrees that each reference to "Loan Agreement" in the Loan Documents (including, without limitation, the Guaranty) to which it is a party shall be deemed to refer to the

Loan Agreement as defined herein as the same may be further amended, restated, supplemented or otherwise modified from time to time; and

(iii) agrees that the execution of this Reaffirmation is not required by the terms of the Loan Documents or by applicable law for the continued validity and enforceability of any Loan Document (including, without limitation, the Guaranty) to which it is a party in accordance with its respective terms but that this Reaffirmation is executed to induce the Lenders and the Administrative Agent to approve of and otherwise enter into the Loan Agreement.

(b) This Reaffirmation is a Loan Document and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with all of the terms and provisions of the Loan Agreement.

(c) This Reaffirmation shall be binding upon and inure to the benefit of the parties hereto and to their respective successors and permitted assigns.

(d) This Reaffirmation represents the agreement of the Reaffirming Parties and the Administrative Agent with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

(e) This Reaffirmation shall be governed by, and construed in accordance with, the laws of the State of New York.

(f) The terms of Sections 9.06 (Counterparts; Integration; Effectiveness; Electronic Execution), 9.09 (Governing Law; Jurisdiction; Consent to Service of Process) and 9.10 (Waiver of Jury Trial) of the Loan Agreement are incorporated herein as though set forth in full.

[Signatures Immediately Follow]

IN WITNESS WHEREOF, each of the undersigned intending to be legally bound hereby has caused this Reaffirmation Agreement to be executed as of the date first above written.

REAFFIRMING PARTIES:

THE CHEESECAKE FACTORY RESTAURANTS, INC.

By: _____
Name: _____
Title: _____

THE CHEESECAKE FACTORY BAKERY
INCORPORATED

By: _____
Name: _____
Title: _____

TCF CO. LLC

By: _____
Name: _____
Title: _____

GRAND LUX CAFÉ, LLC

By: _____
Name: _____
Title: _____

MIDDLE EAST IP CORPORATION

By: _____
Name: _____
Title: _____

TCF CALIFORNIA HOLDING COMPANY

By:

Name:

Title:

D-4

ADMINISTRATIVE AGENT:

JPMORGAN CHASE BANK, N.A.

By:

Name:

Title:

D-5

THE CHEESECAKE FACTORY INCORPORATED
CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David Overton, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The Cheesecake Factory Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2019

/s/ DAVID OVERTON

David Overton

*Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)*

THE CHEESECAKE FACTORY INCORPORATED
CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO EXCHANGE ACT RULES 13a-14(a) AND 15d-14(a)
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Matthew E. Clark, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The Cheesecake Factory Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 8, 2019

/s/ MATTHEW E. CLARK

Matthew E. Clark

*Executive Vice President and Chief Financial Officer
(Principal Financial Officer)*

THE CHEESECAKE FACTORY INCORPORATED
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 of The Cheesecake Factory Incorporated (the "Company") on Form 10-Q for the period ended October 1, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David Overton, Chairman of the Board and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (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.

November 8, 2019

/s/ DAVID OVERTON

David Overton

Chairman of the Board and Chief Executive Officer

THE CHEESECAKE FACTORY INCORPORATED
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 of The Cheesecake Factory Incorporated (the "Company") on Form 10-Q for the period ended October 1, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Matthew E. Clark, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (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.

November 8, 2019

/s/ MATTHEW E. CLARK

Matthew E. Clark

Executive Vice President and Chief Financial Officer
