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# DELTA REPORT

## 10-K

BGSF - BGSF, INC.

10-K - DECEMBER 31, 2023 COMPARED TO 10-K - JANUARY 01, 2023

The following comparison report has been automatically generated

TOTAL DELTAS	6637
CHANGES	304
DELETIONS	802
ADDITIONS	5531



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended **January 1, 2023** **December 31, 2023**

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

For the transition period from to

Commission File Number: 001-36704

 bgstaffingicon2019a03.jpg

**BGSF, INC.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State of Incorporation)

26-0656684

(I.R.S. Employer Identification Number)

5850 Granite Parkway, Suite 730 Plano, Texas

(Address of Principal Executive Offices)

75024

(Zip Code)

Registrant's telephone number, including area code:  
(972) 692-2400

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

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Exchange on Which Registered</u>
Common Stock, par value \$0.01 per share	BGSF	NYSE

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

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

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

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

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

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company 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. (Check one):



Large accelerated filer	..	Accelerated filer	b
Non-accelerated filer	..	Smaller reporting company	<input checked="" type="checkbox"/>
	(Do not check if a smaller reporting company)	Emerging growth company	<input type="checkbox"/>

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

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

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

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

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

The aggregate market value of the common stock held by non-affiliates of the Registrant as of June 24, 2022 June 30, 2023 (the last business day of the Registrant's most recently completed second fiscal quarter) was \$126,930,147 \$98,630,996 (based on the closing sale price of the Registrant's Registrant's common stock on June 24, 2022 June 30, 2023 as reported on the NYSE).

As of March 15, 2023 March 14, 2024, there were 10,789,903 10,928,763 shares of the Registrant's common stock outstanding.

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## FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements. Forward-looking statements may include, but are not limited to, statements with respect to our future financial or operating performance, future plans and objectives, competitive positioning, requirements for additional capital, government regulation of operations and the timing and possible outcome of litigation and regulatory matters. All statements, other than statements of historical fact, included or incorporated by reference in this Annual Report on Form 10-K, including statements that address activities, events or developments that we, or our subsidiaries, expect or anticipate may occur in the future, are forward-looking statements. Often, but not always, forward-looking statements can be identified by use of forward-looking words such as "aim," "potential," "may," "could," "can," "would," "might," "likely," "will," "expect," "intend," "plan," "predict," "ongoing," "project," "budget," "scheduled," "estimate," "anticipate," "believe," "forecast," "committed," "future" or "continue" or the negative thereof or similar variations. Forward-looking statements are based on certain assumptions and analyses made by us, in light of our experience and perception of historical trends, current conditions and expected future developments, as well as other factors we believe are appropriate in the circumstances. Although we believe that the expectations reflected in these forward-looking statements are reasonable, we can give no assurance that these expectations will prove to have been correct. Readers are cautioned not to put undue reliance on such forward-looking statements, which are not a guarantee of performance and are subject to a number of uncertainties and known and unknown risks, many of which are outside our control, which could cause actual results to differ materially from those expressed or implied by such forward-looking statements. Important factors which could cause actual results to differ materially from those expressed or implied by such forward-looking statements include, among other things, general business, economic, competitive, political and social uncertainties, the actual results of current operations, industry conditions, intellectual property and other proprietary rights, liabilities inherent in our industry, the novel coronavirus pandemic (COVID-19) or other pandemics, accidents, labor disputes, delays in obtaining regulatory approvals or financing and general market factors, including interest rates, equity markets, business competition, changes in government regulations. Additional risks and uncertainties include, but are not limited to, those listed under "Item 1A. Risk Factors."

Although we have attempted to identify important factors that could cause actual actions, events or results to differ materially from those described in the forward-looking statements, there may be other factors that cause results to differ from those anticipated. Forward-looking statements contained in this Annual Report on Form 10-K are made as of the date of the Annual Report on Form 10-K and we disclaim any obligation to update any forward-looking statements, whether as a result of new information, future events, results or otherwise, except as required by applicable securities laws.



## Part I

### ITEM 1. BUSINESS.

#### Overview and History

BGSF, Inc. ("BGSF," "we," or the "Company") is a leading national provider of consulting, managed services, and professional workforce solutions with continuing operations that, along with its wholly owned subsidiaries, operate primarily within the U.S. in two industry segments Real Estate segments: Property Management and Professional, with discontinued operations in the Light Industrial segment. Professional. We provide field talent to a variety of client partners that are seeking to match their workforce requirements to their business needs. Our client partners operate across a diverse set of industries.

We employ a diverse operating model, both from a skill set and a geographic standpoint, which we believe mitigates downside revenue risk.

Our workforce solutions services consist of on-demand or short-term assignments, consulting services, managed services and on-site management administration. Short-term workforce solutions assist employers in dealing with field talent demands caused by such factors as seasonality, fluctuations in client partner demand, vacations, illnesses, parental leave, and special projects without incurring the ongoing expense and administrative responsibilities associated with recruiting, hiring and retaining permanent field talent. As more and more companies focus on effectively managing variable costs and reducing fixed overhead, the use of short-term workforce solutions allows companies to utilize a contingent approach for their personnel needs, thereby converting a portion of their fixed personnel costs to a variable expense.

Our consulting workforce solutions place field talent with client partners for extended time-periods or for an indefinite time period. This type of arrangement may involve outsourcing an entire department in a large corporation or providing the workforce for a large project.

Managed Services Solutions are a combination of both workforce solutions and fixed fee arrangements. Field talent is placed with the client partner and services are performed over a given period of time as determined with the client partner. Generally services are provided under a contractual agreement.

In an on-site management arrangement, we place an experienced manager on-site at a client partner's place of business. The manager is responsible for conducting all recruiting, candidate screening, interviewing, drug testing, hiring and placement for field talent at the client partner's facility for a long-term or indefinite period.

Management believes that these solutions and the field talent performing these workforce solutions are, and will remain, an integral part of the labor market in local, regional and national economies in which we operate.

BGSF, Inc. is the successor by conversion to LTN Staffing, LLC, a Delaware limited liability company that was formed on August 27, 2007. In 2011, we began doing business as BG Staffing. LTN Staffing, LLC converted into a Delaware corporation, BG Staffing, Inc., following the merger of LTN Acquisition, LLC (the former parent of LTN Staffing, LLC) with and into LTN Staffing, LLC. The conversion was completed on November 3, 2013. In 2021, we changed our name to BGSF, Inc.

We commenced operations on October 17, 2007 and since 2009 have begun an on-going growth and diversification initiative. Since 2010, we have acquired thirteen fourteen businesses:

- In June 2010, we purchased the interests of BG Personnel Services, LP and BG Personnel, LP, and purchased the common stock of B G Staff Services, Inc. Shortly after the purchase, we relocated our home office to Dallas, Texas. We operate under the BG Multifamily and BG Talent trade names.
- In December 2010, we purchased substantially all of the assets and assumed certain liabilities of JNA Staffing Inc., which specialized in providing light industrial workforce solutions within the State of Wisconsin. These operations were rolled into our existing operations in Milwaukee, Wisconsin.
- In December 2011, we purchased substantially all of the assets and assumed certain liabilities of Extrinsic, LLC, which specialized in providing information technology ("IT") workforce solutions to client partners within the U.S. We continue to operate under the Extrinsic trade name.
- In December 2012, we acquired substantially all of the assets and assumed certain liabilities of American Partners, Inc., which specialized in providing IT workforce solutions to client partners within the U.S. We continue to operate under the American Partners trade name.
- In June 2013, we acquired substantially all of the assets and assumed certain liabilities of InStaff Holding Corporation and InStaff Personnel, LLC, a wholly owned subsidiary of InStaff Holding Corporation (collectively, "InStaff").
- In March 2015, we acquired substantially all of the assets and assumed certain liabilities of D&W Talent, LLC ("D&W"), which specialized in providing part-time and full-time workforce solutions of accounting and finance personnel and secretarial and administrative personnel to client partners in Texas and Louisiana. We continue to operate under the Donovan & Watkins trade name.
- In October 2015, we acquired substantially all of the assets and assumed certain liabilities of Vision Technology Services, Inc., Vision Technology Services, LLC, and VTS-VM, LLC (collectively, "VTS"), which provided IT workforce solutions and project management workforce solutions. We continue to operate under the Vision Technology Services trade name.
- In April 2017, we acquired substantially all of the assets and assumed certain liabilities of Zycron, Inc. ("Zycron"), which provided IT workforce solutions and project management workforce solutions. We continue to operate under the Zycron trade name.



- In September 2017, we acquired substantially all of the assets and assumed certain liabilities of Smart Resources Inc. and Accountable Search, LLC (collectively, "Smart"), which specialized in providing part-time and full-time workforce solutions of accounting and finance personnel and secretarial and administrative personnel to client partners in Chicago market. **We continue to operate under the Accountable Search and Smart Resources trade names.**
- In December 2019, we acquired substantially all of the assets and assumed certain liabilities of L.J. Kushner & Associates, L.L.C. ("LJK"), which provided cybersecurity retained search workforce solutions specializing in recruiting high and mid-level IT security professionals. **We continue to operate under the L.J. Kushner & Associates trade name.**
- In February 2020, we acquired 100% of the equity of EdgeRock Technology Holdings, Inc. ("EdgeRock"), which provides specialized IT consultants and focuses on the sourcing and placement of technology professionals specialized in leading software and data ecosystems. **We continue to operate under the EdgeRock Technology Partners trade name.**
- In February 2021, we acquired substantially all of the assets and assumed certain liabilities of Momentum Solutionz LLC (the "Momentum Solutionz"), which provided IT consulting and managed workforce solutions for organizations utilizing ERP systems. **We continue to operate under the Momentum Solutionz trade name.**
- In December 2022, we acquired substantially all of the assets and assumed certain liabilities of Horn Solutions, Inc. and Horn Solutions, Dallas, LLC (collectively, "Horn Solutions"). Horn Solutions provides services to clients in a variety of industries including, but not limited to energy, financial services, healthcare, real estate and construction, service, manufacturing, and software industries. **We continue to operate under**
- **In April 2023, we acquired substantially all of the Horn Solutions trade names, assets and assumed certain liabilities, of Arroyo Consulting LLC ("Arroyo Consulting"), which provides nearshore and offshore workforce solutions specializing in IT and software development with operations in the United States, Colombia, and India.**

On March 21, 2022, we completed the sale to Sentech Engineering Services, Inc. of substantially all of the assets pertaining to our Light Industrial segment. The Light Industrial segment **provided providing** field talent primarily to manufacturing, distribution, logistics, and call center client partners **needing a flexible workforce and which** operated under the "InStaff" trade name.

**InStaff's InStaff's** financial results **for periods prior to the sale** have been reflected in our Consolidated Statements of Operations and Comprehensive **(Loss)** Income and Consolidated Statements of Cash Flows as discontinued operations. **Additionally, the related assets and liabilities associated with the discontinued operations in the prior periods are classified as discontinued operations in our Consolidated Balance Sheets.**

See "Note 4 - Discontinued Operations" in our Consolidated Financial Statements included elsewhere in this report for additional information.

**We now operate across 46 states** **The Company currently operates primarily within the United States of America ("U.S.") through the Property Management and D.C. We do not currently have any significant foreign operations.** **Professional segments.**

## Our Industry

The workforce solution industry supplies field talent to client partners helping them minimize the cost and effort of workforce planning. These workforce solutions also enable the client partner to rapidly respond to changes in business conditions, and in some cases to convert fixed labor costs to variable costs. Workforce solution companies act as intermediaries in matching available field talent to client partner assignments. **The demand for a flexible workforce continues to grow with competitive and economic pressures to reduce costs and respond to changing market conditions.**

The workforce solution market is subject to volatility based on overall economic conditions. Historically, in periods of economic growth, the number of companies providing workforce solutions has increased due to low barriers to entry. During recessionary periods, the number of companies has decreased through consolidation, bankruptcies, or other events. **The workforce solution industry is experiencing increased demand in relation to total job growth as client partners have placed a greater priority on maintaining a more flexible workforce.**

The workforce solution industry is large and highly fragmented with approximately 25,000 competing companies, while only **186 251** firms exceeded \$100 million in annual revenues during **2021 2022** according to Staffing Industry Analysts ("SIA"). As of September **2022, 2023**, SIA estimated the 2023 U.S. temporary service market will be an estimated **\$216.8 billion \$201.7 billion**, which is **up down** from an estimated **\$212.2 billion \$224.7 billion** in 2022. Workforce solution providers compete both to recruit and retain a supply of field talent and to attract and retain client partners to use these workers. Client partner demand for workforce solutions is dependent on the overall strength of the labor market and trends toward greater workforce flexibility. The workforce solution industry includes a number of markets focusing on business needs that vary widely in duration of assignment and level of technical specialization.

## Our Operations

We have diversified our operations to provide field talent within distinct segments of the industry. We refer to our continuing operations as the **Real Estate Property Management** and Professional segments, and discontinuing operations as the Light Industrial segment.

We operate separate profit centers within each segment and provide managers considerable operational autonomy and financial incentives. Managers focus on business opportunities within their markets and are provided centralized support to achieve success in those markets. We believe this structure allows us to recruit and retain highly motivated managers who have demonstrated the ability to succeed in a competitive environment. This structure also allows managers and team members to focus on market development while relying on centralized services for support in back-office operations, such as risk management programs and unemployment insurance, credit, collections, accounting, advice on legal and regulatory matters, and quality standards.



## Our Segments

Our continuing operations are organized into the Real Estate Property Management and Professional segments, and our discontinued operations is the Light Industrial segment.

### Real Estate Property Management Segment

Our Real Estate Property Management segment is a leading provider of office and maintenance field talent to various apartment communities and commercial buildings, talent. We currently operate in 36 38 states and D.C. The Real Estate segment utilizes Virtual Talent Acquisition Center ("TAC") with team members located in various locations throughout the United States. All open field talent positions nationally are recruited from this TAC. The field talent we assign to our Real Estate Property Management client partners are our employees, although our client partners generally provide on-the-job direction, control and supervision.

### Professional Segment

Our Professional segment provides highly skilled IT professionals with expertise in SAP, Workday, Peoplesoft, Hyperion, Oracle, One Stream, cyber, project management, managed services, and other IT workforce solutions to client partners on a national basis. Additionally, we provide finance, accounting, legal, human resource and related support personnel. Our client partners include large Fortune 500 companies, medium and small companies, as well as consulting firms engaged in systems integration projects. We operate our professional segment remotely and from our offices in Arizona, Florida, Illinois, Maryland,

Massachusetts, New Jersey, North Carolina, Rhode Island, Tennessee, and Texas.

The IT division provides additional nearshore/offshore field talent solutions in Colombia and India.

### Light Industrial Segment

The Light Industrial segment is reported in our financial statements as discontinued operations. See "Note 4 - Discontinued Operations" in our Consolidated Financial Statements for additional information.

## Financial Information about Segments

Refer to Note 19 in the Notes to Consolidated Financial Statements included in Item 8 of this Annual Report on Form 10-K, which is incorporated by reference.

## Financial Information about Geographic Areas

Refer to Notes 1 and 2 in the Notes to Consolidated Financial Statements included in Item 8 of this Annual Report on Form 10-K, which is incorporated by reference.

## Our Client Partners

We currently provide workforce solutions to small and medium-sized companies as well as divisions of Fortune 500 companies. As is common in the industry, our engagements to provide workforce solutions to our client partners are generally of a non-exclusive, short-term nature and subject to termination by the client partner with little or no notice. No client partner accounted for more than 10% of our revenues in fiscal 2023, 2022, 2021, or 2020, 2021.

## Marketing and Recruiting

We believe a key component of our success is the ability to recruit and maintain a pool of qualified field talent and regularly place them into desirable and appropriate positions. We use comprehensive methods to identify, assess, select and, when appropriate, measure the skills of our field talent and permanent placement candidates to meet the needs of our client partners.

We market our workforce solutions to client partners and field talent candidates via both national and local advertising activities. A significant portion of our total marketing efforts comes from direct marketing via email and telephone solicitation. Promotions consists of digital display, pay per click advertising, search engine marketing, social media, trade publications, job boards and events. As well, reputation management is a promotional utility that serves as the first impression; interactions on reviews, comments, posts, direct messages, etc. give our followers a cursory notion of our values and business practices. We market our hiring and career management advice through all digital platforms (websites, social media, and blogs) and have expanded our use of job boards and aggregators in all aspects of sales and recruitment. Joint marketing arrangements have been entered into with major software partners. We actively seek endorsements and affiliations with professional organizations in the accounting and finance, technology, apartment community, commercial building, creative and marketing fields. To enhance public recognition of us and our workforce solutions, we conduct public relations activities and team members and field talent are encouraged to be active in civic organizations and industry trade groups in their local communities.

## Growth Strategy

We are committed to growing our operations. We operations and have grown from \$35 million of Light Industrial revenue in 2009 to \$298 million \$313 million of revenue from continuing operations in 2022, 2023, by using a growth strategy reliant upon both acquisitions and organic growth.

We will continue to evaluate acquisition opportunities utilizing our proven approach to the assessment, valuation, and integration of acquisitions. Additionally, we are committed to continue to grow our operations in our current markets, as well as expand into new markets within the segments and industries that we currently serve.

We are organized to handle many of the administrative functions at our home office location so that our segment operations can focus on business development and the effective recruiting and assignment of field talent.



We continue to invest in technology and process improvements, as necessary, to ensure that we are operating at optimal productivity and performance. In **second quarter 2022**, we completed the board of directors authorized three year plan to enhance our processes through the information technology improvement project. These workstreams included improvements to applications in front office, middle office, back office, modern workplace, IT infrastructure, and project management.

## Competition

**The** **With about 25,000 staffing and recruiting companies, the** workforce solutions market is highly competitive with limited barriers to entry. We compete in national, regional and local markets with full-service and specialized workforce solution companies. Some of our competitors have significantly more marketing and financial resources than we do. Price competition in the industry is intense. We expect that the level of competition will remain high, which could limit our ability to maintain or increase our market share or profitability.

The principal competitive factors in attracting qualified candidates for assignments are pay rates, availability of assignments, duration of assignments and responsiveness to requests for placement. We believe that many potential candidates seeking assignments through us may also be pursuing assignments through other means. Therefore, the speed at which we place prospective field talent and the availability of appropriate assignments are important factors in our ability to complete assignments of qualified field talent. In addition to having high quality field talent to assign in a timely manner, the principal competitive factors in obtaining and retaining client partners in the workforce solution industry are properly assessing the client partners' specific job requirements, the appropriateness of the field talent assigned to the client partner, the price of services and the monitoring of client partner satisfaction. Although we believe we compete favorably with respect to these factors, we expect competition to continue to increase.

## Seasonality and Other Fluctuations

Our business experiences seasonal fluctuations. Our quarterly operating results are affected by the number of billing days in a quarter, as well as the seasonality of our client partners' business. Demand for our **Real Estate Property Management** workforce solutions typically increase in the second quarter and is highest during the third quarter of the year due to the increased turns in multifamily units during the summer months when schools are not in session. Overall first quarter demand can be affected by adverse weather conditions in the winter months. In addition, our cost of services typically increases in the first quarter primarily due to the reset of payroll taxes.

The industry has historically been cyclical, often acting as an indicator of both economic downturns and upswings. Client partners tend to use contingent workforce solutions to supplement their existing workforce and generally hire direct workers when long-term demand is expected to increase. As a consequence, our revenues tend to increase quickly when the economy begins to grow and, conversely, our revenues can also decrease quickly when the economy begins to weaken. Historically, demand for permanent placement workforce solutions is even more sensitive to economic and labor market conditions than demand for workforce and consultant solutions and this is expected to continue.

## Human Capital

We are a workforce solutions company dedicated to connecting people to work in ways that enrich their lives. At BGSF, we define our purpose by championing the future of people, transforming lives, and positively impacting entire communities. We are more than a transactional business. Our focus is on the big picture. We believe we can be a powerful force for good by connecting people to opportunities that enrich their lives and support their personal and professional development. Embedded in our character is the positive energy we embrace that drives a happy work environment, that shapes a happy home, which cascades into happier communities. We believe small actions can turn into big impacts, creating a ripple that becomes a wave powerful enough to change the world around us. This is what we call The BG Ripple Effect. In order to compete and succeed in our highly competitive and rapidly evolving markets, it is crucial that we attract and retain experienced internal team members, as well as talent to work for our client partners. As part of these efforts, we strive to offer competitive total rewards programs, foster an inclusive and diverse environment, and give team members the opportunity to give back to their communities and make a social impact.

## Team Members

As of **February 13, 2023** **February 7, 2024**, we employed approximately **540** **474** team members working remotely or in our various market locations in the United States.

## Field Talent

In addition to our team members, BGSF matches talent with our client partners. In **2022, 2023**, we placed approximately **14,500** **13,900** individuals in positions with our client partners. In significantly all of these instances, we remain the employer of record for substantially all of our talent working at our client partner locations. This means that we retain responsibility for all assignments, wages, benefits, workers' compensation insurance, and the employers' share of applicable payroll taxes as well as the administration of the team **members' members'** share of these taxes. **We also offer** **Also, working with us gives** our talent access to competitive health and benefit **programs while they are working with us, programs.** Eligible talent can participate in a defined contribution plan and the 2020 Employee Stock Purchase Plan ("2020 ESPP").

## Compensation and Benefits

BGSF is committed to providing competitive, equitable and fiscally responsible total rewards programs to our team members. Our compensation programs are designed to attract, retain and reward talented individuals who possess the skills necessary to achieve our strategic goals and create long-term value for our shareholders. We provide team members with competitive compensation opportunities, with pay for performance opportunities that include a mix of base salary, commissions, short-term incentives and, in the case of our more senior team members, long-term equity awards. We believe that our programs provide fair and competitive opportunities that align team member and shareholder interests. In addition to cash and equity compensation, we also offer team members competitive benefits such as life and health (medical, dental and vision) insurance, paid time off including volunteer time off, wellness benefits, education/tuition reimbursement, a defined contribution retirement plan with BGSF matching contributions, and **an Employee Stock Purchase Plan, our 2020 ESPP.**

## Diversity, Equity, and Inclusion



We are committed to fostering an inclusive and diverse workforce. Our responsibility commitment is overseen by executive leadership, along with board-level oversight led by our Nominating and Governance Committee. In September 2020, we formed a diversity, equity and inclusion council called Voices Inspiring Inclusion, Belonging, and Equity ("VIIBE"), which represents broad perspectives across our organization. VIIBE is chaired by our Vice President of Diversity and Development. In August 2022, we launched our first two team member resource groups: African American/Black Employees & Allies and Working Parents and Allies. Later in 2023, we expect to launch our third team member resource group, with the name to be determined, Pride and Allies. Our team member resource groups are designed to create focus on creating a strong sense of belonging within our work culture, to provide raising awareness and gain about obstacles standing in the way of team member success, gaining collaborative support from allies, and to help drive driving equitable opportunities throughout our the organization for all. The essential work of VIIBE has continued to align it's its work with the development of foundational pillars of excellence that promote this philosophy. We are focused on how we source, recruit, develop, appreciate, and leverage perspectives and experiences of underrepresented talent. This focus will extend to our collaboration with client partners, selection of vendor partners, engagement in our communities and prioritization of overall work-life harmony. Our commitment to diversity, equity and inclusion does not sit with a singular individual, but with every team member at BGSF. BGSF leaders will continue to be provided additional inclusive-leadership growth opportunities, understanding the importance of mitigating biases, as an ongoing effort to shape our future talent pool selections, onboard new talent, and support future career trajectories.

As of October 14, 2022 October 13, 2023, we employed approximately 3,025 3,523 people, of which 14% were internal team members and 86% were field talent supporting our client partners across the country.

- Women represented 36% 37% of all team members, and underrepresented minorities ("URMs", defined as those who identify as Black/African American, Hispanic/Latinx, Native American/Alaska Native, Asian, Native Hawaiian/Pacific Islander and/or two or more races) represented 72% of our all of our reporting team members (3% (4% of team members in contingent roles chose not to disclose this information);
- Women represented 62% 61% of our internal team members and 57% 51% of internal team members in managerial and leadership roles; and
- URMs represent 40% 39% of our internal team members and 21% 23% of internal team members in managerial and leadership roles identified as URMs.

Our focus is to ensure BGSF is cultivating equality and equity, while recognizing and celebrating our differences at work, in our homes, and out in the communities.

## Community Involvement

We consider In 2023, we were committed to sustainability to be a guiding principle in strengthening the relationship initiatives which guided our interactions with our workforce, vendor partners, and client partners. Through our programs volunteering time off program, we had 189 individuals volunteer over 2,200 hours and initiatives, donated of over \$40,000 for philanthropic purposes, which emphasized our ongoing dedication to community service. Focusing on impactful community events, we seek to contribute to improving the quality of life of our team members, their families, as well as the communities in which they operate. Designed on the concept of social investment, our approach ensures the creation of future development capacities instead of aiding on isolated occasions. Supporting our communities has always been an important part of how we uphold our company values. To this end, we support volunteerism through two paid days so team members can serve their charity, cause or not-for-profit organization of choice. Our 2021 launch of Philanthropy Cloud, powered by Salesforce.org, improves the giving experience by connecting employees with their charity of choice. The platform also greatly enhances our transparency in impact reporting, tracking, and engagement. In 2022, "BG'ers" donated more than \$38,500 to charity and served over 1,375 volunteer hours to support to support causes that are close to their hearts, as well as BGSF-organized volunteer projects. In 2022, BGSF served as the Presenting Sponsor continued sponsorship of the State Fair of Texas's Youth Agricultural Job Interview Contest, bringing together BG volunteers to facilitate the contest Heart Walk with the American Heart Association and the Steps of Success 5K for high school students from across Texas competing for scholarship awards BGSF. The team also continued to support the Transformation Life Center. We were involved with student development through the Junior Achievement charity, furthering the organization's mission to prepare students for successful futures by providing work-readiness, entrepreneurship, organization and financial literacy learning programs. In early in 2023, BGSF we created the Darrell Freeman Fellowship program for graduated students in Information Technology. Our global investment in professional development initiatives delivered over 20,000 educational hours to 1,600 individuals, resulting in 1,000 certificates awarded and locally we supported the Blacks in Technology Foundation. Additionally, our Colombia team hosted The NASA International Space Apps Challenge, which engaged over 200 individuals to innovate with NASA's open data program. During 2024, we will educate remain dedicated to sustainability, employee development, and support students at Nashville State Community College who want to successfully enter the Information Technology field after graduation. community impact.

## Team Engagement

As part of BGSF's continued initiative to provide its team members with feedback opportunities, in 2022, 2023, we conducted several pulse surveys to understand team member needs and provide support. Survey results were analyzed and reviewed by our senior leadership, as well as shared with individual managers, who were then tasked with taking action based on their team members' confidential feedback (both quantitative and qualitative). By paying close attention to the results, both at an aggregate enterprise level as well as at a department/business/workgroup level, we have been able to continue the enhancement of our culture of rewards and recognition, drive efforts to promote inclusion and diversity, increase communication in support of team member well-being and modernize our approach to foster a culture of continuous learning and feedback. In 2022, 2023, team members recognized our BGSF values through our "BIG Deal" platform by sending over 2,500 2,700 awards to their fellow team members.

## Learning and Development

We emphasize team member development and learning as a priority for the organization. We believe learning and development are key elements to overall retention, engagement, and team member experience strategy. This direction is led by our Vice President of Diversity and Development. Our strategy is designed to empower team members to reach their full potential, and we provide a wide range of development programs, opportunities, and resources needed to be successful. As we continue to develop the BGSF University, our goal is to provide a variety of learning channels including instructor-led, facilitated custom workshops, leader-led, cohort and mentorships, self-paced, e-learning and a catalog of vendor-provided courses, videos, resources, and books. We are committed to the organization's organization's overall health and providing career progression by providing individual development, readiness, and transition plans as a part of our talent review and succession planning process. In 2023, we had over 20,000 hours spent in upskilling the workforce, with over 1,600 going through our training programs and 1,000 certification achieved.

## Intellectual Property



We own or have rights to various copyrights, trademarks, service marks, trade names and domain names used in our business, including, but not limited to, BGSF, BG Staffing, BG Staffing Group, BG Personnel Services, Extrinsic, American Partners, InStaff, BG Temporary Staffing, BG Multifamily, BG Talent, Triance, Donovan & Watkins, D&W Talent, Vision Technology Services, Zycron, Smart Resources, Accountable Search, L.J. Kushner & Associates, EdgeRock, EdgeRock Technology Partners, EdgeRock Technology Partners & Design, Momentum Solutionz, Creative Data Solutions, Horn Solutions, Arroyo Consulting, Arroyo IT Solutions, AC, bgsf.com, bgstaffing.com, bgstaffinggroup.com, bgpersonnel.com, bgpersonnel.net, bgstaffing.net, bgcompanies.net, bgmail.com, lnstaffing.com, milwaukeeetemps.com, milwaukeeetempsinc.com, extrinsicllc.com, extrinsicgroup.com, extrinsicresources.com, jnstaffing.com, therightpeoplelrightnow.com, rightpeoplelrightnow.com, americanpartnersinc.com, instaff.com, donwat.com, vistechs.com, zycron.com, smartstaffing.com, accountablesearch.com, executiveassistantsearch.com, ljkuhsner.com, edgerock.com, edgerock.net, edgerockblue.com, edgerockcares.com, edgerockcares.net, edgerockconsultants.com, edgerockit.com, edgerockpartners.com, edgerockperm.com, edgerockred.com, edgerocksearch.com, edgerocksolutions.com, edgerockstaffing.com, edgerocktech.com, edgerocktech.net, edgerocktechnologies.com, etphome.com, joinedgerock.com, myedgerock.com, momentumsolutionz.com, hornsolutions.net, arroyoconsulting.net, and hornsolutions.net.micro-talent.net. In early 2023, the Board of Directors approved, management's and we completed, management's plan to rebrand as BGSF, eliminating various current trade names. We intend to complete this rebranding by the end of the second quarter of 2023.

## Regulation

We are subject to regulation by numerous foreign, federal, state and local regulatory agencies, including but not limited to the U.S. Department of Labor, which sets employment practice standards for workers, and similar state and local agencies. We are subject to the laws and regulations of the jurisdictions within which we operate. While the specific laws and regulations vary among these jurisdictions, some require some form of licensing and often have statutory requirements for workplace safety and notice of change in obligation of workers' compensation coverage in the event of contract termination. Although compliance with these requirements imposes some additional financial risk on us, particularly with respect to those client partners who breach their payment obligation to us, such compliance has not had a material adverse effect on our business to date. Increased government regulation of the workplace or of the employer-employee relationship, or judicial or administrative proceedings related to such regulation, could also materially harm our business.

## Available Information

We file electronically with the SEC our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended. Our website address is [www.bgsf.com](http://www.bgsf.com). The information included on our website is not included as a part of, or incorporated by reference into, this Annual Report on Form 10-K. We will make available free of charge through our website our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we have filed or furnished such material to the SEC. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC at [www.sec.gov](http://www.sec.gov). Furthermore, we will provide electronic or paper copies of filings free of charge upon written request to our Corporate Secretary.

## ITEM 1A. RISK FACTORS.

There are numerous and varied risks that may prevent us from achieving our goals, including those described below. You should carefully consider the risks described below and the other information included in this Annual Report on Form 10-K, including our consolidated financial statements and related notes. If any of the events or circumstances described below were to occur, our business, the financial condition and the results of operations could be materially adversely affected. As a result, the trading price of our common stock could decline, and investors could lose part or all of their investment. The risks below are not the only risks we face. Additional risks not currently known to us or that we currently deem to be immaterial may also adversely affect our business, financial condition or results of operations. Past financial performance should not be considered to be a reliable indicator of future financial performance, and investors or prospects should not use historical trends to anticipate results or trends in future periods.

### Risks Related to Our Company and Our Business

***We operate in a highly competitive industry with low barriers to entry, and may be unable to compete successfully against existing or new competitors.***

The workforce solution market is highly competitive with limited barriers to entry. We compete in national, regional and local markets with approximately 25,000 full-service and specialized workforce solution companies. We expect that the level of competition will remain high, which could limit our ability to maintain or increase our market share or profitability.

Several of our existing or potential competitors have substantially greater financial, technical and marketing resources than we do, which may enable them to:

- Develop and expand their infrastructure and service offerings more quickly and achieve greater cost savings;
- Invest in new technologies;
- Expand operations into new markets more rapidly;
- Devote greater resources to marketing;
- Compete for acquisitions more effectively and complete acquisitions more easily; and
- Aggressively price products and services and increase benefits in ways that we may not be able to match.

In order to compete effectively in our markets, we must target our potential client partners carefully, continue to improve our efficiencies and the scope and quality of our workforce solutions, and rely on our service quality, innovation, education and program clarity. If our competitive advantages are not compelling or sustainable, then we are unlikely to increase or sustain profits and our stock price could significantly decline.

In addition, heightened competition among our existing competitors, especially on a price basis, or by new entrants into the market, could create additional competitive pressures that may reduce our margins and adversely affect our business. If we fail to successfully respond to these competitive pressures or to implement our strategies effectively, our revenues or gross margins could be significantly reduced.



**Our business is subject to risks associated with geographic market concentration.**

Geographic revenue in excess of 10% of our consolidated revenue from continuing operations in fiscal year 2022 2023 and the related percentage for fiscal years 2021 2022 and 2020 2021 was generated in the following areas:

		2022		2021		2020			
		2023						2023	
								2022	
								2021	
Tennessee	Tennessee	10 %	12 %	16 %	Tennessee	13	%	10	%
Texas	Texas	23 %	23 %	15 %	Texas	25	%	23	%

Consequently, weakness in economic conditions in these regions could have a material adverse effect on our financial position and results of future operations.

**A downturn of the U.S. or global economy could result in our client partners using fewer workforce solutions or becoming unable to pay us for our services on a timely basis or at all, which would materially adversely affect our business.**

Because demand for workforce solutions is sensitive to changes in the level of economic activity, our business may suffer during economic downturns. During periods of weak economic growth or economic contraction, the demand for such workforce solutions typically declines. When demand drops, our operating profit is typically impacted unfavorably as we experience a deleveraging of our selling and administrative expense base as expenses may not decline as quickly as revenues. In periods of decline, we can only reduce selling and administrative expenses to a certain level without negatively impacting the long-term potential of our brands. Additionally, during economic downturns companies may slow the rate at which they pay their vendors, or they may become unable to pay their obligations. If our client partners become unable to pay amounts owed to us, or pay us more slowly, then our cash flow and profitability may materially suffer.

**Our business depends on a strong reputation and anything that harms our reputation will likely harm our results.**

As a provider of workforce solutions, as well as consultant services, our reputation is dependent upon the performance of the field talent we place with our client partners and the services rendered by our consultants. We depend on our reputation and name recognition to secure engagements and to hire qualified field talent and consultants. If our client partners become dissatisfied with the performance of those field talent or consultants or if any of those field talent or consultants engage in or are believed to have engaged in conduct that is harmful to our client partners, our ability to maintain or expand our client base may be significantly harmed. Moreover, use of our copyrights, trademarks, service marks, trade names, domain names, or other intellectual property by third parties, including but not limited to unauthorized use by third parties for criminal purposes or otherwise, even if such use is outside our reasonable control, may significantly harm our reputation or the value of our copyrights, trademarks, service marks, trade names, domain names, or other intellectual property, or subject us to legal proceedings, and therefore have a material adverse effect on our business, results of operations, or financial condition.

**Our rebranding plan may take a significant amount of time and involve substantial costs and may not be favorably received by our client partners.**

In early 2023, our board of directors approved our management's plan to rebrand as BGSF, eliminating various current trade names. We intend to complete this rebranding by the end of the second quarter of 2023. We may incur substantial costs as a result of the rebranding and may not be able to achieve or maintain brand name recognition or status that is comparable to the recognition and status previously enjoyed by certain of our brands. The failure of our rebranding initiative could adversely affect our ability to attract and retain client partners, which could cause us not to realize some or all of the anticipated benefits contemplated by the rebranding.

**We would be adversely affected by the loss of key personnel.**

Our operations and financial success depend significantly on our leadership management team and team members. The loss of any key members of this group could have a material adverse effect on our business, financial condition and results of operations.

**We depend on our ability to attract and retain qualified field talent.**

We depend on our ability to attract qualified field talent who possess the skills and experience necessary to meet the workforce solution requirements of our client partners. We must continually evaluate our base of available qualified personnel to keep pace with changing client partner needs. Competition for individuals with proven professional skills is intense, and demand for these individuals is expected to remain strong for the foreseeable future. There can be no assurance that qualified personnel will continue to be available. Our success is substantially dependent on our ability to recruit and retain qualified field talent.

**Our workforce solution agreements may be terminated on short notice, leaving us vulnerable to loss of a significant amount of client partners in a short period of time.**

Our workforce solution agreements with our client partners are generally cancellable by the client partners with little or no notice to us. As a result, a significant number of our client partners can terminate their agreements with us at any time, making us particularly vulnerable to a significant decrease in revenue within a short period of time that could be difficult to quickly replace.

**If we are unable to retain existing client partners or attract new client partners, our results of operations could suffer.**

Increasing the growth and profitability of our business is particularly dependent upon our ability to retain existing client partners and capture additional client partners. Our ability to do so is dependent upon our ability to provide high quality workforce solutions and offer competitive prices. If we are unable to execute these tasks effectively, we may not be able to attract a significant number of new client partners and our existing client partners base could decrease, either or both of which could have a materially adverse impact on our revenues.



**Acquisitions and new business initiatives may not be successful.**

We expect to continue making acquisitions and entering into new business initiatives, including, but not limited to, dispositions, joint ventures, and strategic investments, as part of our long-term business strategy. These acquisitions and new business initiatives involve significant challenges and risks, including that they may not advance our business strategy, that we may not realize a satisfactory return on our investment, that we may experience difficulty in integrating operations, or diversion of management's attention from our other business. We may be unable to identify suitable acquisition candidates in the future. Moreover, acquisitions may require substantial capital needs and the incurrence of additional indebtedness which may change significantly our capitalization and results of operations. Further, these acquisitions could result in post-closing discovery of material undisclosed liabilities of the acquired business or assets, title or other defects with respect to acquired assets, discrepancies or errors in furnished financial statements or other information or breaches of representations made by the sellers, or the unexpected loss of key team members or client partners from acquired businesses. These events could cause material harm to our operating results or financial condition.

**We have debt that could adversely affect our financial health and prevent us from fulfilling our obligations or put us at a competitive disadvantage.**

While we believe our current debt level is reasonable, we have utilized, and expect to continue to utilize, debt for acquisitions. Our level of debt and the limitations imposed on us by our lenders could have a material impact on investors, including the requirement to use a portion of our cash flow from operations for debt service rather than for our operations and the need to comply with the various covenants associated with such debt. Additionally, we may not be able to obtain additional debt financing for future working capital, capital expenditures or other home office purposes or may have to pay more for such financing. We could also be less able to take advantage of significant business opportunities, such as acquisition opportunities, and to react to changes in market or industry conditions, or we may be disadvantaged compared to competitors with less leverage.

**We have significant working capital needs and if we are unable to satisfy those needs from cash generated from our operations or borrowings under our revolving credit facility, we may not be able to meet payroll requirements.**

We require significant amounts of working capital to operate our business. If we experience a significant and sustained drop in operating profits, or if there are unanticipated reductions in cash inflows or increases in cash outlays, we may be subject to cash shortfalls. If such a shortfall were to occur for even a brief period of time, it may have a significant adverse effect on our business. In particular, we use working capital to pay expenses relating to our team members and field talent and to satisfy our workers' compensation and tax liabilities. Generally, we pay our field talent on a weekly basis while we receive payments from our client partners 30 to 90 days after billing. As a result, we must maintain sufficient cash availability to pay team members and field talent and fund related payroll liabilities prior to receiving payment from client partners.

We derive working capital for our operations through cash generated by our operating activities and borrowings under our revolving credit facility. We believe that our current sources of capital are adequate to meet our working capital needs. However, our available sources of capital are limited. If our working capital needs increase in the future, we may be forced to seek additional sources of capital, which may not be available on commercially reasonable terms, or at all.

**The**

At the end of fiscal 2023, the maximum amount we are were entitled to borrow under our revolving credit facility is currently \$35.0 million was \$41.0 million and the availability of unused funds is was affected by financial, business, economic and other factors, as well as by the daily timing of cash collections and cash outflows.

We typically experience significant seasonal and other fluctuations in our borrowings and borrowing availability, and we aggressively manage our cash flow to ensure adequate funds to meet working capital needs. Such management steps include working to improve collections, adjusting the timing of cash expenditures and managing operating expenses. However, such steps may not always be successful.

**Failure to comply with restrictive covenants under our credit agreement could trigger prepayment obligations or additional costs.**

Our credit agreement includes various financial and other covenants with which we have to comply in order to maintain borrowing availability and avoid default interest, including minimum fixed charge coverage ratio and maximum leverage ratio.

Any future failure to comply with our covenants which may occur under our credit agreement could result in an event of default which, if not cured or waived, could trigger prepayment obligations. There can be no assurances that any lender will waive defaults that may occur in the future. If we are forced to refinance our credit agreement, there can be no assurance that such refinancing would be available or that such refinancing would not have a material adverse effect on our business and financial condition. Even if such refinancing were available, the terms could be less favorable and our results of operations and financial condition could be materially adversely affected by increased costs and interest rates.

**We could be required to write-off goodwill or intangible assets in future periods if our future operating results suffer.**

In accordance with generally accepted accounting principles, we are required to review our goodwill and intangible assets for impairment at least annually. Our goodwill and intangibles assets from continuing operations were \$55.2 million \$59.6 million and \$47.6 million \$30.4 million, respectively, at the end of fiscal year 2022, 2023. An unfavorable evaluation could cause us to write-off these assets in future periods. Any future write-offs could have a material adverse impact on our results of operations. For example, at in 2023, the February, 2023 Board of Director's meeting, management's Director approved management's plan was approved to rebrand as BGSF, eliminating various current trade names. See "Note 8 - Intangible Assets" Summary of Significant Accounting Policies in our Consolidated Financial Statements included elsewhere in this report for additional information.

**The amount of collateral that we are required to maintain to support our workers' compensation obligations could increase, reducing the amount of capital we have available to support and grow our field operations.**

We are contractually obligated to collateralize our workers' compensation obligations under our workers' compensation program through irrevocable letters of credit, surety bonds or cash. Our workers' compensation program renews annually on January 1 of each year, and as part of the renewal, collateral is adjusted to reflect current operating levels. These collateral requirements are significant and place pressure on our liquidity and working capital capacity. We believe that our current sources of liquidity are adequate to satisfy



our immediate needs for these obligations; however, our available sources of capital are limited. Depending on future changes in collateral requirements, we could be required to seek additional sources of capital in the future, which may not be available on commercially reasonable terms, or at all.

***We are dependent on workers' compensation insurance coverage at commercially reasonable terms.***

We provide workers' compensation insurance for our team members and field talent. Our workers' compensation insurance policies are renewed annually. We cannot be certain we will be able to obtain appropriate types or levels of insurance in the future or that adequate replacement policies will be available on commercially reasonable terms. The loss of our workers' compensation insurance coverage would prevent us from doing business in the majority of our markets. Further, we cannot be certain that our current and former insurance carriers will be able to pay claims we make under such policies. The loss of **workers' workers'** compensation insurance could have a material adverse effect on our financial position and results of operations.

***Because we assume the obligation to make wage, tax and regulatory payments in respect of our team members and field talent, we are exposed to client partner credit risks.***

We generally assume responsibility for and manage the risks associated with our team members and field talent payroll obligations, including liability for payment of salaries and wages (including payroll taxes), as well as group health and retirement benefits. These obligations are fixed, whether or not the client partner makes payments required by our workforce solutions agreement, which exposes us to credit risks. We attempt to mitigate this risk by generally invoicing our client partners weekly and having a high number of client partners who are geographically and industry diverse. We also carefully monitor the timeliness of our client partners' payments and impose strict credit standards on our client partners. If we fail to successfully manage our credit risk, we may suffer significant losses which would decrease our profitability.

***Our business is subject to **foreign**, federal, state and local labor and employment laws and a failure to comply could materially harm our business.***

We are subject to regulation by numerous **foreign**, federal, state and local regulatory agencies, including but not limited to the U.S. Department of Labor, which sets employment practice standards for workers, and similar state and local agencies. We are subject to the laws and regulations of the jurisdictions within which we operate. While the specific laws and regulations vary among these jurisdictions, some require some form of licensing and often have statutory requirements for workplace safety and notice of change in obligation of workers' compensation coverage in the event of contract termination. Compliance with these requirements imposes some additional financial risk on us, particularly with respect to those client partners who breach their payment obligation to us. Any inability or failure to comply with government regulation could materially harm our business. Increased government regulation of the workplace or of the employer-employee relationship, or judicial or administrative proceedings related to such regulation, could also materially harm our business.

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively, the "Health Care Reform Laws") include various health-related provisions that took effect during 2014 and established new regulations on health plans. Although the Health Care Reform Laws do not mandate that employers offer health insurance, beginning in 2015 tax penalties were assessed on employers who do not offer health insurance that meets certain affordability or benefit requirements. A portion of the 2017 Tax Cuts and Jobs Act became effective in 2019 reducing the penalty to zero that requires most individuals to have health insurance, which effectively repealed the Health Care Reform Laws requirement. However, some states have begun proceedings to keep these mandates intact through state legislation. Unless modified by regulations or subsequent legislation, the payment of tax penalties if such coverage is not adequate, may increase our costs. Without the individual mandate, more individuals might decline coverage, which could have an impact on employer premiums. If we are unable to raise the rates we charge our client partners to cover these costs, such increases in costs could materially harm our business.

In addition, certain of our client partners may require that we indemnify them against losses in the event that the client partner is determined to be non-compliant with the Health Care Reform Laws with respect to one or more of our field talent assigned to such client partner. While we have not received notice from any client partner that acts or omissions by us may have resulted in losses to the client partner relating to non-compliance with the Health Care Reform Laws, any future liabilities that may be incurred by us pursuant to any such indemnification provisions could materially and adversely affect our results of operations.

It is likely that the U.S. Congress will continue to seek to modify, repeal, or otherwise invalidate all, or certain provisions of, the Health Care Reform Laws. It is unclear at this point what the scope of any future such legislation will be and when it will become effective. Because of the uncertainty surrounding this replacement health care reform legislation, we cannot predict with any certainty the likely impact of the Health Care Reform Laws' repeal or the adoption of any other health care reform legislation on our financial condition or operating results. Whether or not there is alternative health care legislation enacted in the U.S., there is likely to be significant disruption to the health care market in the coming months and years and the costs of our health care expenditures may increase.

***We may be exposed to employment-related claims and losses, including class action lawsuits, which could have a material adverse effect on our business.***

Workforce solution providers typically assign personnel in the workplaces of other businesses. The risks of these activities include possible claims relating to:

- discrimination and harassment;
- wrongful termination or denial of employment;
- violations of employment rights related to employment screening or privacy issues;
- classification of field talent;
- assignment of illegal aliens;
- violations of wage and hour requirements;
- retroactive entitlement to field talent benefits;
- errors and omissions by our field talent;
- misuse of client partners proprietary information;
- misappropriation of funds;
- damage to client partners facilities due to negligence of field talent; and



- criminal activity.

We may incur fines and other losses or negative publicity with respect to these claims. In addition, these claims may give rise to litigation, which could be time-consuming and expensive. New employment and labor laws and regulations may be proposed or adopted that may increase the potential exposure of employers to employment-related claims and litigation. There can be no assurance that the policies we have in place to help reduce our exposure to these risks will be effective or that we will not experience losses as a result of these risks. There can also be no assurance that the insurance policies we have purchased to insure against certain risks will be adequate or that insurance coverage will remain available on commercially reasonable terms or be sufficient in amount or scope of coverage.

***U.S. federal tax regulations and interpretations could adversely affect us.***

On December 22, 2017, the Tax Cuts and Jobs Act (the "TCJA") was signed into law. Notwithstanding the reduction in the corporate income tax rate, the overall impact of these changes on our results of operations will likely evolve as new regulations and interpretations relating to the TCJA are implemented. In addition, various political figures have pledged their support to overturning or modifying key aspects of the TCJA which could further increase the uncertainty relating to the impact of this or any future tax legislation on our results of operations.

***Natural disasters and unusual weather conditions, pandemic outbreaks, terrorist acts, global political events and other serious catastrophic events could disrupt business and otherwise materially adversely affect our business and financial condition.***

With operations in many states, we are subject to numerous risks outside of our control, including risks arising from natural disasters, such as fires, earthquakes, hurricanes, floods, tornadoes, unusual weather conditions, pandemic outbreaks and other health emergencies, terrorist acts or disruptive political events, or similar disruptions that could materially adversely affect our business and financial performance. Our operations are often dependent on the ability of team members, field talent and consultants to travel from business to business and from location to location. Any public health emergencies, including a real or potential pandemic such as those caused by the avian flu, SARS, Ebola, COVID-19, or even a particularly virulent flu, could decrease demand for our workforce solutions and our ability to offer them. Uncharacteristic or significant weather conditions can affect travel and the ability of businesses to remain open, which could lead to decreased ability to offer our workforce solutions and materially adversely affect our short-term results of operations. Although we cannot predict such events or their consequences, these events could materially adversely affect our stock price, reputation, business and financial condition.

**Risks Related to Our Information Technology, Cybersecurity and Data Protection**

***Our results of operations and ability to grow could be materially negatively affected if we cannot successfully keep pace with technological changes impacting the development and implementation of our workforce solutions and the evolving needs of our client partners.***

Our success depends on our ability to keep pace with rapid technological changes affecting both the development and implementation of our workforce solutions and the needs of our client partners. Technological advances such as artificial intelligence, machine learning, and automation are impacting industries served by all our lines of business. In addition, our business relies on a variety of technologies, including those that support hiring and tracking, order management, billing, and client data analytics. If we do not sufficiently invest in new technology and industry developments, appropriately implement new technologies, or evolve our business at sufficient speed and scale in response to such developments, or if we do not make the right strategic investments to respond to these developments, our workforce solutions, results of operations, and ability to develop and maintain our business could be negatively affected.

***We are dependent upon technology services, and if we experience damage, service interruptions or failures in our computer and telecommunications systems, or if our security measures are breached, our client partner and field talent relationships and our ability to attract new client partners may be adversely affected.***

Our business could be interrupted by damage to or disruption of our computer, telecommunications equipment, or software systems, some of which are managed by third-party vendors, and we may lose data. Our client partners' businesses may be adversely affected by any system or equipment failure we experience. As a result of any of the foregoing, our relationships with our client partners may be impaired, we may lose client partners, our ability to attract new client partners may be adversely affected and we could be exposed to contractual liability. Precautions in place to protect us from, or minimize the effect of, such events may not be adequate. In addition, our business involves the storage and transmission of field talent or client partners' proprietary information, and security breaches, computer viruses or **Cyber-attacks, cyber-attacks**, including attacks motivated by grievances against the business industry in general or against us in particular, could expose us to a risk of loss of this information, litigation and possible liability. If our security measures are breached as a result of third-party action, field talent error, malfeasance or otherwise, and, as a result, someone obtains unauthorized access to client partner data, our reputation may be damaged, we may be subject to government sanctions, our business may suffer and we could incur significant liability. Techniques used to obtain unauthorized access or to sabotage systems change frequently and are growing increasingly sophisticated. As a result, we may be unable to anticipate these techniques or to implement adequate preventative measures. If an actual or perceived breach of our security occurs, we could be liable and the market perception of our workforce solutions could be harmed or result in increased costs or loss of revenue. The potential risk of security breaches and cyber-attacks may increase as we introduce new workforce solution offerings.

We maintain insurance with respect to many of such claims; however, there can be no assurance that we will continue to be able to obtain insurance at a cost that does not have a material adverse effect upon us or that such claims (whether by reason of us not having sufficient insurance or by reason of such claims being outside the scope of our insurance) will not have a material adverse effect upon us.

***Changes in data privacy and protection laws and regulations in respect of control of personal information could increase our costs or otherwise adversely impact our operations.***

In the ordinary course of business, we collect, use, and retain personal information from our team members, field talent candidates, and contractors, including, without limitation, full names, government-issued identification numbers, addresses, birth dates, and payroll-related information. The possession and use of personal information in conducting our business subjects us to a variety of complex and evolving laws and regulations regarding data privacy, protection and security, which, in many cases, apply not only to third-party transactions, but also to transfers of information among us and our subsidiaries. Complying with the enhanced obligations and future laws and regulations relating to data transfer,



residency, privacy and protection has increased and may continue to increase our operating costs and require significant management time and attention, while any failure by us or our subsidiaries to comply with applicable laws could result in governmental enforcement actions, fines, and other penalties that could potentially have a material adverse effect on our operations and reputation.

#### **Risks Related to the Ownership of Our Securities**

##### ***An investment in our common stock should be considered high risk.***

An investment in our common stock requires a long-term commitment, with no certainty of return. Investment banks may not agree to underwrite primary or secondary offerings on behalf of our company or its stockholders in the future. If all or any of the foregoing risks occur, it would have a material adverse effect on our company.

##### ***We cannot predict whether an active trading market for our common stock will continue. Even if an active trading market continues, the market price of our common stock may remain volatile.***

In the absence of an active trading market:

- you may have difficulty buying and selling our common stock at all or at the price you consider reasonable;
- market visibility for shares of our common stock may be limited, which may have a depressive effect on the market price for shares of our common stock and on our ability to raise capital or make acquisitions by issuing our common stock.

Even if an active market for our common stock continues, of which no assurances can be given, the market price for our common stock may be volatile and subject to wide fluctuations in response to factors including the following:

- actual or anticipated fluctuations in our quarterly or annual operating results;
- changes in financial or operational estimates or projections;
- **duration and impact of the COVID-19 pandemic and efforts to mitigate its spread;**
- changes in the economic performance or market valuations of companies similar to ours;
- conditions in markets generally;
- sales of significant amounts of our common stock; and
- general economic or political conditions in the United States or elsewhere.

The securities market has from time to time experienced significant price and volume fluctuations that are not related to the operating performance of particular companies. These market fluctuations may also materially and adversely affect the market price of shares of our common stock.

##### ***We will likely issue additional common stock in the future, which would dilute the holdings of our existing stockholders.***

In the future we may issue additional securities up to our total authorized and unissued amounts, including shares of our common stock or securities convertible into or exchangeable or exercisable for our common stock, resulting in the dilution of the ownership interests of our stockholders. We may issue additional shares of our common stock or securities convertible into or exchangeable or exercisable for our common stock in connection with hiring or retaining personnel, option exercises, **2020 ESPP purchases**, future acquisitions or future placements of our securities for capital-raising or other business purposes. Moreover, the exercise of our existing outstanding stock options, which are exercisable for or convertible into shares of our common stock, would dilute our existing common stockholders.

##### ***Our compliance with complicated regulations concerning corporate governance and public disclosure has resulted and may in the future result in additional expenses.***

We are faced with expensive, complicated and evolving disclosure, governance and compliance laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002, which we refer to as the Sarbanes-Oxley Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act. New or changing laws, regulations and standards are subject to varying interpretations in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies, which could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. As a result, our efforts to comply with evolving laws, regulations and standards of a public company are likely to continue to result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities.

Our failure to comply with all laws, rules and regulations applicable to U.S. public companies could subject us or our management to regulatory scrutiny or sanction, which could harm our reputation and stock price.

##### ***There may be limitations on the effectiveness of our internal controls, and a failure of our control systems to prevent error or fraud may materially harm our company.***

Proper systems of internal controls over financial reporting and disclosure are critical to the operation of a public company. Should such systems fail to detect or prevent error or fraud, it would leave us without the ability to reliably compile financial information about our company and significantly impair our ability to prevent or detect errors and fraud, all of which would have a negative impact on our company from many perspectives.

Moreover, we do not expect that disclosure controls or internal control over financial reporting, even if established, will prevent all errors and fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must



reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Failure of our control systems to prevent and detect errors or fraud could materially adversely impact us.

***We cannot be sure we will pay dividends in the future, and consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.***

While we have declared and paid dividends for the prior **thirty-three** **thirty-seven** quarterly periods, we are limited in our ability to pay dividends by our credit agreement, and therefore, we cannot be certain if we will pay any cash dividends to holders of our common stock in the future. Any future determination with respect to the payment of dividends will be at the discretion of our board of directors and will be dependent upon, among other things, our financial condition, results of operations, capital requirements, the terms of our then existing indebtedness, contractual restrictions, future prospects, general economic conditions and other factors considered relevant by our board of directors. Consequently, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

***Upon dissolution of our company, you may not recoup all or any portion of your investment.***

In the event of a liquidation, dissolution or winding-up of our company, whether voluntary or involuntary, the proceeds and/or assets of our company remaining after giving effect to such transaction, and the payment of all of our debts and liabilities will be distributed to the stockholders of common stock on a pro rata basis. There can be no assurance that we will have available assets to pay to the holders of common stock, or any amounts, upon such a liquidation, dissolution or winding-up of our company. In this event, you could lose some or all of your investment.

***Certain provisions of our organizational documents may make it difficult for stockholders to change the composition of our board of directors and may discourage hostile takeover attempts that some of our stockholders may consider to be beneficial.***

Certain provisions of our certificate of incorporation and bylaws may have the effect of delaying or preventing changes in control if our board of directors determines that such changes in control are not in the best interests of us and our stockholders. The provisions in such certificate of incorporation and bylaws include, among other things, the following:

- a classified board of directors with three-year staggered terms;
- the ability of our board of directors to issue shares of preferred stock and to determine the price and other terms, including preferences and voting rights, of those shares without stockholder approval;
- stockholder action can only be taken at a special or regular meeting and not by written consent except in limited circumstances;
- advance notice procedures for nominating candidates to our board of directors or presenting matters at stockholder meetings;
- removal of directors only for cause;
- allowing only our board of directors to fill vacancies on our board of directors or increase the size of our board of directors; and
- super-majority voting requirements to amend certain provisions of our certificate of incorporation.

We have elected in our certificate of incorporation not to be subject to Section 203 of the Delaware General Corporation Law (the "DGCL"), a statutory provision that may have the effect of delaying, hindering or preventing some takeovers of our company. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination, such as a merger, with a person or group owning 15% or more of the corporation's voting stock for a period of three years following the date the person became an "interested stockholder," unless (with certain exceptions) the business combination or the transaction in which the person became an "interested stockholder" is approved in a prescribed manner. Accordingly, we will not be subject to any anti-takeover effects of Section 203. Our certificate of incorporation contains provisions that have the same effect as Section 203, except that they generally provide that Taglich Private Equity LLC, Taglich Brothers, Inc. or any of their respective affiliates or associates, including any investment funds or portfolio companies managed by any of the foregoing, or any other person with whom any of the foregoing act as a group for the purpose of acquiring, voting or disposing of our shares, or any person that becomes an interested stockholder as a result of a transfer of 5% or more of our voting stock by the foregoing persons to such person, will be excluded from the "interested stockholder" definition in our certificate of incorporation and will therefore not be subject to the restrictions set forth therein that have the same effect as Section 203.

While these provisions have the effect of encouraging persons seeking to acquire control of our company to negotiate with our board of directors, they could enable the board of directors to hinder or frustrate a transaction that some, or a majority, of the stockholders might believe to be in their best interests and, in that case, may prevent or discourage attempts to remove and replace incumbent directors.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS.**

None.

#### **ITEM 1C. CYBERSECURITY.**

**Our broader information security program aims to secure our systems, keep our business running, and protect our client partners, field talent, team members, and shareholders from vulnerabilities and threats by protecting against, detecting, and recovering from cybersecurity incidents. With oversight from our Board, the Audit Committee, and management, we have put proactive measures and systems in place in an effort to protect our information assets from unauthorized use or access. Our cybersecurity framework is based on the National Institute of Standards and Technology ("NIST").**



### Management Oversight

Our CIO and key members of senior management are accountable for our cybersecurity and data privacy programs and is supported by the Board of the Directors (the "Board"). Our CIO has extensive information technology and program management experience and has served many years in our corporate information security organization. Under the guidance of the Board, the CIO manages day-to-day operations of the security and data privacy functions and proposes changes to our cybersecurity strategy, which is part of our overall information technology strategy. The CIO and the Board meet frequently to discuss cyber and data operations, privacy programs and risks.

Our IT department monitors and manages system infrastructure in an effort to protect us against threats. Our cybersecurity process considers risks from many sources including, but not limited to, alerts, threat intelligence sources, risk assessments, and vulnerability management. Our cybersecurity process includes a risk assessment procedure, a risk evaluation procedure, and a third-party partner to strengthen our cybersecurity controls. These controls are designed to block and/or provide alerts on suspicious activities. Our security team responds as appropriate to risks identified.

### Board Oversight

The Board is actively engaged in the oversight of cybersecurity and data privacy. On a quarterly basis, the Board receives updates on (a) our progress on security improvement objectives, (b) relevant reported cybersecurity internal incidents and the global evolving risks, and (c) results of work performed by our third-party information security partner. We engage subject matter experts in conducting independent assessments of our cybersecurity program maturity, penetration tests, and other tests and assessments.

### Third-Party Vendor Management

Many of our information technology systems and networks are cloud-based or managed by third parties, whose future performance and reliability we cannot control. The risk of a cyberattack or security breach on a third party carries the same risks to us as those associated with our internal systems. We seek to reduce these risks by performing significant vendor due diligence procedures prior to engaging with any third-party vendor who will have access to sensitive data. Additionally, we require annual audits of certain third parties' information technology processes.

We face risks from cybersecurity threats that could have a material adverse effect on our business strategy. See "Risks Related to Our Information Technology, Cybersecurity and Data Protection" in Part 1, Item 1A. Risk Factors of this report for a discussion of these risks. With respect to our cybersecurity process, we are not aware of any material breach to date.

## ITEM 2. PROPERTIES.

Our home office is located at 5850 Granite Parkway, Suite 730, Plano, Texas 75024, and our telephone number is 972-692-2400. We lease our home office, which is approximately 6,200 square feet of space. We now in the U.S., we operate across 46 states and D.C. We lease all of our offices, which are primarily located throughout in the U.S., through operating leases with terms that range from six months to five years. We also have month to month leases. We believe that our facilities are adequate for our current needs.

## ITEM 3. LEGAL PROCEEDINGS.

From time to time we have been threatened with, or named as a defendant in, litigation, administrative claims and lawsuits. We carry insurance to mitigate potential liabilities associated therewith. The principal risks that we insure against, subject to and upon the terms and conditions of our various insurance policies, are workers' compensation, general liability, automobile liability, property damage, professional liability, employment practices, crime and cyber risk, directors and officer liability, umbrella and excess, fiduciary liability, and fidelity losses. As of the date of this Annual Report on Form 10-K, management believes that the resolution of these matters will not have a material adverse effect on our consolidated financial statements.

## ITEM 4. MINE SAFETY DISCLOSURE.

Not applicable.

## PART II

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

#### Stock Performance Graph

The following graph compares, through January 1, 2023 December 31, 2023, the cumulative total return of the Company's common stock, a peer group index of certain publicly traded workforce solutions companies, and the Russell 3000. The graph assumes the investment of \$100 at the beginning of the period depicted in the chart and reinvestment of all dividends. Note that historic stock price performance is not necessarily indicative of future stock price performance. The following graph and related information shall not be deemed "soliciting material" or to be "filed" with the SEC, nor shall such information be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that we specifically incorporate it by reference into such filing.

 Zack Graph.jpg

Periodically, we review companies within our peer group and decide if we need to make any changes. The peer group index represents the cumulative total return of BGSF and similar corporations providing field talent or permanent employment workforce solutions. Our peer group includes: GEE Group, Mastech Digital, Resources Connection, Inc., and Staffing 360 Solutions.



Market Information and Holders

Our common stock commenced listing on the NYSE on November 14, 2019 under the symbol "BGSF," was listed on the NYSE American from October 27, 2014 to November 13, 2019 under the symbol "BGSF" and was quoted on the OTC Bulletin Board, or OTCBB, under the symbol "BGSF" from April 30, 2014 to October 27, 2014. Prior to the quotation of our common stock on the OTCBB, there was no public market for our common stock. The table below contains the market range of high and low prices for our common stock.

Quarter Ended:	Quarter Ended:	High	Low	Quarter Ended:	High	Low
December 31, 2023						
October 1, 2023						
July 2, 2023						
April 2, 2023						
January 1, 2023	January 1, 2023	\$15.49	\$10.30			
September 25, 2022	September 25, 2022	\$13.33	\$11.88			
June 26, 2022	June 26, 2022	\$13.62	\$11.65			
March 27, 2022	March 27, 2022	\$15.10	\$12.80			
December 26, 2021		\$15.65	\$11.61			
September 26, 2021		\$13.99	\$11.55			
June 27, 2021		\$14.77	\$11.45			
March 28, 2021		\$16.91	\$12.24			

As of February 13, 2023 February 7, 2024, our common stock closing price was \$15.69 \$10.24 per share.  
As of February 13, 2023 February 7, 2024, there were approximately 3,402 2,522 holders of record of our common stock.

Dividends

The board of directors has declared and we have paid the following cash dividends during the fiscal years ended 2023, 2022, 2021, and 2020; 2021:

Declared Date	Declared Date	Record Date	Distribution Date	Dividend per Share	Amount Paid	Declared Date	Record Date	Distribution Date	Dividend per Share	Amount Paid
		February 10, 2020	February 18, 2020	\$0.30	\$3,092,771					
	May 7, 2020	May 20, 2020	May 27, 2020	\$0.05	515,349					
	August 5, 2020	August 18, 2020	August 25, 2020	\$0.05	515,349					
	November 5, 2020	November 16, 2020	November 23, 2020	\$0.10	1,031,679					
	Total				\$5,155,148					
February 8, 2021	February 8, 2021	February 18, 2021	February 26, 2021	\$0.10	\$1,033,597					
	May 6, 2021	May 6, 2021	May 17, 2021	\$0.10	1,034,334					
August 5, 2021	August 5, 2021	August 16, 2021	August 23, 2021	\$0.12	1,248,183					
November 3, 2021	November 3, 2021	November 15, 2021	November 22, 2021	\$0.12	1,251,025					
	Total				\$4,567,139					



February 3, 2022	February 3, 2022	February 14, 2022	February 22, 2022	\$0.15	\$1,564,649
February 3, 2022					
February 3, 2022					
April 27, 2022	April 27, 2022	May 17, 2022	May 24, 2022	\$0.15	1,572,332
August 3, 2022	August 3, 2022	August 15, 2022	August 22, 2022	\$0.15	1,574,992
November 2, 2022	November 2, 2022	November 14, 2022	November 21, 2022	\$0.15	1,577,709
Total	Total				<u>\$6,289,682</u>
February 13, 2023					
February 13, 2023					
February 13, 2023					
May 4, 2023					
August 9, 2023					
November 8, 2023					
Total					

On **February 13, 2023** **February 7, 2024**, the **Company's** **Company's** board of directors declared a cash dividend in the amount of \$0.15 per share of common stock to be paid on **March 2, 2023** **February 27, 2024** to all shareholders of record as of the close of business on **February 23, 2023** **February 20, 2024**.

Our ability to pay dividends is restricted under the terms of our credit agreement and may be restricted under other agreements governing our outstanding indebtedness from time to time. Any future determination with respect to the payment of dividends, including whether to declare a dividend, and, if so, the amount thereof, will be at the discretion of our board of directors and will be dependent upon, among other things, our financial condition, results of operations, capital requirements, the terms of our then existing indebtedness, contractual restrictions, future prospects, general economic conditions and other factors considered relevant by our board of directors.

#### Equity Compensation Plans

The following equity compensation plan information is provided as of **January 1, 2023** **December 31, 2023**:

Plan Category	Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted-average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))	Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted-average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
Equity Compensation Plans	Equity Compensation Plans							
Approved by Security Holders	Approved by Security Holders							
2013 Long-Term Incentive Plan	2013 Long-Term Incentive Plan	883,699	\$15.81	129,268				
2013 Long-Term Incentive Plan								
2013 Long-Term Incentive Plan								



2020	2020			
Employee	Employee			
Stock	Stock			
Purchase	Purchase			
Plan	Plan	—	\$0.00	158,718
Total	Total	883,699	\$15.81	287,986

A description of the equity compensation plan is incorporated by reference to Note 16 in the Notes to Consolidated Financial Statements included in Item 8 in this Annual Report on Form 10-K.

#### Recent Sales of Unregistered Securities

In December 2022, we issued 254,455 shares of common stock in a private placement for a value of \$3.4 million \$3.3 million, and a convertible two-year promissory note of \$4.4 million with an annual interest rate of 6% that is convertible into common shares at any time after one year at a conversion price of \$17.12 per share at the closing of the Horn Solutions acquisition.

The foregoing issuance of securities was exempt from registration pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended.

#### Share Repurchases

During 2022, there were no stock repurchases. During 2021, 2023, we repurchased 610,208 shares of the Company's Company's common stock at a cost of \$8,442 \$19,019 and a weighted average price of \$13.84 \$9.69 upon the vesting of restricted stock to satisfy statutory minimum tax withholding requirements. During 2022, there were no stock repurchases.

#### Item 6. Selected Financial Data

The following tables set forth our summary consolidated historical financial data from continuing operations. You should read the information set forth below in conjunction with "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated historical financial statements and notes thereto included elsewhere in this Annual Report on Form 10-K. The statement of operations data for the fiscal years ended 2023, 2022, 2021, and 2020 2021 and the balance sheet data as of January 1, 2023 December 31, 2023 and December 26, 2021 January 1, 2023 set forth below are derived from our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K. The statement of operations data for the fiscal years ended 2019 2020 and 2018 2019 and the balance sheet data as of December 27, 2020 December 26, 2021, December 29, 2019 December 27, 2020, and December 31, 2018 December 29, 2019 set forth below were derived from our audited financial statements not included in this Annual Report on Form 10-K.

		Fiscal Years Ended					Fiscal Years Ended				
		January	December	December	December	December	December 31,	January 1,	December 26,	December 27,	December 29,
		1,	26,	27,	29,	31,					
		2023	2021	2020	2019	2018	2023	2023	2021	2020	2019
		(dollars in thousands, except per share data)					(dollars in thousands, except per share data)				
<b>Statement of Operations Data:</b>	<b>Statement of Operations Data:</b>										
Revenues	Revenues	\$298,422	\$239,027	\$207,125	\$219,764	\$206,174					
Revenues											
Gross profit	Gross profit	\$103,548	\$ 80,941	\$ 66,040	\$ 69,826	\$ 64,520					
Selling, general and administrative expenses	Selling, general and administrative expenses	\$ 83,211	\$ 65,115	\$ 55,244	\$ 50,222	\$ 44,787					
Gain on contingent consideration	Gain on contingent consideration	\$ —	\$ (2,403)	\$ (76)	\$ —	\$ (3,775)					
Impairment losses	Impairment losses	\$ —	\$ —	\$ 7,240	\$ —	\$ —					
Depreciation and amortization	Depreciation and amortization	\$ 4,054	\$ 3,698	\$ 4,861	\$ 4,718	\$ 4,833					
Operating income (loss)		\$ 16,283	\$ 14,531	\$ (1,229)	\$ 14,886	\$ 18,675					



Operating (loss) income						
Loss on extinguishment of debt	Loss on extinguishment of debt	\$ —	\$ —	\$ —	\$ 541	\$ —
Interest expense, net	Interest expense, net	\$ 1,363	\$ 1,433	\$ 1,584	\$ 1,569	\$ 2,850
Income (loss) from continuing operations before income taxes						
		\$ 14,920	\$ 13,098	\$ (2,813)	\$ 12,776	\$ 15,825
Income tax expense (benefit) from continuing operations						
		\$ 3,659	\$ 2,640	\$ (741)	\$ 3,135	\$ 2,855
Income (loss) from continuing operations						
		\$ 11,261	\$ 10,458	\$ (2,072)	\$ 9,641	\$ 12,970
(Loss) income from continuing operations before income taxes						
Income tax benefit (expense) from continuing operations						
(Loss) income from continuing operations						
Income from discontinued operations, net of tax	Income from discontinued operations, net of tax	\$ 14,100	\$ 3,651	\$ 3,513	\$ 3,606	\$ 4,579
Net income						
		\$ 25,361	\$ 14,109	\$ 1,441	\$ 13,247	\$ 17,549
Net (loss) income						
Basic income (loss) per share:						
Net (loss) income per share - basic:						
Net (loss) income per share - basic:						
Net (loss) income per share - basic:						
Continuing operations						
Continuing operations						
Continuing operations	Continuing operations	\$ 1.08	\$ 1.01	\$ (0.20)	\$ 0.94	\$ 1.35
Income from discontinued operations:						
Income	Income	0.12	0.44	0.46	0.46	0.58
Income						
Income						
Gain on Sale	Gain on Sale	1.69	—	—	—	—
Income tax expense	Income tax expense	(0.46)	(0.09)	(0.12)	(0.11)	(0.10)



Net income per share – basic		\$	2.43	\$	1.36	\$	0.14	\$	1.29	\$	1.83
Net (loss) income per share – basic											
Diluted income (loss) per share:											
Net (loss) income per share - diluted:											
Net (loss) income per share - diluted:											
Net (loss) income per share - diluted:											
Continuing operations											
Continuing operations											
Continuing operations	Continuing operations	\$	1.07	\$	1.00	\$	(0.20)	\$	0.93	\$	1.32
Income from discontinued operations:	Income from discontinued operations:										
Income	Income		0.12		0.44		0.46		0.46		0.57
Income											
Income											
Gain on Sale	Gain on Sale		1.69		—		—		—		—
Income tax expense	Income tax expense		(0.46)		(0.09)		(0.12)		(0.11)		(0.10)
Net income per share – diluted		\$	2.42	\$	1.35	\$	0.14	\$	1.28	\$	1.79
Net (loss) income per share – diluted											
Weighted average shares outstanding – basic											
Weighted average shares outstanding – basic											
Weighted average shares outstanding – basic											
Weighted average shares outstanding – basic											
Weighted average shares outstanding – basic											
Weighted average shares outstanding – diluted											

Weighted average shares outstanding – basic		10,427		10,367		10,312		10,239		9,577
Weighted average shares outstanding – diluted		10,473		10,417		10,338		10,351		9,808
<b>Other Financial Data:</b>										
Adjusted EBITDA from continuing operations <sup>(1)</sup>	\$	21,693	\$	14,970	\$	12,197	\$	21,609	\$	21,256
Cash dividends declared per common share	\$	0.60	\$	0.44	\$	0.50	\$	1.20	\$	1.15

Fiscal Years Ended					Fiscal Years Ended				
December 31, 2023					December 31, 2023	January 1, 2023	December 26, 2021	December 27, 2020	December 29, 2019
(dollars in thousands, except per share data)					(dollars in thousands, except per share data)				



Other  
Financial  
Data:  
Adjusted EBITDA from  
continuing operations<sup>(1)</sup>  
Adjusted EBITDA from  
continuing operations<sup>(1)</sup>  
Adjusted EBITDA from  
continuing operations<sup>(1)</sup>  
Same Day  
EBITDA from  
continuing  
operations<sup>(1)</sup>  
Cash  
dividends  
declared per  
common  
share

Balance Sheet Data from Continuing Operations:	Balance Sheet Data from Continuing Operations:
Working capital	\$ 47,955 \$ 25,851 \$ 17,960 \$ 20,532 \$13,079

Balance Sheet Data from Continuing Operations:	Balance Sheet Data from Continuing Operations:
Working capital <sup>(2)</sup>	
Working capital <sup>(2)</sup>	
Working capital <sup>(2)</sup>	
Total assets	Total assets \$194,673 \$148,294 \$130,278 \$100,378 \$84,316
Total outstanding borrowings, net	Total outstanding borrowings, net \$ 66,670 \$ 39,450 \$ 34,634 \$ 27,494 \$20,089
Total other long-term liabilities	Total other long-term liabilities \$ 3,059 \$ 7,240 \$ 14,224 \$ 6,068 \$ 654
Stockholders' equity	Stockholders' equity \$100,737 \$ 76,592 \$ 65,458 \$ 68,457 \$65,702

(1) We present Adjusted EBITDA and Same Day EBITDA (defined below), a measure that are not in accordance with accounting principles generally accepted in the United States of America ("non-GAAP"), in this Annual Report on Form 10-K to provide investors with a supplemental measure of our operating performance. We believe that Adjusted EBITDA is a and Same Day EBITDA are useful performance measures and is are used by us to facilitate a comparison comparisons of our operating performance on a consistent basis from period-to-period and to provide for a more complete understanding of factors and trends affecting our business than measures under accounting principles generally accepted in the United States of America ("GAAP") can provide alone. Our board and management also use Adjusted EBITDA and Same Day EBITDA as one of the primary methods for planning and forecasting overall expected performance and for evaluating on a quarterly and annual basis actual results against such expectations, and as a performance evaluation metric in determining achievement of certain compensation programs and plans for our management. In addition, the financial covenants in our credit agreement are based on EBITDA as defined in the credit agreement.

(2) The 2023 working capital amount includes the movement of the balances from long-term to current liabilities related to the amended credit agreement with BMO Harris Bank, N.A. ("BMO"), which had a maturity date of July 16, 2024.

We define "Adjusted EBITDA" as earnings before interest expense, income taxes, depreciation and amortization expense, impairment losses, transaction fees, and certain non-cash expenses such as share-based compensation expense. Omitting interest, taxes and the other items provides a financial measure that facilitates comparisons of our results of operations with those of companies having different capital structures. Since the levels of indebtedness and tax structures that other companies have are different from ours, we omit these amounts to facilitate investors' ability to make these comparisons. Similarly, we omit depreciation and amortization because other companies may employ a greater or lesser amount of property and intangible assets. We also believe that investors, analysts, and other interested parties view our ability to generate Adjusted EBITDA as an important measure of our operating performance and that of other companies in our industry. Adjusted EBITDA should not be considered as an alternative to net income for the periods indicated as a measure of our performance. Other companies in our industry may calculate Adjusted EBITDA differently than we do, limiting its usefulness as a comparative measure.



We define "Same Day EBITDA" as Adjusted EBITDA on a fifty-two week fiscal year basis. Omitting the additional revenue days in a fifty-three week fiscal year ended provides a financial measure that facilitates comparisons of our results of operations with those of our fifty-two week fiscal year and comparisons of our results with those companies having same number of days. Same Day EBITDA should not be considered as an alternative to net income for the periods indicated as a measure of our performance. Other companies in our industry may calculate Adjusted EBITDA or Same Day EBITDA differently than we do, limiting their usefulness as comparative measures.

The use of Adjusted EBITDA ~~has and Same Day EBITDA have~~ limitations as analytical ~~tool, tools,~~ and you should not consider ~~this these~~ performance measure in isolation from, or as an alternative to, GAAP measures such as net income. Adjusted EBITDA ~~is and Same Day EBITDA are~~ not a ~~measure measures~~ of liquidity under GAAP or otherwise, and ~~is are~~ not an ~~alternative alternatives~~ to cash flow from continuing operating activities. Our presentation of Adjusted ~~EBITDA and Same Day~~ EBITDA should not be construed as an inference that our future results will be unaffected by the expenses that are excluded from that term or by unusual or non-recurring items. The limitations of Adjusted EBITDA ~~and Same Day EBITDA~~ include: (i) ~~it does they do~~ not reflect our cash expenditures or future requirements for capital expenditures or contractual commitments; (ii) ~~it does they do~~ not reflect changes in, or cash requirements for, our working capital needs; (iii) ~~it does they do~~ not reflect income tax payments we may be required to make;

and (iv) ~~it does they do~~ not reflect the cash requirements necessary to service interest or principal payments associated with indebtedness.

To properly and prudently evaluate our business, we encourage you to review our consolidated financial statements included elsewhere in this Annual Report on Form 10-K and the reconciliation to Adjusted ~~EBITDA and Same Day~~ EBITDA from net income, the most directly comparable financial measure presented in accordance with GAAP, set forth in the following table. All of the items included in the reconciliation from net income to Adjusted EBITDA are either (i) non-cash items or (ii) items that management does not consider in assessing our on-going operating performance. In the case of the non-cash items, management believes that investors may find it useful to assess our comparative operating performance because the measures without such items are less susceptible to variances in actual performance resulting from depreciation, amortization and other non-cash charges and more reflective of other factors that affect operating performance. In the case of the other items that management does not consider in assessing our on-going operating performance, management believes that investors may find it useful to assess our operating performance if the measures are presented without these items because their financial impact may not reflect ongoing operating performance.

		Fiscal Years Ended					Fiscal Years Ended				
		January 1, 2023	December 26, 2021	December 27, 2020	December 29, 2019	December 31, 2018	December 31, 2023	January 1, 2023	December 26, 2021	December 27, 2020	December 29, 2019
		(dollars in thousands)					(dollars in thousands)				
Net income (loss) from continuing operations		\$11,261	\$ 10,458	\$ (2,072)	\$ 9,641	\$ 12,970					
Income tax expense (benefit) from continuing operations <sup>(1)</sup>		3,659	2,640	(741)	3,135	2,855					
(Loss) income from continuing operations											
Income tax expense (benefit) from continuing operations <sup>(1)</sup>											
Interest expense, net	Interest expense, net	1,363	1,433	1,584	1,569	2,850					
Loss on extinguishment of debt	Loss on extinguishment of debt	—	—	—	541	—					
	Operating income (loss)	16,283	14,531	(1,229)	14,886	18,675					
	Operating (loss) income										
Depreciation and amortization	Depreciation and amortization	4,054	3,698	4,861	4,718	4,833					
Gain on contingent consideration	Gain on contingent consideration	—	(2,403)	(76)	—	(3,775)					
Impairment losses <sup>(2)</sup>	Impairment losses <sup>(2)</sup>	—	—	7,240	—	—					



CARES Act credit	CARES Act credit	—	(2,084)	—	—	—
Share-based compensation	Share-based compensation	1,085	1,058	786	850	1,015
Transaction fees	Transaction fees	271	170	615	434	508
	Adjusted EBITDA from continuing operations	21,693	14,970	12,197	20,888	21,256
	Adjusted EBITDA from continuing operations					
Same day adjustment	Same day EBITDA from continuing operations					

(1) 2020 Included a \$3.3 million re-measurement of the net deferred tax assets as a result of the TCJA.

(2) In the Professional segment, we recognized a \$3.7 million trade name impairment loss and a \$3.5 million client partner list impairment loss during the thirteen week period ended June 28, 2020. We recognized a \$22.5 million trade name impairment loss during the thirteen week period ended April 2, 2023.

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

The following discussion and analysis of our financial condition and results of operations from continuing operations, our expectations regarding the future performance of our business and the other non-historical statements in the discussion and analysis are forward-looking statements. See "Forward-Looking Statements" in this Annual Report on Form 10-K. These forward-looking statements are subject to risks, uncertainties and other factors including those described in "Item 1A. Risk Factors" of this Annual Report on Form 10-K. Our actual results of operations may differ materially from those contained in any forward-looking statements. You should read the following discussion together with our audited consolidated financial statements and related notes thereto and other financial information included in this Annual Report on Form 10-K. Financial information provided is based on the results of our continuing operations. Please refer to "Note 4 — Discontinued Operations" of our audited consolidated financial statements for information regarding our discontinued operations.

Our historical financial information may not be indicative of our future performance.

### Company Overview

We provide workforce solutions to our client partners in a variety of industries through our various divisions in IT, Cyber, Finance & Accounting, Managed Services, Solutions, and Real Estate Property Management (apartment communities and commercial buildings) and have completed a series of acquisitions including the acquisition of BG Personnel, LP and B G Staff Services Inc. in June 2010, substantially all of the assets of JNA Staffing, Inc. in December 2010, Extrinsic, LLC in December 2011, American Partners, Inc. in December 2012, InStaff in June 2013, D&W in March 2015, VTS in October 2015, Zycron in April 2017, Smart in September 2017, and LJK in December 2019, 100% of the equity of EdgeRock in February 2020, Momentum Solutionz in February 2021, and substantially all of the assets of Horn Solutions in 2022, 2022, and Arroyo Consulting in 2023. We have continuing operations in two industry segments Real Estate Property Management and Professional, and had discontinued operations in the Light Industrial segment. We primarily operate within the United States of America across 46 states and D.C. America.

On March 21, 2022, we sold substantially all of the assets and certain liabilities of InStaff to Sentech Engineering Services, Inc. ("Sentech") for a sale price of approximately \$30.3 million cash at closing and an additional \$2 million one year following the date of the acquisition. The sale resulted in a pre-tax gain on sale of discontinued operations of \$17.3 million. The Light Industrial segment provided field talent primarily to manufacturing, distribution, logistics, and call center client partners needing a flexible workforce out of 11 locations and 13 on-sites in 11 states.

workforce. The InStaff financial results for periods prior to the sale have been reflected in our Consolidated Statements of Operations and Comprehensive (Loss) Income and Consolidated Statements of Cash Flows as discontinued operations. Additionally, the related assets and liabilities associated with the discontinued operations in the periods presented are classified as discontinued operations in our Consolidated Balance Sheets. See "Note 4 — Discontinued Operations" of our audited consolidated financial statements for information regarding our discontinued operations.

The Real Estate Property Management segment provides office and maintenance field talent to various apartment communities and commercial buildings in 36 38 states and D.C., via to property management companies responsible for the apartment communities' communities' and commercial buildings' buildings' day-to-day operations. The Real Estate segment currently operates through two divisions, BG Multifamily and BG Talent.



The Professional segment provides specialized talent and business consultants on a nationwide basis for information technology ("IT"), managed services, finance, accounting, legal and human resource client partner projects. resource. The Professional segment currently operates through across the U.S. in three divisions, IT, Consulting, Managed Services, Solutions, and Finance & Accounting, with the IT division providing additional nearshore and Accounting under various trade names including Extrinsic, American Partners, Donovan & Watkins, Vision Technology Services, Zycron, Smart Resources, L.J. Kushner & Associates, EdgeRock Technology Partners, Momentum Solutionz, offshore solutions in Colombia and Horn Solutions, India.

## Results of Operations

The following tables summarize key components of our results from continuing operations for the periods indicated, both in dollars and as a percentage of revenues, and have been derived from our consolidated financial statements. We believe that the financial results of 2022 were not materially impacted by the additional week.

		Fiscal Year Ended			
		January 1, 2023	December 26, 2021	December 27, 2020	
		(dollars in thousands)			
Revenues	Revenues	\$ 298,422	\$239,027	\$207,125	
Cost of services	Cost of services	194,874	158,086	141,085	
	Gross Profit	103,548	80,941	66,040	
	Gross Profit				
Selling, general and administrative expenses	Selling, general and administrative expenses	83,211	65,115	55,244	
Gain on contingent consideration	Gain on contingent consideration	—	(2,403)	(76)	
Impairment losses	Impairment losses	—	—	7,240	
Depreciation and amortization	Depreciation and amortization	4,054	3,698	4,861	
	Operating income (loss)	16,283	14,531	(1,229)	
	Operating (loss) income				
Interest expense, net	Interest expense, net	(1,363)	(1,433)	(1,584)	
Interest expense, net	Interest expense, net				
	(Loss) income from continuing operations before income taxes				
Income tax benefit (expense) from continuing operations	Income tax benefit (expense) from continuing operations				

Fiscal Year Ended			
December 31, 2023		January 1, 2023	December 26, 2021
(dollars in thousands)			







(Loss) income from continuing operations	(Loss) income from continuing operations	(3.3)%	3.8 %	4.4 %
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**Revenues:**

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Total gross profit increased approximately \$8.2 million (8.0%). As a percentage of revenue, gross profit has increased to 35.7% from 34.7%, with both segments contributing to the increase.

**Property Management Gross Profit:** Property Management gross profit increased approximately \$2.1 million (4.4%), consistent with a 3.3% increase in revenues, partially offset by lower permanent placement revenue, which has no cost of services.

**Professional Gross Profit:** Professional gross profit increased approximately \$6.1 million (11.0%). The Arroyo Consulting acquisition contributed \$5.1 million in gross profit. The Horn Solutions acquisition, which was integrated with the organic business, added growth to offset the decline experienced in the existing professional business.

**Selling, General and Administrative Expenses:** Selling, general and administrative ("SGA") expenses increased \$5.4 million (6.5%) versus prior year. The overall increase slightly outpaced revenue growth adding 40 bps to total SGA expense as a percent of revenue. Acquisition transaction fees increased \$0.7 million over the prior year.

	Fiscal Year Ended					
	December 31, 2023		January 1, 2023		\$ Change	% Change
	Amount	% of Revenue	Amount	% of Revenue		
(dollars in thousands)						
Compensation and related	\$ 68,536	21.9 %	\$ 64,782	21.7 %	\$ 3,754	5.8 %
Advertising and recruitment	2,111	0.7 %	1,987	0.7 %	124	6.2 %
Occupancy and office operations	3,310	1.1 %	2,773	0.9 %	537	19.4 %
Travel, meals and entertainment	1,349	0.4 %	1,044	0.3 %	305	29.2 %
Software	5,339	1.7 %	5,751	1.9 %	(412)	(7.2)%
Liability insurance	1,140	0.4 %	991	0.3 %	149	15.0 %
Professional fees	1,413	0.5 %	1,647	0.6 %	(234)	(14.2)%
Public company related costs	851	0.3 %	734	0.2 %	117	15.9 %
Bad debt	798	0.3 %	315	0.1 %	483	153.3 %
Share-based compensation	1,029	0.3 %	1,085	0.4 %	(56)	(5.2)%
Transaction fees	974	0.3 %	271	0.1 %	703	259.4 %
Workers' compensation loss retention return	(491)	(0.2)%	(117)	— %	(374)	319.7 %
Other	2,291	0.7 %	1,948	0.7 %	343	17.6 %
Total	\$ 88,650	28.3 %	\$ 83,211	27.9 %	\$ 5,439	6.5 %

**Impairment losses:** In Fiscal 2023, managements's plan to eliminate the use of various trade names was approved by the Board of Directors. The decision to rebrand as BGSF created a \$22.5 million write-off in trade names.

**Depreciation and Amortization:** Depreciation and amortization charges increased \$3.7 million (91.8%). The increase in deprecation and amortization is primarily due to the amortization of intangible assets related to the 2022 Horn Solutions acquisition and the 2023 Arroyo Consulting acquisition.

**Interest Expense, net:** Interest expense, net increased \$4.6 million primarily due to the increased debt balances related to the 2022 Horn Solutions acquisition, the 2023 Arroyo Consulting acquisition, and higher interest rates.

**Income Taxes:** We recorded a tax benefit of approximately \$2.9 million primarily due impairment losses on the trade names in the first quarter versus a tax expense of \$3.7 million in 2022.

**Non-GAAP Same Day Revenues:** Same Day Revenues are defined as a fifty-three week fiscal year ended January 1, 2023 (Fiscal 2022) revenues less five revenue days. The Fiscal 2022 revenues of \$298.4 million would be less \$5.9 million for five revenue days resulting in Same Day Revenues of \$292.5 million. Same Day Revenues increased \$20.7 million (7.1%) to \$313.2 million in Fiscal 2023. Same Day Revenues and GAAP revenues were equal for Fiscal 2023.

**Non-GAAP Same Day Gross Profit:** Same Day Gross Profit is defined as a fifty-three week fiscal year ended January 1, 2023 (Fiscal 2022) gross profit less five gross profit days. The Fiscal 2022 gross profit of \$103.5 million would be less \$2.1 million for five gross profit days resulting in Same Day Gross Profit of \$101.5 million. Same Day Gross Profit increased \$10.3 million (10.2%) to \$111.8 million in Fiscal 2023. Same Day Gross Profit and GAAP gross profit were equal for Fiscal 2023.

#### **Fifty-three Week Fiscal Year Ended January 1, 2023 (Fiscal 2022) Compared with Fifty-two Week Fiscal Year Ended December 26, 2021 (Fiscal 2021)**

##### **Revenues:**

	Fiscal Year Ended
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	January 1, 2023		December 26, 2021	
	(dollars in thousands)			
Revenues by Segment:				
Property Management	\$	121,093	40.6 %	\$ 92,018 38.5 %
Professional		177,329	59.4 %	147,009 61.5 %
Total Revenues	\$	298,422	100.0 %	\$ 239,027 100.0 %

**Property Management Revenues:** Property Management revenues increased approximately \$29.1 million (31.6%). The increase was primarily due to an 11.0% increase in average bill rate.

**Professional Revenues:** Professional revenues increased approximately \$30.3 million (20.6%), primarily due to growth in the IT division of \$27.6 million, the 2022 Horn Solutions acquisition which contributed \$1.4 million of new revenues, and an increase of 11.8% in the average bill rate.

**Gross Profit:**

Gross profit represents revenues from workforce solutions less cost of services expenses, which consist of payroll, payroll taxes, payroll-related insurance, field talent costs, and reimbursable costs.

	Fiscal Year Ended			
	January 1, 2023		December 26, 2021	
	(dollars in thousands)			
Gross Profit by Segment:				
Property Management	\$	47,695	46.1 %	\$ 34,969 43.2 %
Professional		55,853	53.9 %	45,972 56.8 %
Total Gross Profit	\$	103,548	100.0 %	\$ 80,941 100.0 %

	Fiscal Year Ended		Fiscal Year Ended	
	January 1, 2023		December 26, 2021	
Gross Profit Percentage by Segment:				
Property Management			39.4 %	38.0 %
Professional			31.5 %	31.3 %
Company Gross Profit Percentage			34.7 %	33.9 %

Overall, our gross profit increased approximately \$22.6 million (27.9%). As a percentage of revenue, gross profit has increased to 34.7% from 33.9%, primarily due to higher gross profits across all our segments.

We determine spread as the difference between bill rate and pay rate.

**Real Estate Property Management Gross Profit:** Real Estate Property Management gross profit increased approximately \$12.7 million (36.4%) consistent with the increase in revenue, and an 15.0% increase in average spread.

**Professional Gross Profit:**Professional gross profit increased approximately \$9.9 million (21.5%) consistent with an increase in revenue, and an increase of \$0.6 million from the 2022 Horn Solutions acquisition which provided gross profit of \$0.6 million, and an overall increase of 12.6% in average spread.

**Selling, General and Administrative Expenses:** Selling, general and administrative expenses ("SGA") as a percent of revenue increased 70 basis points to 27.9%. Total SGA increased \$18.1 million (27.8%), primarily due to additional compensation generated. Expenses in 2021 benefited from increased overall gross profit and the Horn Solutions acquisition, which were partially offset by the CARES ACT credit. Adjusting for the impact of the credit, in 2021. The components total SGA expenses as a percentage of SGA expense are detailed in the following table:

Fiscal Year Ended						Fiscal Year Ended	
		January 1, 2023		December 26, 2021			
	% of	% of	\$	%			
	Amount	Revenue	Amount	Revenue	Change	Change	



		Amount															
		Amount															
		Amount								% of Revenue		Amount		% of Revenue			



	December 26, 2021		December 27, 2020	
	(dollars in thousands)			
Revenues by Segment:				
Real Estate	\$	92,018	38.5 %	\$ 68,755 33.2 %
Professional		147,009	61.5 %	138,370 66.8 %
Total Revenues	\$	239,027	100.0 %	\$ 207,125 100.0 %

**Real Estate Revenues:** Real Estate revenues increased approximately \$23.3 million (33.8%). The increase was due to a 20.1% increase in billed hours and a 11.0% increase in average bill rate.

**Professional Revenues:** Professional revenues increased approximately \$8.6 million (6.2%), primarily due to the 2020 EdgeRock acquisition which contributed fifty-two weeks of revenue in Fiscal 2021 vs. forty-seven weeks in Fiscal 2020, the 2021 Momentum acquisition which contributed \$3.5 million of new revenues, an increase in permanent placements revenue of \$1.2 million, and billed hours increased 5.5%. These increases were partially offset by a decrease in the IT division of approximately \$11.6 million in revenue and a decrease of 0.2% in average bill rate.

#### Gross Profit:

Gross profit represents revenues from workforce solutions less cost of services expenses, which consist of payroll, payroll taxes, payroll-related insurance, field talent costs, and reimbursable costs.

	Fiscal Year Ended			
	December 26, 2021		December 27, 2020	
	(dollars in thousands)			
Gross Profit by Segment:				
Real Estate	\$	34,969	43.2 %	\$ 25,813 39.1 %
Professional		45,972	56.8 %	40,227 60.9 %
Total Gross Profit	\$	80,941	100.0 %	\$ 66,040 100.0 %

	Fiscal Year Ended	
	December 26, 2021	December 27, 2020
Gross Profit Percentage by Segment:		
Real Estate	38.0 %	37.5 %
Professional	31.3 %	29.1 %
Company Gross Profit Percentage	33.9 %	31.9 %

Overall, our gross profit increased approximately \$14.9 million (22.6%). As a percentage of revenue, gross profit has increased to 33.9% from 31.9%, primarily due to higher gross profits across all our segments.

We determine spread as the difference between bill rate and pay rate.

**Real Estate Gross Profit:** Real Estate gross profit increased approximately \$9.1 million (35.5%) consistent with the increase in revenue, and an 11.6% increase in average spread.

**Professional Gross Profit:** Professional gross profit increased approximately \$5.8 million (14.3%) from the 2020 EdgeRock acquisition which contributed fifty-two weeks of gross profit in Fiscal 2021 vs. forty-seven weeks in Fiscal 2020, the Momentum acquisition which provided gross profit of \$1.7 million, and an overall increase of 1.4% in average spread. These increases were partially offset by a decrease in the IT division of approximately \$2.4 million in gross profit.

**Selling, General and Administrative Expenses:** SGA expenses increased approximately \$9.9 million (17.9%), primarily due to additional compensation generated from increased overall gross profit, from the EdgeRock acquisition with fifty-two weeks in Fiscal 2021 vs. forty-seven weeks in Fiscal 2020, and the Momentum acquisition. The components of SGA expense are detailed in the following table:

	Fiscal Year Ended	
	December 26, 2021	December 27, 2020



	Amount	% of Revenue	Amount	% of Revenue	\$ Change	% Change
	(dollars in thousands)					
Compensation and related	\$ 53,332	22.5 %	\$ 41,563	20.0 %	\$ 11,769	28.3 %
Advertising and recruitment	1,379	0.6 %	1,552	1.0 %	(173)	(11.1)%
Occupancy and office operations	3,128	1.3 %	3,456	2.0 %	(328)	(9.5)%
Travel, meals and entertainment	389	0.2 %	321	— %	68	21.2 %
Software	2,538	1.2 %	2,044	1.0 %	494	24.2 %
Liability insurance	740	0.3 %	584	— %	156	26.7 %
Professional fees	1,111	0.8 %	1,143	1.0 %	(32)	(2.8)%
Public company related costs	727	0.3 %	691	— %	36	5.2 %
Bad debt	145	0.1 %	344	— %	(199)	(57.8)%
Share-based compensation	1,058	0.4 %	786	— %	272	34.6 %
Transaction fees	170	0.1 %	615	— %	(445)	(72.4)%
Workers' compensation loss retention return	(348)	(0.1)%	(464)	— %	116	(25.0)%
CARES Act credit	(2,083)	(0.9)%	—	— %	(2,083)	— %
Other	2,829	0.5 %	2,609	1.0 %	220	8.4 %
Total	\$ 65,115	27.2 %	\$ 55,244	27.0 %	\$ 9,871	17.9 %

**Gain on contingent consideration:** As a result of the certain business developments in Fiscal 2021, the Company recognized a \$2.4 million gain on contingent consideration related to the 2019 LJK acquisition.

**Depreciation and Amortization:** Depreciation and amortization charges decreased approximately \$1.2 million (23.9%). The decrease in depreciation and amortization is primarily due to the Professional segment with a decrease related to the 2015 Vision Technology Services acquisition, which was partially offset by an increase related to the information technology improvement project.

**Impairment loss:** As a result of the certain business developments in Fiscal 2020 and changes in the Company's long-term projections, the Company calculated the quantitative impairment test of the finance and accounting group using the relief from royalty method for the indefinite-lived intangible assets and residual method for the definite-lived intangible assets by asset group. In the Professional segment, the Company recognized a \$3.7 million trade name impairment loss and a \$3.5 million client partner list impairment loss in Fiscal 2020.

**Interest Expense, net:** Interest expense, net decreased approximately \$0.2 million (10)% primarily due to the lower average balance on the Revolving Facility, offset by an increase in interest income from our workers compensation loss retention program.

**Income Taxes:** Income tax expense increased \$3.4 million primarily due to higher pre-tax 2021 income, intangible impairment losses in 2020, non-deductible transaction fees in 2020 related to the EdgeRock acquisition, and a higher Work Opportunity Tax Credit in 2021.

## Liquidity and Capital Resources

Our working capital requirements are primarily driven by field talent payments, tax payments and client partner accounts receivable receipts. Since receipts from client partners lag payments to field talent, working capital requirements increase substantially in periods of growth.

Our primary sources of liquidity are cash generated from operations and borrowings under our amended credit agreement lead by with BMO, Harris Bank, N.A. ("BMO"), that provides for a revolving credit facility maturing July 16, 2024 March 12, 2028 (the "Revolving Facility"). Our primary uses of cash are payments to field talent, team members, related payroll liabilities, operating expenses, capital expenditures, cash interest, cash taxes, dividends and contingent consideration and debt payments. We believe that the cash generated from operations, together with the borrowing availability under our Revolving Facility, will be sufficient to meet our normal working capital needs for at least the next twelve months, including investments made, and expenses incurred, in connection with opening new markets throughout the next year. Our ability to continue to fund these items may be affected by general economic, competitive and other factors, many of which are outside of our control. If our future cash flow from operations and other capital resources are insufficient to fund our liquidity needs, we may be forced to obtain additional debt or equity capital or refinance all or a portion of our debt.

While we believe we have sufficient liquidity and capital resources to meet our current operating requirements and expansion plans, we may elect to pursue additional growth opportunities within the next year that could require additional debt or equity financing. If we are unable to secure additional financing at favorable terms in order to pursue such additional growth opportunities, our ability to pursue such opportunities could be materially adversely affected.

A summary of our working capital, operating, investing and financing activities are shown in the following table:

Fiscal Year Ended	Fiscal Year Ended
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related taxes for services rendered in accrued payroll and expenses, **an increase in accounts receivable**, and payments of deferred employer FICA for the CARES Act in other current liabilities.

During Fiscal 2021, net cash provided by continuing operating activities was \$1.4 million, a decrease of \$18.3 million compared with \$19.7 million for Fiscal 2020. This decrease is primarily attributable to increased accounts receivable and payments on accrued payroll and expenses, which were partially offset by an increase in the accrual in other long-term liabilities from deferred employer FICA for the CARES Act in Fiscal 2020.

During Fiscal 2020, net cash provided by continuing operating activities was \$19.7 million, primarily attributable to the non-cash impact of intangible impairment losses, additional other long-term liabilities that includes the deferred employer FICA, and payments on accounts receivable, additional income taxes payable.

#### *Investing Activities*

Cash used in investing activities consists primarily of cash paid for businesses acquired, cash received for businesses sold, and capital expenditures.

In Fiscal 2023, we paid \$6.8 million in connection with the Arroyo Consulting acquisition, funded a working capital payment of \$0.1 million in connection with the Horn Solutions acquisition, and made capital expenditures of \$2.6 million mainly related to continued information technology improvements and for software and computer equipment purchased in the ordinary course of business.

In Fiscal 2022, we received \$30.7 million in connection with the sale of InStaff, we paid \$33.9 million in connection with the Horn Solutions acquisition, and we made capital expenditures of \$5.7 million mainly related to the the information technology improvement project and for software and computer equipment purchased in the ordinary course of business.

In Fiscal 2021, we paid \$3.8 million in connection with the Momentum acquisition and we made capital expenditures of \$3.2 million mainly related to the information technology improvement project and for software and computer equipment purchased in the ordinary course of business. In Fiscal 2020, we paid net \$22.0 million in connection with the 2020 EdgeRock and 2019 LJK acquisitions and we made capital expenditures of \$2.1 million mainly related to the the information technology improvement project and for software and computer equipment purchased in the ordinary course of business.

#### *Financing Activities*

Cash flows from financing activities consisted principally of borrowings and payments under our credit agreement, payment of dividends, and contingent consideration paid.

For Fiscal 2023, we disbursed \$6.5 million in cash dividends on our common stock, we paid down \$6.0 million on the Term Loan, we paid \$1.1 million of contingent consideration related to the Momentum acquisition, and borrowed \$2.3 million on our Revolving Facility for increased working capital needs.

For Fiscal 2022, we received \$40.0 million on the issuance of the New Term Loan, we paid down \$26.9 million on the Term Loan, as discussed below, we paid disbursed \$6.3 million in cash dividends on our common stock, we paid \$1.1 million of contingent consideration related to the Momentum acquisition, and borrowed \$9.8 million on our Revolving Facility for increased working capital needs.

For Fiscal 2021, we borrowed \$6.8 million on our Revolving Facility for increased working capital needs and to fund the Momentum acquisition, paid disbursed \$4.6 million in cash dividends on our common stock, and paid down \$2.1 million on the Term Loan, as defined below.

For Fiscal 2020, we borrowed \$22.5 million on our Term Loan, as defined below, to fund the EdgeRock acquisition and pay down the Revolving Facility, we reduced \$14.4 million on our Revolving Facility, paid \$5.2 million in cash dividends on our common stock, and paid down \$1.1 million on the Term Loan.

#### *Credit Agreements*

On July 16, 2019, we entered into a Credit Agreement, **as amended** (the "Credit Agreement"), maturing July 16, 2024, led by BMO, as lead administrative agent, lender, letters of credit issuer, and swing line lender. The Credit Agreement provides for the Revolving Facility permitting us to borrow funds from time to time in an aggregate amount up to **\$35 million \$35.0 million**. The Credit Agreement also provided for a term loan commitment (the "Term Loan") permitting us to borrow funds from time to time in an aggregate amount not to exceed **\$30 million \$30.0 million** with principal payable quarterly, based on an annual percentage of the original principal amount as defined in the Credit Agreement, all of which has been **funded, funded and repaid**. We also had the option to request an increase **in** the aggregate Term Loan by \$40 million, which was done in connection with the Horn Solutions acquisition. **Our obligations under the Second Credit Amendment are secured by a first priority security interest in substantially all our tangible and intangible property.** The Credit Agreement bore interest either at the Base Rate plus the Applicable Margin or LIBOR plus the Applicable Margin through August 17, 2022 (as such terms are defined in the Credit Agreement). We pay an unused commitment fee on the daily average unused amount of Revolving Facility.

On February 8, 2021, the Company borrowed \$3.8 million on the Revolving Facility in conjunction with the closing of the Momentum acquisition.

On March 21, 2022, the Company paid down the balance on the existing Term Loan and a portion of the Revolving Facility using the proceeds from the sale of InStaff (See "Note 4 - Discontinued Operations").

On August 18, 2022, **the Company we** entered into an amendment to the Credit Agreement **(as amended, the "Amended Credit Agreement")** with BMO, **to temporarily increase the Revolving Facility to \$60 million for a period of ninety days and change which changed** the interest rate component from LIBOR to the Secured Overnight Financing Rate ("SOFR"), **plus the Applicable Margin (as such terms are defined in the amended credit agreement).**

In connection with the Horn Solutions acquisition on December 12, 2022 (See "Note 3 - Acquisitions"), we **borrowed exercised the option to borrow** \$40 million, as noted above, pursuant to a second amendment to the **credit agreement Credit Agreement** ("Second Credit Amendment"). **Our obligations under the Second Credit Amendment are secured by a**



first priority security interest in substantially all tangible and intangible property of the Company and its subsidiaries. The Second Credit Amendment bears interest either at the Base Rate plus the Applicable Margin or Adjusted Term SOFR plus the Applicable Margin (as such terms are defined in the Second Credit Amendment), with requires 2.5% of the original principal balance of the New Term Loan payable on the last business day of each quarter, beginning on March 31, 2023.

The Second Credit Amendment contains customary affirmative and negative covenants. We are subject to a maximum Leverage Ratio and a minimum Fixed Charge Coverage Ratio as (as such terms are defined in the amended Second Credit Amendment. Amendment).

On April 24, 2023, in connection with the acquisition of Arroyo Consulting, we entered into a Third Amendment to the Credit Agreement ("Third Credit Amendment") with BMO. The Third Credit Amendment revised language to permit an acquisition of a foreign entity under certain circumstances and modified the terms of permitted distributions and guarantors

On May 19, 2023, we entered into a Fourth Amendment to the Credit Agreement ("Fourth Credit Amendment") and increased the Revolving Facility by \$6.0 million to an aggregate amount up to \$41.0 million. We were in compliance with these the customary affirmative and negative covenants as of January 1, 2023 December 31, 2023.

The indebtedness under the Credit Agreement had a maturity date of July 16, 2024 and has therefore been classified within current liabilities on the Company's consolidated balance sheets as of December 31, 2023. On March 12, 2024, the Credit Agreement was amended and restated through the Company's entry into an Amended and Restated Credit Agreement with certain lenders, BMO Bank, N.A., as administrative agent, letter of credit issuer, and swing line lender, and BMO Capital Markets Corp., as sole lead arranger and sole book runner. The Amended and Restated Credit Agreement has a maturity date of March 12, 2028. The Amended and Restated Credit Agreement provides for a revolving credit facility permitting us to borrow funds from time to time in an aggregate amount up to \$40 million. Term loans with an outstanding principal balance of \$34 million were outstanding under the Credit Agreement remain outstanding under the Amended and Restated Credit Agreement. The Amended and Restated Credit Agreement further provides for a delayed draw term loan commitment of \$4.3 million. The Company is required to repay the term loans in quarterly principal installments in an amount equal to 2.5% of the aggregate principal balance thereof. The Amended and Restated Credit Agreement provides for interest either at the Base Rate plus the Applicable Margin, or the Adjusted Term SOFR plus the Applicable Margin (in each case, as such terms are defined in the Amended and Restated Credit Agreement). The Amended and Restated Credit Agreement also provides for letter of credit fees and commitment fees as further described therein. The Company's obligations under the Amended and Restated Credit Amendment are secured by a first priority security interest in substantially all of the Company's and its subsidiaries' tangible and intangible property. The Amended and Restated Credit Agreement provides for a maximum Leverage Ratio and a minimum Fixed Charge Coverage Ratio (as such terms are defined in the Amended and Restated Credit Amendment), and also provides for, among other items, representations and warranties, affirmative and negative covenants, as described therein.

## Contractual Obligations

The following table summarizes our cash contractual obligations as of January 1, 2023 December 31, 2023.

		Payments due by period					Payments due by period				
		Total	Less than 1 year	1–3 years	3–5 years	More than 5 years	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
		(dollars in thousands)					(dollars in thousands)				
Long-term debt obligations	Long-term debt obligations	\$62,562	\$ 4,000	\$58,562	\$ —	\$ —					
Contingent consideration	Contingent consideration	1,110	1,110	—	—	—					
Convertible note	Convertible note	4,368	—	4,368	—	—					
Operating lease obligations	Operating lease obligations	5,336	2,043	2,344	781	168					
Contractual cash obligations	Contractual cash obligations	\$73,376	\$ 7,153	\$65,274	\$ 781	\$ 168					

## Off-Balance Sheet Arrangements

### Letter of Credit

In March 2020, in conjunction with the 2020 EdgeRock acquisition, we entered into a standby letter of credit arrangement, which expires December 31, 2024, for purposes of protecting a lessor against default on lease payments. As of January 1, 2023 December 31, 2023, we had a maximum financial exposure from this standby letter of credit totaling \$0.1 million, all of which is considered usage against our Revolving Facility.

## Critical Accounting Policies and Estimates

We have identified the policies listed below as critical to our business and the understanding of our results of operations. For a detailed discussion of the application of these and other accounting policies, see Note 2 in the Notes to the Consolidated Financial Statements of this Annual Report on Form 10-K.



## Revenue Recognition

We derive our revenues from continuing operations in Real Estate our Property Management and Professional segments. We provide workforce solutions, placement services, and placement managed services. Revenues are recognized when promised workforce solutions are delivered to client partners, in an amount that reflects the consideration we expect to be entitled to in exchange for those services. We recognize revenue through the following types of services: workforce solutions, contingent placements, retained search placements, and managed services.

## Intangible Assets

We hold intangible assets with indefinite and finite lives. Intangible assets with indefinite useful lives are not amortized. Intangible assets with finite useful lives are amortized over their respective estimated useful lives, ranging from three to ten years, based on a pattern in which the economic benefit of the respective intangible asset is realized. We capitalize purchased software and internal payroll costs directly incurred in the modification of software for internal use. Software maintenance and training costs are expensed in the period incurred.

## Goodwill

Goodwill represents the difference between the enterprise value/cash paid less the fair value of all recognized net asset fair values including identifiable intangible asset values in a business combination. We review goodwill for impairment annually during the fourth quarter or whenever events or changes in circumstances indicate the carrying value of goodwill may not be recoverable.

## Income Taxes

The current provision for income taxes represents estimated amounts payable or refundable on tax returns filed or to be filed for the year. We recognizes any penalties when necessary as part of selling, general and administrative expenses. Deferred tax assets and liabilities are recorded for the estimated future tax effects of temporary differences between the tax basis of assets and liabilities and amounts are classified net as noncurrent in the consolidated balance sheets. Deferred tax assets are also recognized for net operating loss and tax credit carryovers. When appropriate, we will record a valuation allowance against net deferred tax assets to offset future tax benefits that may not be realized. We follow the guidance of Accounting Standards Codification ("ASC") Topic 740, Accounting for Uncertainty in Income Taxes.

## Recent Accounting Pronouncements

For a discussion of recent accounting pronouncements and their potential effect on our results of operations and financial condition, refer to Note 2 in the Notes to the Consolidated Financial Statements of this Annual Report on Form 10-K.

## Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

We are exposed to certain market risks from transactions we enter into in the normal course of business. Our primary market risk exposure relates to interest rate risk.

## Interest Rates

A portion of our Revolving Facility and New Term Loan are priced at variable interest rates. Accordingly, future interest rate increases could potentially put us at risk for an adverse impact on future earnings and cash flows.

## Item 8. Financial Statements and Supplementary Data.

Page

### Audited Consolidated Financial Statements of BGSF, Inc.

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and  
Stockholders of BGSF, Inc.

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of BGSF, Inc., and its subsidiaries (the "Company") as of **January 1, 2023** **December 31, 2023** and **December 26, 2021** **January 1, 2023**, and the related consolidated statements of operations and comprehensive (loss) income, changes in stockholders' equity, and cash flows for each of the three years in the period ended **January 1, 2023** **December 31, 2023**, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of **January 1, 2023** **December 31, 2023** and **December 26, 2021** **January 1, 2023**, and the results of its their operations and its cash flows for each of the three years in the period ended **January 1, 2023** **December 31, 2023**, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the Company's internal control over financial reporting as of **January 1, 2023** **December 31, 2023**, based on criteria established in *2013 Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated **March 15, 2023** **March 14, 2024** expressed an unqualified opinion.

### Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved especially challenging, subjective, or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

#### Acquisition of **Horn Solutions, Inc. Arroyo Consulting, LLC** – Fair Value of Intangible Assets

##### *Description of the Matter*

As discussed in Note 3 to the consolidated financial statements, the Company acquired substantially all of the assets and assumed certain liabilities of **Horn Solutions, Inc., Arroyo Consulting, LLC** ("Horn" Arroyo") for a purchase price of **\$42.7 million up to \$8.7 million** in cash **common stock** and **a two-year convertible promissory note**, **contingent consideration of up to \$8.5 million**. The acquisition of **Horn Arroyo** resulted in a total of \$13.9 million of intangible assets, which are comprised primarily of client partner lists. The determination of fair value for the client partner lists required management to make estimates of discounted future cash flows and included their subjective assumptions of the appropriate discount rate, the growth of revenue, and rate of attrition for the related customers. **The contingent consideration of up to \$8.5 million is based on the forecasted performance of the acquired business for the two years following the date of the acquisition.**

We identified the fair value of the intangible assets acquired **and contingent consideration liability** in the **Horn Arroyo** business combination to be a critical audit matter due to the significant judgments made by management to estimate their fair values. This required a high degree of auditor judgment and an increased extent of effort, including the need to involve our fair value specialists, when performing audit procedures to evaluate the reasonableness of management's estimates and assumptions related to the selection of discount and customer attrition rates, as well as forecasts of future revenues and cash flows.

##### *How We Addressed the Matter in Our Audit*



Our audit procedures related to the discount rates, and forecasts of future revenues and cash flows used by management to estimate the fair value of both the intangible assets acquired and contingent consideration liability in the Horn Arroyo business combination included the following, among others:

- We tested the effectiveness of controls over management's Horn Arroyo purchase price allocation, including those over the determination of the fair value of intangible assets, such as controls related to management's selection of discount rates, client attrition rate, and forecasts of future revenues and cash flows.
- With the assistance of our fair value specialists, we evaluated the reasonableness of the (i) valuation methodology, (ii) discount rates, (iii) client attrition rate, and (iv) future revenue and growth rates, including testing the source information underlying the determination of the discount rates, testing the mathematical accuracy of the calculations, and developing a range of independent estimates and comparing those to the discount rates selected by management.
- We evaluated management's ability to accurately forecast future revenues and cash flows by considering the past financial performance of Horn Arroyo and current economic factors.

/s/ Whitley Penn LLP

We have served as the Company's auditor since 2013.

Dallas, Plano, Texas  
March 15, 2023 14, 2024

BGSF, Inc. and Subsidiaries			
CONSOLIDATED BALANCE SHEETS			
(in thousands, except share amounts)			
		December 26,	
		January 1, 2023	2021
		December 31, 2023	January 1, 2023
ASSETS	ASSETS		
Current assets	Current assets		
Current assets			
Current assets			
	Cash and cash equivalents	\$ —	\$ 112,104
	Accounts receivable (net of allowance for credit losses of \$554 and \$558, respectively)		
	Accounts receivable (net of allowance for credit losses of \$554 and \$558, respectively)		
	Accounts receivable (net of allowance for credit losses of \$554 and \$558, respectively)		
	Prepaid expenses		
	Other current assets		



	Accounts receivable (net of allowance for credit losses of \$557,605 for 2022 and \$448,622 for 2021)	66,284,929	48,132,896
	Prepaid expenses	2,417,652	2,345,948
	Other current assets	7,459,195	2,381,197
	Current assets of discontinued operations	—	7,198,104
	Total current assets	76,161,776	60,170,249
	Total current assets		
	Total current assets		
	Total current assets		
Property and equipment, net	Property and equipment, net	2,081,115	4,331,052
Property and equipment, net			
Property and equipment, net			
Other assets	Other assets		Other assets
	Deposits	2,616,277	4,106,622
	Other assets	4,411,368	1,283,629
	Deferred income taxes, net	2,195,684	4,548,285
	Right-of-use asset - operating leases	4,461,633	3,914,060
	Intangible assets, net	47,552,411	33,584,910
	Goodwill	55,192,901	29,141,883
	Noncurrent assets of discontinued operations	—	7,213,276
	Total other assets	116,430,274	83,792,665
	Total assets	\$ 194,673,165	\$148,293,966
	Deposits		
	Software as a service, net		
	Deferred income taxes, net		
	Right-of-use asset - operating leases		
	Intangible assets, net		
	Goodwill		
	Total other assets		
	Total assets		
LIABILITIES AND STOCKHOLDERS' EQUITY	LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES AND STOCKHOLDERS' EQUITY			



## LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities	Current liabilities	
Current liabilities		
Current liabilities		
	Accounts payable	
	Accrued payroll and expenses	
	Line of credit (net of debt issuance costs of \$128)	
	Long-term debt, current portion	
	Accrued interest	
	Income taxes payable	
	Contingent consideration, current portion	
	Convertible note	
	Other current liabilities	
	Lease liabilities, current portion	
	Total current liabilities	
	Long-term debt, current portion	\$ 4,000,000 \$ 3,562,500
	Accrued interest	273,267 102,304
	Accounts payable	586,816 401,175
	Accrued payroll and expenses	19,170,794 16,153,920
	Contingent consideration, current portion	1,081,060 1,073,901
	Lease liability, current portion	1,841,638 1,896,253
	Other current liabilities	1,000,000 3,549,785
	Income taxes payable	253,351 381,806
	Current liabilities of discontinued operations	— 1,262,056
	Total current liabilities	28,206,926 28,383,700



Line of credit (net of deferred finance fees of \$259,469 and \$193,264 for 2022 and 2021, respectively)		22,302,423	12,587,591
Line of credit (net of debt issuance costs of \$259)			
Line of credit (net of debt issuance costs of \$259)			
Line of credit (net of debt issuance costs of \$259)			
Long-term debt, less current portion	Long-term debt, less current portion	36,000,000	23,300,000
Contingent consideration, less current portion			
Convertible note	Convertible note	4,368,000	—
Contingent consideration, less current portion		—	989,608
Lease liability, less current portion		3,049,043	2,685,270
Lease liabilities, less current portion			
Other long-term liabilities	Other long-term liabilities	10,240	3,565,218
Noncurrent liabilities of discontinued operations		—	190,395
	Total liabilities	93,936,632	71,701,782
Total liabilities			
Commitments and contingencies	Commitments and contingencies		
Commitments and contingencies			
Commitments and contingencies			
Preferred stock, \$0.01 par value per share, 500,000 shares authorized, -0- shares issued and outstanding	Preferred stock, \$0.01 par value per share, 500,000 shares authorized, -0- shares issued and outstanding	—	—
Common stock, \$0.01 par value per share; 19,500,000 shares authorized, 10,772,515 and 10,425,210 shares issued and outstanding for 2022 and 2021, respectively, net of treasury stock, at cost, 1,845 shares for 2022 and 2021, respectively		69,833	66,360
Common stock, \$0.01 par value per share; 19,500,000 shares authorized, 10,887,509 and 10,772,515 shares issued and outstanding, respectively, net of treasury stock, at cost, of 3,930 and 1,845 shares, respectively			



Additional paid in capital	Additional paid in capital	67,003,422	61,875,406
Retained earnings	Retained earnings	33,663,278	14,592,087
Accumulated other comprehensive income		—	58,331
	Total stockholders' equity	100,736,533	76,592,184
	Total liabilities and stockholders' equity	\$ 194,673,165	\$148,293,966
	Total stockholders' equity		
	Total stockholders' equity		
	Total stockholders' equity		
	Total liabilities and stockholders' equity		

The accompanying notes are an integral part of these consolidated financial statements.

**BGSF, Inc. and Subsidiaries**  
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS) INCOME  
(in thousands, except per share and dividend amounts)

		Years ended			January 1, 2023 and		December 26, 2021	
		2022	2021	2020	2023	2022	2021	2020
Revenues	Revenues	\$298,421,828	\$239,027,177	\$207,125,480				
Cost of services	Cost of services	194,874,358	158,086,274	141,086,046				
	Gross profit	103,547,470	80,940,903	66,039,434				
	Gross profit							
Selling, general and administrative expenses	Selling, general and administrative expenses	83,211,263	65,115,223	55,244,147				
Gain on contingent consideration	Gain on contingent consideration	—	(2,402,844)	(76,102)				
Impairment losses	Impairment losses	—	—	7,239,514				
Depreciation and amortization	Depreciation and amortization	4,053,258	3,698,329	4,860,788				
	Operating income (loss)	16,282,949	14,530,195	(1,228,913)				
	Operating (loss) income							
Interest expense, net	Interest expense, net	(1,362,683)	(1,432,733)	(1,583,630)				
	Interest expense, net							
	Interest expense, net							



	(Loss) income from continuing operations before income taxes			
Income tax benefit (expense) from continuing operations				
	(Loss) income from continuing operations			
Income from discontinued operations:				
	Income			
	Income			
	Income			
	Gain on sale			
	Income tax expense			
	Net (loss) income			
	Income (loss) from continuing operations before income taxes	14,920,266	13,097,462	(2,812,543)
Income tax (expense) benefit from continuing operations	(3,659,071)	(2,639,587)	740,656	
Change in unrealized (losses) gains on cash flow hedges				
Change in unrealized (losses) gains on cash flow hedges				
Change in unrealized (losses) gains on cash flow hedges				
	Other comprehensive (loss) gain			
	Net comprehensive (loss) income			
	Income (loss) from continuing operations	11,261,195	10,457,875	(2,071,887)
Income from discontinued operations:				
Net (loss) income per share - basic:				
Net (loss) income per share - basic:				
Net (loss) income per share - basic:				
	Net (loss) income from continuing operations			
	Net income from discontinued operations:			



Income				
Income				
Income				
Gain on sale				
Income tax expense				
Net (loss) income per share - basic				
Income	1,234,996	4,570,216	4,767,103	
Gain on sale	17,675,044	—	—	
Income tax expense	(4,810,362)	(918,613)	(1,253,748)	
Net income	\$ 25,360,873	\$ 14,109,478	\$ 1,441,468	
Change in unrealized losses (gains) on cash flow hedges	58,331	(181,205)	122,874	
Other comprehensive (gain) loss	58,331	(181,205)	122,874	
Net comprehensive income	\$ 25,302,542	\$ 14,290,683	\$ 1,318,594	
Net income per share - basic:				
Net Income from continuing operations	\$ 1.08	\$ 1.01	\$ (0.20)	
Net income from discontinued operations:				
Income	0.12	0.44	0.46	
Gain on sale	1.69	—	—	
Income tax expense	(0.46)	(0.09)	(0.12)	
Net income per share - basic	\$ 2.43	\$ 1.36	\$ 0.14	
Net income per share - diluted:				
Net Income from continuing operations	\$ 1.07	\$ 1.00	\$ (0.20)	
Net income from discontinued operations:				
Income	0.12	0.44	0.46	
Gain on sale	1.69	—	—	
Income tax expense	(0.46)	(0.09)	(0.12)	
Net income per share - diluted	\$ 2.42	\$ 1.35	\$ 0.14	
Net (loss) income per share - diluted:				
Net (loss) income per share - diluted:				
Net (loss) income per share - diluted:				
Net (loss) income from continuing operations				
Net (loss) income from continuing operations				
Net (loss) income from continuing operations				
Net income from discontinued operations:				
Income				



Weighted average shares outstanding:	Weighted average shares outstanding:			
	Basic	10,426,821	10,367,054	10,311,606
	Diluted	10,472,845	10,416,610	10,338,029

**BGSF, Inc. and Subsidiaries**

Years ended January 1, 2023 December 31, 2023, December 26, 2021 January 1, 2023 and December 27, 2020 December 26, 2021

	<div> <div></div> <div>Common Stock</div> <div></div> </div>							
	Preferred Stock	Shares	Par Value	Treasury Stock Amount	Additional Paid in Capital	Retained Earnings	Accumulated Other Comprehensive (Loss)/Income	Total
Stockholders' equity, December 29, 2019	—	10,309,236	\$103,093	\$(27,318)	\$59,617,787	\$ 8,763,428	—	\$68,456,990
Share-based compensation from continuing operations	—	—	—	—	785,723	—	—	785,723
Share-based compensation from discontinued operations	—	—	—	—	63,725	—	—	63,725
Issuance of restricted shares, net of 231 shares of treasury stock	—	19,143	191	(2,132)	(191)	—	—	(2,132)
Share issuance costs	—	—	—	—	(10,000)	—	—	(10,000)



Cash dividends declared	—	—	—	—	—	(5,155,148)	—	(5,155,148)
Net income	—	—	—	—	—	1,441,468	—	1,441,468
Other comprehensive loss	—	—	—	—	—	—	(122,874)	(122,874)
Stockholders' equity, December 27, 2020	—	10,328,379	103,284	(29,450)	60,457,044	5,049,748	(122,874)	65,457,752
Share-based compensation from continuing operations	—	—	—	—	1,058,096	—	—	1,058,096
Share-based compensation from discontinued operations	—	—	—	—	53,550	—	—	53,550
Issuance of shares, net of offering costs	—	—	—	—	(40,058)	—	—	(40,058)
Issuance of restricted shares, net of 610 shares of treasury stock	—	64,092	640	(8,442)	(640)	—	—	(8,442)
Issuance of ESPP shares	—	31,776	318	—	340,133	—	—	340,451
Exercise of common stock shares	—	963	10	—	7,281	—	—	7,291
Cash dividends declared	—	—	—	—	—	(4,567,139)	—	(4,567,139)
Net income	—	—	—	—	—	14,109,478	—	14,109,478
Other comprehensive gain	—	—	—	—	—	—	181,205	181,205
Stockholders' equity, December 26, 2021	—	10,425,210	\$104,252	\$(37,892)	\$61,875,406	\$14,592,087	\$ 58,331	\$76,592,184
Share-based compensation from continuing operations								
Share-based compensation from discontinued operations								
Transaction fees related to sale of discontinued operations								
Issuance of shares								
Issuance of restricted shares								



Issuance of  
ESPP shares  
Exercise of  
common stock  
options  
Cash dividends  
declared  
Net income  
Other  
comprehensive  
loss  
Stockholders'  
equity, January  
01, 2023

The accompanying notes are an integral part of these consolidated financial statements.

**BGSF, Inc. and Subsidiaries**

**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (CONTINUED)**

Years ended January 1, 2023, December 26, 2021 and December 27, 2020 (in thousands)

	Common Stock						Accumulated Other Comprehensive	
	Preferred Stock	Shares	Par Value	Treasury Stock Amount	Additional Paid in Capital	Retained Earnings	(Loss)/Income	Total
Stockholders' equity, December 26, 2021	—	10,425,210	\$ 104,252	\$ (37,892)	\$ 61,875,406	\$ 14,592,087	\$ 58,331	\$ 76,592,184
Share-based compensation from continuing operations	—	—	—	—	1,084,638	—	—	1,084,638
Share-based compensation from discontinued operations	—	—	—	—	7,697	—	—	7,697
Transaction fees related sale of discontinued operations	—	—	—	—	35,093	—	—	35,093
Issuance of shares	—	254,455	2,545	—	3,337,545	—	—	3,340,090
Issuance of restricted shares	—	32,344	323	—	(323)	—	—	—
Issuance of ESPP shares	—	59,506	594	—	653,655	—	—	654,249
Exercise of common stock shares	—	1,000	11	—	9,711	—	—	9,722
Cash dividends declared	—	—	—	—	—	(6,289,682)	—	(6,289,682)
Net income	—	—	—	—	—	25,360,873	—	25,360,873
Other comprehensive loss	—	—	—	—	—	—	(58,331)	(58,331)
Stockholders' equity, January 1, 2023	—	10,772,515	\$ 107,725	\$ (37,892)	\$ 67,003,422	\$ 33,663,278	\$ —	\$100,736,533

Years ended December 31, 2023, January 1, 2023 and December 26, 2021

	Common Stock						Accumulated Other Comprehensive	
	Preferred Stock	Shares	Par Value	Treasury Stock Amount	Additional Paid in Capital	Retained Earnings	(Loss)/Income	Total
Stockholders' equity, January 01, 2023	—	10,772	\$ 108	\$ (38)	\$ 67,003	\$ 33,663	\$ —	\$ 100,736
Share-based compensation	—	—	—	—	1,029	—	—	1,029
Issuance of restricted shares, net of 2,085 shares of treasury stock	—	57	1	(19)	(23)	—	—	(41)
Issuance of ESPP shares	—	54	—	—	512	—	—	512
Exercise of common stock options	—	5	—	—	30	—	—	30
Cash dividends declared	—	—	—	—	—	(6,507)	—	(6,507)
Net loss	—	—	—	—	—	(10,223)	—	(10,223)
Stockholders' equity, December 31, 2023	—	10,888	\$ 109	\$ (57)	\$ 68,551	\$ 16,933	\$ —	\$ 85,536



**BGSF, Inc. and Subsidiaries**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

		2022	2021	2020			2023	2022	2021
Cash flows from operating activities	Cash flows from operating activities				Cash flows from operating activities				
Net (loss) income									
(Income) from discontinued operations									
Adjustments to reconcile net (loss) income to net cash provided by (used in) operating activities:									
Depreciation									
Amortization									
Gain on sale of discontinued operations									
Impairment losses									
CARES Act credit									
Loss on disposal of property and equipment									
Net income	\$25,360,873	\$14,109,478	\$ 1,441,468						
(Income) from discontinued operations	(1,234,996)	(4,570,216)	(4,767,103)						
Adjustments to reconcile net income to net cash provided by (used in) operating activities									
Depreciation	597,382	685,546	757,038						
Amortization	3,455,876	3,012,783	4,103,750						
Impairment losses	—	—	7,239,514						
CARES Act credit	—	(2,368,049)	—						
Gain on sale of discontinued operations	(17,675,044)	—	—						



Loss on disposal of property and equipment	6,018	8,347	—
Contingent consideration adjustment	—	(2,402,843)	(76,102)
Amortization of deferred financing fees	171,693	74,812	83,052
Interest expense on contingent consideration payable	127,550	251,705	189,650
Provision for credit losses	315,036	221,240	349,362
Share-based compensation	1,084,638	1,058,096	785,723
Deferred income taxes, net of acquired deferred tax liability	2,352,601	1,279,388	(2,413,019)
Net changes in operating assets and liabilities, net of effects of acquisitions:			
Accounts receivable	(14,792,950)	(15,177,999)	5,025,576
Prepaid expenses and other current assets	(866,424)	(200,504)	(855,112)
Deposits	1,503,096	(126,404)	(208,979)
Other assets	660,512	319,178	(916,123)
Accrued interest	170,963	24,170	5,107
Accounts payable	(227,755)	156,054	(279,326)
Accrued payroll and expenses	1,632,623	5,730,002	(1,342,377)
Other current liabilities	(4,549,549)	18,977	(16,565)
Income taxes receivable and payable	(1,201,701)	(560,697)	3,128,729
Operating leases	(127,416)	(106,871)	212,663
Other long-term liabilities	(63,398)	(78,311)	7,232,667
Net cash (used in) provided by continuing operating activities	(3,300,372)	1,357,882	19,679,593
Net cash (used in) provided by discontinued operating activities	(3,821,951)	5,305,572	2,577,357
Net cash (used in) provided by operating activities	(7,122,323)	6,663,454	22,256,950



Contingent  
consideration  
adjustment

Contingent  
consideration  
adjustment

Contingent  
consideration  
adjustment

Amortization  
of debt  
issuance  
costs

Interest  
expense on  
contingent  
consideration  
payable

Provision for  
credit losses

Share-based  
compensation

Deferred  
income taxes,  
net of  
acquired  
deferred tax  
liability

Net changes  
in operating  
assets and  
liabilities, net  
of effects of  
acquisitions:

Accounts  
receivable

Prepaid  
expenses  
and other  
current  
assets

Deposits

Software as  
a service

Accounts  
payable

Accrued  
payroll and  
expenses

Accrued  
interest

Income taxes  
receivable  
and payable

Other current  
liabilities

Operating  
leases

Net changes in operating assets and liabilities, net of effects of  
acquisitions:



Other long-term liabilities				
Net cash provided by (used in) continuing operating activities				
Net cash (used in) provided by discontinued operating activities				
Net cash provided by (used in) operating activities				
Cash flows from investing activities				
Cash flows from investing activities				
Cash flows from investing activities				
Cash flows from investing activities				
Businesses acquired, net of cash acquired				
Businesses sold				
Businesses acquired, net of cash received	(33,940,000)	(3,791,210)	(22,002,109)	
Business sold	30,722,233	—	—	
Capital expenditures	(5,680,277)	(3,203,909)	(2,076,216)	
Proceeds from sale of property and equipment	—	5,158	—	
Net cash used in continuing investing activities	(8,898,044)	(6,989,961)	(24,078,325)	
Net cash used in discontinued investing activities	(25,755)	(34,505)	(68,730)	
Net cash used in investing activities	(8,923,799)	(7,024,466)	(24,147,055)	
Capital expenditures				
Capital expenditures				
Capital expenditures				



Proceeds from  
sale of  
property and  
equipment  
Net cash  
used in  
continuing  
investing  
activities  
Net cash  
used in  
discontinued  
investing  
activities  
Net cash  
used in  
investing  
activities

The accompanying notes are an integral part of these consolidated financial statements.

**BGSF, Inc. and Subsidiaries**  
CONSOLIDATED STATEMENTS OF CASH FLOWS (CONTINUED)  
(in thousands)

Years ended **January 1, 2023** December 31, 2023, **December 26, 2021** January 1, 2023 and **December 27, 2020** December 26, 2021

	2023	2023	2022	2021
Cash flows from financing activities				
Net borrowings under line of credit				
Net borrowings under line of credit				
Net borrowings under line of credit				
Proceeds from issuance of long-term debt				
Principal payments on long-term debt				
Payments of dividends				
Payments of dividends				
Payments of dividends				



Issuance of ESPP shares Issuance of shares under the 2013 Long-Term Incentive Plan and Form S-3 registration statement costs, net of exercises Contingent consideration paid Debt issuance costs Net cash (used in) provided by continuing financing activities				
		2022	2021	2020
Cash flows from financing activities				
Net change in cash and cash equivalents				
Net borrowings (payments) under line of credit		9,781,038	6,803,513	(14,367,615)
Proceeds from issuance of long-term debt		40,000,000	—	22,500,000
Principal payments on long-term debt		(26,862,500)	(2,062,500)	(1,075,000)
Payments of dividends		(6,289,682)	(4,567,139)	(5,155,148)
ESPP shares		654,249	340,451	—
Issuance of shares under the 2013 Long-Term Incentive Plan and Form S-3 registration statement, net of exercises		(1,188)	(41,209)	(12,132)
Contingent consideration paid		(1,110,000)	—	—
Deferred financing costs		(237,899)	—	—



	Net cash provided by continuing financing activities	15,934,018	473,116	1,890,105
	Net cash provided by discontinued financing activities	—	—	—
Net change in cash and cash equivalents				
	Net cash provided by financing activities	15,934,018	473,116	1,890,105
Net change in cash and cash equivalents	Net change in cash and cash equivalents	(112,104)	112,104	—
Cash and cash equivalents, beginning of year	Cash and cash equivalents, beginning of year	112,104	—	—
Cash and cash equivalents, end of year	Cash and cash equivalents, end of year	\$ —	\$ 112,104	\$ —
Supplemental cash flow information:	Supplemental cash flow information:			
Supplemental cash flow information:				
Supplemental cash flow information:				
	Cash paid for interest, net			
	Cash paid for interest, net			
	Cash paid for interest, net			
	Cash paid for taxes, net of refunds			
	Cash paid for interest	\$ 640,541	\$ 879,219	\$ 1,133,323
	Cash paid for taxes, net of refunds	\$ 7,562,241	\$ 3,675,842	\$ 995,361

The accompanying notes are an integral part of these consolidated financial statements.

**BGSF, Inc. and Subsidiaries**  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**NOTE 1 - NATURE OF OPERATIONS**



BGSF, Inc., provides consulting, managed services, and professional workforce solutions to a variety of industries through its various divisions in IT, Cyber, information technology ("IT"), Finance & Accounting, Managed Services, Solutions, and Property Management (formally known as Real Estate (apartment which includes apartment communities and commercial buildings) (collectively, with its consolidated subsidiaries, the "Company").

On February 8, 2021, the Company acquired substantially all of the assets, and assumed certain of the liabilities of Momentum Solutionz LLC ("Momentum"). See "Note 3- Acquisitions."

On March 21, 2022, the Company completed the sale of substantially all its Light Industrial segment ("InStaff") assets to Jobandtalent ("J&T"), through the wholly-owned subsidiary, Sentech Engineering Services, Inc. InStaff's financial results for reported periods have been reflected in our Consolidated Statements of Operations and Comprehensive (Loss) Income and Consolidated Statements of Cash Flows as discontinued operations. Additionally, the related assets and liabilities associated with the discontinued operations are classified as discontinued operations in the Consolidated Balance Sheets. See "Note 4 - Discontinued Operations" in the Consolidated Financial Statements included elsewhere in this report for additional information.

On December 12, 2022, the Company acquired substantially all of the assets, and assumed certain of the liabilities of Horn Solutions, Inc. and Horn Solutions Dallas, LLC (collectively "Horn Solutions"). See "Note 3- Acquisitions."

On April 24, 2023, the Company acquired substantially all of the assets and assumed certain of the liabilities of Arroyo Consulting, LLC ("Arroyo Consulting"), which is a nearshore and offshore workforce solutions company that specializes in IT and software development with operations in the United States, Colombia, and India. See "Note 3- Acquisitions."

The Company operates primarily within the United States of America in ("U.S.") through the Real Estate Property Management and Professional industry segments.

The Real Estate Property Management segment provides office and maintenance field talent to various apartment communities and commercial buildings in 36 38 states and D.C., via to property management companies responsible for the apartment communities' communities' and commercial buildings' buildings' day-to-day operations. The Real Estate segment currently operates through two divisions, BG Multifamily and BG Talent.

The Professional segment provides specialized talent and business consultants on a nationwide basis for information technology ("IT"), managed services, finance, accounting, legal and human resource client partner projects. resource. The Professional segment currently operates through across the U.S. in three divisions, IT, Consulting, Managed Services, Solutions, and Finance & Accounting, with the IT division providing additional nearshore and Accounting under various trade names including Extrinsic, American Partners, Donovan & Watkins, Vision Technology Services, Zycron, Smart Resources, L.J. Kushner & Associates, EdgeRock Technology Partners, Momentum Solutionz, offshore solutions in Colombia and Horn Solutions, India.

## NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### Basis of Presentation

The consolidated financial statements include the accounts of the Company. All significant intercompany transactions and balances have been eliminated in consolidation.

### Fiscal Year

The Company has a 52/53 week fiscal year. Fiscal years for the consolidated financial statements included herein are for the 52 weeks ended December 31, 2023, and 53 weeks ended January 1, 2023, and the 52 weeks ended December 26, 2021, and December 27, 2020, referred to herein as Fiscal 2023, 2022, 2021, and 2020, 2021, respectively.

### Reclassifications

Certain reclassifications have been made to the 2020 2022 and 2021 financial statements to conform with the 2022 2023 presentation.

### Management Estimates

The preparation of consolidated financial statements in conformity with generally accepted accounting principles in United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates affecting the financial statements include allowances for credit losses, goodwill, intangible assets, lease liability, liabilities, contingent consideration obligations related to acquisitions, and income taxes. Additionally, the valuation of share-based

## **BGSF, Inc. and Subsidiaries**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

compensation expense uses a model based upon interest rates, stock prices, maturity estimates, volatility and other factors. The

## **BGSF, Inc. and Subsidiaries**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Company believes these estimates and assumptions are reliable. However, these estimates and assumptions may change in the future based on actual experience as well as market conditions.

### Financial Instruments



The Company uses fair value measurements in areas that include, but are not limited to, the allocation of purchase price consideration to tangible and identifiable intangible assets, convertible debt, contingent consideration, and interest rate swap agreements. The carrying values of cash, and cash equivalents, accounts receivables, prepaid expenses, accounts payable, accrued liabilities, payroll and expenses, and other current assets and liabilities approximate their fair values because of the short-term nature of these instruments. The carrying value of bank debt approximates fair value due to the variable nature of the interest rates under the credit agreement with BMO Harris Bank, N.A. ("BMO") that provides for a revolving credit facility, term loan and current rates available to the Company for debt with similar terms and risk. In Fiscal 2022 and 2021, Management determined the fair value on the interest rate swap based on quoted prices from BMO.

#### Cash and Cash Equivalents

Cash and cash equivalents include all highly liquid investments with an original maturity of three months or less.

#### Concentration of Credit Risk

Concentration of credit risk is limited due to the Company's diverse client partner base and their dispersion across many different industries and geographic locations nationwide. No single client partner accounted for more than 10% of the Company's accounts receivable from continuing operations as of January 1, 2023 December 31, 2023 and December 26, 2021 January 1, 2023 or revenue from continuing operations in Fiscal 2023, 2022 2021 and 2020, 2021. Geographic revenue from continuing operations in excess of 10% of the Company's Company's consolidated revenue in Fiscal 2022 2023 and the related percentage for Fiscal 2021 2022 and 2020 2021 was generated in the following areas: areas at:

		2022	2021	2020						
	December 31, 2023					December 31, 2023			January 1, 2023	December 26, 2021
Tennessee	Tennessee	10 %	12 %	16 %						
Tennessee										
Tennessee		13 %				10 %			12 %	
Texas	Texas	23 %	23 %	15 %	Texas	25 %			23 %	

Consequently, weakness in economic conditions in these regions could have a material adverse effect on the Company's financial position and results of future operations.

#### Accounts Receivable

The Company extends credit to its client partners in the normal course of business. Accounts receivable represents unpaid balances due from client partners. The Company maintains an allowance for credit losses for expected losses resulting from client partners' non-payment of balances due to the Company. The Company's determination of the allowance for uncollectible amounts is based on management's judgments and assumptions, including general economic conditions, portfolio composition, prior credit loss, experience, evaluation of credit risk related to certain individual client partners and the Company's ongoing examination process. Receivables are written off after they are deemed to be uncollectible after all reasonable means of collection have been exhausted. Recoveries of receivables previously written off are recorded when received.

Changes in the allowance for credit losses from continuing operations for the fiscal years are as follows: follows at (in thousands):

		2022	2021		December 31, 2023		January 1, 2023
Beginning balance	Beginning balance	\$448,622	\$492,087				
Acquired allowance for credit losses - Horn Solutions	Acquired allowance for credit losses - Horn Solutions	108,983	—				
Provision for credit losses, net	Provision for credit losses, net	315,036	221,240				
Amounts written off, net	Amounts written off, net	(315,036)	(264,705)				
Ending balance	Ending balance	\$557,605	\$448,622				

#### BGSF, Inc. and Subsidiaries NOTES TO CONSOLIDATED FINANCIAL STATEMENTS



## Property and Equipment

The Company depreciates the cost of property and equipment over the estimated useful lives of the assets using the straight-line method ranging from five to seven years. The costs of leasehold improvements are amortized over the shorter of the estimated useful life or lease term. The cost of normal maintenance and repairs is charged to operating expenses as incurred. Material expenditures that increase the life of an asset are capitalized and depreciated over the estimated remaining useful life of the asset. The cost of properties sold, or otherwise disposed of, and the related accumulated depreciation or amortization, are removed from the accounts, and any gains or losses are reflected in current operations.

## Deposits

The Company maintains guaranteed costs policies for workers' compensation coverage in monopolistic states and minimal loss retention coverage in all other states. Under these policies, the Company is required to maintain refundable deposits of \$2.4 million and \$3.9 million, which are included in Deposits and other assets from continuing operations in the accompanying consolidated balance sheets, as of January 1, 2023, December 31, 2023 and December 26, 2021, respectively, January 1, 2023.

## Other Assets Software as a service

The Company capitalizes direct costs incurred in cloud computing implementation costs from hosting arrangements, and are reported as a component of Other assets. Software as a service. All other internal-use software development costs are capitalized and reported as a component of computer software within intangible assets. In Fiscal 2022, 2023, the Company added software assets of \$2.5 million \$0.6 million and reclassified \$1.3 million \$0.7 million from property and equipment related to the information technology improvement project.

The Company reviews its long-lived assets, primarily fixed assets, for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recovered. The Company looks primarily to the undiscounted future cash flows in its assessment of whether or not long-lived assets have been impaired. There were no impairments with respect to long-lived assets during Fiscal 2023, 2022, 2021 or 2020, 2021.

## Leases

The Company leases all their office space through operating leases, which expire at various dates through 2028, 2030. Many of the lease agreements obligate the Company to pay real estate taxes, insurance and certain maintenance costs, which are accounted for separately. Certain of the Company's lease arrangements contain renewal provisions from 31 to 10 years, exercisable at the Company's option. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants.

The Company determines if an arrangement is an operating lease at inception. Leases with an initial term of 12 months or less are not recorded on the balance sheet. All other leases are recorded on the balance sheet as right-of-use assets and lease liabilities for the lease term.

Right-of-use lease assets and lease liabilities are recognized at commencement date based on the present value of lease payments over the lease term and include options to extend or terminate the lease when they are reasonably certain to be exercised. The present value of lease payments is determined primarily using the incremental borrowing rate based on the information available at lease commencement date, unless the implicit rate in the lease is readily determinable. The Company's operating lease expense is recognized on a straight-line basis over the lease term and is recorded in selling, general and administrative expenses.

## Intangible Assets

The Company holds intangible assets with indefinite and finite lives. Intangible assets with indefinite useful lives are not amortized. Intangible assets with finite useful lives are amortized over their respective estimated useful lives, ranging from three to ten years, based on a pattern in which the economic benefit of the respective intangible asset is realized.

Identifiable intangible assets recognized in conjunction with acquisitions are recorded at fair value. Significant unobservable inputs are used to determine the fair value of the identifiable intangible assets based on the income approach valuation model whereby the present worth and anticipated future benefits of the identifiable intangible assets are discounted back to their net present value.

## **BGSF, Inc. and Subsidiaries** **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The Company capitalizes purchased software and internal payroll costs directly incurred in the modification of software for internal use. Software maintenance and training costs are expensed in the period incurred.

## **BGSF, Inc. and Subsidiaries** **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The Company evaluates the recoverability of intangible assets whenever events or changes in circumstances indicate that an intangible asset's carrying amount may not be recoverable. The Company considered the current and expected future economic and market conditions and its impact on each of the reporting units. The Company annually evaluates the remaining useful lives of all intangible assets to determine whether events and circumstances warrant a revision to the remaining period of amortization. In the Professional segment, first quarter of Fiscal 2023, management decided to eliminate the Company recognized a \$3.7 million use of various trade names and go to market under the BGSF brand. Management's rebranding created an impairment loss and a \$3.5 million client partner list impairment loss in Fiscal 2020 (see "Note 8 - Intangible Assets"), charge of \$22.5 million. The Company determined that there were no impairment indicators for these assets in Fiscal 2022 or 2021.



At the February 2023 Board of Directors meeting, management's plan was approved to rebrand as BGSF, eliminating various current trade names. See "Note 8 - Intangible Assets". 2022.

#### Goodwill

Goodwill represents the difference between the enterprise value/cash total consideration paid less the fair value of all recognized net asset fair values including identifiable intangible asset values in a business combination. The Company reviews goodwill for impairment annually during the fourth quarter or whenever events or changes in circumstances indicate the carrying value of goodwill may not be recoverable. The Company considered the current and expected future economic and market conditions surrounding COVID-19 and its impact on each of the reporting units. Based on annual testing, the Company has determined that there was no goodwill impairment in Fiscal 2023, 2022, 2021 or 2020, 2021.

The Company first evaluates qualitative factors to determine whether it is more likely than not (that is, a likelihood of more than 50 percent) that the fair value of the reporting unit is less than its carrying amount, including goodwill. If after qualitatively assessing the totality of events or circumstances, the Company determines that it is not more likely than not that the fair value of the reporting unit is less than its carrying amount, then further testing is unnecessary. If after assessing the totality of events or circumstances, the Company determines that it is more likely than not that the fair value of the reporting unit is less than its carrying amount, the Company then estimates the fair value of the reporting unit and compares the fair value of the reporting unit with its carrying amount, including goodwill, as discussed below.

In assessing whether it is more likely than not that an indefinite-lived intangible asset is impaired, the Company assesses relevant events and circumstances that could affect the significant inputs used to determine the fair value.

The quantitative impairment test for an indefinite-lived intangible asset consists of a comparison of the fair value of the asset with its carrying amount. If the carrying amount of an intangible asset exceeds its fair value, a reporting unit shall recognize an impairment loss in an amount equal to that excess.

The quantitative goodwill impairment test involves a two-step process. In the first step, the Company compares the fair value of each reporting unit to its carrying value. If the fair value of the reporting unit exceeds its carrying value, goodwill is not impaired and no further testing is required. If the fair value of the reporting unit is less than the carrying value, the Company must perform the second step of the impairment test to measure the amount of impairment loss. In the second step, the reporting unit's unit's fair value is allocated to all of the assets and liabilities of the reporting unit, including any unrecognized intangible assets, in a hypothetical analysis that calculates the implied fair value of goodwill in the same manner as if the reporting unit was being acquired in a business combination. If the implied fair value of the reporting unit's goodwill is less than the carrying value, the difference is recorded as an impairment loss.

#### Deferred Financing Fees Cash Flow Hedge

The unrealized gains or losses associated with the change in the fair value of the effective portion of the hedging instrument was recorded in accumulated other comprehensive income or loss. The Company reclassified the interest rate swap from accumulated other comprehensive gain or loss against interest expense in the same period in which the hedge transaction affected earnings. There were no outstanding cash flow hedges at December 31, 2023 or January 1, 2023.

#### Debt Issuance Costs

Deferred financing fees Debt issuance costs are amortized using the effective interest method over the term of the respective loans. Debt issuance costs related to a recognized debt liability are presented in the balance sheet as a direct deduction from the carrying amount of the related debt liability.

### **BGSF, Inc. and Subsidiaries**

#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

#### Contingent Consideration

The Company has an obligation, obligations, to be paid in cash, related to an acquisition its acquisitions if certain operating and financial goals are met. The fair value of this contingent consideration is determined using expected cash flows and present value technique. The fair value calculation of the expected future payments uses a discount rate commensurate with the risks of the expected cash flow. The resulting discount is amortized as interest expense over the outstanding period using the effective interest method.

### **BGSF, Inc. and Subsidiaries**

#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

#### Revenue Recognition

The Company derives its revenues from continuing operations in Real Estate Property Management and Professional segments. The Company provides segments by providing workforce solutions, placement services, and placement managed services. Revenues are recognized when promised services are delivered to client partners, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services. Revenues from continuing operations as presented on the consolidated statements of operations and comprehensive (loss) income represent services rendered to client partners less sales adjustments and allowances. Reimbursements, including those related to out-of-pocket expenses, are also included in revenues, and the related amounts of reimbursable expenses are included in cost of services.

The Company records revenue on a gross basis as a principal versus on a net basis as an agent in the presentation of revenues and expenses. The Company has concluded that gross reporting is appropriate because the Company (i) has the risk of identifying and hiring qualified field talent, (ii) has the discretion to select the field talent and establish their price and duties and (iii) bears the risk for services that are not fully paid for by client partners.



Workforce solution revenues - Field talent revenues from contracts with client partners are recognized in the amount to which the Company has a right to invoice, when the services are rendered by the Company's field talent.

Contingent placement revenues - Any revenues associated with workforce solutions that are provided on a contingent basis are recognized once the contingency is resolved, as this is when control is transferred to the client partner, usually when employment candidates start their employment.

Retained search placement revenues - Any revenues from these workforce solutions are recognized based on the contractual amount for services completed to date which best depicts the transfer of control of services, which is less than 1% of consolidated revenues.

Managed services revenues - include both workforce solution revenues and fixed fee revenues from client partner contracts. Services performed represent the transfer of control to the client partner over a given period of time. Fixed fee revenues are recognized in equal amounts at fixed intervals as promised services are delivered. **Contracts generally include an enforceable right to payment for services provided to date.**

The Company estimates the effect of placement candidates who do not remain with its client partners through the guarantee period (generally 90 days) based on historical experience. Allowances, recorded as a liability, are established to estimate these losses. Fees to client partners are generally calculated as a percentage of the new worker's annual compensation. No fees for placement workforce solutions are charged to employment candidates. These assumptions determine the timing of revenue recognition for the reported period.

Refer to Note 19 for disaggregated revenues by segment.

Payment terms in the **Company's** **Company's** contracts vary by the type and location of its client partner and the workforce solutions offered. The term between invoicing and when payment is due is not significant. There were no unsatisfied performance obligations as of **December 31, 2023** or January 1, 2023. There were no revenues recognized during Fiscal **2022** **2023** related to performance obligations satisfied or partially satisfied in previous periods. There are no contract costs capitalized. The Company did not recognize any contract impairments during Fiscal **2022**, **2023**, **2022**, and **2021**. **The opening balance of accounts receivable at December 26, 2021, was \$48.1 million.**

#### Advertising

The Company recognizes advertising expense in selling, general and administrative expenses as the services are incurred. Total advertising expense from continuing operations for Fiscal **2023**, **2022**, and **2021** and **2020** was **\$1.8 million** **\$2.1 million**, **\$1.3 million** **\$2.0 million**, and **\$1.6 million** **\$2.0 million**, respectively.

#### BGSF, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### Share-Based Compensation

The Company recognizes compensation expense in selling, general and administrative expenses over the service period for options or restricted stock that are expected to vest and records adjustments to compensation expense at the end of the service period if actual forfeitures differ from original estimates.

#### BGSF, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### Earnings Per Share

Basic earnings per common share are computed by dividing net income by the weighted average number of common shares outstanding during the period. Diluted earnings per share is calculated by dividing income available to common stockholders by the weighted average number of common shares outstanding during the period adjusted to reflect potentially dilutive securities. Antidilutive shares are excluded from the calculation of earnings per share.

The following is a reconciliation of the number of shares used in the calculation of basic and diluted earnings per share for the respective **periods: periods (in thousands):**

		January 1, 2023	December 26, 2021	December 27, 2020	December 31, 2023	January 1, 2023	December 26, 2021
Weighted-average number of common shares outstanding:	Weighted-average number of common shares outstanding:	10,426,821	10,367,054	10,311,606			
Effect of dilutive securities:	Effect of dilutive securities:						
	Stock options and restricted stock	46,024	49,556	26,423			



Stock options and restricted stock
Stock options and restricted stock
Stock options and restricted stock

Weighted-average number of diluted common shares outstanding	Weighted-average number of diluted common shares outstanding	10,472,845	10,416,610	10,338,029
--	--	------------	------------	------------

Weighted-average number of diluted common shares outstanding
Weighted-average number of diluted common shares outstanding

Stock options and restricted stock	359,650	401,450	423,350
Warrants	—	—	25,862
Convertible note	255,140	—	—
Antidilutive shares	614,790	401,450	449,212

Stock options and restricted stock	812	360	402
Convertible note	255	255	—
Antidilutive shares	1,067	615	402

## Income Taxes

The current provision for income taxes represents estimated amounts payable or refundable on tax returns filed or to be filed for the year. The Company recognizes any penalties when necessary as part of selling, general and administrative expenses. As a matter of operation, we first calculated the effective tax on continuing operations, and then allocated the remaining taxes to our discontinued operations, in accordance with Accounting Standards Codification ("ASC") Topic 740. As of December 31, 2023 and January 1, 2023, goodwill of \$45.9 million and \$50.4 million, respectively, which is limited annually and is expected to be deductible for tax purposes.

Deferred tax assets and liabilities are recorded for the estimated future tax effects of temporary differences between the tax basis of assets and liabilities and amounts are classified as noncurrent in the consolidated balance sheets. Deferred tax assets are also recognized for net operating loss and tax credit carryovers. The overall change in deferred tax assets and liabilities for the period measures the deferred tax expense or benefit for the period. Effects of changes in enacted tax laws on deferred tax assets and liabilities are reflected as adjustments to tax expense in the period of enactment. As of January 1, 2023 December 31, 2023, the Company has a \$3.9 \$2.6 million net operating loss carry forward from the 2020 EdgeRock acquisition with no expiration date. These net operating losses are subject to an annual Internal Revenue Code Section 382 limitation of \$1.3 million. Additionally, there was an increase of \$5.2 million to the deferred tax assets related to the \$22.5 million in impairment losses as of December 31, 2023.

When appropriate, the Company will record a valuation allowance against net deferred tax assets to offset future tax benefits that may not be realized. In determining whether a valuation allowance is appropriate, the Company considers whether it is more likely than not that all or some portion of our deferred tax assets will not be realized, based in part upon management's judgments regarding future events and past operating results. The Company believes that it is more likely than not that all deferred tax assets will be realized and thus, believes that a valuation allowance is not required as of January 1, 2023 December 31, 2023 or December 26, 2021 January 1, 2023.

The Company follows the guidance of Accounting Standards Codification ("ASC") ASC Topic 740, Accounting for Uncertainty in Income Taxes. ASC Topic 740 prescribes a more-likely-than-not measurement methodology to reflect the financial statement impact of uncertain tax positions taken or expected to be taken in a tax return.



## Recent Accounting Pronouncements

In August 2020, the Financial Accounting Standards Board ("FASB") issued ASU 2020-06, Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging— Contracts in Entity's Own Equity (Subtopic 815-40) ("ASU 2020-06"). The new standard eliminates the cash conversion and beneficial conversion feature models that previously required separate accounting for conversion features. Entities that had those conversion features will report less interest expense as those conversion features were recorded as debt discounts which were amortized over the term of the debt. In addition, ASU 2020-06 requires the application of the if-converted method when calculating diluted earnings per share. Under the new standard, the conversion of debt that is accounted for as a liability in its entirety will not result in any gain or loss if the conversion feature is exercised according to the original conversion terms. If those terms allowed the issuer to include cash as

### BGSF, Inc. and Subsidiaries NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### part Recent Accounting Pronouncements

In November 2023, the Financial Accounting Standards Board ("FASB") issued ASU 2023-07, Segment Reporting: Improvements to Reportable Segment Disclosures. The new standard provides guidance to improve reportable segment disclosure with enhanced reporting of significant segment expenses. The new guidance is effective after December 15, 2023, and interim periods beginning after December 15, 2024, early adoption is permitted. The Company is evaluating the impact of the **settlement** new guidance on its consolidated financial statements and related disclosures.

In December 2023, FASB issued ASU 2023-09, Income Taxes: Improvements to Income Tax Disclosures. The new standard requires annual disclosure of the **conversion** feature, specific categories in the issuer will first reduce rate reconciliation, and additional information for reconciling items that meet a quantitative threshold. Additional information may be required on reconciling items. The new guidance is effective after December 15, 2024, early adoption is permitted. The Company is evaluating the **carrying amount** impact of the convertible debt, including any unamortized premium, discount or issuance costs, by the value of the cash or other assets transferred and then recognize the remaining carrying value of the debt in the capital accounts. ASU 2020-06 was effective for fiscal years beginning after December 15, 2021. The Company adopted this ASU in Fiscal 2022, which did not have a material impact new guidance on the its consolidated financial statements, statements and related disclosures.

#### NOTE 3 - ACQUISITIONS

##### Momentum Solutionz

On February 8, 2021, the Company acquired substantially all of the assets and assumed certain liabilities of Momentum Solutionz LLC ("Momentum") for a purchase price of \$3.8 million cash, subject to customary purchase price adjustments as specified in the purchase agreement. The purchase agreement further provides for contingent consideration of up to \$2.2 million based on the performance of the acquired business for the two years following the date of acquisition. As of January 1, 2023, contingent consideration of \$1.1 million has been paid. At closing, the purchase price was paid out of currently available funds under the Company's credit agreement led by BMO. The purchase agreement contained a provision for a "true up" of acquired working capital 60 days after the closing date, which was not material.

The acquired business was assigned to the Professional segment. The acquisition of Momentum allows the Company to strengthen its operations in IT consultants and technology professionals. Momentum provides IT consulting and managed workforce solutions for organizations utilizing ERP systems. The IT consulting workforce solutions include strategic planning, software selection, road mapping, cloud migration, and implementation of ERP systems. The IT managed workforce solutions include optimization and maintenance of ERP systems. Momentum provides workforce solutions to clients throughout the United States in a variety of industries, including but not limited to hospitals, retail, universities and mid-size businesses.

The 2020 consolidated statement of operations does not include any operating results of Momentum. The Fiscal 2021 Momentum operations included forty-seven weeks for approximately \$3.5 million of revenue and of \$0.7 million operating income. All amounts recorded to goodwill are expected to be deductible for tax purposes. The acquisition has been allocated to the assets acquired and liabilities assumed as of the date of acquisition as follows:

Accounts receivable	\$	345,121
Prepaid expenses and other assets		3,626
Property plant and equipment, net		5,101
Intangible assets		3,347,970
Goodwill		2,089,823
Liabilities Assumed		(73,708)
Total net assets acquired	\$	5,717,933
Cash		3,791,210
Fair value of contingent consideration		1,926,723
Total fair value of consideration transferred for acquired business	\$	5,717,933

The allocation of the intangible assets is as follows:



	Estimated Fair Value	Estimated Useful Lives
Covenants not to compete	\$ 37,800	5 years
Trade name	1,420,000	Indefinite
Client partner list	1,890,170	10 years
Total	\$ 3,347,970	

The Company incurred costs of approximately \$0.2 million related to the Momentum acquisition. These costs were expensed as incurred in selling, general and administrative expenses.

**BGSF, Inc. and Subsidiaries**  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Horn Solutions

On December 12, 2022, the Company acquired substantially all of the assets, and assumed certain of the liabilities, of Horn Solutions. The purchase price of \$42.7 million was paid at closing with \$33.9 million in cash and \$3.4 million of the Company common stock (254,455 shares of the Company common stock privately placed under Section 4(a)(2) of the Securities Act of 1933, as amended, based upon the volume weighted average closing price of the Company's shares for the ten business days prior to closing) amended), as well as a two-year convertible promissory note of \$4.4 million with an annual interest rate of 6%, with accrued and unpaid interest to be paid quarterly. The promissory note is convertible into shares of the Company common stock at any time after the one-year anniversary of the promissory note at a conversion price equal to \$17.12 per share. The promissory note is subordinate to the Company's senior debt. An additional portion of the purchase price, \$1.0 million in cash, was held back as partial security for a post-closing purchase price adjustment, which is expected to fund in March 2023. adjustment. The asset purchase agreement contains contained a provision for a "true up" of acquired working capital within 120 days after the closing date. In May 2023, the hold back and true-up were paid, adjusting businesses acquired by \$0.1 million in goodwill. The purchase price at closing was paid out of funds under the Company's Company's credit agreement led by BMO, see "Note 12 - Debt".

The acquired business was assigned to the Professional segment. The acquisition of Horn Solutions allows allowed the Company to strengthen and expand its finance and accounting operations across the country by providing consulting, project loan staff, interim staff, direct hire, and managed services through three complementary business units, units: strategic accounting and finance, information technology, and transactional accounting and office staffing. Horn Solutions provides services to clients in a variety of industries including, but not limited to energy, financial services, healthcare, real estate and construction, service, manufacturing, and software industries.

The 2021 Shortly after closing, Horn Solutions was fully integrated into the Company's organizational structure and 2020 consolidated statements does not operate as a discrete entity. Consequently, the amount of operations do not include any operating results of Horn Solutions. The Fiscal 2022 consolidated statement of operations revenue and comprehensive income includes three weeks earnings of Horn Solutions operations, which included in the Consolidated Statement of Comprehensive (Loss) Income since the acquisition date is approximately \$1.4 million of revenue impracticable to provide.

**BGSF, Inc. and zero operating income. Subsidiaries**  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The purchase price has been allocated to the assets acquired and liabilities assumed as of the date of acquisition as follows: follows (in thousands):

Accounts receivable	\$ 3,733,515	3,734
Prepaid expenses and other assets	117,767	118
Property and equipment, net	83,234	83
Right-of-use asset - operating leases	1,528,073	1,528
Intangible assets	13,926,585	13,484
Goodwill (deductible tax basis of \$26.1 million)	26,051,018	26,610
Current liabilities assumed	(1,786,715)	(1,787)
Lease liability - operating leases	(1,528,073)	(1,528)
Total net assets acquired	\$ 42,125,404	42,242
Cash	\$ 33,940,000	33,940
Hold back (included in Other current liabilities)	1,000,000	1,000
Convertible Note	4,368,000	4,368
Common stock	3,351,000	3,351
Working capital adjustment	(533,596)	(417)
Total fair value of consideration transferred for acquired business	\$ 42,125,404	42,242

The allocation of the intangible assets is as follows: follows (in thousands):



	Estimated Fair Value	Estimated Useful Lives
Covenants not to compete	\$ 50,000	5 years
Client partner list	13,876,585	13,434
Total	\$ 13,926,585	13,484

The Company incurred costs of \$0.3 million \$0.4 million in Fiscal 2023 and Fiscal 2022 related to the Horn Solutions acquisition. These costs were expensed as incurred in selling, general and administrative expenses.

#### Arroyo Consulting

On April 24, 2023, the Company acquired substantially all of the assets, and assumed certain of the liabilities, of Arroyo Consulting for cash consideration of \$6.8 million. Certain post-closing liabilities were held back of \$0.4 million and a partial security for any indemnification obligation was held back for one year of \$0.9 million. The purchase agreement further provides for contingent consideration of up to \$8.5 million based on the performance of the acquired business for the two years following the date of acquisition. The purchase price at closing was paid out of funds under the Company's credit agreement led by BMO, see "Note 12 - Debt". The purchase agreement contained a provision for a "true up" of acquired working capital within 120 days after the closing date, which has not yet been finalized with the seller.

The acquired business was assigned to the Professional segment. The acquisition of Arroyo Consulting allows the Company to strengthen the go-to-market cross-selling efforts providing clients a cost effective alternative offering nearshore and offshore IT resources. Arroyo Consulting provides nearshore and offshore professional workforce solutions specializing in IT and software development with operations in the United States, Colombia, and India.

The 2022 and 2021 consolidated statements of operations do not include any operating results of Arroyo Consulting. The Fiscal 2023 consolidated statement of operation and comprehensive (loss) income included thirty-six weeks for approximately \$14.8 million of revenue and \$4.0 million of operating income, which included \$0.7 million in amortization expense on acquisition intangibles.

### BGSF, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The preliminary purchase price has been allocated to the assets acquired and liabilities assumed as of the date of acquisition as follows (in thousands):

Accounts receivable	\$	3,452
Right-of-use asset - operating leases		141
Intangible assets		11,468
Goodwill (no deductible tax basis)		3,836
Current liabilities assumed		(2,471)
Lease liability - operating leases		(140)
Total net assets acquired	\$	16,286
Cash	\$	6,800
Hold back, working capital*		350
Hold back, indemnities*		850
Working capital adjustment*		677
Fair value of contingent consideration		7,609
Total fair value of consideration transferred for acquired business	\$	16,286

\*Included in Other current liabilities

The allocation of the intangible assets is as follows (in thousands):

	Estimated Fair Value	Estimated Useful Lives
Covenants not to compete	\$ 352	5 years
Client partner list	10,946	10 years
Computer software	170	3 years
Total	\$ 11,468	

The Company incurred costs of \$0.6 million in Fiscal 2023 related to the Arroyo Consulting acquisition. These costs were expensed as incurred in selling, general and administrative expenses.



## Supplemental Unaudited Pro Forma Information

The Company estimates what would have been reported if the revenues and net income from continuing operations for of the periods below that would have been reported if the Momentum Horn Solutions and Horn Solutions Arroyo Consulting acquisitions had taken place on the first day of the Company's Company's Fiscal 2021 would be as follows (dollars in 2022 (in thousands, except income per share amounts) share):

		2022	2021		
		December 31, 2023		December 31, 2023	January 1, 2023
Revenues	Revenues	\$ 326,798	\$262,398		
Gross profit	Gross profit	\$ 116,781	\$ 91,073		
Net income		\$ 11,106	\$ 8,997		
Net income per share:					
Net (loss) income from continuing operations					
Net (loss) income per share from continuing operations:					
Basic	Basic	\$ 1.06	\$ 0.87		
Diluted	Diluted	\$ 1.05	\$ 0.86		

Pro forma net (loss) income from continuing operations includes amortization of identifiable intangible assets, primarily client partner lists, interest expense on additional borrowings on the Revolving Facility related to Momentum and the New Term Loan related to Horn Solutions (see and the revolving facility (the "Revolving Facility") (see "Note 12 - Debt") at a rate of 4.3% in 2022 and 2.3% in 2021 and 2.5%. The tax expense benefit of the pro forma adjustments at an effective tax rate of 23.1% 22.3% for Fiscal 2022 2023 and 20.2% 24.5% for Fiscal 2021 2022. The pro forma operating results include adjustments to Momentum Horn Solutions and Horn Solutions Arroyo Consulting related to synergy adjustments for expenses that would be duplicative and other non-recurring, non-operating and out of period expense items once integrated with the Company. There were no material nonrecurring adjustments.

## BGSF, Inc. and Subsidiaries

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Amounts set forth above are not necessarily indicative of the results that would have been attained had the Momentum Horn Solutions and Horn Solutions Arroyo Consulting acquisitions taken place on the first day of Fiscal 2021 2022 or of the results that may be achieved by the combined enterprise in the future.

#### NOTE 4 – DISCONTINUED OPERATIONS

On March 21, 2022, the Company sold substantially all of the assets and certain liabilities of InStaff to Sentech Engineering Services, Inc. ("Sentech") for a sale price of approximately \$30.3 million cash, subject to customary sales price and working capital adjustments specified in the purchase agreement, which were received in the amount of \$0.6 million in October 2022. agreement. The purchase agreement further provides provided for deferred consideration of \$2 \$2.0 million, one year following the date of the acquisition, which is included in Other current assets, see "Note 5 - Other Current Assets" was received April 3, 2023. The sale resulted in a an original pre-tax gain on sale of discontinued operations of \$17.7 million. The Company provided certain back-office services to Sentech through February 2023.

\$17.3 million, with an additional pre-tax gain of \$0.4 million recognized as part of the net working capital adjustment in October 2022.

The InStaff financial results for periods prior to the sale have been reflected in our Consolidated Statements of Operations and Comprehensive (Loss) Income and Consolidated Statements of Cash Flows as discontinued operations. Additionally, the related assets and liabilities associated with the discontinued operations in the periods presented are classified as discontinued operations in our Consolidated Balance Sheets.

The financial results of InStaff are as follows (dollars in at (in thousands):

	Fiscal Year		
	2022	2021	2020
Revenue	\$ 16,465	\$ 71,292	\$ 70,765
Cost of services	14,144	60,948	60,585



Gross profit	2,321	10,344	10,180
Selling expenses	1,062	5,684	5,314
Depreciation	24	90	99
Income from operations of discontinued operations before gain on sale and income taxes \$	\$ 1,235	\$ 4,570	\$ 4,767

**BGSF, Inc. and Subsidiaries**  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

	December 26, 2021
Carrying amount of assets included as part of discontinued operations:	
Accounts receivable	\$ 7,198
Property and equipment, net	201
Deposits	36
Right-of-use assets - operating leases	303
Intangible assets, net	1,648
Goodwill	5,025
Total assets classified as discontinued operations	\$ 14,411
Carrying amount of liabilities included as part of discontinued operations:	
Accrued payroll and expenses	\$ 1,129
Lease liability, current portion	133
Lease liability, less current portion	190
Total liabilities classified as discontinued operations	\$ 1,452

	January 1, 2023	December 26, 2021
Revenue	\$ 16,465	\$ 71,292
Cost of services	14,144	60,948
Gross profit	2,321	10,344
Selling expenses	1,062	5,684
Depreciation	24	90
Income from discontinued operations before gain on sale and income taxes	\$ 1,235	\$ 4,570

**NOTE 5 - OTHER CURRENT ASSETS**

Other current assets as of January 1, 2023 and December 26, 2021 consist of the following; following at (in thousands):

		2022	2021	December 31, 2023	January 1, 2023
CARES Act receivable	CARES Act receivable	\$2,368,049	\$2,368,049		
Deferred consideration	Deferred consideration	2,000,000	—		
Income tax receivable	Income tax receivable	1,667,235	—		
Horn Solutions working capital adjustment	Horn Solutions working capital adjustment	533,596	—		
Workers' deposit refund receivable	compensation	448,155	—		
Due from Sentech		410,771	—		



Workers' compensation deposit refund receivable			
Due from Arroyo and Sentech, respectively			
Other	Other	31,389	13,148
		<u>\$7,459,195</u>	<u>\$2,381,197</u>
		\$	=

#### CARES Act Receivable

The Employee Retention Credit ("ERC") **ERC** was established by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act allows relief to businesses affected by the coronavirus pandemic, by providing payment to employers for qualified wages and health insurance benefits for team members. The CARES Act applies to taxes incurred from March 27, 2020, through the second quarter of 2021.

#### **NOTE 6 - PROPERTY AND EQUIPMENT, NET**

Property and equipment as of January 1, 2023 and December 26, 2021 consist of the following:

	2022	2021
Leasehold improvements	\$ 1,397,316	\$ 1,384,009
Furniture and fixtures	1,505,709	1,401,015
Computer systems	4,077,083	5,839,675
	<u>6,980,108</u>	<u>8,624,699</u>
Accumulated depreciation	(4,898,993)	(4,293,647)
Property and equipment, net	<u>\$ 2,081,115</u>	<u>\$ 4,331,052</u>

Total depreciation expense from continuing operations in Fiscal 2022, 2021 and 2020 was \$0.6 million, \$0.7 million, and \$0.8 million, respectively. In Fiscal 2022, the Company added software assets of \$1.4 million and reclassified \$1.3 million to Other assets and \$1.9 million to Intangible assets related to the information technology improvement project.

### **BGSF, Inc. and Subsidiaries** NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### **NOTE 6 - PROPERTY AND EQUIPMENT, NET**

Property and equipment consist of the following at (in thousands):

	December 31, 2023	January 1, 2023
Leasehold improvements	\$ 665	\$ 1,397
Furniture and fixtures	1,152	1,506
Computer systems	3,476	4,077
	<u>5,293</u>	<u>6,980</u>
Accumulated depreciation	(4,076)	(4,899)
Property and equipment, net	<u>\$ 1,217</u>	<u>\$ 2,081</u>

Total depreciation expense from continuing operations in Fiscal 2023, 2022 and 2021 was \$0.4 million, \$0.6 million, and \$0.7 million, respectively. In Fiscal 2023, the Company completed software assets and reclassified \$0.7 million to Software as a service and \$0.2 million to Intangible assets related to the information technology improvement project.

#### **NOTE 7 - LEASES**

The Company's future continuing operating lease obligations that have not yet commenced are immaterial. Short-term leases were immaterial. **Supplemental** The supplemental balance sheet and cash flow information related to the Company's operating leases consisted of the following were as follows at (dollars in thousands):

	Fiscal Year		
	2022	2021	2020



		December 31, 2023	December 31, 2023	December 31, 2023			January 1, 2023	December 26, 2021
Weighted average remaining lease term of operation leases	Weighted average remaining lease term of operation leases	3.3 years	2.7 years	3.5 years	Weighted average remaining lease term of operation leases	3.5 years	3.3 years	2.7 years
Weighted average discount rate for continuing operating leases	Weighted average discount rate for continuing operating leases	5.2 %	5.0 %	4.9 %	Weighted average discount rate for continuing operating leases	6.5 %	5.2 %	5.0 %
Cash paid for continuing operating leases	Cash paid for continuing operating leases	\$ 2,115	\$ 2,136	\$ 1,987				
Continuing operating lease expense	Continuing operating lease expense	\$ 1,887	\$ 1,907	\$ 1,859				
Right-of-use assets obtained in exchange for new operating lease liabilities								

The undiscounted annual future minimum lease payments of continuing operations consist of the following **at** **at** (in thousands):

		January 1, 2023
2023		\$2,042,792
	December 31, 2023	December 31, 2023
2024	2024	1,538,403
2025	2025	805,455
2026	2026	401,920
2027	2027	379,132
2028		
Thereafter	Thereafter	168,333
Total lease payment	Total lease payment	5,336,035
Interest	Interest	(445,354)



Present value of lease liabilities	Present value of lease liabilities	\$4,890,681
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#### NOTE 8 - INTANGIBLE ASSETS

**Finite** In the first quarter of Fiscal 2023, management decided to eliminate the use of various trade names and **indefinite lived intangible** go to market under the BGSF brand. Management's rebranding created an impairment charge of \$22.5 million. The Company determined that there were no impairment indicators for these assets **from continuing operations consist of the following at:** in Fiscal 2022.

	January 1, 2023		
	Gross Value	Accumulated Amortization	Net Carrying Value
Finite lives:			
Client partner lists	\$ 58,609,423	\$ 38,227,373	\$ 20,382,050
Covenant not to compete	2,391,385	1,886,225	505,160
Computer software	7,207,568	3,086,933	4,120,635
	68,208,376	43,200,531	25,007,845
Indefinite lives:			
Trade names	23,977,000	1,432,434	22,544,566
Total	\$ 92,185,376	\$ 44,632,965	\$ 47,552,411

#### BGSF, Inc. and Subsidiaries NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

	December 26, 2021		
	Gross Value	Accumulated Amortization	Net Carrying Value
Finite lives:			
Client partner lists	\$ 44,732,838	\$ 36,112,796	\$ 8,620,042
Covenant not to compete	2,341,385	1,663,444	677,941
Computer software	3,594,313	1,851,952	1,742,361
	50,668,536	39,628,192	11,040,344
Indefinite lives:			
Trade names	23,977,000	1,432,434	22,544,566
Total	\$ 74,645,536	\$ 41,060,626	\$ 33,584,910

**Finite and indefinite lived intangible assets consist of the following at (in thousands):**

	December 31, 2023		
	Gross Value	Accumulated Amortization	Net Carrying Value
Finite lives:			
Client partner lists	\$ 69,114	\$ 44,150	\$ 24,964
Covenants not to compete	2,743	2,153	590
Computer software	7,825	3,009	4,816
Total	\$ 79,682	\$ 49,312	\$ 30,370

	January 1, 2023		
	Gross Value	Accumulated Amortization	Net Carrying Value



Finite lives:			
Client partner lists	\$	58,609	\$ 38,227 \$ 20,382
Covenants not to compete		2,391	1,886 505
Computer software		7,208	3,087 4,121
		68,208	43,200 25,008
Indefinite lives:			
Trade names		23,977	1,433 22,544
Total	\$	92,185	\$ 44,633 \$ 47,552

Estimated future amortization expense from continuing operations for the next five years and thereafter is as follows: follows (in thousands):

Fiscal Years Ending:	Fiscal Years Ending:	Fiscal Years Ending:
2023	\$ 6,563,709	
2024	5,442,478	
2025	4,017,497	
2026	2,882,030	
2027	2,329,279	
2028		
Thereafter	3,772,852	
Total	\$25,007,845	

Total amortization expense from continuing operations for Fiscal 2023, 2022 and 2021 was \$7.3 million, \$3.5 million and 2020 was \$3.5 million, \$3.0 million and \$4.1 million, respectively. In Fiscal 2022, 2023, the Company added software assets of \$1.7 million \$1.5 million and reclassified \$1.9 million \$0.2 million from property and equipment related to the information technology improvement project.

At the February 2023 Board of Directors meeting, management's plan was approved to rebrand as BGSF, eliminating various current trade names. \$22.5 million in trade name assets, which will be written off in 2023. Since the trade name asset has an indefinite life, the carrying value is not amortized. Thus, the impairment will have no cash impact.

#### NOTE 9 - GOODWILL

The changes in the carrying amount of goodwill from continuing operations as of and during the years ended were as follows at: at (in thousands):

	Real Estate	Professional	Total	Property Management	Professional	Total
December 27, 2020	\$1,073,755	\$25,978,305	\$27,052,060			
Additions from acquisitions	—	2,089,823	2,089,823			
December 26, 2021	1,073,755	28,068,128	29,141,883			
Additions from acquisitions	—	26,051,018	26,051,018			
January 1, 2023	\$1,073,755	\$54,119,146	\$55,192,901			
Additions from acquisitions						
December 31, 2023						

#### BGSF, Inc. and Subsidiaries NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### NOTE 10 - ACCRUED PAYROLL AND EXPENSES AND CONTINGENT CONSIDERATION

Accrued payroll and expenses from continuing operations consist of the following at: at (in thousands):







Current state income tax	716,942	765,716	919,966
Deferred income tax (benefit)	2,352,601	1,279,388	(2,413,019)
Income tax expense (benefit) from continuing operations	3,659,071	2,639,587	(740,656)
Income tax expense from discontinued operations	4,810,362	918,613	1,253,748
Income tax expense	<u>\$ 8,469,433</u>	<u>\$ 3,558,200</u>	<u>\$ 513,092</u>

	December 31, 2023	January 1, 2023	December 26, 2021
Current federal income tax	\$ (1,312)	\$ (589)	\$ (594)
Current state income tax	(825)	(717)	(766)
Deferred tax benefit (income)	5,075	(2,353)	(1,279)
Income tax benefit (expense) from continuing operations	2,938	(3,659)	(2,639)
Income tax (expense) from discontinued operations	—	(4,810)	(919)
Income tax benefit (expense)	<u>\$ 2,938</u>	<u>\$ (8,469)</u>	<u>\$ (3,558)</u>

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Significant components of the Company's deferred income taxes from continuing operations are as follows at: at (in thousands):

	January 1, 2023	December 26, 2021	December 31, 2023	January 1, 2023
Deferred tax assets:				
Deferred tax assets:				
Allowance for credit losses				
Allowance for credit losses				
Allowance for credit losses				
Goodwill and intangible assets				
Accrued payroll and expenses				
Contingent consideration				
Allowance for credit losses	\$ 127,430	\$ 103,609		
Goodwill and intangible assets	786,455	996,763		
Accrued payroll and expenses	404,050	207,600		
Contingent consideration	271,130	535,687		
Other long-term liabilities (deferred employer FICA)	—	1,843,081		
Share-based compensation	503,961	452,029		
Net operating loss carry forward	984,902	1,356,294		



Share-based compensation			
Share-based compensation			
Share-based compensation			
Net operating loss carry forward			
Deferred tax liabilities:	Deferred tax liabilities:		
Prepaid expenses and other current assets	(579,593)	(579,027)	
Fixed assets	(302,651)	(367,751)	
Prepaid expenses and other current assets			
Prepaid expenses and other current assets			
Prepaid expenses and other current assets			
Property and equipment			
Deferred income taxes, net	Deferred income taxes, net		
	\$2,195,684	\$4,548,285	
Deferred income taxes, net			
Deferred income taxes, net			

The income tax provision, reconciled to the tax computed at the statutory federal rate, is as follows: follows at (in thousands):

	2022		2021		2020	
Tax expense (benefit) at federal statutory rate	\$	3,133,256 21.0 %	\$	2,750,467 21.0 %	\$	(590,634) 21.0 %
State income taxes, net of federal benefit		794,554 5.3 %		1,100,072 8.4 %		96,269 (3.4) %
Equity, permanent differences and other		178,493 1.2 %		(503,123) (3.9) %		239,020 (8.5) %
Work Opportunity Tax Credit, net		(447,232) (3.0) %		(707,829) (5.4) %		(485,311) 17.3 %
Income tax expense (benefit) from continuing operations		3,659,071 24.5 %		2,639,587 20.1 %		(740,656) 26.4 %
Income tax expense from discontinued operations		4,810,362 24.5 %		918,613 20.1 %		1,253,748 26.4 %
Income tax expense	\$	8,469,433 24.5 %	\$	3,558,200 20.1 %	\$	513,092 26.4 %

	December 31, 2023		January 1, 2023		December 26, 2021	
Tax benefit (expense) at federal statutory rate	\$	2,764 (21.0) %	\$	(3,133) (21.0) %	\$	(2,750) (21.0) %
State income tax benefit (expense), net of federal benefit		194 (1.5) %		(795) (5.3) %		(1,100) (8.4) %
Equity, permanent differences and other		(319) 2.3 %		(178) (1.2) %		503 3.7 %
Work Opportunity Tax Credit, net		299 (2.3) %		447 3.0 %		708 5.4 %
Income tax benefit (expense) from continuing operations		2,938 (22.5) %		(3,659) (24.5) %		(2,639) (20.3) %
Income tax (expense) from discontinued operations		— — %		(4,810) (24.5) %		(919) (20.3) %
Income tax benefit (expense)	\$	2,938 (22.5) %	\$	(8,469) (24.5) %	\$	(3,558) (20.3) %



## NOTE 12 - DEBT

On July 16, 2019, the Company entered into a Credit Agreement (the "Credit Agreement"), maturing July 16, 2024, led by BMO, as lead administrative agent, lender, letters of credit issuer, and swing line lender. The Credit Agreement provides provided for a revolving facility (the "Revolving Facility") the Revolving Facility permitting the Company to borrow funds from time to time in an aggregate amount up to \$35 million. The Credit Agreement also provided for a term loan commitment (the "Term Loan") permitting the Company to borrow funds from time to time in an aggregate amount not to exceed \$30 million with principal payable quarterly, based on an annual percentage of the original principal amount as defined in the Credit Agreement, all of which has been funded. funded and repaid. The Company also had the option to request an increase in the aggregate Term Loan by \$40 million, which was done in connection with the Horn Solutions acquisition. The Company's obligations under the Credit Amendment are secured by a first priority security interest in substantially all tangible and intangible property of the Company and its subsidiaries. The Credit Agreement bore interest either at the Base Rate plus the Applicable Margin or LIBOR plus the Applicable Margin through August 17, 2022 (as such terms are defined in the Credit Agreement). The Company pays an unused commitment fee on the daily average unused amount of Revolving Facility.

On February 8, 2021, the Company borrowed \$3.8 million on the Revolving Facility in conjunction with the closing of the Momentum acquisition.

On March 21, 2022, the Company paid down the balance on the existing Term Loan and a portion of the Revolving Facility using the proceeds from the sale of InStaff (See "Note 4 - Discontinued Operations"). Facility.

On August 18, 2022, the Company entered into an amendment to the Credit Agreement with BMO, to temporarily increase the Revolving Facility to \$60 million for a period of ninety days and change which changed the interest rate component from LIBOR to the Secured Overnight Financing Rate ("SOFR"), plus the Applicable Margin (as such terms are defined in the amended credit agreement).

In connection with the Horn Solutions acquisition on December 12, 2022 (See "Note 3 - Acquisitions"), the Company borrowed \$40 exercised the option to borrow \$40.0 million, as noted above, pursuant to a second amendment to the Credit Agreement ("Second Credit

### BGSF, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Amendment"). The Company's obligations under the Second Credit Amendment are secured by a first priority security interest in substantially all tangible and intangible property of the Company and its subsidiaries. The Second Credit Amendment bears interest either at the Base Rate plus the Applicable Margin or Adjusted Term SOFR plus the Applicable Margin (as such terms are defined in the Second Credit Amendment), with requires 2.5% of the original principal balance of the New Term Loan payable on the last business day of each quarter, beginning on March 31, 2023.

On April 24, 2023, in connection with the acquisition of Arroyo Consulting, the Company entered into a Third Amendment to the Credit Agreement ("Third Credit Amendment") with BMO. The Second Third Credit Amendment contains customary affirmative revised language to permit an acquisition of a foreign entity under certain circumstances and negative covenants. modified the terms of permitted distributions and guarantors.

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On May 19, 2023, the Company entered into a Fourth Amendment to the Credit Agreement ("Fourth Credit Amendment") increasing the Revolving Facility by \$6.0 million to an aggregate amount up to \$41.0 million.

The Company is subject to a maximum Leverage Ratio and a minimum Fixed Charge Coverage Ratio as (as such terms are defined in the amended Second Credit Amendment. Amendment). The Company was in compliance with these the customary affirmative and negative covenants as of January 1, 2023 December 31, 2023.

The indebtedness under the Credit Agreement had a maturity date of July 16, 2024, which has been classified within current liabilities as of December 31, 2023. The Credit Agreement was amended and restated on March 12, 2024. See Note 21 - Subsequent Events.

#### Letter of Credit

In March 2020, in conjunction with the 2020 EdgeRock acquisition, the Company entered into a standby letter of credit arrangement, which expires December 31, 2024, for purposes of protecting a lessor against default on lease payments. As of January 1, 2023 December 31, 2023, the Company had a maximum financial exposure from this standby letter of credit totaling \$0.1 million, all of which is considered usage against the Revolving Facility. The Company has no history of default, nor is it aware of circumstances that would require it to perform under, any of these arrangements and believes that the resolution of any disputes thereunder that might arise in the future would not materially affect the Company's Company's consolidated financial statements. Accordingly, no liability has been recorded in respect to these arrangements as of December 31, 2023 or January 1, 2023.

#### Line of Credit

At January 1, 2023 December 31, 2023 and December 26, 2021 January 1, 2023, \$22.6 million \$24.9 million and \$12.8 million \$22.6 million, respectively, was outstanding on the revolving facilities. Average daily balance for Fiscal 2023, 2022 and 2021 and 2020 was \$23.1 million, \$18.4 million, \$9.9 million, and \$11.7 million \$9.9 million, respectively.

Borrowings under the revolving facilities consisted of and bore interest at: at (in thousands):

January 1, 2023	December 26, 2021
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December 31, 2023						December 31, 2023						January 1, 2023		
Base Rate	Base Rate	\$ 2,561,892	8.25 %	\$ 2,780,855	4.50 %	Base Rate	\$ 4,874	9.75	9.75	%	\$ 2,562	8.25	8.25	%
SOFR	SOFR	20,000,000	6.45 %	—	— %	SOFR	3,000	7.69	7.69	%	20,000	6.45	6.45	%
LIBOR		—	— %	10,000,000	2.35 %									
SOFR						SOFR	2,000	7.71	%	—		—	%	
SOFR						SOFR	15,000	7.77	%	—		—	%	
Total	Total	\$22,561,892		\$12,780,855										
Total														
Total														

#### Long-Term Debt

Long-term debt consisted of and bore interest at: at (in thousands):

December 31, 2023						December 31, 2023						January 1, 2023		
			January 1, 2023		December 26, 2021									
Base Rate	\$	—	— %	\$ 2,237,500	2.35 %									
Fixed rate		—	— %	24,625,000	2.39 %									
SOFR	SOFR	40,000,000	6.72 %	—	— %									
SOFR														
SOFR						\$	34,000	7.79	%	\$	40,000	6.72	%	
Long-term debt	Long-term debt	\$40,000,000		\$26,862,500										

Maturities on the Revolving Facility with BMO and long-term debt from continuing operations as of January 1, 2023, are as follows: follows at (in thousands):

Fiscal:			Fiscal:			December 31, 2023		
2023		\$ 4,000,000						
2024	2024	58,561,892						
		62,561,892						
Less deferred finance fees		(259,469)						
Less debt issuance costs								
Less debt issuance costs								
Less debt issuance costs								
Total, net	Total, net	\$62,302,423						

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#### Cash Flow Hedge

In April 2020, the Company entered into a pay-fixed/receive-floating interest rate swap agreement with our bank syndicate led by BMO that reduces the floating interest rate component on the Term Loan obligation. The \$25.0 million notional amount was designed as a cash flow hedge on the underlying variable rate interest payments against a fixed



interest rate. In accordance with cash flow hedge accounting treatment, the Company had determined that the hedge was perfectly effective using the change-in-variable-cash-flow method.

On March 21, 2022, the Company paid down the balance, on the existing Term Loan containing the \$25.0 million notional amount, which cancelled the pay-fixed/receive-floating interest rate swap agreement. The unrealized gains or losses associated with the change in the fair value of the effective portion of the hedging instrument was recorded in accumulated other comprehensive income or loss. The Company reclassified the interest rate swap from accumulated other comprehensive gain or loss against interest expense in the same period in which the hedge transaction affected earnings. As of January 1, 2023, these amounts have been removed from Other long-term assets (See "Note 13 - Fair Value Measurements").

#### Convertible Note

At December 31, 2023 and January 1, 2023, the Company has had a two-year convertible unsecured promissory note of \$4.4 million \$4.4 million due to the seller with an annual interest rate of 6%, with accrued and unpaid interest to be paid quarterly related to the Horn Solutions acquisition on December 12, 2022 (See "Note 3 - Acquisitions"). The promissory note is convertible into shares of our common stock at any time after the one-year anniversary of the promissory note at a conversion price equal to \$17.12 per share. share, prior to the maturity date of December 12, 2024. The promissory note is subordinate to the Company's senior debt.

### NOTE 13 - FAIR VALUE MEASUREMENTS

The accounting standard for fair value measurements defines fair value and establishes a market-based framework or hierarchy for measuring fair value. The standard is applicable whenever assets and liabilities are measured at fair value. The fair value hierarchy established prioritizes the inputs used in valuation techniques into three levels as follows:

Level 1 - Observable inputs - quoted prices in active markets for identical assets and liabilities;

Level 2 - Observable inputs other than the quoted prices in active markets for identical assets and liabilities - includes quoted prices for similar instruments, quoted prices for identical or similar instruments in inactive markets, and amounts derived from valuation models where all significant inputs are observable in active markets, for substantially the full term of the financial instrument; and

Level 3 - Unobservable inputs - includes amounts derived from valuation models where one or more significant inputs are unobservable and require us to develop relevant assumptions.

The following table summarizes the financial assets and liabilities measured at fair value on a recurring basis and the level they fall within the fair value hierarchy: hierarchy (in thousands):

Amounts Recorded at Fair Value	Financial Statement Classification	Fair Value Hierarchy	January 1, 2023	December 26, 2021
Interest rate swap	Other long-term assets	Level 2	\$ —	\$ 58,331
Convertible note	Convertible note	Level 2	\$ 4,368,000	\$ —
Contingent consideration, net	Contingent consideration, net - current and long-term	Level 3	\$ 1,081,060	\$ 2,063,509

The changes in the Level 2 fair value measurements from December 26, 2021 to January 1, 2023 relate to the convertible note of \$4.4 million on the Horn acquisition and to the cancellation of the interest rate swap agreement. Key inputs in determining the fair value of the convertible note was the interest rate of 6% and the interest rate swap as of December 26, 2021 were quoted prices from BMO.

Amounts Recorded at Fair Value	Financial Statement Classification	Fair Value Hierarchy	December 31, 2023	January 1, 2023
Convertible note	Convertible note	Level 2	\$ 4,368	\$ 4,368
Contingent consideration, net	Contingent consideration, net - current and long-term	Level 3	\$ 8,320	\$ 1,081

The changes in the Level 3 fair value measurements from December 26, 2021 January 1, 2023 to January 1, 2023 December 31, 2023 relates primarily to payments of \$1.1 million on the Momentum an increase from Arroyo Consulting acquisition, partially including \$0.7 million in accretion, offset by \$0.1 million in accretion, a \$1.1 million payment for the 2021 Momentum Solutionz acquisition. Key inputs in determining the fair

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value of the contingent consideration as of January 1, 2023 December 31, 2023 and December 26, 2021 January 1, 2023 included discount rates of approximately 7% and 9%, respectively, as well as management's management's estimates of future sales volumes and earnings before interest, income taxes, depreciation, and amortization ("EBITDA").

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**NOTE 14 - CONTINGENCIES**

The Company is engaged from time to time in legal matters and proceedings arising out of its normal course of business. The Company establishes a liability related to its legal proceedings and claims when it has determined that it is probable that the Company has incurred a liability and the related amount can be reasonably estimated. If the Company determines that an obligation is reasonably possible, the Company will, if material, disclose the nature of the loss contingency and the estimated range of possible loss, or include a statement that no estimate of the loss can be made.

The Company insures against, subject to and upon the terms and conditions of various insurance policies, claims or losses from workers' compensation, general liability, automobile liability, property damage, professional liability, employment practices, fiduciary liability, fidelity losses, crime and cyber risk, and director and officer liability. Under the Company's bylaws, the Company's directors and officers are indemnified against certain liabilities arising out of the performance of their duties to the Company. The Company also has an insurance policy for our directors and officers to insure them against liabilities arising from the performance of their positions with the Company or its subsidiaries. The Company has also entered into indemnification agreements with its directors and certain officers.

Employment Agreements

The CEO's employment agreement was effective as of October 1, 2018 and the agreement remains in effect under successive one-year extensions unless terminated pursuant to its terms. In the event that her employment is terminated by the Company without cause or by her for good reason, she will be entitled to (i) twelve months of base salary, (ii) accrued bonus, and (iii) eighteen months of COBRA premiums for her and her dependents, grossed-up for federal income taxes. Additionally, she will become 100% vested in any awards outstanding under the Company's 2013 Long-Term Incentive Plan, as amended, ("2013 Plan") or similar plan. Should there be a sale of the Company that results in the termination of her employment or a material adverse change in her duties and responsibilities, she will be entitled to all of the amounts listed above, however, base salary shall equal eighteen months.

The CFO's employment agreement was effective as of October 1, 2018 March 20, 2023 and the agreement remains in effect under through December 31, 2025 with successive one-year extensions unless terminated pursuant to its terms. In the event that his employment is terminated by the Company without cause or by him for good reason, he will be entitled to (i) twelve months of base salary, (ii) accrued bonus, and (iii) eighteen months of COBRA premiums for him and his dependents, grossed-up for federal income taxes. Additionally, he will become 100% vested in any awards outstanding under the 2013 Plan or similar plan. Should there be a sale of the Company that results in the termination of his employment, or a material adverse change in his duties and responsibilities, he will be entitled to all of the amounts listed above, however, base salary shall equal eighteen months. See "Note 21 - Subsequent Events."

**NOTE 15 - EQUITY**

Authorized capital stock consists of 19,500,000 shares of common stock, par value \$0.01 per share and 500,000 shares of undesignated preferred stock, par value \$0.01 per share.

Restricted Stock

The Company issued net restricted common stock of 32,344 56,889 and 64,092 32,344 shares to team members and non-team member (non-employee) directors in Fiscal 2022 2023 and Fiscal 2021, 2022, respectively. The restricted shares of \$0.01 par value per share were issued under the 2013 Plan and contain a three-year service condition. The restricted stock constitutes issued and outstanding shares of the Company's common stock, except for the right of disposal, for all purposes during the period of restriction including voting rights and dividend distributions.

In connection with the vesting portions of the restricted stock, the Company repurchased 610, 2,085, -0-, and 231 610 shares of company stock, or treasury stock, to satisfy the withholding obligation in connection with the vesting of a portion of the restricted stock for Fiscal 2023, 2022, and 2021, and 2020, respectively. No treasury stock was repurchased in 2022. Treasury stock is accounted for under the cost method whereby the entire cost of the acquired stock is recorded.

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**NOTE 16 - SHARE-BASED COMPENSATION**Stock Options

In December 2013, the board of directors adopted the original 2013 Plan. Under the original 2013 Plan team members, directors and consultants of the Company may receive incentive stock options and other awards. To the extent any option or award expires unexercised or is canceled, terminated or forfeited in any manner without the issuance of common stock thereunder, such shares shall again be available for issuance under the original 2013 Plan. As of January 1, 2023 December 31, 2023, a total of 1,012,967 1,215,987 shares remain available for issuance under the 2013 Plan.

The term of each option is determined by the board of directors but cannot exceed 10 years. Unless otherwise specified in an option agreement, options vest and become exercisable on the following schedule: 20% immediately and 20% on each anniversary date of the grant date. Each option shall be designated as an incentive stock option ("ISO") or a non-qualified option ("NQO"). The exercise price of an ISO shall not be less than the fair market value of the stock covered by the ISO at the grant date; provided, however, the exercise price of an ISO granted to any person who owns, directly or indirectly, stock of the Company constituting more than 10% of the total combined voting power of all classes of outstanding stock of the Company or of any affiliate of the Company, shall not be less than 110% of such fair market value.



The fair value of each option award was estimated on the date of grant using a Black-Scholes option pricing model and the assumptions in the following table. Because this option valuation model incorporates ranges of assumptions for inputs, those ranges are disclosed below. The Company bases the estimate of expected volatility on the historical volatilities of the Company for a period equal to the expected life of the option.

The risk-free rate for periods within the expected term of the option is based on the U.S. Treasury yield curve in effect at the time of grant. The Company expects to use historical data to estimate team member termination within the valuation model; separate groups of team members that have similar historical termination behavior are considered separately for valuation purposes. The Company believes these estimates and assumptions are reasonable. However, these estimates and assumptions may change in the future based on actual experience as well as market conditions.

For Fiscal 2023, 2022, 2021 and 2020, 2021, the Company recognized \$0.7 million, \$0.4 million, \$0.6 million, \$0.7 million and \$0.5 million, \$0.6 million of compensation expense from continuing operations related to stock awards, respectively. Unamortized share-based compensation expense from continuing operations as of January 1, 2023, December 31, 2023 amounted to \$0.9 million which is expected to be recognized over the next 2.7, 2.6 years.

The following assumptions were used to estimate the fair value of stock options for the years ended:

	2022	2021	2020					
Weighted- Weighted- average average fair value fair value of awards of awards	\$5.17	\$4.91	\$4.60					
Weighted-average fair value of awards								
Weighted-average fair value of awards								
Weighted-average risk-free interest rate								
Weighted-average risk-free interest rate								
Weighted- Weighted- average average risk-free risk-free interest interest rate rate	2.7 %	0.8 %	0.4 %	4.2 %	%	2.7 %	%	0.8 %
Weighted- Weighted- average average dividend dividend yield yield	\$0.54	\$0.35	\$0.96					
Weighted- Weighted- average average volatility volatility factor factor	54.6 %	53.3 %	53.6 %					
Weighted-average volatility factor								
Weighted-average volatility factor				52.8 %	%	54.6 %	%	53.3 %
Weighted- Weighted- average average expected expected life life	10.0 yrs	10.0 yrs	10.0 yrs	Weighted-average expected life	10.0 yrs	10.0 yrs	10.0 yrs	10.0 yrs

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A summary of stock option activity is presented as follows:

Weighted Average Number of Shares	Weighted Exercise Price Per Share	Weighted Average Remaining Contractual Life	Total Intrinsic Value of Options (in thousands)	Number of Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life	Total Intrinsic Value of Options (in thousands)
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Awards outstanding at					
December 29, 2019	564,845	\$ 18.90	7.7	\$ 2,412	
Granted	93,610	\$ 10.28			
Forfeited / Canceled	(5,800)	\$ 22.22			
Awards outstanding at					
December 27, 2020	652,655	\$ 17.63	7.1	\$ 665	
Granted	116,374	\$ 11.57			
Exercised	(1,350)	\$ 9.72			
Exercised					
Exercised					
Forfeited / Canceled	(72,350)	\$ 15.01			
Forfeited / Canceled					
Forfeited / Canceled					
Awards outstanding at					
December 26, 2021					
Awards outstanding at					
December 26, 2021					
Awards outstanding at					
December 26, 2021	695,329	\$ 16.91	6.7	\$ 665	
Granted	164,000	\$ 12.87			
Exercised	(1,000)	\$ 9.75			
Exercised					
Exercised					
Forfeited / Canceled					
Forfeited / Canceled					
Forfeited / Canceled	(36,650)	\$ 17.65			
Awards outstanding at					
January 1, 2023	821,679	\$ 16.08	6.4	\$ 1,907	
Awards outstanding at					
January 1, 2023					
Awards outstanding at					
January 1, 2023					
Granted					
Exercised					
Exercised					
Exercised					
Forfeited / Canceled					
Forfeited / Canceled					
Forfeited / Canceled					
Awards outstanding at					
December 31, 2023					
Awards outstanding at					
December 31, 2023					
Awards outstanding at					
December 31, 2023					



Awards exercisable at				
December 26, 2021		475,765	\$ 17.62	5.9 \$ 452
Awards exercisable at January 1, 2023	Awards exercisable at January 1, 2023	573,863	\$ 17.50	5.4 \$ 1,164
Awards exercisable at January 1, 2023				
Awards exercisable at January 1, 2023				
Awards exercisable at December 31, 2023				

		Number of Shares	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Grant Date Fair Value
Non-vested outstanding at December 26, 2021		219,564	\$ 12.73		
Non-vested outstanding at January 1, 2023	Non-vested outstanding at January 1, 2023	247,816	\$ 7.64		
Non-vested outstanding at December 31, 2023					

During Fiscal 2023 and 2022, there were no cashless stock option exercises. During Fiscal 2021 the Company issued 213 shares of common stock upon the cashless exercise of 600 stock options, and during Fiscal 2020, there were no cashless stock option exercises. options.

Restricted Stock

For Fiscal 2023, 2022 2021 and 2020,2021, the Company recognized \$0.4 million\$0.6 million, \$0.5 million\$0.4 million, and \$0.3 million\$0.5 million, respectively, of compensation expense related to restricted stock. Unamortized share-based compensation expense as of January 1, 2023December 31, 2023 amounted to \$0.6 million which is expected to be recognized over the next 1.8 years.

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A summary of restricted stock activity is presented as follows:

	Number of Shares	Weighted Average Grant Date Fair Value	
Restricted outstanding at December 29, 2019	18,000	\$ 28.61	
Issued	21,624	\$ 9.02	
Vested	(14,406)	\$ 21.26	
	Number of Shares		Weighted Average Grant Date Fair Value



Restricted outstanding at December 27, 2020	Restricted outstanding at December 27, 2020	25,218	\$ 16.01
Issued	Issued	64,702	\$ 12.04
Vested	Vested	(29,076)	\$ 15.75
Restricted outstanding at December 26, 2021	Restricted outstanding at December 26, 2021	60,844	\$ 11.91
Restricted outstanding at December 26, 2021	outstanding		
Restricted outstanding at December 26, 2021	outstanding		
Issued	Issued	32,344	\$ 13.14
Vested	Vested	(31,168)	\$ 11.79
Restricted outstanding at January 1, 2023	Restricted outstanding at January 1, 2023	62,020	\$ 12.21
Restricted outstanding at January 1, 2023	outstanding		
Restricted outstanding at January 1, 2023	outstanding		
Issued			
Vested			
Forfeited / Canceled			
Restricted outstanding at December 31, 2023			
Nonvested at December 26, 2021	Nonvested outstanding at December 26, 2021	60,844	\$ 11.91
Nonvested outstanding at January 1, 2023	Nonvested outstanding at January 1, 2023	62,020	\$ 12.21
Nonvested at January 1, 2023	outstanding		
Nonvested outstanding at January 1, 2023	outstanding		
Nonvested outstanding at December 31, 2023			

#### Warrant Activity

For Fiscal 2023, 2022 2021 and 2020, 2021, the Company did not recognize compensation cost related to warrants. There was no unamortized stock compensation expense remaining to be recognized as of January 1, 2023 December 31, 2023.

A summary of warrant activity is presented as follows:



	Number of Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life	Total Intrinsic Value of Warrants (in thousands)
Warrants outstanding at December 29, 2019	64,482	\$ 13.84	0.8	\$ 473
Expired	(38,620)	\$ 11.85		
Warrants exercisable at December 27, 2020	25,862	\$ 16.80	0.4	\$ —
Expired	(25,862)	\$ 16.80		
Warrants outstanding at December 26, 2021 and January 1, 2023	—	\$ —	0.0	\$ —
Warrants exercisable at December 26, 2021 and January 1, 2023	—	\$ —	0.0	\$ —

	Number of Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life	Total Intrinsic Value of Warrants (in thousands)
Warrants outstanding at December 27, 2020	25,862	\$ 16.80	0.4	\$ —
Expired	(25,862)	\$ 16.80		
Warrants outstanding at December 26, 2021, January 1, 2023, and December 31, 2023	—	\$ —	0.0	\$ —
Warrants exercisable January 1, 2023 and December 31, 2023	—	\$ —	0.0	\$ —

There were no non-vested warrants outstanding at January 1, 2023, December 31, 2023, December 26, 2021, January 1, 2023, and December 27, 2020, December 26, 2021. There were no exercises of warrants in Fiscal 2023, 2022, 2021, and 2020, 2021.

The intrinsic value in the tables above is the amount by which the market value of the underlying stock exceeded the exercise price of outstanding options or warrants, before applicable income taxes and represents the amount holders would have realized if all in-the-money options or warrants had been exercised on the last business day of the period indicated.

**BGSF, Inc. and Subsidiaries**  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

2020 Employee Stock Purchase Plan ("2020 ESPP")

In November 2020, the Company's shareholders approved the 2020 ESPP. Under the 2020 ESPP, eligible team members of the Company may elect for payroll deductions to purchase shares on each purchase date during an offering period. A total of 250,000 shares of common stock of BGSF, Inc. were initially reserved for issuance pursuant to the 2020 ESPP. For Fiscal 2022, 2023, and 2021, 2022, the Company issued 59,506 54,305 and 31,776 59,506 shares of common stock under the 2020 ESPP, respectively.

**BGSF, Inc. and Subsidiaries**  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**NOTE 17 - RELATED PARTY TRANSACTIONS**

There were no related party transactions in Fiscal 2023, 2022, 2021, or 2020, 2021.

**NOTE 18 - TEAM MEMBER BENEFIT PLAN**

Defined Contribution Plan

The Company provides a defined contribution plan (the "401(k) Plan") for the benefit of its eligible team members and field talent. The 401(k) Plan allows participants to make contributions subject to applicable statutory limitations. The Company matches participants contributions 100% up to the first 3% and 50% of the next 2% of a team member or field talent's compensation. The Company contributed \$1.5 million \$2.0 million, \$1.5 million and \$1.3 million \$1.5 million from continuing operations to the 401(k) Plan for Fiscal 2023, 2022 2021 and 2020, 2021, respectively.

**NOTE 19 - BUSINESS SEGMENTS**

The Company has continuing operations within two industry segments: Real Estate through the Property Management and Professional, Professional segments.



Segment (loss) income from continuing operations includes all revenue and cost of services, direct selling expenses, depreciation and amortization expense and excludes all general and administrative (home office) expenses. Assets of home office include cash, unallocated prepaid expenses, property and equipment, deferred tax assets, and other assets.

The following table provides a reconciliation of revenue and (loss) income from continuing operations by reportable segment to consolidated results for the periods indicated: indicated at (in thousands):

	2022	2021	2020
Revenue:			
Real Estate	\$ 121,093,109	\$ 92,017,975	\$ 68,755,975
Professional	177,328,719	147,009,202	138,369,505
Total	<u>\$ 298,421,828</u>	<u>\$ 239,027,177</u>	<u>\$ 207,125,480</u>

Depreciation:			
Real Estate	\$ 178,904	\$ 210,180	\$ 218,425
Professional	354,905	389,995	404,590
Home office	63,573	85,371	134,023
Total	<u>\$ 597,382</u>	<u>\$ 685,546</u>	<u>\$ 757,038</u>
Amortization:			
Professional	\$ 2,337,535	\$ 2,430,827	\$ 3,923,063
Home office	1,118,341	581,956	180,687
Total	<u>\$ 3,455,876</u>	<u>\$ 3,012,783</u>	<u>\$ 4,103,750</u>
Operating income (loss):			
Real Estate	\$ 19,803,015	\$ 14,663,443	\$ 9,671,504
Professional - without CARES Act credit and impairment loss	15,603,944	10,340,171	7,514,924
Professional - CARES Act credit	—	921,093	—
Professional - impairment loss	—	—	(7,239,514)
Home office - general and administrative	(19,124,010)	(14,947,796)	(11,251,929)
Home office - CARES Act credit	—	1,150,440	—
Home office - gain on contingent consideration	—	2,402,844	76,102
Total	<u>\$ 16,282,949</u>	<u>\$ 14,530,195</u>	<u>\$ (1,228,913)</u>

	December 31, 2023	January 1, 2023	December 26, 2021
Revenue:			
Property Management	\$ 125,077	\$ 121,093	\$ 92,018
Professional	188,090	177,329	147,009
Total	<u>\$ 313,167</u>	<u>\$ 298,422</u>	<u>\$ 239,027</u>

Depreciation:			
Property Management	\$ 133	\$ 179	\$ 210
Professional	263	355	390
Home office	50	63	85
Total	<u>\$ 446</u>	<u>\$ 597</u>	<u>\$ 685</u>
Amortization:			
Professional	\$ 6,198	\$ 2,338	\$ 2,431
Home office	1,130	1,119	582
Total	<u>\$ 7,328</u>	<u>\$ 3,457</u>	<u>\$ 3,013</u>

**BGSF, Inc. and Subsidiaries**  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS



	December 31, 2023	December 31, 2023	January 1, 2023	December 26, 2021
Operating (loss) income:				
Property Management				
Property Management				
Property Management				
Professional - without CARES Act credit and impairment loss				
Professional - CARES Act credit				
Professional - impairment loss				
Home office - general and administrative				
Home office - general and administrative				
Home office - general and administrative				
Home office - CARES Act credit				
Home office - gain on contingent consideration				
Total				
Capital	Capital	2022	2021	2020
Expenditures:	Expenditures:			
Real Estate	\$	135,259	\$ 105,547	\$ 81,918
Capital Expenditures:				
Capital Expenditures:				
Property Management				
Property Management				
Property Management				
Professional	Professional	89,840	107,476	184,611
Home office				
Home office				
Home office	Home office	5,455,178	2,990,886	1,809,687
Total	Total	\$ 5,680,277	\$ 3,203,909	\$2,076,216
Total Assets:	Total Assets:			
Real Estate	\$	29,302,189	\$ 20,753,085	
Total Assets:				
Total Assets:				
Property Management				
Property Management				



Property Management				
Professional				
Professional				
Professional	Professional	141,018,474	92,782,442	
Home office	Home office	24,352,502	20,347,059	
Discontinued operations		—	14,411,380	
Home office				
Home office				
Total	Total	\$ 194,673,165	\$148,293,966	
Total				
Total				

#### NOTE 20 - QUARTERLY FINANCIAL DATA (UNAUDITED)

	2022				
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Fiscal Year
Revenues	\$ 68,542,277	\$ 74,089,166	\$ 78,507,873	\$ 77,282,512	\$ 298,421,828
Gross profit	\$ 23,430,799	\$ 25,059,426	\$ 27,999,845	\$ 27,057,401	\$ 103,547,470
Income from continuing operations	\$ 2,007,769	\$ 3,183,642	\$ 4,652,473	\$ 1,417,311	\$ 11,261,195
Income (loss) from discontinued operations, net of tax	\$ 13,792,014	\$ (7,228)	\$ —	\$ 314,892	\$ 14,099,678
Net income	\$ 15,799,783	\$ 3,176,414	\$ 4,652,473	\$ 1,732,203	\$ 25,360,873
Net income per share - basic:					
Income from continuing operations	\$ 0.19	\$ 0.30	\$ 0.44	\$ 0.14	\$ 1.08
Income from discontinued operations	0.12	—	—	—	0.12
Gain on sale	1.66	—	—	0.03	1.69
Income tax expense	(0.45)	—	—	(0.01)	(0.46)
Net income per share - basic	\$ 1.52	\$ 0.30	\$ 0.44	\$ 0.16	\$ 2.43
Net income per share - diluted:					
Income from continuing operations	\$ 0.19	\$ 0.30	\$ 0.44	\$ 0.14	\$ 1.07
Income from discontinued operations	0.12	—	—	—	0.12
Gain on sale	1.65	—	—	0.03	1.69
Income tax expense	(0.45)	—	—	(0.01)	(0.46)
Net income per share - diluted	\$ 1.51	\$ 0.30	\$ 0.44	\$ 0.16	\$ 2.42
Weighted-average shares outstanding:					
Basic	10,428,897	10,472,353	10,492,396	10,500,733	10,426,821
Diluted	10,485,104	10,514,261	10,532,918	10,544,323	10,472,845

	December 31, 2023				
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Fiscal Year
Revenues	\$ 75,316	\$ 80,800	\$ 83,484	\$ 73,567	\$ 313,167
Gross profit	\$ 26,784	\$ 29,574	\$ 29,979	\$ 25,447	\$ 111,784
Net (loss) income	\$ (16,466)	\$ 2,604	\$ 2,640	\$ 999	\$ (10,223)
Net (loss) income per share:					
Basic	\$ (1.54)	\$ 0.24	\$ 0.24	\$ 0.11	\$ (0.95)
Diluted	\$ (1.54)	\$ 0.24	\$ 0.24	\$ 0.11	\$ (0.95)



Weighted-average shares outstanding:					
Basic		10,712	10,759	10,791	10,812
Diluted		10,712	10,770	10,803	10,823

**BGSF, Inc. and Subsidiaries**  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

		2021				
		First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Fiscal Year
		January 1, 2023				
		First Quarter				Fourth Quarter
Revenues	Revenues	\$ 49,750,192	\$57,397,722	\$64,184,813	\$67,694,450	\$239,027,177
Gross Profit	Gross Profit	\$ 16,214,709	\$19,247,481	\$22,046,888	\$23,431,825	\$ 80,940,903
(Loss) income from continuing operations		\$ (211,583)	\$ 2,635,226	\$ 3,713,480	\$ 4,320,752	\$ 10,457,875
Income from discontinued operations, net of tax		\$ 923,380	\$ 807,612	\$ 930,129	\$ 990,482	\$ 3,651,603
Income from continuing operations						
Income from continuing operations						
Income from continuing operations						
Income (loss) from discontinued operations, net of tax						
Net income	Net income	\$ 711,797	\$ 3,442,838	\$ 4,643,609	\$ 5,311,234	\$ 14,109,478
Net (loss) income per share - basic:						
Net income per share - basic:						
Net income per share - basic:						
	Income from continuing operations					
	Income from continuing operations					
	Income from continuing operations					
	Income from discontinued operations					
	Gain on sale					
	Income tax expense					
	Net income per share - basic					
	Continuing operations	\$ (0.02)	\$ 0.25	\$ 0.36	\$ 0.42	\$ 1.01
	Discontinued operations	\$ 0.09	\$ 0.08	\$ 0.09	\$ 0.09	\$ 0.35
	Net income per share - basic	\$ 0.07	\$ 0.33	\$ 0.45	\$ 0.51	\$ 1.36
Net (loss) income per share - diluted:						



Continuing operations	\$	(0.02)	\$	0.25	\$	0.36	\$	0.41	\$	1.00
Discontinued operations		0.09		0.08		0.09		0.09		0.35
Net income per share - diluted	\$	0.07	\$	0.33	\$	0.45	\$	0.50	\$	1.35

Net income per share - diluted:

Net income per share - diluted:

Net income per share - diluted:

Income from  
continuing operations

Income from  
continuing operations

Income from  
continuing operations

Income from  
discontinued  
operations

Income from  
discontinued  
operations

0.12 — — —

Gain on sale

Gain on sale 1.66 — — 0.03

Income tax  
expense

Net income  
per share -  
diluted

Weighted-  
average  
shares

Weighted-average  
shares outstanding:

Basic 10,332,817 10,340,243 10,380,902 10,414,262 10,367,054

Diluted 10,394,841 10,391,925 10,427,114 10,464,885 10,416,610

Weighted-average shares  
outstanding:

Weighted-average shares  
outstanding:

Basic

Basic

Basic

Diluted

## BGSF, Inc. and Subsidiaries

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### NOTE 21 - SUBSEQUENT EVENTS

##### Dividend

On February 13, 2023 February 7, 2024, the Company's Company's board of directors declared a cash dividend in the amount of \$0.15 per share of common stock to be paid on March 2, 2023 February 27, 2024 to all shareholders of record as of the close of business on February 23, 2023 February 20, 2024.

##### Trade names

At the February 2023 Board of Directors meeting, management's plan was approved to rebrand as BGSF, eliminating various current trade names. Management intends to complete this rebranding by the end of the second quarter of 2023. The decision to rebrand creates an indication of impairment of the \$22.5 million in trade name assets, which will be written off in 2023. Since the trade name asset has an indefinite life, the carrying value is not amortized. Thus, the impairment will have no cash impact.

##### Appointment of Chief Financial Officer and Secretary Credit Agreement



On March 3, 2023 March 12, 2024, the Board Credit Agreement was amended and restated through the Company's entry into an Amended and Restated Credit Agreement with certain lenders, BMO Bank, N.A., as administrative agent, letter of Directors credit Issuer, and swing line lender, and BMO Capital Markets Corp., as sole lead arranger and sole book runner. The Amended and Restated Credit Agreement has a maturity date of March 12, 2028. The Amended and Restated Credit Agreement provides for a revolving credit facility permitting us to borrow funds from time to time in an aggregate amount up to \$40 million. Term loans with an outstanding principal balance of \$34 million were outstanding under the Credit Agreement remain outstanding under the Amended and Restated Credit Agreement. The Amended and Restated Credit Agreement further provides for a delayed draw term loan commitment of \$4.3 million. The Company is required to repay the term loans in quarterly principal installments in an amount equal to 2.5% of the Company approved aggregate principal balance thereof. The Amended and Restated Credit Agreement provides for interest either at the appointment of John Barnett, Base Rate plus the Applicable Margin, or the Adjusted Term SOFR plus the Applicable Margin (in each case, as Chief Financial Officer and Secretary of the Company, effective March 20, 2023 (the "Commencement Date"). B G Staff Services, Inc., a subsidiary of the Company, entered into an Executive Employment Agreement (the "Employment Agreement") with Mr. Barnett. The Employment Agreement remains in effect through December 31, 2025, and then under successive one-year extensions unless terminated pursuant to its terms.

In the event that Mr. Barnett's employment is terminated for any reason, he is eligible to receive his accrued but unpaid base salary, earned but unpaid acquisition bonus, and (if the termination is due to death, involuntary termination without "cause," termination for "good reason," or expiration of the employment period) earned but unpaid bonus for the preceding fiscal year and a prorated annual bonus for the fiscal year in which the termination occurs (each calculated as described such terms are defined in the Employment Amended and Restated Credit Agreement).

## **BGSF, Inc. The Amended and Subsidiaries**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Resignation Restated Credit Agreement also provides for letter of Chief Financial Officer credit fees and Secretary.

On March 3, 2023, Dan Hollenbach resigned commitment fees as further described therein. The Company's obligations under the Chief Financial Officer Amended and Secretary of the Company and its subsidiaries, effective March 20, 2023, and will then act as Restated Credit Amendment are secured by a senior advisor with BGSF through April 30, 2024. Mr. Hollenbach's resignation was part first priority security interest in substantially all of the Company's leadership succession plan and Mr. Hollenbach's planned retirement.

On March 3, 2023, the Company its Subsidiaries' tangible and BG Staff Services, Inc., a subsidiary of the Company, entered into an Amended Executive Employment Agreement (the "Amended Employment Agreement") with Mr. Hollenbach. intangible property. The Amended Employment and Restated Credit Agreement remains in effect through April 30, 2024, unless extended by mutual agreement or terminated pursuant to its terms.

In the event that Mr. Hollenbach's employment is terminated provides for any reason, he is eligible to receive his accrued but unpaid base salary, earned but unpaid acquisition bonus, a maximum Leverage Ratio and (if the termination is due to death or expiration of the employment period) unpaid bonus for 2023 and unpaid acquisition bonus (each calculated as described a minimum Fixed Charge Coverage Ratio (as such terms are defined in the Amended Employment Agreement). The Company and Mr. Hollenbach have Restated Credit Amendment), and also entered into a confidentiality, non-solicitation, non-interference provides for, among other items, representations and non-competition agreement, which remains in effect. warranties and affirmative and negative covenants, as described therein.

#### **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

#### **Item 9A. Controls and Procedures.**

##### **Evaluation of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act) as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report to provide reasonable assurance that information we are required to disclose in reports that are filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms specified by the Securities and Exchange Commission and that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

We note that the design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving the stated goals under all potential future conditions.

##### **Management's Annual Report on Internal Control Over Financial Reporting**

Management of the Company, including the President and Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934, as amended) for the Company. The Company's internal control system was designed to provide reasonable assurance to management and the Company's Board of Directors regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Consistent with guidance issued by the Securities and Exchange Commission on recently acquired businesses, management's assessment of the effectiveness of internal controls over financial reporting, with respect thereto may be omitted. As of December 31, 2023, management has excluded Arroyo Consulting from the assessment of internal controls over financial reporting. Arroyo Consulting was acquired by the Company in a purchase business combination during Fiscal 2023 whose total assets and revenues



excluded from management's assessment and our audit of Internal Control Over Financial Reporting represent 10.9% and 4.7%, respectively, of the related consolidated financial statements as of and for the year ended December 31, 2023.

Management assessed the effectiveness of the Company's internal control over financial reporting as of January 1, 2023 December 31, 2023, using criteria established in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and concluded that the Company maintained effective internal control over financial reporting as of January 1, 2023 December 31, 2023.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

The effectiveness of our internal control over financial reporting as of January 1, 2023 December 31, 2023, has been audited by Whitley Penn LLP, an independent registered public accounting firm, as stated in their report which is included herein.

#### Changes in Internal Control Over Financial Reporting

There have not been any changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) promulgated under the Exchange Act) during the fourth quarter of Fiscal 2022 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and  
Stockholders of BGSF, Inc.

#### Opinion on Internal Control Over Financial Reporting

We have audited BGSF, Inc.'s and its subsidiaries (the "Company") internal control over financial reporting as of January 1, 2023 December 31, 2023, based on criteria established in 2013 Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of January 1, 2023 December 31, 2023, based on criteria established in 2013 Internal Control — Integrated Framework issued by COSO, the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated balance sheets of the Company, as of January 1, 2023 December 31, 2023 and December 26, 2021 January 1, 2023, and the related consolidated statements of operations and comprehensive (loss) income, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended January 1, 2023 December 31, 2023, and the related notes (collectively referred to as the "consolidated financial statements"), and our report dated March 15, 2023 March 14, 2024 expressed an unqualified opinion on those consolidated financial statements.

#### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the entity's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

As described in Management's Report on Internal Control Over Financial Reporting, management has excluded the Arroyo Consulting, LLC business from its assessment of internal control over financial reporting as of December 31, 2023 because it was acquired by the Company in a purchase business combination during fiscal 2023. We have also excluded the Arroyo Consulting, LLC business from our audit of internal control over financial reporting. The Arroyo Consulting, LLC business is a wholly-owned subsidiary whose total assets and total revenues excluded from management's assessment and our audit of internal control over financial reporting represent approximately 10.9% and 4.7%, respectively, of the related consolidated financial statement amounts as of and for the year ended December 31, 2023.

#### Definition and Limitations of Internal Control Over Financial Reporting

An entity's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. An entity's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the entity; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the entity are being made only in accordance with authorizations of management and directors of the entity; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the entity's assets that could have a material effect on the financial statements.



Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Whitley Penn LLP

Dallas, Plano, Texas  
March 15, 2023 14, 2024

#### Item 9B. Other Information.

None. Trading Plans

During the three months ended December 31, 2023, no director or Section 16 officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

#### Item 9C. Disclosure Regarding Foreign Jurisdictions That Prevent Inspections

None.

### PART III

#### Item 10. Directors, Executive Officers and Corporate Governance.

##### Board Composition

Our Board of Directors (the "Board") consists of six seven directors. Our Board has determined that the following directors are "independent" as defined under the rules of the NYSE: C. David Allen, Jr., Richard L. Baum, Donna Carroll, Jr., Douglas E. Hailey, Cynthia Marshall, and Paul A. Seid. The authorized number of directors may be changed by resolution of our Board. Vacancies on our Board can be filled by resolution of our Board. Our Board is divided into three classes, each serving staggered, three-year terms:

- Our Class I director is directors are Beth Garvey and her term Donna Carroll. The terms of each director will expire at the 2024 annual meeting of stockholders;
- Our Class II directors are Richard L. Baum, Jr., Cynthia Marshall, and Paul A. Seid, and the term Seid. The terms of each director will expire at the 2025 annual meeting of stockholders; and
- Our Class III directors are C. David Allen, Jr. and Douglas E. Hailey the term Hailey. The terms of each director will expire at the 2023 2026 annual meeting of stockholders.

As a result, only one class of directors will be elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective terms.

##### Board Leadership and Role in Risk Oversight

Meetings of our Board (including executive sessions other than executive sessions consisting only of independent directors) are presided over by our Chair of the Board, Beth Garvey. Our Board does not have a formal policy addressing whether or not the roles of chair and chief executive officer should be separate or combined. The directors serving on the Board possess considerable professional and industry experience, significant experience as directors of both public and private companies and a unique knowledge of the challenges and opportunities that the Company faces. As such, the Board believes that it is in the best position to evaluate the needs of the Company and to determine how best to organize the Company's leadership structure to meet those needs. While the Board believes it is important to retain the flexibility to determine whether the roles of chair and chief executive officer should be separated or combined in one individual, the Board believes that our structure represents the appropriate allocation of roles and responsibilities at this time. Our Board believes that Ms. Garvey is currently best situated to preside over meetings of our Board because of her familiarity with our business and ability to effectively identify strategic priorities and lead the discussion and execution of strategy. Ms. Garvey works closely with senior management and various Board members to identify appropriate topics of consideration for the Board and to plan effective and informative Board meetings.

Our Board oversees the risk management activities designed and implemented by our management and executes its oversight responsibility for risk management both directly and through its committees. The full Board also considers specific risk topics, including risks associated with our strategic plan, our whistle blower program, business operations and capital structure, and ESG matters. In addition, our Board receives detailed regular reports from members of our senior management and other personnel that include assessments and potential mitigation of the risks and exposures involved with their respective areas of responsibility.

Our Board delegates to the Audit Committee oversight of our risk management process. Our other Board committees also consider and address risk as they perform their respective committee responsibilities. All committees report to the full Board as appropriate, including when a matter rises to the level of a material or enterprise level risk.

##### Committees of the Board

The standing committees of our Board consist of an Audit Committee, a Compensation Committee, and a Nominating and Corporate Governance Committee. Each of the committees reports to our Board as they deem appropriate and as our Board may request. The composition, duties and responsibilities of these committees are set forth below.

##### Audit Committee



The Audit Committee is responsible for, among other matters: (1) appointing, retaining and evaluating our independent registered public accounting firm and approving all services to be performed by them; (2) overseeing our independent registered public accounting firm's qualifications, independence and performance; (3) overseeing the financial reporting process and discussing with management and our independent registered public accounting firm the interim and annual financial statements that we file with the SEC; (4) reviewing and monitoring our accounting principles, accounting policies, financial and accounting controls and compliance with legal and regulatory requirements; (5) establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls or auditing matters; (6) reviewing and approving related person transactions; and (7) overseeing the risk management process.

Our Audit Committee consists of C. David Allen, Jr., Richard L. Baum, Jr., Donna Carroll and Douglas E. Hailey. We believe that each qualifies as independent directors according to the rules and regulations of the SEC and NYSE with respect to audit committee membership. We also believe that Mr. Hailey and Mr. Allen qualify as our "audit committee financial expert," as such term is defined in Item 407(d)(5)(ii) of Regulation S-K. Our Board has adopted a written charter for the Audit Committee, which is available on our home office website under the investor relations tab at [www.bgsf.com](http://www.bgsf.com). The information on our website is not part of this Annual Report on Form 10-K.

#### *Compensation Committee*

The Compensation Committee is responsible for, among other matters: (1) reviewing key team member (i.e., employee) compensation goals, policies, plans and programs; (2) reviewing and approving the compensation of our directors, president and executive officer and other executive officers; (3) reviewing and approving employment agreements and other similar arrangements between us and our executive officers; and (4) administering our stock plans and other incentive compensation plans, including our 2013 Long-Term Incentive Plan and our 2020 Employee Stock Purchase Plan. The Committee shall have the authority to delegate any of its responsibilities, along with the authority to take action in relation to such responsibilities, to one or more subcommittees as the committee may deem appropriate in its sole discretion. The Compensation Committee may invite such members of management to its meetings as it deems appropriate. However, the Compensation Committee meets regularly without such members present, and in all cases no officer may be present at meetings at which such officer's compensation or performance is discussed or determined. The Committee has the authority, in its sole discretion, to select, retain and obtain the advice of a compensation consultant as necessary to assist with the execution of its duties and responsibilities. Neither the Compensation Committee nor management engaged a compensation consultant with respect to Fiscal 2022, 2023.

Our Compensation Committee consists of C. David Allen, Jr., Richard L. Baum, Jr., Cynthia Marshall, Donna Carroll and Paul A. Seid. Our Board has adopted a written charter for the Compensation Committee, which is available on our home office website under the investor relations tab at [www.bgsf.com](http://www.bgsf.com). The information on our website is not part of this Annual Report on Form 10-K.

#### *Nominating and Corporate Governance Committee*

We have a Nominating and Corporate Governance Committee, which identifies, evaluates and recommends qualified nominees to serve on our Board, develops and oversees our internal corporate governance processes and maintains a management succession plan. Our Nominating and Corporate Governance Committee charter defines the committee's primary duties. The Nominating and Corporate Governance Committee will evaluate nominees for director, including nominees recommended by stockholders, using all relevant criteria, including diversity of experience and background. The Nominating and Corporate Governance Committee will consider any director candidates recommended by the Company's stockholders provided that the notice and information requirements specified by Section 2.06(b)–(c) of the Bylaws (relating to direct stockholder nominations) are complied with. Our Nominating and Corporate Governance Committee consists of Richard L.

Baum, Jr., Douglas E. Hailey, Cynthia Marshall, and Paul A. Seid. A copy of the Nominating and Corporate Governance Committee's charter is available on our home office website, under the investor relations tab at [www.bgsf.com](http://www.bgsf.com). The information on our website is not part of this Annual Report on Form 10-K.

#### *Other Committees*

Our Board may establish other committees as it deems necessary or appropriate from time to time.

### **Family Relationships**

There are no family relationships among any of our executive officers or any of our directors.

### **Directors**

#### **C. David Allen, Jr.**

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#### **Independent Director**

**Age:** 59 60

**Director Since:** 2014

**Committees Served:** Audit Committee, Compensation Committee

Starting in 2022, Mr. Allen has served as Chief Financial Officer of Life Sciences Logistics, a Blackstone portfolio company. From 2016 to 2022, Mr. Allen has served as Chief Financial Officer of Smart Start, LLC, a provider of automotive technology products. Prior to Smart Start, from 2015 to 2016, Mr. Allen has served as Chief Financial Officer of Graebel Vanlines Holdings, LLC, a provider of commercial and residential logistics, moving and storage services. Prior to Graebel, from 2009 to 2015, Mr. Allen served as an officer of Snelling Services, LLC, a workforce solutions and contract provider. From 2010 to 2015, Mr. Allen served as President and Chief Executive Officer. From 2009 to 2010 he served as Chief Financial Officer. Prior to Snelling, Mr. Allen served for three years as Chief Operating Officer and six years as Chief Financial Officer for Telvista Inc., a business process outsourcer providing customer relationship management solutions. He earned a Master of Business Administration degree from the Tuck School at Dartmouth College in 1993 and received a Bachelor of Business Administration from Stephen F. Austin State University with honors in 1986. Our Board benefits from Mr. Allen's extensive experience in the workforce solutions industry as well as his financial expertise.

#### **Richard L. Baum, Jr.**



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**Independent Director****Age:** 62 63**Director Since:** 2013**Committees Served:** Audit Committee, Compensation Committee (Chair), Nominating and Corporate Governance Committee (Chair)

Richard L. Baum, Jr. served on the board of managers of LTN Acquisition, LLC (the former parent of the predecessor to BGSF, Inc.) since its inception and was appointed to serve on our Board in November 2013. Since March 2013, Mr. Baum has been Chairman of the Board of Unique Fabricating, Inc. (NYSE American: UFAB). Mr. Baum joined Taglich Private Equity LLC in 2005 and currently is an active director with a number of private companies where Taglich has an investment. Prior to joining Taglich, Mr. Baum led a group that purchased a private equity portfolio from Transamerica Business Credit. From 1998 to 2003, Mr. Baum was a Managing Director in the small business merger and acquisition practices of Wachovia Securities and its predecessor, First Union Securities. From 1988 through 1998, Mr. Baum was a Principal with the Mid-Atlantic Companies, Ltd., a financial services firm acquired by First Union in 1998. Mr. Baum received a Bachelor of Science from Drexel University and a Master of Business Administration from the Wharton School of the University of Pennsylvania. Our Board benefits from Mr. Baum's perspective and experience with our ongoing operations and strategy that he has obtained through his prolonged service to the company and due to his ability to assist with the evaluation of potential acquisitions.

**Donna Carroll**

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**Independent Director****Age:** 59**Director Since:** 2023**Committees Served:** Audit Committee, Compensation Committee

Ms. Carroll has served as the Founder and President of Human Factor, LLC, a provider of advisory, consulting, and leadership development services to public sector and non-profit organizations since July 2020. From January 2017 to July 2020, Ms. Carroll served, among other roles, as Chief Sales Officer of Supplemental Health Care, a private healthcare staffing and professional services company. Ms. Carroll is also member of the Board of Directors of Champions Community Foundation, Inc., on the Leadership Advisory Council of the Women Business Collaborative, and a former advisory Board member of Phaidon International. She attended Kalamazoo Valley Community College and holds a Certificate in Leading Change and Organizational Leadership from the University of Georgia – Terry College of Business, and a Certificate in the Future of Work: Leading Modern Workplaces through the Wharton School of the University of Pennsylvania. Additionally, she is a Certified Professional Coach and COR.E Dynamics | Leadership Dynamics Specialist. Our Board benefits from Ms. Carroll's substantial experience in the professional services and staffing industry.

**Beth Garvey**

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**Chair, President and Chief Executive Officer****Age:** 57 58**Director Since:** 2020

Beth Garvey began serving as assumed the role of President and Chief Executive Officer of the Company in October 2018. Ms. Garvey 2018, having previously served as Chief Operating Officer of the Company from since August 2016 and 2016. She joined the Company through the Company's acquisition of substantially all of the assets of InStaff Holding Corporation and InStaff Personnel, LLC ("InStaff") in 2013. Ms. Garvey started at InStaff 2013, where she began her career in 1998 as Director of Human Resources subsequently serving as Director of Operations, VP of

Operations, Senior VP of Operations, COO and ultimately CEO prior to our acquisition. The later became CEO. Ms. Garvey has been consistently recognized by the Staffing Industry Analysts has recognized her as one of a top figure in North America Staffing 100 list for the previous 3 five years and has been included her in the Global Power 150 – Women in Staffing list for the past 6 six years. In addition, Additionally, D CEO has named Ms. Garvey lauded her as one of the top Dallas 500 Business Leaders 4 times. In 2010, Ms. Garvey was a on seven occasions, while the Dallas Business Journal honored her with the 'Women in Business' honoree recognizing outstanding local women business leaders who not only make award for her significant industry and community impact. Ms. Garvey achievements were further underscored when she emerged as a difference finalist in their industries, but also in their communities. Beth currently the EY Entrepreneur of the Year® 2020 Award for the Southwest region. Currently, she serves on the Board of Directors of the National Association of Corporate Directors in North Texas and holds the Chair position at Junior Achievement of Dallas, and the Dallas. As a Board of Directors Member of the Dallas Regional Chamber, where she is currently serves as a member of the DEI Diversity Leadership Sub-Council prior co-chair of and has previously co-chaired the Talent Attraction committee. She is a past chair of Ms. Garvey has held leadership roles in various organizations, including chairing the Executive Committee Women's Roundtable and participating in the International Women's Forum. Additionally, she contributes as a board member of Business Council for the Dallas Executive Women's Roundtable. She Arts and is a member of YTexas and founding Board Member of the YTexas Foundation an initiative of Texas CEOs to help advance workforce development initiatives for students and veterans actively involved in the State of Texas. In addition, she is a member of the Leadership Committee for the Dallas 50/50 Women on Boards. Boards initiative. Ms. Garvey was named Garvey's extensive experience in the workforce solutions industry combined with her steadfast commitment to community impact positions her as a finalist in catalyst for positive change within the EY Entrepreneur of the Year® 2020 Award for the Southwest region. Company. Our Board benefits from Ms. Garvey's Garvey's extensive experience in the workforce solutions industry.

**Douglas E. Hailey**

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**Independent Director****Age:** 61 62**Director Since:** 2013**Committees Served:** Audit Committee (Chair), Nominating and Corporate Governance Committee



Douglas E. Hailey served on the board of managers of LTN Acquisition, LLC (the former parent of the predecessor to BGSF, Inc.) since its inception and was appointed to our Board in November 2013. Mr. Hailey is the managing director of Taglich Private Equity LLC. Mr. Hailey joined Taglich Brothers, Inc. in 1994 as Head of Investment Banking and is an employee, not a partner, director, shareholder or executive officer. Taglich Brothers, Inc. is not an affiliate of Taglich Private Equity LLC. He co-led the private equity initiative in 2001 and currently participates in evaluating and executing new investments. Prior to joining Taglich Brothers, Inc., Mr. Hailey spent five years with Weatherly Financial Group, assisting in sponsoring leveraged buyouts and five years in structured finance lending at Heller Financial and the Bank of New York. He received a Bachelor of Business Administration from Eastern New Mexico University and a Master of Business Administration in Finance from the University of Texas. Our Board benefits from Mr. Hailey's perspective and experience with our ongoing operations and strategy that he has obtained through his prolonged service to the company and due to his ability to assist with the evaluation of potential acquisitions.

Cynthia Marshall

**Independent Director**  
**Age:** 63 64  
**Director Since:** 2020  
**Committees Served:** Compensation Committee, Nominating and Corporate Governance Committee

Ms. Marshall is currently the CEO of the Dallas Mavericks, is Founder, President and CEO of the consulting firm Marshalling Resources. The Marshalling Resources consulting firm specializes in leadership, diversity and inclusion, culture transformation and overall optimization of people resources. Ms. Marshall worked with The Dow Chemical Company in 2017 and 2018 to develop and implement a strategy for institutionalizing an inclusive culture. Prior to this position, Ms. Marshall retired from a 36-year career at AT&T, where she had ultimately served as SVP - Human Resources and Chief Diversity Officer. She was responsible for identifying and developing leaders, aligning employees with the company's vision and priorities, overseeing major business unit HR support, performance development, employee engagement, skills transformation initiatives, EEO and Affirmative Action. She led the team that created a world class Diversity and Inclusion culture, earning AT&T a top 3 ranking on Diversity Inc's 2017 Top 50 list of companies. Ms. Marshall also spearheaded the work that for the first-time placed AT&T on Fortune's 100 Best Companies to Work For list in 2017 (one of only two Fortune 50 companies). Before her SVP-Human Resources and Chief Diversity Officer roles, Ms. Marshall served as President - AT&T North Carolina where she became the first African-American chair of the North Carolina State Chamber of Commerce. Marshall graduated from the University of California-Berkeley with degrees in Business Administration and Human Resources Management and holds four honorary Doctorate degrees. Ms. Marshall has chaired a variety of non-profit boards and is currently on the board of Dallas CASA, Dallas Regional Chamber, Texas Women's Foundation, Texas 2036 and a member of the Executive Leadership Council. Our Board benefits from Ms. Marshall's extensive leadership and business experience and her expertise with respect to human resources and culture.

Paul A. Seid

**Independent Director**  
**Age:** 74 75  
**Director Since:** 2014  
**Committees Served:** Compensation Committee, Nominating and Corporate Governance Committee

Since 2010, Mr. Seid has served on the board of directors of BioVentrix, a medical device company. Starting in 2013, he has served as Chief Executive Officer of RST Automation, a maker of hospital robotic devices which was established 2004. For the past eighteen years he has been President of Strategic Data Marketing, a research and data collection company. He has also founded, bought and/ or sold over twenty companies in Asia, Europe, North, and South America. Mr. Seid graduated from Queen's College, a division of the City University of New York, in 1968 with a Bachelor's degree in Political Science. Mr. Seid has held numerous other board of directors and consulting positions. Our Board benefits from Mr. Seid's extensive experience growing diverse businesses.

Information about our Executive Officers

Our Board appoints our executive officers and updates the executive officer positions as needed throughout the fiscal year. Each executive officer serves at the behest of our Board and until their successors are appointed, or until the earlier of their death, resignation or removal.

The following table sets forth certain information with respect to our executive officers as of the date of this Annual Report on Form 10-K:

Name	Age	Position
Beth Garvey	57 58	Chair, President and Chief Executive Officer
Dan Hollenbach John Barnett	67 57	Chief Financial Officer and Secretary

Beth Garvey began serving as assumed the role of President and Chief Executive Officer of the Company in October 2018. Ms. Garvey 2018, having previously served as Chief Operating Officer of the Company from since August 2016 and 2016. She joined the Company through the Company's acquisition of substantially all of the assets of InStaff Holding Corporation and InStaff Personnel, LLC ("InStaff") in 2013. Ms. Garvey started at InStaff 2013, where she began her career in 1998 as Director of Human Resources subsequently serving as Director of Operations, VP of Operations, Senior VP of Operations, COO and ultimately CEO prior to our acquisition. The later became CEO. Ms. Garvey has been consistently recognized by the Staffing Industry Analysts has recognized her as one of a top figure in North America Staffing 100 list for the previous 2 five years and has been included her in the Global Power 150 – Women in Staffing list for the past 3 six years. In addition, Additionally, D CEO has named Garvey lauded her as one of the top Dallas 500 Business Leaders 4 times. In 2010, Ms. Garvey was a on seven occasions, while the Dallas Business Journal honored her with the 'Women in Business' honoree recognizing outstanding local women business leaders who not only make award for her significant industry and community impact. Ms. Garvey achievements were further underscored when she emerged as a difference finalist in their industries, but also in their communities. Beth currently the EY Entrepreneur of the Year® 2020 Award for the Southwest region. Currently, she serves on the Board of Directors of the National Association of Corporate Directors in North Texas and holds the Chair position at Junior Achievement of Dallas, and



the Dallas. As a Board of Directors Member of the Dallas Regional Chamber, where she is currently serves as a member of the DEI Diversity Leadership Sub-Council prior co-chair of and has previously co-chaired the Talent Attraction committee. She is a past chair of Ms. Garvey has held leadership roles in various organizations, including chairing the Executive Committee Women's Roundtable and participating in the International Women's Forum. Additionally, she contributes as a board member of Business Council for the Dallas Executive Women's Roundtable. She Arts and is a member of YTexas and founding Board Member of the YTexas Foundation an initiative of Texas CEOs to help advance workforce development initiatives for students and veterans actively involved in the State of Texas. In addition, she is a member of the Leadership Committee for the Dallas 50/50 Women on Boards. Boards initiative. Ms. Garvey was named Garvey's extensive experience in the workforce solutions industry combined with her steadfast commitment to community impact positions her as a finalist in catalyst for positive change within the EY Entrepreneur of the Year® 2020 Award for the Southwest region. Company.

Dan Hollenbach John Barnett joined as CFO Chief Financial Officer and Secretary in August 2015. March 2023. Prior to joining the Company, Mr. Hollenbach was Barnett served as Chief Financial Officer of Protective Insurance (NASDAQ: PTVC) from October 2019 to February 2022 and as Chief Financial Officer of First Acceptance (NYSE: FAC) from November 2018 to September 2019. He also served in senior leadership roles for both Broadcast Music, Inc. and Anheuser-Busch. Mr. Barnett earned a Bachelor of Science degree from the CFO U.S. Military Academy at West Point, a Master of Cybergy Holdings, Inc. (OTC: CYBG), Science in Engineering Management from Missouri University of Science and Technology, and an advisory service and products company for MBA from the federal and state governments, and commercial client partners, from May 2014 to August 2015. Prior to this position, he led the consulting practice for Robert Half Management Resources University of Illinois Urbana-Champaign. Early in Colorado from June 2010 to May 2014. From August 2004 to July 2009, Dan was the CFO for Global Employment Holdings (OTC: GEYH), a national workforce solution, consulting, and professional employer organization company. Mr. Hollenbach began his career, Barnett served in the Audit and Assurance Services practice U.S. Army advancing to the rank of EY before entering the corporate world. He has over three decades of experience in corporate accounting and finance, including expertise in initial public offerings, SEC reporting, mergers and acquisitions, Sarbanes-Oxley, treasury management, process improvement, and all phases of audit, tax, and reporting. Additionally, he has served on audit committees and led negotiations of multiple senior debt restructurings. He is a CPA in the State of Texas, holds a Chartered Global Management Accountant certification, and received his B.B.A. in accounting from Texas Tech University. Captain.

#### Code of Ethics

We have adopted a Code of Ethics that applies to all of our team members, including our chief executive officer and our chief financial officer (who is our principal accounting officer). Our Code of Ethics is available on our home office website, under the investor relations tab at [www.bgsf.com](http://www.bgsf.com). If we amend or grant a waiver of one or more of the provisions of our Code of Ethics, we intend to satisfy the requirements under Item 5.05 of Item 8-K regarding the disclosure of amendments to or waivers from provisions of our Code of Ethics that apply to our principal executive, financial and accounting officers by posting the required information on our home office website at the above address. Our website is not part of this Annual Report on Form 10-K.

#### Corporate Governance Guidelines

The Board has adopted Corporate Governance Guidelines on a number of significant matters, including director qualifications, director responsibilities, board committees, director access to officers, employees, and advisors, director compensation, related party transactions, annual performance evaluations, and chief executive officer and director succession. A copy of the Corporate Governance Guidelines is posted on our home office website, under the investor relations tab at [www.bgsf.com](http://www.bgsf.com). The information on our website is not part of this Annual Report on Form 10-K.

#### Clawback Policy

The Board has adopted a Clawback Policy providing for the recoupment of certain executive compensation in the event of an accounting restatement resulting from material noncompliance with financial reporting requirements under the U.S. federal securities laws. The Clawback Policy is available on our home office website under the investor relations tab at [www.bgsf.com](http://www.bgsf.com). The information on our website is not a part of this Annual Report on Form 10-K.

#### Delinquent Section 16(a) Beneficial Ownership Reporting Compliance Reports

Based on a review of reports filed by our directors, executive officers, and beneficial owners of more than 10% of our shares of common stock pursuant to Section 16 of the Securities Exchange Act of 1934, as amended, and other information available to us, we believe that all such ownership reports required to be filed by those reporting persons during and with respect to Fiscal 2022 2023 were timely made, made, except for a Form 3 (filed on May 12, 2023) and a Form 4 (filed on November 13, 2023) in respect of Donna Carroll, which were not timely filed.

#### Item 11. Executive Compensation.

##### Named Executive Officers

Our named executive officers for Fiscal 2022 2023 are:

- Beth Garvey, our Chair, President and Chief Executive Officer; and
- Dan Hollenbach, John R. Barnett, our Chief Financial Officer and Secretary since March 2023.
- Dan Hollenbach, who served as our Chief Financial Officer and Secretary until March 2023.

Throughout this section, the term "named executive officer" is intended to refer to the individuals identified above. During Fiscal 2022, 2023, we had only two named three executive officers, each of whom is set forth above.



## Summary Compensation Table

The following table presents compensation information for our named executive officers with respect to Fiscal **2022** **2023** and **2021**, **2022**.

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$) (*)	Option Awards (\$) (*)	Non-equity incentive plan compensation (\$)	Non-qualified deferred compensation earnings (\$)	All Other Compensation (\$)	Total (\$)
Beth Garvey Chair, President and Chief Executive Officer	2022	\$425,000	\$297,500	\$79,598	\$203,268	\$—	\$—	\$15,521 (1)	\$1,020,887
	2021	\$425,000	\$188,388	\$28,922	\$102,816	\$—	\$—	\$14,857 (1)	\$759,983
Dan Hollenbach Chief Financial Officer and Secretary	2022	\$320,000	\$224,000	\$64,898	\$109,525	\$—	\$—	\$10,800 (1)	\$729,223
	2021	\$320,000	\$146,388	\$33,373	\$82,648	\$—	\$—	\$10,400 (1)	\$592,809

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$) (*)	Option Awards (\$) (*)	Non-equity incentive plan compensation (\$)	Non-qualified deferred compensation earnings (\$)	All Other Compensation (\$)	Total (\$)
Beth Garvey Chair, President and Chief Executive Officer	2023	\$450,500	\$45,543	\$70,067	\$109,317	\$—	\$—	\$17,188 (1)	\$692,615
	2022	\$425,000	\$297,500	\$79,598	\$203,268	\$—	\$—	\$15,521 (1)	\$1,020,887
Dan Hollenbach Chief Financial Officer and Secretary (through March 2023)	2023	\$339,200	\$45,543	\$55,661	\$19,859	\$—	\$—	\$12,084 (1)	\$472,347
	2022	\$320,000	\$224,000	\$64,898	\$109,525	\$—	\$—	\$10,800 (1)	\$729,223
John Barnett Chief Financial Officer and Secretary	2023	\$282,692	\$—	\$17,114	\$12,382	\$—	\$—	\$2,692 (1)	\$314,880
	2022	\$—	\$—	\$—	\$—	\$—	\$—	\$—	\$—

(\*) The amounts reflect the dollar amounts recognized for financial statement reporting purposes in accordance with FASB ASC Topic 718. The assumptions used in the calculation of these amounts are included in Note 16 Share-based Compensation to the audited consolidated financial statements included in this Annual Report on Form 10-K.

(1) Represents the matching 401(k) contributions made by us.

## Agreements with Executive Officers

### Chair, President and Chief Executive Officer

On October 1, 2018, we amended a 2016 employment agreement with Beth Garvey pursuant to which Ms. Garvey serves as our President and Chief Executive Officer through September 30, 2021. The agreement remains in effect under successive one-year extensions unless terminated pursuant its terms. Ms. ~~Garvey's~~ **Garvey's** annual compensation is evaluated annually, but may not be less than \$350,000 per year. Effective **December 27, 2020** **February 3, 2023**, Ms. ~~Garvey's~~ **Garvey's** annual salary was raised to ~~\$425,000.~~ **\$450,500.**

Ms. Garvey is eligible to receive an annual cash bonus based on achieving certain adjusted EBITDA levels (as defined by the Compensation Committee) and, except as stated in her employment agreement, provided that Ms. Garvey is in our employment on the last day of the fiscal year. Moreover, if certain acquisitions occur during her employment period, Ms. Garvey will receive a bonus equal to 1% of the acquired company's adjusted EBITDA, as determined by the Board, for the first 12 months after the acquisition's closing date. The Compensation Committee may also grant discretionary bonuses.

In the event that Ms. Garvey's employment is terminated by us without cause or by Ms. Garvey for good reason, Ms. Garvey will receive as severance installments equal to twelve months of base salary plus COBRA premiums for eighteen months for Ms. Garvey and her dependents. In the event that Ms. Garvey's employment is terminated without cause or for good reason within one year of a change in control, Ms. Garvey will receive her base salary and COBRA premiums for eighteen months for her and her dependents. Ms. Garvey will also generally be entitled to receive any bonus payable but unpaid, payment for unused vacation days, and unpaid reimbursements. The severance is contingent upon Ms. Garvey's execution of a separation agreement including a general release. In the event that Ms. Garvey's employment is terminated by us for cause, or by Ms. Garvey other than for good reason, we will pay to Ms. Garvey any monthly salary, bonus, unused vacation, and expense reimbursements, earned or due to Ms. Garvey but unpaid.

We and Ms. Garvey have also entered into a confidentiality, non-solicitation, non-interference and non-competition agreement. Pursuant to the agreement, Ms. Garvey generally agrees not to disclose our confidential information (as defined in the agreement) and, for a period of eighteen months following her termination, not to solicit our client partners, interfere with our client partner and supplier relationships, or solicit our team members. Ms. Garvey also agrees not to compete with us for a period of twelve months after termination.



Ms. Garvey was granted stock options and restricted stock in Fiscal 2022 2023 as further described under "Outstanding Equity Awards" below.

#### Chief Financial Officer

On October 1, 2018, we amended a 2015 We executed an employment agreement, effective March 20, 2023, with Dan Hollenbach John R. Barnett pursuant to which Mr. Hollenbach Barnett serves as our Chief Financial Officer and Secretary through September 30, 2021 December 31, 2025. The contract agreement remains in effect under successive one-year extensions unless terminated pursuant to its terms. Mr. Hollenbach's Barnett's annual compensation is evaluated annually, but may not be less than \$275,000 per year. the then effective base salary. Effective December 27, 2020 March 25, 2024, Mr. Hollenbach's Barnett's annual salary was will be raised to \$320,000.

On March 3, 2023 \$375,000 and effective March 24, 2025, Dan Hollenbach resigned as the Chief Financial Officer and Secretary of the Company and its subsidiaries, effective March 20, 2023, and will then act as a senior advisor with BGSF through April 30, 2024. Mr. Hollenbach's resignation was part of the Company's leadership succession plan and Mr. Hollenbach's planned retirement.

On March 3, 2023, the Company and BG Staff Services, Inc., a subsidiary of the Company, entered into an Amended Executive Employment Agreement (the "Amended Employment Agreement") with Mr. Hollenbach. The Amended Employment Agreement remains in effect through April 30, 2024, unless extended by mutual agreement or terminated pursuant raised to its terms, \$400,000.

Mr. Hollenbach Barnett is eligible to receive an annual cash bonus based on achieving certain adjusted EBITDA levels (as defined by the Compensation Committee) and, except as stated in his employment agreement, provided that Mr. Hollenbach Barnett is in our employment on the last day of the fiscal year. Moreover, if certain acquisitions occur during his employment period, and Mr. Hollenbach Barnett will receive a bonus equal to 1% of the acquired company's adjusted EBITDA, as determined by the Board, for the first 12 months after the acquisition's closing date. The Compensation Committee may also grant discretionary bonuses.

In the event that Mr. Hollenbach's Barnett's employment is terminated by us without cause or by Mr. Hollenbach Barnett for good reason, Mr. Hollenbach Barnett will receive as severance installments equal to twelve months of base salary plus COBRA premiums for eighteen months for Mr. Hollenbach Barnett and his dependents. In the event that Mr. Hollenbach's Barnett's employment is terminated without cause or for good reason by Mr. Barnett within one year of a change in control, Mr. Hollenbach Barnett will receive his base salary and COBRA premiums for eighteen months for him and his dependents. Mr. Hollenbach Barnett will also generally be entitled to receive any bonus payable but unpaid, payment for unused vacation days, and unpaid reimbursements. The severance is contingent upon Mr. Hollenbach's Barnett's execution of a separation agreement including a general release. In the event that Mr. Hollenbach's Barnett's employment is terminated by us for cause, or by Mr. Hollenbach Barnett other than for good reason, we will pay to Mr. Hollenbach Barnett any monthly salary, bonus, unused vacation, and expense reimbursements, earned or due to Mr. Hollenbach Barnett but unpaid.

We and Mr. Hollenbach Barnett have also entered into a confidentiality, non-solicitation, non-interference noninterference and non-competition agreement. Pursuant to the agreement, Mr. Hollenbach Barnett generally agrees not to disclose our confidential information (as defined in the agreement) and, for a period of eighteen months following his termination, not to solicit our client partners, interfere with our client partner and supplier relationships, or solicit our team members. Mr. Hollenbach Barnett also agrees not to compete with us for a period of twelve months after termination.

Mr. Hollenbach Barnett was granted stock options and restricted stock in Fiscal 2022 2023 as further described under "Outstanding Equity Awards" below.

Dan Hollenbach resigned as Chief Financial Officer and Secretary effective March 20, 2023, and will then act as a senior advisor with BGSF through April 30, 2024. Mr. Hollenbach's resignation was part of the Company's leadership succession plan and Mr. Hollenbach's planned retirement. Effective February 3, 2023, Mr. Hollenbach's annual salary was raised to \$339,000.

#### 2013 Long-Term Incentive Plan

In December 2013, the Board adopted the original 2013 Plan. Under the original 2013 Plan team members, directors and consultants of the Company may receive incentive stock options and other awards. To the extent any option or award expires unexercised or is canceled, terminated or forfeited in any manner without the issuance of common stock thereunder, such shares shall again be available for issuance under the original 2013 Plan, of which 1,012,967 1,215,987 shares remain available for issuance as of January 1, 2023 December 31, 2023.

The term of each option is determined by the Board but cannot exceed 10 years. Unless otherwise specified in an option agreement, options vest and become exercisable on the following schedule: 20% immediately and 20% on each anniversary date of the grant date. Each option shall be designated as an incentive stock option ("ISO") or a non-qualified option ("NQO"). The exercise price of an ISO shall not be less than the fair market value of the stock covered by the ISO at the grant date; provided, however, the exercise price of an ISO granted to any person who owns, directly or indirectly, stock of the Company constituting more than 10% of the total combined voting power of all classes of outstanding stock of the Company or of any affiliate of the Company, shall not be less than 110% of such fair market value.

For more details on our 2013 Plan, see our registration statement on Form S-8 (File No. 333-193014) filed on December 20, 2013, Form S-8 (File No. 333-218869) filed on June 20, 2017, Form S-8 (File No. 333-251192) filed on December 8, 2020, Form S-8 (File No. 333-274809) filed on October 2, 2023, and Note 16 in the Notes to Consolidated Financial Statements.

#### 2020 Employee Stock Purchase Plan ("2020 ESPP")

In November 2020, the Board adopted and the shareholders approved the 2020 ESPP. Under the 2020 ESPP, eligible team members of the Company may elect for payroll deductions to purchase shares on each purchase date during an offering period. A total of 250,000 shares of common stock of BGSF, Inc. were initially reserved for issuance pursuant to the 2020 ESPP. As of January 1, 2023 December 31, 2023, 158,718 93,245 shares remain available for issuance.



## Outstanding Equity Awards

	Option Awards								Stock Awards		Option Awards						Stock Awards	
	Equity incentive plan awards:								Market Value of Shares or		Equity incentive plan awards:						Number of Shares or Units of	
	Number of securities underlying unexercised options (#)	Number of securities underlying unexercised options (#)	Number of securities underlying unexercised options (#)	price (\$)	expiration date		Number of Shares or Units of Stock that Have Not Vested	Units of Stock that Have Not Vested			Number of securities underlying unexercised options (#)	Number of securities underlying unexercised options (#)	Number of securities underlying unexercised options (#)	price (\$)	expiration date		Stock that Have Not Vested	Stock that Have Not Vested
Name	Name	Grant date	exercisable	unexercisable	options (#)	price (\$)	date	Vested (#)	(\$)	Name	date	exercisable	unexercisable	options (#)	price (\$)	date	Vested (#)	(\$)
(a)	(a)		(b)	(c)	(d)	(e)	(f)	(g)	(h)	(a)		(b)	(c)	(d)	(e)	(f)	(g)	(h)
Beth Garvey	Beth Garvey	08/03/2022	—	23,872	(1)	—	\$ 12.87	08/03/2032	—									
Beth Garvey																		
Beth Garvey																		
09/01/2023																		
02/17/2023																		
02/17/2023																		
02/17/2023																		
08/03/2022																		
08/03/2022																		
05/04/2022																		
08/04/2021																		
08/04/2021																		
08/04/2021																		
08/04/2020																		
08/04/2020																		
09/24/2018																		
09/24/2018																		
06/07/2017																		
06/07/2017																		
08/16/2016																		
08/16/2016																		
06/09/2015																		
		08/03/2022	10,000	16,128	(2)	—	\$ 12.87	08/03/2032	—									
		05/04/2022	—	—		—	\$ —	—	2,821	(8)	\$ 37,491							
		08/04/2021	—	6,000	(3)	—	\$ 11.57	08/04/2031	—									
		08/04/2021	4,000	—		—	\$ 11.57	48,064	—									
		08/04/2021	—	—		—	\$ —	—	10,000	(9)	\$ 140,100							
		08/04/2020	3,600	—		—	\$ 9.72	08/04/2030	—									
		08/04/2020	—	2,400	(4)	—	\$ 9.72	08/04/2030	—									
		09/24/2018	6,148	—		—	\$ 25.71	09/24/2028	—									
		09/24/2018	93,852	—		—	\$ 25.71	09/24/2028	—									
		06/07/2017	2,500	—		—	\$ 16.76	06/07/2027	—									
		06/07/2017	10,000	—		—	\$ 16.76	06/07/2027	—									



08/16/2016	13,185	—	—	\$ 17.46	08/16/2026	—	—
08/16/2016	36,815	—	—	\$ 17.46	08/16/2026	—	—
06/09/2015	20,000	—	—	\$ 11.00	06/09/2025	—	—

John Barnett

John Barnett

John Barnett

03/20/2023

03/20/2023

Dan Dan

Hollenbach Hollenbach	08/03/2022	2,000	—	—	\$ 12.87	08/03/2032	—	—
	08/03/2022	—	8,000 (5)	—	\$ 12.87	08/03/2032	—	—
	05/04/2022	—	—	—	\$ —	—	2,821 (8)	\$ 37,491
	08/04/2021	—	3,000 (6)	—	\$ 11.57	08/04/2031	—	—
	08/04/2021	2,000	—	—	\$ 11.57	08/04/2031	—	—
	08/04/2021	—	—	—	\$ —	—	7,500 (10)	\$ 105,075
	08/04/2020	2,700	—	—	\$ 9.72	08/04/2030	—	—
	08/04/2020	—	1,800 (7)	—	\$ 9.72	08/04/2030	—	—
	09/24/2018	8,408	—	—	\$ 25.71	09/24/2028	—	—
	09/24/2018	66,592	—	—	\$ 25.71	09/24/2028	—	—
	06/07/2017	5,000	—	—	\$ 16.76	06/07/2027	—	—
	06/07/2017	7,500	—	—	\$ 16.76	06/07/2027	—	—
	10/27/2015	17,012	—	—	\$ 11.07	10/27/2025	—	—
	10/27/2015	19,835	—	—	\$ 11.07	10/27/2025	—	—

Dan Hollenbach

Dan Hollenbach

02/17/2023

08/03/2022

08/03/2022

08/03/2022

08/03/2022

05/04/2022

08/04/2021

08/04/2021

08/04/2021

08/04/2020

08/04/2020

09/24/2018

09/24/2018

06/07/2017

06/07/2017

10/27/2015

10/27/2015

- (1) Non-qualified stock options will vest 10,000 on September 1, 2024, 10,000 on September 1, 2025, 10,000 on September 1, 2026, and 1,007 on September 1, 2027.
- (2) Incentive stock options will vest 5,065 8,993 on August 3, 2023 September 1, 2027.
- (3) Non-qualified stock options will vest 871 on February 17, 2024, 871 on February 17, 2025, and 871 on February 17, 2026.
- (4) Incentive stock options will vest 871 on February 17, 2027.
- (5) Incentive stock options will vest 5,065 on August 3, 2024, 5,972 on August 3, 2025, and 7,770 on August 2026.
- (2) (6) Non-qualified stock options will vest 4,935 on August 3, 2023, 4,935 on August 3, 2024, 4,028 on August 3, 2025, and 2,230 on August 2, 2026.
- (3) (7) Incentive stock options will vest 2,000 on August 4, 2023 August 4, 2024, 2,000 on August 4, 2024, and 2,000 on August 4, 2025.
- (4) (8) Non-qualified stock options will vest 1,200 on August 4, 2023, and 1,200 on August 4, 2024.
- (5) (9) Incentive stock options will vest 2,000 9,756 on August 3, 2023 March 16, 2026.
- (10) Non-qualified stock options will vest 5,644 on March 16, 2026.



- (11) Incentive stock options will vest 394 on February 17, 2024, 393 on February 17, 2025, 393 on February 17, 2026 and 393 on February 17, 2027.
- (12) Incentive stock options will vest 2,000 on August 3, 2024, 2,000 on August 3, 2025, and 2,000 August 3, 2026.
- (6) (13) Incentive stock options will vest 1,000 on August 4, 2023 August 4, 2024, 1,000 on August 4, 2024, and 1,000 on August 4, 2025, August 4, 2025.
- (7) (14) Non-qualified stock options will vest 900 on August 4, 2023, and 900 on August 4, 2024.
- (8) (15) Shares will vest 941 1,916 on May 4, 2023, February 17, 2024 and 1,916 on February 17, 2025.
- (16) Shares will vest 940 on May 4, 2024, and 940 on May 4, 2025.
- (9) (17) Shares will vest 5,000 on August 10, 2023, and 5,000 on August 10, 2024.
- (10) (18) Shares will vest 3,750 6,375 on August 10, 2023, March 16, 2026.
- (19) Shares will vest 883 on February 17, 2024 and 883 on February 17, 2025.
- (20) Shares will vest 3,750 on August 10, 2024.

Each option and stock award is subject to the condition that the optionee will have remained employed by the Company, or any one or more of its subsidiaries, through such vesting dates, and each option is further subject to the terms and conditions set forth in the 2013 Plan and in the applicable Stock Option Agreement.

#### Compensation Committee Interlocks and Insider Participation

No member of our Compensation Committee is a current or former officer or team member of BGSF, Inc. or its subsidiaries. No executive officer of BGSF, Inc. served as a director or member of the compensation committee of any entity that has one or more executive officers serving as a member of our Board or Compensation Committee.

#### Director Compensation

Set forth below is a summary of the components of compensation payable to our non-management directors.

#### Cash Compensation

We reimburse each member of our Board for all reasonable out-of-pocket expenses incurred in connection with their attendance at meetings of our Board and any committees thereof, including, without limitation, reasonable travel, lodging and meal expenses. Each director who is not a team member or officer of the Company is entitled to (i) an annual retainer of \$45,000 for their service on our Board, and (ii) an annual retainer of \$5,000 for audit committee service.

Name	Nominating & Governance Chairperson												
	Board Member	Audit Committee	Compensation Committee	Governance Committee	Chairperson of the Board	Total		Board Member	Audit Committee	Compensation Committee	Nominating & Governance Committee	Chairperson of the Board	Total
	Name	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	Name	(\$)	(\$)	(\$)	(\$)	(\$)
C. David Allen, Jr.	C. David Allen, Jr.	\$45,000	\$ 5,000	\$ —	\$ —	\$ —	\$50,000						
C. David Allen, Jr.	C. David Allen, Jr.												
Richard L. Baum, Jr.	Richard L. Baum, Jr.	\$45,000	\$ 5,000	\$ —	\$ —	\$ —	\$50,000						
Donna Carroll	Donna Carroll												
Douglas E. Hailey	Douglas E. Hailey	\$45,000	\$ 5,000	\$ —	\$ —	\$ —	\$50,000						
Cynthia Marshall	Cynthia Marshall	\$45,000	\$ —	\$ —	\$ —	\$ —	\$45,000						
Paul A. Seid	Paul A. Seid	\$45,000	\$ —	\$ —	\$ —	\$ —	\$45,000						

#### Director Compensation for Fiscal 2022 2023

The table below sets forth the compensation payable to our non-management directors for service during Fiscal 2022, 2023.



Name	Fees earned or paid in cash								Fees earned or paid in cash							
	Name	(\$)	(\$) (*)	(\$) (*)	(\$)	(\$)	(\$)	Total (\$)	Name	(\$)	(\$) (*)	(\$) (*)	(\$)	(\$)	(\$)	Total (\$)
C. David Allen, Jr.	C. David Allen, Jr.	\$50,000	\$45,667	\$9,355	\$—	\$—	\$—	\$105,022								
C. David Allen, Jr.	C. David Allen, Jr.															
Richard L. Baum, Jr.	Richard L. Baum, Jr.	\$50,000	\$45,667	\$5,700	\$—	\$—	\$—	\$101,367								
Richard L. Baum, Jr.	Richard L. Baum, Jr.															
Donna Carroll	Donna Carroll															
Douglas E. Hailey	Douglas E. Hailey	\$50,000	\$45,667	\$5,700	\$—	\$—	\$—	\$101,367								
Cynthia Marshall	Cynthia Marshall	\$45,000	\$66,288	\$2,569	\$—	\$—	\$—	\$113,857								
Paul A. Seid	Paul A. Seid	\$45,000	\$45,667	\$5,700	\$—	\$—	\$—	\$96,367								

\* The amounts reflect the dollar amounts recognized for financial statement reporting purposes in accordance with FASB ASC Topic 718. The assumptions used in the calculation of these amounts are included in Note 16. [Share-based Compensation](#) to the audited consolidated financial statements included in this Annual Report on Form 10-K.

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

The following table sets forth information regarding the beneficial ownership of our common stock as of [February 13, 2023](#) [February 7, 2024](#) by:

- each person, or group of affiliated persons, known by us to be the beneficial owner of more than 5% of our outstanding shares of common stock;
- each of our named executive officers and directors; and
- all our executive officers and directors as a group.

Each stockholder's percentage ownership is based on [10,789,903](#) [10,917,265](#) shares of common stock outstanding as of [February 13, 2023](#) [February 7, 2024](#).

Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the securities. Except as otherwise indicated, each person or entity named in the table has sole voting and investment power with respect to all shares of our capital shown as beneficially owned, subject to applicable community property laws.

The number and percentage of shares beneficially owned by a person includes shares that may be acquired by such person within 60 days of [February 13, 2023](#) [February 7, 2024](#) through the exercise of vested options, while these shares are not counted as outstanding for computing the percentage ownership of any other person.

Except as otherwise set forth below, the address of the persons below is c/o BGSF, Inc., 5850 Granite Parkway, Suite 730, Plano, Texas 75024.

Name of Beneficial Owner	Shares of Common Stock			Name of Beneficial Owner	Shares of Common Stock	Percent of Common Stock
	Name of Beneficial Owner	Beneficially Owned	Percent of Common Stock			



C. David Allen, Jr.	C. David Allen, Jr.	(1)	33,158	*				
C. David Allen, Jr.						52,397	(1)	*
John Barnett					John Barnett	6,375	(2)	*
Richard L. Baum, Jr.	Richard L. Baum, Jr.	(2)	102,660	*	Richard L. Baum, Jr.	111,299	(3)	*
Donna Carroll					Donna Carroll	6,381	(4)	*
Beth Garvey	Beth Garvey	(3)	252,158	2.3 %	Beth Garvey	283,452	(5)	
Douglas E. Hailey	Douglas E. Hailey	(4)	162,127	1.5 %	Douglas E. Hailey	202,264	(6)	1.8 %
Dan Hollenbach								
Cynthia Marshall	Cynthia Marshall	(6)	17,408	*	Cynthia Marshall	25,047	(7)	*
Paul A. Seid	Paul A. Seid	(7)	105,715	*	Paul A. Seid	114,354	(8)	*
All executive officers and directors as a group (7 total)								
			827,885	7.4 %				
North Star Investment Management Corporation (8)								
			593,023	5.5 %				
All executive officers and directors as a group (8 total)					All executive officers and directors as a group (8 total)	801,569	(9)	7.0 %
Dan Hollenbach					Dan Hollenbach	161,971	(11)	1.5 %
North Star Investment Management Corporation								
					North Star Investment Management Corporation (10)	725,573		6.6 %

\* Less than 1%.

- (1) Includes 5,428 8,185 shares of common stock issuable upon exercise of stock options and 7,209 9,118 shares of unvested restricted common stock.
- (2) Includes 17,678 6,375 of unvested restricted common stock
- (3) Includes 19,435 shares of common stock issuable upon exercise of stock options, 53,650 35,891 shares of common stock held by a private investment company controlled by Mr. Baum, 10,388 5,388 shares of common stock held by a family trust and 7,209 shares of unvested restricted common stock.
- (3) Includes 200,100 shares of common stock issuable upon exercise of stock options and 12,821 9,118 shares of unvested restricted common stock.
- (4) Includes 29,176 500 shares of common stock issuable upon exercise of stock options and 7,209 4,411 shares of unvested restricted common stock.
- (5) Includes 131,047 226,642 shares of common stock issuable upon exercise of stock options and 10,321 10,712 shares of unvested restricted common stock.
- (6) Includes 2,428 31,933 shares of common stock issuable upon exercise of stock options and 7,209 9,118 shares of unvested restricted common stock.
- (7) Includes 17,678 4,185 shares of common stock issuable upon exercise of stock options and 7,209 9,118 shares of unvested restricted common stock.
- (8) Includes 20,435 shares of common stock issuable upon exercise of stock options and 9,118 shares of unvested restricted common stock.
- (9) Includes 135,736 shares of common stock issuable upon exercise of stock options and 7,396 shares of unvested restricted common stock.
- (10) The address of North Star Investment Management Corporation is 20 N. Wacker Drive, Suite 1416, Chicago, Illinois 60606.
- (9) (11) Based on schedule 13G filed with the SEC, includes 496,800 602,000 shares over which North Star Investment Management Corporation or its subsidiaries have sole voting power, 496,800 602,000 shares over which such entities have sole dispositive power, and 96,223 123,573 over which such entities have shared dispositive power.

## Equity Compensation Plans



See Item 5, Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities - Equity Compensation Plans in this Annual Report on Form 10-K.

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

Policy on Review and Approval of Transactions with Related Persons

Our Board is currently primarily responsible for developing and implementing processes and controls to obtain information from our directors, executive officers and significant stockholders regarding related-person transactions and then determining, based on the facts and circumstances, whether we or a related person has a direct or indirect material interest in these transactions. Our Audit Committee is responsible for the review, approval and ratification of "related-person transactions" between us and any related person. Under SEC rules, a related person is a director, executive officer, nominee for director or beneficial holder of more than of 5% of any class of our voting securities or an immediate family member of any of the foregoing. In the course of its review and approval or ratification of a related-person transaction, the Audit Committee will consider:

- the nature of the related person's interest in the transaction;
- the material terms of the transaction, including the amount involved and type of transaction;
- the importance of the transaction to the related person and to the Company;
- whether the transaction would impair the judgment of a director or executive officer to act in our best interest and the best interest of our stockholders; and
- any other matters the Audit Committee deems appropriate.

Any member of the Audit Committee who is a related person with respect to a transaction under review will not be able to participate in the deliberations or vote on the approval or ratification of the transaction. However, such a director may be counted in determining the presence of a quorum at a meeting of the committee that considers the transaction.

See Item 10, Directors, Executive Officers and Corporate Governance, with respect to the independence of our directors.

Item 14. Principal Accountant Fees and Services.

The Audit Committee reviews and pre-approves both audit and all permissible non-audit services provided by our independent registered public accounting firm, and accordingly, all services and fees in Fiscal 2023, 2022, 2021, and 2020 2021 provided by Whitley Penn LLP were pre-approved by the Audit Committee. The Audit Committee has considered whether the provision of services, other than services rendered in connection with the audit of our annual financial statements, is compatible with maintaining Whitley Penn LLP's independence. The Audit Committee has determined that the rendering of non-audit services by Whitley Penn LLP during Fiscal 2023, 2022, 2021, and 2020 2021 was compatible with maintaining the firm's independence.

Aggregate fees billed or incurred related to the following years for professional services rendered by Whitley Penn LLP for Fiscal 2022 2023 and 2021 2022 are set forth below.

2023		2023		2022	
Audit Fees <sup>(1)</sup>					
Audit Fees <sup>(1)</sup>					
Audit Fees <sup>(1)</sup>					
Audit-Related Fees <sup>(2)</sup>					
		2022	2021		
Total					
Audit Fees <sup>(1)</sup>	\$	290,424	\$304,803		
Audit-Related Fees <sup>(2)</sup>		203,061	67,400		
Tax Fees		—	—		
All Other Fees		—	—		
Total	Total \$	493,485	\$372,203		
Total					



- (1) Audit fees consist principally of fees for the audit of our consolidated financial statements and Sarbanes-Oxley audit over internal controls and review of our interim consolidated financial statements.
- (2) These fees consist principally of fees related to the preparation of SEC registration statements, acquisition due diligence, audit services related to our acquisitions, and U.S. Department of Labor filings.

## Selection

The Audit Committee appointed Whitley Penn LLP as our independent registered public accounting firm for the 2023 fiscal year and Whitley Penn LLP has served in this capacity since 2013. Our Board has further directed that we submit the selection of our independent registered public accounting firm for ratification by our shareholders at the 2023 2024 annual meeting.

## PART IV

### Item 15. Exhibits and Financial Statement Schedules. Schedules.

#### (1) Financial Statements

The following consolidated financial statements of the Company and the report of the Independent Registered Public Accounting Firm are contained in Item 8 of Part II of this Annual Report on Form 10-K as indicated:

Page

#### Audited Consolidated Financial Statements of BGSE, Inc.

As of and for the Fiscal Years Ended January 1, 2023 December 31, 2023, December 26, 2021 January 1, 2023, and December 27, 2020 December 26, 2021.

Report of Independent Registered Public Accounting Firm (PCAOB (Whitley Penn PCAOB ID 726) 39 40

Consolidated Balance Sheets 41

Consolidated Statements of Operations and Comprehensive Income 42

Consolidated Statements of Operations and Comprehensive (Loss) Income 43

Consolidated Statements of Changes in Stockholders' Stockholders' Equity 43 44

Consolidated Statements of Cash Flows 45 46

Notes to Consolidated Financial Statements 47 48

#### 2) Financial Statement Schedules

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

#### 3) Exhibits

See the list of exhibits in the Index to Exhibits to this Annual Report on Form 10-K, which is incorporated herein by reference.

### Item 16. Form 10-K Summary.

None.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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 on March 15, 2023 March 14, 2024.



BGSF, INC.

By: /s/ Beth Garvey  
Name: Beth Garvey  
Title: Chair, President, and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated on **March 15, 2023** **March 14, 2024**.

<u>/s/ Beth Garvey</u> <b>Beth Garvey</b>	Chair, President, and Chief Executive Officer (Principal Executive Officer)
<u>/s/ Dan Hollenbach John Barnett</u> <b>Dan Hollenbach John Barnett</b>	Chief Financial Officer and Secretary (Principal Financial and Accounting Officer)
<u>/s/ C. David Allen, Jr.</u> <b>C. David Allen, Jr.</b>	Director
<u>/s/ Richard L. Baum, Jr.</u> <b>Richard L. Baum, Jr.</b>	Director
<u>/s/ Donna Carroll</u> <b>Donna Carroll</b>	Director
<u>/s/ Douglas E. Hailey</u> <b>Douglas E. Hailey</b>	Director
<u>/s/ Cynthia Marshall</u> <b>Cynthia Marshall</b>	Director
<u>/s/ Paul A. Seid</u> <b>Paul A. Seid</b>	Director

EXHIBIT INDEX



Exhibit No.	Description
2.1††	<a href="#">Asset Purchase Agreement, dated as of December 13, 2019, between BG Staffing, Inc., BG Staffing, LLC, L.J.Kushner &amp; Associates, L.L.C., and Lee J. Kushner (incorporated by reference from the registrant's Current Report on Form 8-K filed on December 16, 2019)</a>
2.2††	<a href="#">Securities Purchase Agreement, dated as of February 3, 2020, by and between BG Staffing, LLC, EdgeRock Technology Holdings, Inc., and CDI Holding Company LLC (incorporated by reference from the registrant's Current Report on Form 8-K filed on February 6, 2020)</a>
2.3††	<a href="#">Asset Purchase Agreement, dated as of February 8, 2021, between BG Staffing, LLC, Momentum Solutionz LLC, Lorne Kaufman, and Jeff Servidio (incorporated by reference from the registrant's Current Report on Form 8-K filed on February 11, 2021)</a>
2.4††	<a href="#">Asset Purchase Agreement, dated as of February 28, 2022, between BGSF, Inc., Sentech Engineering Services, Inc., and Jobandtalent Holding Limited (incorporated by reference from the registrant's Current Report on Form 8-K filed on March 1, 2022)</a>
2.5††	<a href="#">Asset Purchase Agreement, dated as of December 12, 2022, by and between BG Professional LLC, Horn Solutions, Inc., Horn Solutions Dallas, LLC, and Gary Horn (incorporated by reference from the registrant's Current Report on Form 8-K filed on December 14, 2022)</a>
2.6††	<a href="#">December 14Asset Purchase Agreement, dated April 24, 2023, 2022) by and between BGSF Professional, LLC, Arroyo Consulting LLC, Luis Fernando Sanchez, and Maureen E. Herrera (incorporated by reference from the registrant's Current Report on Form 8-K filed on April 26, 2023)</a>
3.1	<a href="#">Certificate of Incorporation of BG Staffing, Inc. (incorporated by reference from Amendment No. 2 to the registrant's registration statement on Form S-1 (File No. 333-191683) filed on November 4, 2013)</a>
3.2	<a href="#">Certificate of Amendment to Certificate of Incorporation of BGSF, Inc. (incorporated by reference from the registrant's Current Report on Form 8-K filed on February 12, 2021)</a>
3.3	<a href="#">Bylaws of BG Staffing, Inc. (incorporated by reference from Amendment No. 2 to the registrant's registration statement on Form S-1 (File No. 333-191683) filed on November 4, 2013)</a>
4.1	<a href="#">Form of Common Stock Certificate (incorporated by reference from Amendment No. 1 to the registrant's registration statement on Form S-1 (File No. 333-191683) filed on October 28, 2013)</a>
4.2	<a href="#">Description of Securities Registered Under Section 12 of the Securities Exchange Act of 1934, as amended (incorporated by reference from the registrant's Form 10-K filed on March 12, 2020)</a>
10.1**	<a href="#">BG Staffing, Inc. 2013 Long-Term Incentive Plan (incorporated by reference from the registrant's definitive proxy statement on Schedule 14A filed on September 15, 2020 June 20, 2023)</a>
10.2**	<a href="#">Form of Nonqualified Stock Option Agreement (Vested Options) (incorporated by reference from the registrant's Form 8-K filed on February 12, 2014)</a>
10.3**	<a href="#">Form of Incentive Stock Option Agreement (incorporated by reference from the registrant's Form 8-K filed on February 12, 2014)</a>
10.4**	<a href="#">Form of Nonqualified Stock Option Agreement (incorporated by reference from the registrant's Form 8-K filed on February 12, 2014)</a>
10.5**	<a href="#">Form of Indemnification Agreement for Directors and Executive Officers (incorporated by reference from the registrant's Form 8-K filed on February 4, 2014)</a>
10.6	<a href="#">Amended and Restated Securities Purchase Agreement, dated as of May 28, 2013, among LTN Acquisition, LLC, LTN Staffing, LLC, BG Staffing, LLC, BG Personnel Services, LP, BG Personnel, LP, and B G Staff Services Inc., and Legg Mason SBIC Mezzanine, L.P., Brookside Pecks Capital Partners, L.P. and Brookside Mezzanine Fund II, L.P. (incorporated by reference from the registrant's registration statement on Form S-1 (File No. 333-191683) filed on October 10, 2013)</a>
10.7	<a href="#">First Amendment to Amended and Restated Securities Purchase Agreement and Other Documents, dated as of November 1, 2013, by and among LTN Acquisition, LLC, LTN Staffing, LLC, BG Staffing, LLC, BG Personnel Services, LP, BG Personnel, LP, and B G Staff Services Inc., and Legg Mason SBIC Mezzanine, L.P., Brookside Pecks Capital Partners, L.P. and Brookside Mezzanine Fund II, L.P. (incorporated by reference from Amendment No. 2 to the registrant's registration statement on Form S-1 (File No. 333-191683) filed on November 4, 2013)</a>



10.8	<a href="#">Second Amendment to Amended and Restated Securities Purchase Agreement and Other Documents, dated as of January 29, 2014, by and among BG Staffing, Inc., BG Staffing, LLC, BG Personnel Services, LP, BG Personnel, LP, and B G Staff Services Inc., and Legg Mason SBIC Mezzanine, L.P., Brookside Pecks Capital Partners, L.P. and Brookside Mezzanine Fund II, L.P. (incorporated by reference from the registrant's Form 8-K filed on February 4, 2014)</a>
10.10*	<a href="#">Executive Employment Agreement, entered into January 26, 2016 to be effective as of December 28, 2015, between B G Staff Services, Inc. and L. Allen Baker, Jr. (incorporated by reference from registrant's Form 8-K filed February 1, 2016)</a>
10.12	<a href="#">Stock Option Cancellation Agreement, dated May 31, 2018 (incorporated by reference from the registrant's Form 8-K filed June 5, 2018)</a>
10.13*	<a href="#">Executive Employment Agreement, entered into February 6, 2019 to be effective as of October 1, 2018, between B G Staff Services, Inc. and Beth Garvey (incorporated by reference from the registrant's Annual Report on Form 10-K filed on March 12, 2019)</a>
10.14*	<a href="#">Executive Employment Agreement, entered into February 6, 2019 to be effective as of October 1, 2018, between B G Staff Services, Inc. and Dan Hollenbach (incorporated by reference from the registrant's Annual Report on Form 10-K filed on March 12, 2019)</a>
10.15*	<a href="#">Form of Restricted Stock Agreement (incorporated by reference from the registrant's Quarterly Report on Form 10-Q filed on October 30, 2018)</a>
10.16	<a href="#">Credit Agreement, dated as of July 16, 2019, among BG Staffing, Inc., as borrower, the lenders from time to time party there to, and BMO Harris Bank, National Association, as administrative agent, letters of credit issuer, swing line lender, sole lead arranger, and sole book runner (incorporated by reference from the registrant's Current Report on Form 8-K filed on July 22, 2019)</a>
10.17*	<a href="#">BG Staffing, Inc. 2020 Employee Stock Purchase Plan (incorporated by reference from the registrant's definitive proxy statement on Schedule 14A filed on September 15, 2020)</a>
10.18	<a href="#">First Amendment to the Credit Agreement, dated as of August 18, 2022, among BGSE, Inc., as borrower, the lenders party thereto, and BMO Harris Bank, National Association, as administrative agent and lender (incorporated by reference from the registrant's Quarterly Report on Form 10-Q filed on November 3, 2022)</a>
10.19	<a href="#">Second Amendment to Credit Agreement, by and among BGSE, Inc., the Guarantors party hereto and BMO Harris Bank N.A., as administrative agent for the Lenders and as a lender (incorporated by reference from the registrant's Current Report on Form 8-K filed on December 14, 2022)</a>
10.20*	<a href="#">Executive Executive Employment Agreement, dated as of March 3, 2023, between BG Staff Services, Inc. and John Barnett (incorporated by reference from the registrant's Current Report on Form 8-K filed on March 9, 2023March 9, 2023)</a>
10.21*	<a href="#">Amended Executive Employment Agreement, dated as of March 3, 2023, between BGSE, Inc., BG BG Staff Services, Inc. and Dan Hollenbach (incorporated by reference from the registrant's Current Report on Form 8-K filed on March, March 9, 2023)</a>
10.22	<a href="#">9Third Amendment to Credit Agreement dated as of April 24, 2023, by and among BGSE, Inc., 202 the Guarantors party hereto, and BMO Harris Bank N.A., as administrative agent for the Lenders and as a lender (incorporated by reference from the registrant's Quarterly Report on Form 10-Q filed on May 11, 2023)</a>
10.23	<a href="#">3Fourth Amendment to Credit Agreement dated as of May 19, 2023, by and among BGSE, Inc., the Guarantors party hereto, and BMO Harris Bank N.A., as administrative agent for the Lenders and as a lender (incorporated by reference from the registrant's Current Report on Form 8-K filed on May 25, 2023)</a>
10.24**	<a href="#">Amended and Restated Credit Agreement, dated as of March 12, 2024, among BGSE, Inc., as Borrower, the Lenders from time to time party thereto, BMO Bank, N.A., as Administrative Agent, L/C Issuer, and Swing Line Lender, and BMO Capital Markets Corp., as Sole Lead Arranger and Sole Book Runner</a>
21.1*	<a href="#">List of Subsidiaries of the Registrant</a>
23.1*	<a href="#">Consent of Independent Registered Public Accounting Firm (Whitley Penn LLP)</a>
31.1*	<a href="#">Certification pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934 implementing Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer)</a>
31.2*	<a href="#">Certification pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934 implementing Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Financial Officer)</a>
32.1†	<a href="#">Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
97.1*	<a href="#">BGSE, Inc. Clawback Policy</a>
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101document)



- \* Filed herewith.
- \*\* Management contract or compensatory plan or arrangement.
- † This certification is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act.
- †† Pursuant to Item 601(a)(5) of Regulation S-K, certain schedules and similar attachments have been omitted. The Company hereby agrees to furnish a copy of any omitted schedule or attachment to the Securities and Exchange Commission upon request.

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Execution Version

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## AMENDED AND RESTATED CREDIT AGREEMENT

among

**BGSF, INC.,**  
as Borrower

**THE LENDERS FROM TIME TO TIME PARTY HERETO**

and

**BMO BANK N.A.,**  
as Administrative Agent, L/C Issuer and Swing Line Lender

**BMO CAPITAL MARKETS CORP.,**  
as Sole Lead Arranger and Sole Book Runner

Dated as of March 12, 2024

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[Schedules and other similar attachments have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant hereby undertakes to furnish supplementally copies of any of the omitted schedules or attachments to the Securities and Exchange Commission upon request.]

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[BGSF] Amended and Restated Credit Agreement

## AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT (this “**Agreement**”), dated as of March 12, 2024, is among BGSF, INC., a Delaware corporation (“**Borrower**”), the lenders from time to time party hereto (collectively, “**Lenders**” and individually, a “**Lender**”), and BMO BANK N.A., as Administrative Agent, L/C Issuer and Swing Line Lender.

### RECITALS

WHEREAS, Borrower, Administrative Agent and the “Lenders” from time to time party thereto (the “**Original Lenders**”) are parties to that certain Credit Agreement, dated as of July 16, 2019 (as such agreement was amended, restated, amended and restated, supplemented and otherwise modified from time to time before the date hereof, the “**Original Credit Agreement**”);

WHEREAS, Borrower has requested that Administrative Agent and the Lenders amend and restate the Original Credit Agreement in its entirety; and

WHEREAS, it is the intention of the parties hereto that the loans outstanding under the Original Credit Agreement prior to the Closing Date shall continue and remain outstanding and shall not be repaid on the Closing Date but constitute outstanding loans hereunder and accordingly, the loans made hereunder are not an extinguishment or novation of the loans and other extensions of credit made pursuant to the Original Credit Agreement (as herein amended and restated by this Agreement).

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS

Section 1.1 **Definitions.** As used in this Agreement, all exhibits, appendices and schedules hereto and in any note, certificate, report or other Loan Documents made or delivered pursuant to this Agreement, the following terms will have the meanings given such terms in this **Article 1** or in the provision, section or recital referred to below:



**“Account”** means an account, as defined in the UCC.

**“Acquisition”** means the acquisition by any Person of (a) a majority of the equity interests of another Person, (b) all or substantially all of the assets of another Person or (c) all or substantially all of a business unit or line of business of another Person, in each case (i) whether or not involving a merger or consolidation with such other Person and (ii) whether in one transaction or a series of related transactions.

**“Acquisition Consideration”** means the consideration given by Borrower or any of its Subsidiaries for an Acquisition, including but not limited to the sum of (without duplication) (a) the fair market value of any cash, property (excluding equity interests) or services given, plus (b) the amount of any Debt assumed, incurred or guaranteed (to the extent not otherwise included) in connection with such Acquisition by Borrower or any of its Subsidiaries.

**“Adjusted Term SOFR”** means, for the purposes of any calculation, the rate per annum equal to Term SOFR for such calculation plus the applicable Term SOFR Adjustment.

**“Administrative Agent”** means BMO Bank N.A., in its capacity as administrative agent under any of the Loan Documents, until the appointment of a successor administrative agent pursuant to the terms of this Agreement and, thereafter, shall mean such successor administrative agent.

**“Administrative Questionnaire”** means an Administrative Questionnaire in a form supplied by Administrative Agent.

**“Affected Financial Institution”** means (a) any EEA Financial Institution or (b) any UK Financial Institution.

**“Affiliate”** means, as to any Person, any other Person (a) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person; (b) that directly or indirectly beneficially owns or holds 10% or more of any class of voting stock of such Person; or (c) 10% or more of the voting stock of which is directly or indirectly beneficially owned or held by such Person. The term **“control”** means the possession, directly or indirectly, of the power to direct or cause direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise; *provided, however*, in no event shall any Lender be deemed an Affiliate of Borrower or any of its Subsidiaries or Affiliates.

**“Agent Parties”** means, collectively, Administrative Agent or any of its Related Parties.

**“Agreement”** has the meaning set forth in the introductory paragraph hereto, and includes all schedules, exhibits and appendices attached or otherwise identified therewith.

**“Anti-Corruption Laws”** means the United States Foreign Corrupt Practices Act of 1997, the UK Bribery Act of 2010 and all other applicable Laws relating to any Obligated Party or any of its Affiliates from time to time concerning or relating to bribery or corruption.

**“Applicable Margin”** means the applicable percentages per annum set forth below, based upon the Leverage Ratio, as set forth in the most recent Compliance Certificate received by Administrative Agent pursuant to **Section 7.1(d)**:

Pricing Level	Leverage Ratio	Base Rate Portion	Term SOFR Portions and Letter of Credit Fee	Commitment Fee
1	≥ 2.50:1.00	1.75%	2.75%	0.40%
2	≥ 2.00:1.00 but < 2.50:1.00	1.50%	2.50%	0.35%
3	≥ 1.50:1.00 but < 2.00:1.00	1.25%	2.25%	0.30%
4	≥ 1.00:1.00 but < 1.50:1.00	1.00%	2.00%	0.25%



5	< 1.00:1.00	0.75%	1.75%	0.20%
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Any increase or decrease in the Applicable Margin resulting from a change in the Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to **Section 7.1(d)**; provided that if a

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[BGSF] Amended and Restated Credit Agreement

Compliance Certificate is not delivered when due in accordance with such Section, then upon the request of the Required Lenders, Pricing Level 1 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered. Subject to the foregoing sentence, the Applicable Margin from the Closing Date through the date a Compliance Certificate is delivered pursuant to **Section 7.1(d)** in respect of the first fiscal quarter of Borrower ending after the Closing Date shall be determined based upon Pricing Level 2.

If, as a result of any restatement of or other adjustment to the financial statements of Borrower or for any other reason, Borrower or the Required Lenders determine that (i) the Leverage Ratio as calculated by Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Leverage Ratio would have resulted in higher pricing for such period, Borrower shall immediately and retroactively be obligated to pay to Administrative Agent for the account of the applicable Lenders, L/C Issuer or Swing Line Lender, as the case may be, promptly on demand by Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States, automatically and without further action by Administrative Agent, any Lender, L/C Issuer or Swing Line Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of Administrative Agent, any Lender, L/C Issuer or Swing Line Lender, as the case may be, under **Section 2.3(c)(iii), 2.3(g) or 2.7(g)** or under **Article 8**. Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

**"Applicable Percentage"** means

(a) in respect of the Delayed Draw Term Loan Commitments, with respect to any Term Loan Lender at any time, the percentage (carried out to the twelfth decimal place) of the aggregate Delayed Draw Term Loan Commitments of all Term Loan Lenders at such time represented by such Term Loan Lender's Delayed Term Loan Commitment at such time, and

(b) in respect of the Incremental Term Loan Commitments, with respect to any Term Loan Lender at any time, the percentage (carried out to the twelfth decimal place) of the aggregate Incremental Term Loan Commitments of all Term Loan Lenders at such time represented by such Term Loan Lender's Incremental Term Loan Commitment at such time,

(c) in respect of the Term Loans, with respect to any Term Loan Lender at any time, the percentage (carried out to the twelfth decimal place) of the Term Loan Facility represented by the Obligations under the Term Loan Facility held by such Term Loan Lender at such time, and

(d) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the twelfth decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender's Revolving Credit Commitment at such time; provided that if Revolving Credit Commitments have been terminated or otherwise reduced to \$0 pursuant to the terms hereof, then the Applicable Percentage of each Lender with respect to the Revolving Credit Facility shall be determined based upon the Applicable Percentage of such Lender immediately prior to such termination or reduction and after giving effect to any subsequent assignments made pursuant to the terms hereof.

**"Applicable Rate"** means (a) in the case of a Portion bearing interest based upon the Base Rate, the Base Rate plus the Applicable Margin; and (b) in the case of a Portion bearing interest based upon Term SOFR or Adjusted Term SOFR, Adjusted Term SOFR plus the Applicable Margin.

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[BGSF] Amended and Restated Credit Agreement



**"Approved Foreign Acquisition"** means any Permitted Acquisition which was made in reliance on either **clause (A)(y)** or **(B)(y)** of **Section 8.5(e)(ii)**.

**"Approved Fund"** means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**"Arranger"** means BMO Capital Markets Corp. in its capacity as sole lead arranger and sole book manager.

**"Arroyo Acquisition Agreement"** means that certain Asset Purchase Agreement, dated as of April 23, 2023, by and among BGSF Professional, Arroyo Consulting LLC, a Tennessee limited liability company, Luis Fernando Sanchez, an individual resident of the State of Texas, and Maureen E. Herrera, an individual resident of the State of Texas, as the same may be amended from time to time.

**"Arroyo Earnout"** has the meaning set forth in **Section 8.20**.

**"ASC 842"** has the meaning set forth in **Section 1.2(c)**.

**"Assignment and Assumption"** means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by **Section 12.8**), and accepted by Administrative Agent, in substantially the form of **Exhibit A** or any other form approved by Administrative Agent.

**"Auto-Extension Letter of Credit"** means a Letter of Credit that has automatic extension provisions.

**"Available Tenor"** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to **Section 2.11**.

**"Bail-In Action"** means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

**"Bail-In Legislation"** means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliate (other than through liquidation, administration or other insolvency proceedings).

**"Bank Product Agreements"** means those certain agreements entered into from time to time between any Obligated Party and a Lender or its Affiliate in connection with any of the Bank Products, including without limitation, Hedge Agreements.

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[BGSF] Amended and Restated Credit Agreement

**"Bank Product Obligations"** means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by any Obligated Party to any Lender or its Affiliate pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all such amounts that an Obligated Party is obligated to reimburse to any Lender or its Affiliate as a result of such Lender or its Affiliate purchasing participations or executing indemnities or reimbursement obligations with respect to the Bank Products provided to any Obligated Party pursuant to the Bank Product



Agreements. For the avoidance of doubt, the Bank Product Obligations arising under any Hedge Agreement shall be determined by the Hedge Termination Value thereof.

**"Bank Product Provider"** means any Person that, (a) at the time it enters into a Bank Product Agreement is a Lender or an Affiliate of a Lender or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Bank Product Agreement, in each case, in its capacity as a party to such Bank Product Agreement.

**"Bank Products"** means any service provided to, facility extended to, or transaction entered into with, any Obligated Party by any Lender or its Affiliate consisting of (a) deposit accounts, (b) cash management services, including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements maintained with any Lender or its Affiliates, (c) debit cards, stored value cards, and credit cards (including commercial credit cards (including so-called "procurement cards" or "P-cards")) and debit card and credit card processing services or (d) Hedge Agreements.

**"Base Rate"** means, for any day, a fluctuating rate per annum equal to the highest of (a) the rate of interest announced by Administrative Agent from time to time as its prime rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; and (c) the sum of (i) Adjusted Term SOFR for a one-month tenor in effect on such day plus (ii) 1.00%. Any change in the Base Rate due to a change in the prime rate, the Federal Funds Rate or Adjusted Term SOFR, as applicable, shall be effective from and including the effective date of the change in such rate. If the Base Rate is being used as an alternate rate of interest pursuant to **Section 2.11** or **3.3** hereof, then the Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. If the Base Rate as determined above shall ever be less than the Floor, then Base Rate shall be deemed to be the Floor.

**"Base Rate Portion"** means each Portion bearing interest based on the Base Rate.

**"Benchmark"** means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to **Section 2.11**.

**"Benchmark Replacement"** means the first alternative set forth in the order below that can be determined by Administrative Agent for the applicable Benchmark Replacement Date,

(a) the sum of (i) Daily Simple SOFR plus (ii) 0.10% (10 basis points); or

(b) the sum of: (i) the alternate benchmark rate that has been selected by Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate

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by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**"Benchmark Replacement Adjustment"** means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.



**“Benchmark Replacement Date”** means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness or non-compliance will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

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(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Unavailability Period”** means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 2.11** and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 2.11**.

**“Beneficial Ownership Certification”** means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** means 31 C.F.R. § 1010.230.

**“BGSF Professional”** means BGSF Professional, LLC, a Delaware limited liability company.

**“BMO”** means BMO Bank, N.A.



**"Borrower"** means the Person identified as such in the introductory paragraph hereto, and its successors and assigns to the extent permitted by **Section 12.8**.

**"Borrowing"** means a Revolving Credit Borrowing, a Swing Line Borrowing or a Term Loan Borrowing, as the context may require.

**"Borrowing Request"** means a Revolving Credit Borrowing Request or a Term Loan Borrowing Request, as applicable.

**"Business Day"** means for all purposes, a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized or required by law to be closed. Unless otherwise provided, the term "days" when used herein means calendar days.

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**"Capital Expenditure"** means, with respect to any Person, any expenditure by such Person for (a) an asset which will be used in a year or years subsequent to the year in which the expenditure is made and which asset is properly classified in relevant financial statements of such Person as equipment, real property, a fixed asset or a similar type of capitalized asset in accordance with GAAP or (b) an asset relating to or acquired in connection with an acquired business, and any and all acquisition costs related to **clause (a) or (b)** above.

**"Capitalized Lease Obligation"** means, with respect to any Person, the amount of Debt under a lease of Property by such Person that would be shown as a liability on a balance sheet of such Person prepared for financial reporting purposes in accordance with GAAP (but excluding, for the avoidance of doubt, the amount of Debt under "operating leases" as defined in ASC 842).

**"Cash Collateralize"** means to pledge and deposit with or deliver to Administrative Agent, for the benefit of one or more of L/C Issuer or Revolving Credit Lenders, as collateral for L/C Obligations or obligations of Revolving Credit Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if Administrative Agent and L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to Administrative Agent and L/C Issuer. **"Cash Collateral"** shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**"Cash Interest Expense"** means, for any Person for any period, total interest expense in respect of all outstanding Debt actually paid or that is payable by such Person during such period, including, without limitation, all commissions, discounts, and other fees and charges with respect to letters of credit and all net costs under Hedge Agreements in respect of interest rates to the extent such costs are allocable to such period, but excluding interest expense not payable in cash, all as determined in accordance with GAAP.

**"Casualty Event"** means any event not constituting a Disposition that gives rise to the receipt by Borrower or any of its Subsidiaries of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

**"Change in Law"** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a **"Change in Law"**, regardless of the date enacted, implemented, adopted or issued.

**"Change of Control"** means an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all

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securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”), directly or indirectly, of more than fifty percent (50%) or more of the equity interests of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right); or

(b) during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in **clause (i)** above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in **clauses (i) and (ii)** above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

“**Closing Date**” means the first date all the conditions precedent in **Section 5.1** are satisfied or waived in accordance with **Section 12.10**.

“**Code**” means the Internal Revenue Code of 1986.

“**Collateral**” means substantially all of the Property of Borrower and its Subsidiaries as described in the Security Documents, together with any other Property and collateral described in the Security Documents, including, among other things, any other Property which may now or hereafter secure the Obligations or any part thereof, and any products or proceeds of any of the foregoing.

“**Commitment**” means a Term Loan Commitment or a Revolving Credit Commitment, as the context may require.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“**Communications**” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed to Administrative Agent, any Lender, L/C Issuer, or Swing Line Lender by means of electronic communications pursuant to **Section 12.11(d)**, including through the Platform.

“**Compliance Certificate**” means a certificate, substantially in the form of **Exhibit C**, or in any other form agreed to by Borrower and Administrative Agent, prepared by and certified by a Responsible Officer of Borrower.

“**Conforming Changes**” means with respect to either the use or administration of Term SOFR (including Adjusted Term SOFR) or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” the definition of “U.S. Government Securities Business Day”, the timing and frequency of determining rates and making payments of interest, the timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or

operational matters) that Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines that no market practice for the



administration of any such rate exists, in such other manner of administration as Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“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.

**“Constituent Documents”** means (a) in the case of a corporation, its articles or certificate of incorporation and bylaws; (b) in the case of a general partnership, its partnership agreement; (c) in the case of a limited partnership, its certificate of limited partnership or certificate of formation, as applicable, and partnership agreement; (d) in the case of a trust, its trust agreement; (e) in the case of a joint venture, its joint venture agreement; (f) in the case of a limited liability company, its articles of organization, operating agreement, regulations and/or other organizational and governance documents and agreements; and (g) in the case of any other entity, its organizational and governance documents and agreements.

**“Covenant Holiday”** has the meaning set forth in **Section 9.1**.

**“Covenant Holiday Acquisition”** means any Acquisition consummated by Borrower or a Subsidiary for which the total Acquisition Consideration exceeds \$40,000,000.

**“Credit Extension”** means a Revolving Credit Borrowing, a Term Loan Borrowing, an L/C Credit Extension or a Swing Line Borrowing, as the context may require.

**“Daily Simple SOFR”** means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for bilateral business loans; provided, that if Administrative Agent decides that any such convention is not administratively feasible for the Lender, then Administrative Agent may establish another convention in its reasonable discretion.

**“Debt”** means, of any Person as of any date of determination (without duplication): (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, notes, debentures, or other similar instruments; (c) all obligations of such Person to pay the deferred purchase price of Property or services, except trade accounts payable of such Person arising in the ordinary course of business that are not past due by more than ninety (90) days; (d) all Capitalized Lease Obligations of such Person; (e) all Debt or other obligations of others Guaranteed by such Person; (f) all obligations secured by a Lien existing on Property owned by such Person, whether or not the obligations secured thereby have been assumed by such Person or are non-recourse to the credit of such Person; (g) any other obligation for borrowed money or other financial accommodations which in accordance with GAAP would be shown as a liability on the balance sheet of such Person; (h) any repurchase obligation or liability of a Person with respect to Accounts, chattel paper or notes receivable sold by such Person; (i) any liability under a sale and leaseback transaction that is not a Capitalized Lease Obligation; (j) any obligation under any so called “synthetic leases;” (k) any obligation arising with respect to any other transaction that is the functional equivalent of borrowing but which does not constitute a liability on the balance sheets of a Person; (l) all payment and reimbursement obligations of such Person (whether contingent or otherwise) in respect of letters

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of credit, bankers' acceptances, surety or other bonds and similar instruments; (m) all liabilities of such Person in respect of unfunded vested benefits under any Plan; (n) all net Hedge Obligations of such Person, valued at the Hedge Termination Value thereof; and (o) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any equity interests in such Person or any other Person, valued, in the case of redeemable preferred stock interests, at the greater of its voluntary or involuntary liquidation preference, excluding, however, all accrued and unpaid dividends.

For all purposes, the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person.

**“Debt Service”** means, for any Person as of any date, the sum of (a) all regularly scheduled principal payments that are paid or are payable in respect of all Debt of such Person, *plus* (b) all Cash Interest Expense that is paid or payable in respect of all Debt of such Person, in each case for the four fiscal quarters of such Person most recently ended; *provided* that the repayment by Borrower of the outstanding principal balance of the Horn



Solutions Seller Note on or before December 12, 2024, shall be disregarded from the calculation of “Debt Service” so long as such repayment is made in accordance with the provisions of **Section 8.9**.

“**Debtor Relief Laws**” means Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, assignment for the benefit of creditors, moratorium, arrangement or composition, extension or adjustment of debts, or similar Laws affecting the rights of creditors.

“**Default**” means an Event of Default or the occurrence of an event or condition which with notice or lapse of time or both would become an Event of Default.

“**Default Interest Rate**” means an interest rate equal to (a) the Base Rate *plus* (b) the Applicable Margin then applicable to a Base Rate Portion *plus* (c) two percent (2%) per annum; *provided, however*, that with respect to a Term SOFR Portion, the Default Interest Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise then applicable to such Term SOFR Portion *plus* two percent (2%) per annum; *provided, however*, in no event shall the Default Interest Rate exceed the Maximum Rate.

“**Defaulting Lender**” means, subject to **Section 12.22(b)**, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Swing Line Loans) within two (2) Business Days of the date when due, (b) has notified Borrower, Administrative Agent, L/C Issuer or Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (*provided that*

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such Lender shall cease to be a Defaulting Lender pursuant to this **clause (c)** upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action; *provided that* a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of **clauses (a)** through **(d)** above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 12.22(b)**) upon delivery of written notice of such determination to Borrower and each Lender.

“**Delayed Draw Commitment Termination Date**” means July 15, 2024.

“**Delayed Draw Term Loan Commitment**” means, as to each Term Loan Lender, its obligation to make a Delayed Draw Term Loan to Borrower pursuant to **Section 2.1(b)(ii)** in an aggregate principal amount not to exceed the amount set forth opposite such Term Loan Lender’s name on **Schedule 2.1** under the caption “Delayed Draw Term Loan Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term Loan Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. As of the Closing Date, the aggregate Delayed Draw Term Loan Commitments are \$4,250,000.

“**Delayed Draw Term Loans**” has the meaning set forth in **Section 2.1(b)**.



**"Designated Jurisdiction"** means any country, region or territory to the extent that such country, region or territory is the subject of any Sanction.

**"Disposition"** means any sale, lease, sub-lease, transfer, assignment, conveyance, release, loss or other disposition, or entry into any contract the performance of which would result in any of the foregoing, of any interest in Property, or of any interest in a Subsidiary that owns Property, in any transaction or event or series of transactions or events, and **"Dispose"** has the correlative meaning thereto.

**"Dollars"** and **"\$"** mean lawful money of the United States of America.

**"EBITDA"** means, for any Person for any period, an amount equal to (a) Net Income *plus* (b) the sum of the following to the extent deducted in the calculation of Net Income: (i) interest expense; (ii) income taxes; (iii) depreciation; (iv) amortization; (v) extraordinary losses determined in accordance with GAAP; and (vi) all non-cash charges which do not represent a cash item in such period or any future period, *minus* (c) the sum of the following to the extent included in the calculation of Net Income: (i) income tax credits; (ii) extraordinary gains determined in accordance with GAAP; and (iii) all non-cash items increasing Net Income. Without limiting **Section 1.9**, for purposes of calculating the Fixed Charge Coverage Ratio and the Leverage Ratio as at any date, EBITDA shall be calculated on a *pro forma* basis (as certified by Borrower to Administrative Agent) assuming that all Acquisitions made, and all Dispositions completed, during the four consecutive fiscal quarters then most recently ended has been made

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on the first day of such period (but without any adjustment for projected cost savings or other synergies unless otherwise approved by Administrative Agent).

**"EEA Financial Institution"** means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that 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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

**"Eligible Assignee"** means any Person that meets the requirements to be an assignee under **Section 12.8(b)(iii)**, (v) and (vi) (subject to such consents, if any, as may be required under **Section 12.8(b)(iii)**).

**"Environmental Laws"** means any and all federal, state, and local Laws, regulations, judicial decisions, orders, decrees, plans, rules, permits, licenses, and other governmental restrictions and requirements pertaining to health, safety, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.

**"Environmental Liabilities"** means, as to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs, and expenses (including, without limitation, all reasonable fees, disbursements and expenses of counsel, expert and consulting fees and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, including any Environmental Law, permit, order or agreement with any Governmental Authority or other Person, arising from environmental, health or safety conditions or the Release or threatened Release of a Hazardous Material into the environment, resulting from the past, present, or future operations of such Person or its Affiliates.

**"Equity Issuance"** means the issuance and sale by Borrower for cash of equity interests of Borrower, which equity interests do not benefit from any redemption or retirement right or obligation, any sinking fund or similar right or obligation, any option or obligation to purchase or sell, any conversion or exchange right or obligation, or any liquidation preference.



**"ERISA"** means the Employee Retirement Income Security Act of 1974.

**"ERISA Affiliate"** means any corporation or trade or business which is a member of the same controlled group of corporations (within the meaning of *Section 414(b)* of the Code) as an Obligated Party or is under common control (within the meaning of *Section 414(c)* of the Code and *Sections 414(m)* and *(o)* of the Code for purposes of the provisions relating to *Section 412* of the Code) with an Obligated Party.

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**"ERISA Event"** means (a) a Reportable Event with respect to a Plan, (b) a withdrawal by any Obligated Party or any ERISA Affiliate from a Plan subject to *Section 4063* of ERISA during a plan year in which it was a substantial employer (as defined in *Section 4001(a)(2)* of ERISA) or a cessation of operations which is treated as such a withdrawal under *Section 4062(e)* of ERISA, (c) a complete or partial withdrawal by any Obligated Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization, (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under *Section 4041* or *4041A* of ERISA, or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan, (e) the occurrence of an event or condition which might reasonably be expected to constitute grounds under *Section 4042* of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan, (f) the imposition of any liability to the PBGC under Title IV of ERISA, other than for PBGC premiums due but not delinquent under *Section 4007* of ERISA, upon any Obligated Party or any ERISA Affiliate, (g) the failure of any Obligated Party or ERISA Affiliate to meet any funding obligations with respect to any Plan or Multiemployer Plan, or (h) a Plan becomes subject to the at-risk requirements in *Section 303* of ERISA and *Section 430* of the Code.

**"EU Bail-In Legislation Schedule"** means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

**"Event of Default"** has the meaning set forth in *Section 10.1*.

**"Excluded Swap Obligation"** means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a Lien to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to any "keepwell, support or other agreement" for the benefit of such Guarantor and any and all guaranties of such Guarantor's Swap Obligations by Borrower or any other Guarantor) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

**"Excluded Taxes"** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in such Loan or Commitment (other than pursuant to an assignment request by Borrower under *Section 3.6(b)*) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to *Section 3.4*, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with *Section 3.4(g)* and (d) any U.S. federal withholding Taxes imposed under FATCA.

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**"Existing Revolving Loans"** has the meaning set forth in **Section 2.1(a)**.

**"Existing Term Loans"** has the meaning set forth in **Section 2.1(b)**.

**"Exiting Lender"** means each Person signatory hereto as an "Exiting Lender".

**"Facility"** means the Term Loan Facility or the Revolving Credit Facility, as the context may require.

**"FATCA"** means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any applicable intergovernmental agreements entered into in connection with the implementation of such Sections of the Code.

**"Federal Funds Rate"** means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York, on the Business Day next succeeding such day, *provided* that (a) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average rate charged to Administrative Agent on such day on such transactions as determined by Administrative Agent.

**"Fee Letter"** means (i) the separate Amended and Restated Fee Letter, dated as of the Closing Date, between Borrower and BMO, and (ii) any other fee letter among Borrower and Administrative Agent, Arranger and/or BMO concerning fees to be paid by Borrower in connection with this Agreement including any amendments, restatements, supplements or modifications thereof. By its execution of this Agreement, each Lender acknowledges and agrees that Administrative Agent, Arranger and/or BMO may elect to treat as confidential and not share with Lenders any Fee Letters executed from time to time in connection with this Agreement.

**"Fixed Charge Coverage Ratio"** means, as of any date, the ratio of (a) Net Cash Flow to (b) Debt Service.

**"Floor"** means the rate per annum of interest equal to 0%.

**"Foreign Lender"** means (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender that is resident or organized under the Laws of a jurisdiction other than that in which Borrower is resident for tax purposes.

**"Foreign Subsidiary"** means any Subsidiary that is organized under the laws of a jurisdiction other than the United States, a State thereof, the District of Columbia or Canada.

**"Fronting Exposure"** means, at any time there is a Defaulting Lender, with respect to (a) L/C Issuer, such Defaulting Lender's Applicable Percentage of the Outstanding Amount of the L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) Swing Line Lender, such Defaulting Lender's Applicable Percentage of the Outstanding Amount of Swing Line Loans other than Swing Line Loans as to which such

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Defaulting Lender's participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

**"Fund"** means any Person (other than a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**"Funded Debt"** means, on any date of determination, the outstanding principal amount of all Debt of Borrower and its Subsidiaries of the type described in **clauses (a), (b), (c), (d), (f), (g), (h), (i), (j), (k), (l), (n) and (o)** of the definition of **"Debt"**, and, without duplication, any Guarantees of the



foregoing, in each case determined on a consolidated basis in accordance with GAAP; *provided* that “Funded Debt” shall in any case exclude performance-based earn-out payments of Borrower and its Subsidiaries in respect of Acquisitions.

“**GAAP**” means generally accepted accounting principles, applied on a consistent basis, as set forth in opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board and/or their respective successors and which are applicable in the circumstances as of the date in question. Accounting principles are applied on a “consistent basis” when the accounting principles applied in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

“**Governmental Authority**” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, tribal body or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), and any group or body charged with setting financial accounting or regulatory capital rules or standards (including without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“**Guarantee**” by any Person means any obligation or liability, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person as well as any obligation or liability, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation or liability (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to operate Property, to take-or-pay, or to maintain net worth or working capital or other financial statement conditions or otherwise) or (b) entered into for the purpose of indemnifying or assuring in any other manner the obligee of such Debt or other obligation or liability of the payment thereof or to protect the obligee against loss in respect thereof (in whole or in part); *provided* that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The term “**Guarantee**” used as a verb has a corresponding meaning.

“**Guarantors**” means each Person who from time to time Guarantees all or any part of the Obligations under the Loan Documents, and “**Guarantor**” means any one of the Guarantors.

“**Guaranty**” means any Guaranty executed by any Guarantor in favor of the Guaranteed Parties (as defined therein), including any guaranty supplement thereto, substantially in the form of **Exhibit D**, including, without limitation, that certain Guaranty, dated as of the date hereof, executed by, *inter alia*, each Subsidiary of Borrower in existence as of the date hereof.

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“**Hazardous Material**” means any substance, product, waste, pollutant, material, chemical, contaminant, constituent, or other material which is or becomes listed, regulated, or addressed under any Environmental Law, including, without limitation, asbestos, petroleum, and polychlorinated biphenyls.

“**Hedge Agreement**” means (a) any and all interest rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules and annexes, a “**Master Agreement**”) and (c) any and all Master Agreements and any and all related confirmations.

“**Hedge Obligations**” means, at any time with respect to any Person, all indebtedness, liabilities, and obligations of such Person under or in connection with any Hedge Agreement, whether actual or contingent, due or to become due and existing or arising from time to time.



**"Hedge Termination Value"** means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and settlement amounts, early termination amounts or termination value(s) determined in accordance therewith, such settlement amounts, early termination amounts or termination value(s), and (b) for any date prior to the date referenced in **clause (a)**, the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more commercially reasonable mid-market or other readily available quotations provided by any dealer which is a party to such Hedge Agreement or any other recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

**"Honor Date"** has the meaning set forth in **Section 2.3(c)(i)**.

**"Horn Solutions Seller Note"** means that certain Convertible Subordinated Note, dated as of December 12, 2022, issued by BG Professional, LLC in favor of the Horn Solutions Seller Parties, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

**"Horn Solutions Seller Parties"** means, collectively, Horn Solutions, Inc., a Texas corporation, and Horn Solutions Dallas, LLC, a Texas limited liability company.

**"Increase Effective Date"** has the meaning set forth in **Section 2.9(d)**.

**"Incremental Commitment"** has the meaning set forth in **Section 2.9(a)**.

**"Incremental Lender"** has the meaning set forth in **Section 2.9(b)**.

**"Incremental Term Loan Commitment"** has the meaning set forth in **Section 2.9(a)**.

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**"Incremental Term Loan Facility"** means any Term Loan Facility consisting of Incremental Term Loan Commitments and all Term Loan Borrowings thereunder.

**"Incremental Term Loan Lender"** has the meaning set forth in **Section 2.9(b)**.

**"Indemnified Taxes"** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not otherwise described in **clause (a)**, Other Taxes.

**"Information"** has the meaning set forth in **Section 12.25**.

**"Intellectual Property"** means all copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses and other types of intellectual property, in whatever form, now owned or hereafter acquired.

**"Interest Period"** means, with respect to any Term SOFR Portion, the period commencing on the date such Term SOFR Portion is advanced, continued, or created by conversion and ending one, three, or six months thereafter as selected by Borrower in its notice as provided herein; provided that:

(a) no Interest Period shall extend beyond the Maturity Date;

(a) no Interest Period with respect to any portion of the Term Loans shall extend beyond a date on which the Borrowers are required to make a scheduled payment of principal on the Term Loans unless the sum of (a) the aggregate principal amount of all Base Rate Portions of the Term Loans plus (b) the aggregate principal amount of all Term SOFR Portions of the Term Loans with Interest Periods expiring on or before such date equals or exceeds the principal amount to be paid on the Term Loans on such payment date;

(b) whenever the last day of any Interest Period would otherwise be a day that is not a Business Day, the last day of such Interest Period shall be extended to the next succeeding Business Day, provided that, if such extension would cause the last day of an Interest Period



for any Term SOFR Portions to occur in the following calendar month, the last day of such Interest Period shall be the immediately preceding Business Day; and

(c) for purposes of determining an Interest Period for any Term SOFR Portions, a month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month; provided, that if there is no numerically corresponding day in the month in which such an Interest Period is to end or if such an Interest Period begins on the last Business Day of a calendar month, then such Interest Period shall end on the last Business Day of the calendar month in which such Interest Period is to end; and

(d) no tenor that has been removed from this definition pursuant to **Section 2.11** below shall be available for specification by the Borrowers.

**"Interest Rate"** means the rate equal to the lesser of (a) the Maximum Rate and (b) the Applicable Rate.

**"IRS"** means the Internal Revenue Service or any entity succeeding to all or any of its functions.

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**"ISP"** means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

**"Issuer Documents"** means, with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by L/C Issuer and Borrower (or any Subsidiary) or in favor of L/C Issuer and relating to such Letter of Credit.

**"L/C Advance"** means, with respect to each Revolving Credit Lender, such Revolving Credit Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

**"L/C Borrowing"** means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed by Borrower on the date when made or refinanced as a Revolving Credit Borrowing.

**"L/C Credit Extension"** means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

**"L/C Issuer"** means BMO in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

**"L/C Obligations"** means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.8**. 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 Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

**"Laws"** means, collectively, all international, foreign, federal, state, provincial and local statutes, constitutions, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administrative thereof by any Governmental Authority charged with the enforcement, interpretation or administrative thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

**"Lease"** of any Person means all of the right, title and interest of such Person as lessee or licensee in, to and under leases or license of land, improvements and/or fixtures.

**"Lender"** and **"Lenders"** have the meanings set forth in the introductory paragraph hereto, and shall include the L/C Issuer and Swing Line Lender, as the context may require.

**"Lending Office"** means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify Borrower and Administrative Agent.



**“Letter of Credit”** means any letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder.

**“Letter of Credit Application”** means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by L/C Issuer.

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**“Letter of Credit Expiration Date”** means the day that is thirty (30) days prior to the Maturity Date for the Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

**“Letter of Credit Fee”** has the meaning set forth in **Section 2.4(b)**.

**“Letter of Credit Sublimit”** means an amount equal to \$2,000,000.00. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Commitments.

**“Leverage Ratio”** means, as of any date of determination, the ratio of (a) all Funded Debt of Borrower and its Subsidiaries as of the last day of the fiscal quarter most recently ended to (b) EBITDA of Borrower and its Subsidiaries for the four fiscal quarters most recently ended.

**“Lien”** means, as to any Property of any Person, (a) any lien, mortgage, security interest, tax lien, pledge, charge, hypothecation, collateral assignment, preference, priority, or other encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or title retention agreement), whether arising by contract, operation of law, or otherwise, affecting such Property and (b) the signing or filing of a financing statement which names the Person as debtor or the signing of any security agreement or the signing of any document authorizing a secured party to file any financing statement which names such Person as debtor.

**“Loan”** means an extension of credit by a Lender to Borrower under **Article 2** in the form of a Revolving Credit Loan, a Term Loan or a Swing Line Loan.

**“Loan Documents”** means this Agreement, the Guaranty, the Security Documents, the Revolving Credit Notes, the Term Loan Notes, and all other promissory notes, security agreements, deeds of trust, assignments, letters of credit, guaranties, and other instruments, documents, or agreements executed and delivered pursuant to or in connection with this Agreement or the Security Documents; *provided* that the term “Loan Documents” shall not include any Bank Product Agreement.

**“Loss”** has the meaning set forth in **Section 7.5(b)**.

**“Material Adverse Event”** means any act, event, condition, or circumstance which could materially and adversely affect (a) the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of Borrower or Borrower and its Subsidiaries, taken as a whole; (b) the ability of any Obligated Party to perform its obligations under any Loan Document to which it is a party; or (c) the legality, validity, binding effect or enforceability against any Obligated Party of any Loan Document to which it is a party.

**“Maturity Date”** means March 12, 2028, or such earlier date on which the Commitments of each Lender terminate as provided in this Agreement; *provided, however*, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next succeeding Business Day.

**“Maximum Rate”** means, at all times, the maximum rate of interest which may be charged, contracted for, taken, received or reserved by Lenders in accordance with applicable Texas law (or applicable United States federal law to the extent that such law permits Lenders to charge, contract for, receive or reserve a greater amount of interest than under Texas law). The Maximum Rate shall be calculated in a manner that takes into account any and all fees, payments, and other charges in respect of the Loan Documents that constitute interest under applicable law. Each change in any interest rate provided for herein based upon the Maximum Rate resulting from a change in the Maximum Rate shall take effect without notice to Borrower at the time of such change in the Maximum Rate.

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**"Minimum Collateral Amount"** means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the time that a Defaulting Lender exists, an amount equal to 105% of the Fronting Exposure of L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of **Section 2.10(a)(i), (a)(ii) or (a)(iii)**, an amount equal to 105% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by Administrative Agent and L/C Issuer in their sole discretion.

**"MIRE Event"** shall mean if there are any Mortgaged Properties at such time, any increase, extension or renewal of any of the Commitments or Loans, but excluding any continuation or conversion of Borrowings, or the making of any Revolving Credit Loan.

**"Mortgaged Property"** means any property subject to a Mortgage.

**"Mortgages"** means, collectively, the mortgages or deeds of trust now or hereafter encumbering Borrower's or any of its Subsidiaries' fee in the property as described therein in favor of Administrative Agent, in form and substance satisfactory to Administrative Agent.

**"Multiemployer Plan"** means a multiemployer plan defined as such in *Section 3(37)* of ERISA to which contributions are being made or have been made by, or for which there is an obligation to make by or there is any liability, contingent or otherwise, with respect to an Obligated Party or any ERISA Affiliate and which is covered by Title IV of ERISA.

**"Net Cash Flow"** means, as of any date, with respect to Borrower and its Subsidiaries, the sum of (a) EBITDA *minus* (b) cash taxes paid, *minus* (c) Non-Financed Capital Expenditures, *minus* (d) Restricted Payments paid in cash, *minus* (e) earn-out payments paid in respect of Acquisitions (excluding the Arroyo Earnout to the extent funded with the proceeds of the Delayed Draw Term Loans), in each case, for the immediately preceding four fiscal quarters ending on such date.

**"Net Cash Proceeds"** means

(a) with respect to any Disposition by Borrower or any of its Subsidiaries, or any Casualty Event, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Debt that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Debt under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by Borrower or such Subsidiary in connection with such transaction and payable to a Person that is not an Affiliate of Borrower, and (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided that, if the amount of any estimated taxes pursuant to **subclause (C)** exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds; and

(b) with respect to any Equity Issuance by Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and cash equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by Borrower or such Subsidiary in connection therewith.

**"Net Income"** means, for any Person for any period, the net income (or loss) of such Person and its Subsidiaries on a consolidated basis as determined in accordance with GAAP; *provided that* Net Income shall exclude (a) the net income of any Subsidiary of such Person during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Constituent Documents or any agreement, instrument or Law applicable to such Subsidiary during such period, except that such Person's equity in any net loss of any such Subsidiary for such period shall be included in determining Net Income, and (b) any income (or loss) for such period of any other Person if such other Person is not a Subsidiary (except where pursuant to the express provisions of this Agreement, the income or loss of



such Person is intended to be included in the *pro forma* calculations hereunder), except that Borrower's equity in the net income of any such Person for such period shall be included in Net Income up to the aggregate amount of cash actually distributed by such Person during such period to Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to Borrower as described in **clause (a)** of this proviso).

**"Non-Consenting Lender"** means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all affected Lenders in accordance with the terms of **Section 12.10** and (b) has been approved by the Required Lenders.

**"Non-Defaulting Lender"** means, at any time, each Lender that is not a Defaulting Lender at such time.

**"Non-Extension Notice Date"** has the meaning set forth in **Section 2.3(b)(iii)**.

**"Non-Financed Capital Expenditures"** means, for the prior twelve-month period, all Capital Expenditures other than those made utilizing financing provided by the applicable seller or third party lenders or fundings under the Facility.

**"Note"** means a Revolving Credit Note or a Term Loan Note, as the context may require.

**"Notice Period"** has the meaning specified in **Section 5.3**.

**"Obligated Party"** means Borrower and each Guarantor.

**"Obligations"** means all obligations, indebtedness, and liabilities of Borrower, each Guarantor and any other Obligated Party to Administrative Agent, each Lender and any Affiliates of Administrative Agent or any Lender now existing or hereafter arising, whether direct, indirect, related, unrelated, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, arising under or pursuant to this Agreement, any Bank Product Agreements, the other Loan Documents, and all interest accruing thereon (whether a claim for post-filing or post-petition interest is allowed in any bankruptcy, insolvency, reorganization or similar proceeding) and all attorneys' fees and other expenses incurred in the enforcement or collection thereof, including any obligations to pay, discharge and satisfy the Erroneous Payment Subrogation Rights; *provided that*, as to any Guarantor, the "Obligations" shall exclude any Excluded Swap Obligations of such Guarantor.

**"OFAC"** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**"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 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 3.6**).

**"Outstanding Amount"** means (a) with respect to the Revolving Credit Loans, the Term Loans and the Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of Revolving Credit Loans, the Term Loans and Swing Line Loans, as the case may be, occurring on such date, and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by Borrower of Unreimbursed Amounts.

**"Owned Real Estate Support Documents"** means, with respect to any real property which is owned by Borrower or its Subsidiaries in fee simple, such mortgagee title insurance policies (in amounts and with endorsements acceptable to Administrative Agent), surveys, environmental



assessment reports, environmental questionnaires, flood hazard certifications, evidence of flood insurance, if required, and other mortgage-related documents as Administrative Agent may reasonably request, in each case in form and substance reasonably satisfactory to Administrative Agent.

**"Participant"** means any Person (other than a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, a Defaulting Lender, or Borrower or any of Borrower's Affiliates or Subsidiaries or any other Obligated Party) to which a participation is sold by any Lender in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it).

**"Participant Register"** means a register in the United States on which each Lender that sells a participation 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.

**"Patriot Act"** means the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56, signed into law October 26, 2001).

**"Payment Date"** means (a) in respect of each Base Rate Portion, the first day of each and every calendar quarter during the term of this Agreement and the Maturity Date, and (b) in respect of each Term SOFR Portion, the last day of each Interest Period applicable to such Term SOFR Portion (or the day that is three months after the first day of such Interest Period if such Interest Period has a length of more than three (3) months) and the Maturity Date.

**"PBGC"** means the Pension Benefit Guaranty Corporation or any entity succeeding to all or any of its functions under ERISA.

**"Permitted Account"** has the meaning set forth in **Section 7.12**.

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**"Permitted Acquisition"** means any Acquisition which, at the time of closing, satisfies or has satisfied, as applicable, all of the requirements of **Section 8.5(e)**.

**"Permitted Distributions"** means distributions on account of Borrower's equity interests if (a) prior to the distribution no Default exists, (b) immediately after giving effect to such distribution (including any Credit Extensions made in connection therewith), there shall be at least \$2,000,000 in Revolving Credit Availability, and (c) after giving Pro Forma Effect to the distribution no Default exists or will exist.

**"Permitted Liens"** means those Liens permitted by **Section 8.2**.

**"Person"** means any individual, corporation, limited liability company, business trust, association, company, partnership, joint venture, Governmental Authority, or other entity, and shall include such Person's heirs, administrators, personal representatives, executors, successors and assigns.

**"Plan"** means any employee benefit or other plan, other than a Multiemployer Plan, established or maintained by, or for which there is an obligation to make contributions by or there is any liability, contingent or otherwise with respect to Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA or subject to **Section 412** of the Code.

**"Platform"** means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

**"Portion"** means any principal amount of any Loan bearing interest based upon the Base Rate or Adjusted Term SOFR.

**"Principal Office"** means the principal office of Administrative Agent, presently located at the address set forth on **Schedule 12.11**.

**"Pro Forma Basis"** and **"Pro Forma Effect"** means, with respect to compliance with any test, covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with **Section 1.9**.

**"Pro Forma Compliance"** means, with respect to the any financial test, covenant or calculation of any ratio hereunder, compliance on a Pro Forma Basis in accordance with **Section 1.9**.



**"Prohibited Transaction"** means any transaction set forth in *Section 406* of ERISA or *Section 4975* of the Code.

**"Property"** of a Person means any and all property, whether real, personal, tangible, intangible or mixed, of such Person, or any other assets owned, operated or leased by such Person.

**"Quarterly Payment Date"** has the meaning set forth in *Section 2.7(b)*.

**"Recipient"** means Administrative Agent, L/C Issuer, Swing Line Lender, and any Lender, as applicable.

**"Register"** means a register for the recordation of the names and addresses of Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time.

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**"Related Indebtedness"** means any and all indebtedness paid or payable by Borrower to Administrative Agent or any Lender pursuant to any Loan Document other than any Note.

**"Related Parties"** means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

**"Release"** means, as to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, disbursement, leaching, or migration of Hazardous Materials into the indoor or outdoor environment or into or out of property owned by such Person, including, without limitation, the movement of Hazardous Materials through or in the air, soil, surface water, ground water, or Property.

**"Relevant Governmental Body"** means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

**"Remedial Action"** means all actions required to (a) clean up, remove, treat, or otherwise address Hazardous Materials in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release of Hazardous Materials so that they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

**"Removal Effective Date"** has the meaning set forth in *Section 11.6(b)*.

**"Reportable Event"** means any of the events set forth in *Section 4043* of ERISA.

**"Required Lenders"** means, at any time, the Administrative Agent and Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders; *provided* that, if one Lender holds more than 50% but less than 100% of the Total Credit Exposures of all Lenders at such time, subject to the last sentence of *Section 12.10*, Required Lenders shall be at least two Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time. Lenders that are Affiliates of one another shall be deemed to be one Lender for purposes of this definition.

**"Required Revolving Credit Lenders"** means, as of any date of determination, Revolving Credit Lenders holding more than 50% of the sum of the (a) the Revolving Credit Exposure of all Revolving Credit Lenders (with the aggregate amount of each Revolving Credit Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; *provided* that, if one Revolving Credit Lender holds more than 50% but less than 100% of the sum of the Revolving Credit Exposure and the unused Revolving Credit Commitments at such time, subject to the last sentence of *Section 12.10*, Required Revolving Credit Lenders shall be at least two Revolving Credit Lenders. The unused Revolving Credit Commitment of, and the portion of the Revolving Credit Exposure of all Revolving Credit Lenders held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders. Lenders that are Affiliates of one another shall be deemed to be one Lender for purposes of this definition.

**"Rescindable Amount"** has the meaning set forth in *Section 2.5(c)*.



**"Resignation Effective Date"** has the meaning set forth in **Section 11.6(a)**.

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**"Resolution Authority"** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**"Responsible Officer"** means the chief executive officer, president, chief financial officer, or treasurer of an Obligated Party or any Person designated by a Responsible Officer to act on behalf of a Responsible Officer; *provided* that such designated Person may not designate any other Person to be a Responsible Officer. Any document delivered hereunder that is signed by a Responsible Officer of an Obligated Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of Obligated Party.

**"Restricted Payments"** means, with respect to any Person, (a) any dividends or any other payment or distribution (in cash, Property, or obligations) on account of its equity interests, (b) any redemption, purchase, retirement, call, or acquisition any of its equity interests, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of its equity interests and (d) the setting aside of any money for a sinking or other analogous fund for any dividend or other distribution on its equity interests or for any redemption, purchase, retirement, or other acquisition of any of its equity interests or to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of its equity interests.

**"Revolving Credit Availability"** means, as of any date, the difference between (a) an amount equal to the aggregate amount of the Commitments of the Revolving Credit Lenders on such date less (b) the total Revolving Credit Exposure of the Revolving Credit Lenders on such date.

**"Revolving Credit Borrowing"** means a borrowing consisting of simultaneous Revolving Credit Loans made by each of the Revolving Credit Lenders pursuant to **Section 2.1**.

**"Revolving Credit Borrowing Request"** means a writing, substantially in the form of **Exhibit E**, properly completed and signed by Borrower, requesting a Revolving Credit Borrowing.

**"Revolving Credit Commitment"** means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to Borrower pursuant to **Section 2.1(a)**, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on **Schedule 2.1** under the caption "Revolving Credit Commitment", or, with respect to any Lender who becomes a party to this Agreement after the Closing Date, opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, in any case, as such amount may be adjusted from time to time in accordance with this Agreement (including pursuant to a Revolving Commitment Increase). As of the Closing Date, the aggregate Revolving Credit Commitments are \$40,000,000.

**"Revolving Credit Exposure"** means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Lender's participation in Swing Line Loans and L/C Obligations at such time.

**"Revolving Credit Facility"** means, at any time, the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments at such time.

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**"Revolving Credit Lender"** means, (a) at any time prior to the termination of the Revolving Credit Commitments, any Lender that has a Revolving Credit Commitment at such time, and (b) at any time after the termination of the Revolving Credit Commitments, any Lender that has Revolving Credit Exposure at such time, and, in each case, shall include Swing Line Lender, as the context may require.

**"Revolving Credit Loan"** means (a) the Existing Revolving Loans and (b) any revolving advance made pursuant to **Section 2.1(a)(ii)** (including any such advance made pursuant to a Revolving Commitment Increase).

**"Revolving Credit Note"** means a promissory note made by Borrower in favor of a Revolving Credit Lender evidencing Revolving Credit Loans or Swing Line Loans, as the case may be, made by such Revolving Credit Lender, substantially in the form of **Exhibit F**.

**"Revolving Commitment Increase"** has the meaning set forth in **Section 2.9(a)**.

**"Revolving Facility Increasing Lender"** has the meaning set forth in **Section 2.9(b)**.

**"RICO"** means the Racketeer Influenced and Corrupt Organization Act of 1970.

**"Sanctions"** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC), the European Union, Her Majesty's Treasury, or other relevant sanctions authority.

**"Sanctioned Country"** means at any time, a country or territory that is the subject or target of any Sanctions (including Cuba, Iran, North Korea, Sudan and Syria).

**"Sanctioned Person"** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in **clauses (a) and (b)**.

**"SDN List"** has the meaning set forth in **Section 6.20**.

**"Secured Parties"** means the collective reference to Administrative Agent, each Lender, L/C Issuer, Swing Line Lender, each Bank Product Provider, and any other Person the Obligations owing to which are, or are purported to be, secured by the Collateral under the terms of the Security Documents.

**"Security Agreement"** means any Security Agreement executed by one or more of the Obligated Parties, including any joinder thereto, substantially in the form of **Exhibit G**, including, without limitation, that certain Amended and Restated Security Agreement, dated as of the date hereof, executed by, *inter alia*, Borrower and each Subsidiary of Borrower in existence as of the date hereof.

**"Security Documents"** means each and every Mortgage, Security Agreement, pledge agreement, deed of trust, control agreement or other collateral security agreement required by or delivered to Administrative Agent from time to time that purport to create a Lien in favor of any of the Secured Parties to secure payment or performance of the Obligations or any portion thereof.

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**"Solvent"** means, with respect to any Person, as of any date of determination, that the fair value of the assets of such Person (at fair valuation) is, on the date of determination, greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person as of such date, that the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the probable liability of such Person on its debts as such debts become absolute and matured, and that, as of such date, such Person will be able to pay all liabilities of such Person as such liabilities mature and such Person does not have unreasonably small capital with which to carry on its business. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability discounted to present value at rates believed to be reasonable by such Person acting in good faith.



**"SOFR"** means a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York or a successor administrator of the secured overnight financing rate.

**"Specified Transaction"** means any investment that results in a Person becoming a Subsidiary, any Acquisition or any Disposition that results in a Subsidiary ceasing to be a Subsidiary of Borrower, any investment constituting an acquisition of assets constituting a business unit, line of business or division of, or all or substantially all of the equity interests of, another Person or any Disposition of a business unit, line of business or division of Borrower or a Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise, or any incurrence or repayment of Debt (other than Debt incurred or repaid under any revolving credit facility or line of credit), or any other transaction that by the terms of this Agreement requires such transaction and any related test, ratio or covenant to be calculated on a "Pro Forma Basis" or after giving "Pro Forma Effect."

**"Subordinated Debt"** means any unsecured Debt of Borrower and its Subsidiaries that has been subordinated to the Obligations under the Loan Documents by written agreement, in form and content satisfactory to Administrative Agent and which has been approved in writing by Administrative Agent as constituting Subordinated Debt for purposes of this Agreement.

**"Subordination Provisions"** means paragraphs (a) through (l) of the Horn Solutions Seller Note, as in effect on the December 12, 2022.

**"Subsidiary"** means (a) any corporation of which at least a majority of the outstanding shares of stock having by the terms thereof ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether or not at the time stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by Borrower or one or more of other Subsidiaries or by Borrower and one or more of such Subsidiaries, and (b) any other entity (i) of which at least a majority of the ownership, equity or voting interest is at the time directly or indirectly owned or controlled by one or more of Borrower and other Subsidiaries and (ii) which is treated as a subsidiary in accordance with GAAP.

**"Swap Obligations"** means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

**"Sweep Agreement"** has the meaning set forth in **Section 2.1(c)**.

**"SWIFT"** has the meaning set forth in **Section 2.3(f)**.

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**"Swing Line Borrowing"** means a borrowing of a Swing Line Loan pursuant to **Section 2.2**.

**"Swing Line Lender"** means BMO in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

**"Swing Line Loan"** has the meaning set forth in **Section 2.2(a)**.

**"Swing Line Loan Request"** means a writing, substantially in the form of **Exhibit H**, or in such other form agreed to by Borrower and Administrative Agent, properly completed and signed by Borrower, requesting a Swing Line Borrowing.

**"Swing Line Sublimit"** means an amount equal to the lesser of (a) \$15,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

**"Syndicated Borrowing"** means a Revolving Credit Borrowing or the Term Loan Borrowing.

**"Taxes"** means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**"Term Loan"** means (a) the Existing Term Loans, and (b) any advance made by any Term Loan Lender under the Term Loan Facility (including, for the avoidance of doubt, any Delayed Draw Term Loans or Incremental Term Loans).

**"Term Loan Borrowing"** means a borrowing consisting of simultaneous Term Loans made by each of the Term Loan Lenders pursuant to **Section 2.1(b)**.



**“Term Loan Borrowing Request”** means a writing, substantially in the form of **Exhibit J**, properly completed and signed by Borrower, requesting a Term Loan Borrowing.

**“Term Loan Commitment”** means, as to each Term Loan Lender, its obligation to make Term Loans to Borrower pursuant to **Section 2.1(b)** or **Section 2.9**. For the avoidance of doubt, each Term Loan Lender’s “Term Loan Commitment” shall include its unfunded Delayed Draw Term Loan Commitment and its unfunded Incremental Term Loan Commitments.

**“Term Loan Facility”** means the aggregate Term Loan Commitments and Term Loans of the Term Loan Lenders from time to time (including any Incremental Term Loan Commitments and Term Loans thereunder).

**“Term Loan Lender”** means any Lender that holds a Term Loan Commitment or a Term Loan.

**“Term Loan Notes”** means the promissory notes of Borrower payable to the order of each Term Loan Lender evidencing the Term Loans made by such Term Loan Lender, in substantially the form of **Exhibit K**.

**“Term SOFR”** means, for the applicable tenor, the Term SOFR Reference Rate on the day (such day, the “Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to (a) in the case of Term SOFR Portions, the first day of such applicable Interest Period, or (b) with respect to Base Rate, such day of determination of the Base Rate, in each case as such rate is published by the Term SOFR Administrator; provided, however, that if

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as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day. If Term SOFR determined as provided above shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

**“Term SOFR Adjustment”** means, for any calculation with respect to a Base Rate Portion or a Term SOFR Portion, a percentage per annum as set forth below for the applicable type of such Portion and (if applicable) Interest Period therefor:

**Index Rate Portions:**

0.10%

**Term SOFR Portions:**

Interest Period	Percentage
One Month	0.10%
Three Months	0.15%
Six Months	0.25%

**“Term SOFR Administrator”** means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Administrative Agent in its reasonable discretion).

**“Term SOFR Portion”** means each Portion bearing interest based on Adjusted Term SOFR.

**“Term SOFR Reference Rate”** means the forward-looking term rate based on SOFR.



**"Total Credit Exposure"** means, as to any Lender at any time, the unused Commitments, Revolving Credit Exposure and Outstanding Amount of the Term Loan of such Lender at such time.

**"Transaction"** means the (a) the execution of this Agreement and the other Loan Documents, (b) the funding of any Credit Extensions to be funded on the Closing Date, and (c) the payment of any costs, fees and expenses incurred in connection with the foregoing.

**"Type"** means, with respect to a Loan, its character as a Base Rate Loan or a SOFR Loan.

**"UCC"** means Chapters 1 through 11 of the Texas Business and Commerce Code.

**"UK Financial Institution"** means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct

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Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**"UK Resolution Authority"** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**"Unadjusted Benchmark Replacement"** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**"Unfunded Pension Liability"** means the excess, if any, of (a) the funding target as defined under Section 430(d) of the Code without regard to the special at-risk rules of Section 430(i) of the Code, over (b) the value of plan assets as defined under Section 430(g)(3)(A) of the Code determined as of the last day of each calendar year, without regard to the averaging which may be allowed under Section 310(g)(3)(B) of the Code and reduced for any prefunding balance or funding standard carryover balance as defined and provided for in Section 430(f) of the Code.

**"Unreimbursed Amount"** has the meaning set forth in Section 2.3(c)(i).

**"U.S. Government Securities Business Day"** means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**"U.S. Person"** means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

**"U.S. Tax Compliance Certificate"** has the meaning specified in Section 3.4(g)(ii)(B)(3).

**"Withholding Agent"** means each of Borrower and Administrative Agent.

**"Write-Down and Conversion Powers"** means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

## Section 1.2 Accounting Matters.

(a) **Generally.** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the audited financial



statements described in **Section 6.2**, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Debt of Borrower and its Subsidiaries shall be deemed to

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be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) **Changes in GAAP.** If at any time any change in GAAP would affect the computation of any financial ratio or other requirement or provision set forth herein, and either Borrower or the Required Lenders shall so request, Administrative Agent, Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) Borrower shall provide to Administrative Agent and Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) **ASC 842.** Notwithstanding anything to the contrary contained in **Section 1.2(a)** or in the definition of "Capitalized Lease Obligation," (i) accounting principles requiring all leases to be capitalized or to accrue a lease amount pursuant to Financial Accounting Standards Board Accounting Standards Codification 842 ("**ASC 842**") shall not be given effect hereunder, (ii) no change in accounting for operating leases shall be given effect hereunder, in each case if such change would require treating the amount of Debt under any lease (or similar arrangement conveying the right to use) as a Capitalized Lease Obligation where such lease (or similar arrangement) was not required to be so treated under GAAP prior to the effectiveness of ASC 842, and (iii) only the amount of Debt under those leases (assuming for purposes hereof that such leases were in existence on the date hereof) that would constitute Capitalized Lease Obligations in conformity with GAAP on the date hereof shall be considered Capitalized Lease Obligations, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance with the foregoing.

**Section 1.3 ERISA Matters.** If, after the date hereof, there shall occur, with respect to ERISA, the adoption of any applicable law, rule, or regulation, or any change therein, or any change in the interpretation or administration thereof by the PBGC or any other Governmental Authority, then either Borrower or Required Lenders may request a modification to this Agreement solely to preserve the original intent of this Agreement with respect to the provisions hereof applicable to ERISA, and the parties to this Agreement shall negotiate in good faith to complete such modification.

**Section 1.4 Other Definitional Provisions.** All definitions contained in this Agreement are equally applicable to the singular and plural forms of the terms defined. The words "hereof", "herein", and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear. Terms used herein that are defined in the UCC, unless otherwise defined herein, shall have the meanings specified in the UCC. Any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. Words denoting gender shall be construed to include the masculine, feminine and neuter, when such construction is appropriate; and specific enumeration shall not exclude the general but

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shall be constructed as cumulative; the word “or” is not exclusive; the word “including” (in its various forms) means “including, without limitation”; in the computation of periods of time, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”; and all references to money refer to the legal currency of the United States of America.

**Section 1.5 Interpretative Provision.** For purposes of *Section 10.1*, a breach of a financial covenant contained in *Article 9* shall be deemed to have occurred as of any date of determination thereof by Borrower, the Required Lenders or as of the last date of any specified measurement period, regardless of when the financial statements or the Compliance Certificate reflecting such breach are delivered to Administrative Agent.

**Section 1.6 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to central time (daylight or standard, as applicable).

**Section 1.7 Other Loan Documents.** The other Loan Documents, including the Security Documents, contain representations, warranties, covenants, defaults and other provisions that are in addition to and not limited by, or a limitation of, similar provisions of this Agreement. Such provisions in such other Loan Documents may be different or more expansive than similar provisions of this Agreement and neither such differences nor such more expansive provisions shall be construed as a conflict.

**Section 1.8 Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**Section 1.9 Pro Forma Calculations.**

(a) Notwithstanding anything to the contrary herein, financial ratios, tests and covenants, including the Leverage Ratio and the Fixed Charge Coverage Ratio shall be calculated in the manner prescribed by this **Section 1.9**.

(b) For purposes of calculating any financial ratio, covenant or test, Specified Transactions (with any incurrence or repayment (excluding voluntary repayments) of any Debt in connection therewith to be subject to **Section 1.9(c)**) that have been made (i) during the applicable measurement period and (ii) subsequent to such period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable measurement period. If, since the beginning of any applicable period any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into Borrower or any of its Subsidiaries since the beginning of such period shall have made any Specified Transaction that would have required adjustment pursuant to this **Section 1.9**, then such financial ratio or test shall be calculated to give pro forma effect thereto in accordance with this **Section 1.9**.

(c) In the event that Borrower or any Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment (other than voluntary repayments), retirement or extinguishment) any Debt included in the calculations of any financial ratio, covenant or test (in each case, other than Debt incurred or repaid under any revolving credit

facility), (i) during the applicable period or (ii) subsequent to the end of the applicable period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving pro forma effect to such incurrence or repayment of Debt, to the extent required, as if the same had occurred on the last day of the applicable period.

**Section 1.10 Divisions.** Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, Disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person



hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

**Section 1.11 Interest Rates.** Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Benchmark or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## ARTICLE 2

### THE COMMITMENTS AND CREDIT EXTENSIONS

#### Section 1.1 The Loans.

##### (a) Revolving Credit Facility.

(i) **Existing Revolving Loans.** Borrower acknowledges and agrees that certain of the Original Lenders made revolving loans to Borrower from time to time under the Original Credit Agreement (the “**Existing Revolving Loans**”), and as of the Closing Date, immediately before giving effect to this Agreement, the outstanding principal balance of the Existing Revolving Loans is \$22,000,000. Each of Borrower, Administrative Agent and each Lender acknowledges and agrees that the Existing Revolving Loans (x) remain outstanding hereunder, (y) constitute “Revolving Credit Loans” for all purposes under this Agreement and the other Loan Documents and (z) as

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of the Closing Date, constitute a single Term SOFR Portion with an Interest Period of one month, the first day of which is the Closing Date.

(ii) **Revolving Credit Borrowings.** Subject to the terms and conditions of this Agreement, each Revolving Credit Lender severally agrees to make one or more Revolving Credit Loans to Borrower from time to time from the Closing Date until the Maturity Date in an aggregate principal amount for all such Revolving Credit Loans (including any Existing Revolving Loans) of such Revolving Credit Lender at any time outstanding up to but not exceeding the amount of such Revolving Credit Lender's Commitment, *provided* that the Revolving Credit Exposure of all Revolving Credit Lenders shall not exceed the aggregate amount of the Commitments of the Revolving Credit Lenders. Subject to the foregoing limitations, and the other terms and provisions of this Agreement, Borrower may borrow, repay, and reborrow Revolving Credit Loans hereunder.

##### (b) Term Loan Facility.

(i) **Existing Term Loans.** Borrower acknowledges and agrees that certain of the Original Lenders made term loans to Borrower from time to time under the Original Credit Agreement (the “**Existing Term Loans**”), and, as of the Closing Date, immediately before giving effect to this Agreement, the outstanding principal balance of the Existing Term Loans is \$34,000,000. Each of Borrower, Administrative Agent and each Lender acknowledges and agrees that the Existing Term Loans (x) remain outstanding hereunder, (y) constitute “Term Loans” for all purposes under this Agreement and the other Loan Documents and (z) as of the Closing Date, constitute a single Term SOFR Portion with an Interest Period of one month, the first day of which is the Closing Date.



(ii) **Delayed Draw Term Loans.** Subject to the terms and conditions of this Agreement and the other Loan Documents, each Term Loan Lender severally agrees to make to Borrower on or before the Delayed Draw Commitment Termination Date a term loan (a “**Delayed Draw Term Loan**”) in an aggregate principal amount not to exceed such Term Loan Lender’s Delayed Draw Term Loan Commitment; *provided* the aggregate original principal balance of the Delayed Draw Term Loans shall not in any event exceed the Lenders’ aggregate Delayed Draw Term Loan Commitments.

(iii) **Incremental Term Loans.** Subject to the terms and conditions of this Agreement and the other Loan Documents, each Incremental Term Loan Lender severally agrees to make one or more term loans to Borrower from time to time on any Increase Effective Date after the Closing Date until the Maturity Date in an aggregate principal amount, on any Increase Effective Date with respect to any Incremental Term Loan Facility, not to exceed such Lender’s Incremental Term Loan Commitment under such Incremental Term Loan Facility. Borrower may not borrow, repay, and reborrow the Term Loans.

(c) **Borrowing Procedure.** Unless Borrower and Administrative Agent have entered into a sweep agreement regarding Borrower’s cash management and funding and pay down of the Loans hereunder in form and substance satisfactory to Borrower and Administrative Agent (“**Sweep Agreement**”), each Syndicated Borrowing, each conversion of a Portion from one Type to the other, and each continuation of a Term SOFR Portion shall be made upon Borrower’s irrevocable notice to Administrative Agent, which may be given by telephone. Each such notice must be received by Administrative Agent not later than 12:00 noon (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of a Term SOFR Portion or of any conversion of a Term SOFR Portion to a Base Rate Portion and (ii) on the requested date of any Borrowing of a Base Rate Portion. Each telephonic notice by Borrower

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pursuant to this **Section 2.1(c)** must be confirmed promptly by delivery to Administrative Agent of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of Borrower. Except as provided in **Section 2.2(c)**, each Borrowing of, conversion to or continuation of a Loan shall be in a principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof, or with respect to a Revolving Credit Borrowing, in an amount equal to the Revolving Credit Availability and, with respect to a Term Loan Borrowing, in an amount equal to the aggregate Term Loan Commitments at such time. Each Borrowing Request (whether telephonic or written) shall specify (i) whether Borrower is requesting a Syndicated Borrowing, a conversion of Portions from one Type to the other, or a continuation of Portions, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Portions to be borrowed, converted or continued, (iv) the Type of Portions to be borrowed or to which existing Portions are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If Borrower fails to specify a Type of Portion in a Borrowing Request or if Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Portions shall be made as, or converted to, Base Rate Portions. Any such automatic conversion to Base Rate Portions shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Portions. If Borrower requests a Borrowing of, conversion to, or continuation of a Term SOFR Portion in any such Borrowing Request, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month. For avoidance of doubt, to the extent that any borrowing procedures set forth in this Article 2 conflict with the terms and provisions of a Sweep Agreement in effect, the terms and provisions of such Sweep Agreement shall control.

(d) **Funding.** Following receipt of a Borrowing Request, Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Portions, and if no timely notice of a conversion or continuation is provided by Borrower, Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Portions as described in **Section 2.1(c)**. Each Lender shall make the amount of its Loan available to Administrative Agent in immediately available funds at Administrative Agent’s Principal Office not later than 1:00 p.m. on the Business Day specified in the applicable Borrowing Request. Upon satisfaction of the applicable conditions set forth in **Section 5.2** (and, if such Borrowing is the initial Credit Extension, **Section 5.1**), Administrative Agent shall make all funds so received available to Borrower in like funds as received by Administrative Agent either by (i) crediting the account of Borrower on the books of BMO with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) Administrative Agent by Borrower; *provided, however*, that if, on the date the Borrowing Request with respect to such Borrowing is given by Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, at the option of the Administrative Agent, *first*, shall be applied to the payment in full of any such L/C Borrowings, and *second*, shall be made available to Borrower as provided above.



(e) **Continuations and Conversions.** Except as otherwise provided herein, a Term SOFR Portion may be continued or converted only on the last day of an Interest Period for such Term SOFR Portion. During the existence of a Default, (i) no Loans may be requested as, converted to or continued as Term SOFR Portions without the consent of the Required Lenders and (ii) unless repaid, each Term SOFR Portion shall be converted to a Base Rate Portion at the end of the Interest Period applicable thereto.

(f) **Notifications.** Administrative Agent shall promptly notify Borrower and Lenders of the interest rate applicable to any Interest Period for Term SOFR Portions upon determination of such interest rate. At any time that Base Rate Portions are outstanding, Administrative Agent shall notify Borrower and Lenders of any change in BMO's prime rate used in determining the Base Rate promptly following the public announcement of such change.

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(g) **Interest Periods.** After giving effect to all Credit Extensions, all conversions of Portions from one Type to the other, and all continuations of Portions as the same Type, there shall not be more than five (5) Interest Periods in effect with respect to Term SOFR Portions.

## Section 1.2 Swing Line Loans.

(a) **The Swing Line.** Subject to the terms and conditions set forth herein, Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this **Section 2.2**, may in its sole discretion make loans (each such loan, a "**Swing Line Loan**") to Borrower from time to time on any Business Day during the period from the Closing Date to the Maturity Date for the Facility in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Credit Loans of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Commitment; *provided, however*, that (x) after giving effect to any Swing Line Loan, (i) the Revolving Credit Exposure of all Revolving Credit Lenders shall not exceed the aggregate amount of the Revolving Credit Commitments of the Revolving Credit Lenders, and (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Revolving Credit Lender's Revolving Credit Commitment, (y) Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and (z) Swing Line Lender shall not be under any obligation to make any Swing Line Loan if it shall determine (which determination shall be in its sole discretion) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, Borrower may borrow under this **Section 2.2**, prepay under **Section 2.8(b)**, and reborrow under this **Section 2.2**. Each Swing Line Loan shall bear interest as a Base Rate Portion. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Percentage times the amount of such Swing Line Loan.

(b) **Borrowing Procedures.** Unless Borrower and Administrative Agent have entered into a Sweep Agreement with respect to Swing Line Loans, each Swing Line Borrowing shall be made upon Borrower's irrevocable notice to Swing Line Lender and Administrative Agent, which may be given by telephone. Each such notice must be received by Swing Line Lender and Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to Swing Line Lender and Administrative Agent of a written Swing Line Loan Request, appropriately completed and signed by a Responsible Officer of Borrower. Any telephonic request for a Swing Line Loan by Borrower shall be promptly confirmed by submission of a properly completed Swing Line Loan Request, signed by a Responsible Officer of Borrower, to Swing Line Lender and Administrative Agent, but failure to deliver a Swing Line Loan Request shall not be a defense to payment of any Swing Line Borrowing. Neither Swing Line Lender nor Administrative Agent shall have any liability to Borrower for any loss or damage suffered by Borrower as a result of Swing Line Lender's or Administrative Agent's honoring of any requests, execution of any instructions, authorizations or agreements or reliance on any reports communicated to it telephonically, by facsimile or electronically and purporting to have been sent to Swing Line Lender or Administrative Agent by Borrower and neither Swing Line Lender nor Administrative Agent shall have any duty to verify the origin of any such communication or the identity or authority of the Person sending it. Promptly after receipt by Swing Line Lender of any telephonic Swing Line Loan Request, Swing Line Lender will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has also received such Swing Line Loan Request and, if not, Swing Line Lender will notify Administrative Agent (by telephone or in writing) of the contents thereof. Unless Swing Line Lender has received notice (by telephone

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or in writing) from Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of **Section 2.2(a)**, or (B) that one or more of the applicable conditions specified in **Article 5** is not then satisfied, then, subject to the terms and conditions hereof, Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Request, make the amount of its Swing Line Loan available to Borrower at its office by crediting the account of Borrower on the books of Swing Line Lender in immediately available funds.

**(c) Refinancing of Swing Line Loans.**

(i) Swing Line Lender at any time in its sole discretion may request, on behalf of Borrower (which hereby irrevocably authorizes Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Revolving Credit Loan in an amount equal to such Revolving Credit Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Revolving Credit Borrowing Request for purposes hereof) and in accordance with the requirements of **Section 2.1**, subject to the unutilized portion of the Commitments and the conditions set forth in **Section 5.2**. Swing Line Lender shall furnish Borrower with a copy of the applicable Revolving Credit Borrowing Request promptly after delivering such notice to Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Revolving Credit Borrowing Request available to Administrative Agent in immediately available funds for the account of Swing Line Lender at Administrative Agent's Principal Office not later than 1:00 p.m. on the day specified in such Revolving Credit Borrowing Request, whereupon, subject to **Section 2.2(c)(ii)**, each Revolving Credit Lender that so makes funds available shall be deemed to have made a Revolving Credit Loan to Borrower in such amount. Administrative Agent shall remit the funds so received to Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with **Section 2.2(c)(i)**, the request for Revolving Credit Loans submitted by Swing Line Lender as set forth herein shall be deemed to be a request by Swing Line Lender that each Revolving Credit Lender fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to Administrative Agent for the account of Swing Line Lender pursuant to **Section 2.2(c)(i)** shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to Administrative Agent for the account of Swing Line Lender any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this **Section 2.2(c)** by the time specified in **Section 2.2(c)(i)**, Swing Line Lender shall be entitled to recover from such Revolving Credit Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by Swing Line Lender in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Credit Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of Swing Line Lender submitted to any Revolving Credit

Lender (through Administrative Agent) with respect to any amounts owing under this **clause (iii)** shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this **Section 2.2(c)** shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any



setoff, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against Swing Line Lender, Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this **Section 2.2(c)** is subject to the conditions set forth in **Section 5.2**. No such funding of risk participations shall relieve or otherwise impair the obligation of Borrower to repay Swing Line Loans, together with interest as provided herein.

**(d) Repayment of Participations.**

(i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if Swing Line Lender receives any payment on account of such Swing Line Loan, Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Percentage thereof in the same funds as those received by Swing Line Lender.

(ii) If any payment received by Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by Swing Line Lender under any of the circumstances described in **Section 12.24** (including pursuant to any settlement entered into by Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to Swing Line Lender its Applicable Percentage thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. Administrative Agent will make such demand upon the request of Swing Line Lender. The obligations of Revolving Credit Lenders under this **clause** shall survive the payment in full of the Obligations and the termination of this Agreement.

**(e) Interest for Account of Swing Line Lender.** Swing Line Lender shall be responsible for invoicing Borrower for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Revolving Credit Loan or risk participation pursuant to this **Section 2.2** to refinance such Revolving Credit Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of Swing Line Lender.

**(f) Payments to Swing Line Lender or Revolving Credit Lenders.** Borrower shall make all payments of principal and interest in respect of the Swing Line Loans to Administrative Agent for the account of Swing Line Lender or Revolving Credit Lenders, as applicable.

**Section 1.3 Letters of Credit.**

**(a) Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, (A) L/C Issuer agrees, in reliance upon the agreements of Revolving Credit Lenders set forth in this **Section 2.3**, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of

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Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with **subsection (b)** below, and (2) to honor drawings under the Letters of Credit; and (B) Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of Borrower and any drawings thereunder; *provided* that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Revolving Credit Exposure of all Revolving Credit Lenders shall not exceed the aggregate amount of the Revolving Credit Commitments of the Revolving Credit Lenders, (y) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Revolving Credit Lender's Revolving Credit Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) L/C Issuer shall not issue any Letter of Credit, if: (A) the expiry date of the requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Required Revolving Credit Lenders have approved such expiry date; or (B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date.



(iii) L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain L/C Issuer from issuing the Letter of Credit, or any Law applicable to L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over L/C Issuer shall prohibit, or request that L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by Administrative Agent and L/C Issuer, the Letter of Credit is in an initial stated amount of at least \$10,000;

(D) the Letter of Credit is to be denominated in a currency other than Dollars;

(E) any Revolving Credit Lender is at that time a Defaulting Lender, unless L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to L/C Issuer (in its sole discretion) with Borrower or such Revolving Credit Lender to eliminate L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 12.22(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be

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issued or that Letter of Credit and all other L/C Obligations as to which L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(F) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iv) L/C Issuer shall not amend any Letter of Credit if L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) L/C Issuer shall act on behalf of Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and L/C Issuer shall have all of the benefits and immunities (A) provided to Administrative Agent in **Article 11** with respect to any acts taken or omissions suffered by L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in **Article 11** included L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to L/C Issuer.

**(b) Procedures for the Issuance and Amendment of Letters of Credit.**

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of Borrower delivered to L/C Issuer (with a copy to Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by L/C Issuer, by personal delivery or by any other means acceptable to L/C Issuer. Such Letter of Credit Application must be received by L/C Issuer and Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as Administrative Agent and L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be



presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as L/C Issuer may require. Additionally, in each case, Borrower shall furnish to L/C Issuer and Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as L/C Issuer or Administrative Agent may require.

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(ii) Promptly after receipt of any Letter of Credit Application, L/C Issuer will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has received a copy of such Letter of Credit Application from Borrower and, if not, L/C Issuer will provide Administrative Agent with a copy thereof. Unless L/C Issuer has received written notice from any Revolving Credit Lender, Administrative Agent or any Obligated Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in **Article 5** shall not then be satisfied, then, subject to the terms and conditions hereof, L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If Borrower so requests in any applicable Letter of Credit Application, L/C Issuer may, in its sole discretion, agree to issue an Auto-Extension Letter of Credit; *provided* that any such Auto-Extension Letter of Credit must permit L/C Issuer to prevent any such extension at least once in each twelve (12) -month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**") in each such twelve (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by L/C Issuer, Borrower shall not be required to make a specific request to L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, Lenders shall be deemed to have authorized (but may not require) L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; *provided, however*, that L/C Issuer shall not permit any such extension (and the terms of the Auto-Extension Letter of Credit may permit L/C Issuer to refuse to extend such Letter of Credit) if (A) L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of **clause (ii)** or **(iii)** of **Section 2.2(a)** or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from Administrative Agent that Required Revolving Credit Lenders have elected not to permit such extension or (2) from Administrative Agent, any Revolving Credit Lender or Borrower that one or more of the applicable conditions specified in **Section 5.2** is not then satisfied, and in each such case directing L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, L/C Issuer will also deliver to Borrower and Administrative Agent a true and complete copy of such Letter of Credit or amendment.

**(c) Drawings; Reimbursements; Funding of Participations.**

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, L/C Issuer shall notify Borrower and Administrative Agent thereof. Not later than 1:00 p.m. on the date of any payment by L/C Issuer under a Letter of Credit (each such date, an "**Honor Date**"), Borrower shall reimburse L/C Issuer through Administrative Agent in an amount equal to the amount of such drawing. If Borrower fails to so reimburse L/C Issuer by such time, Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount

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of the unreimbursed drawing (the “**Unreimbursed Amount**”), and the amount of such Revolving Credit Lender’s Applicable Percentage thereof. In such event, Borrower shall be deemed to have requested a Revolving Credit Borrowing to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, subject to the amount of the unutilized portion of the Revolving Credit Commitments and the conditions set forth in **Section 5.2** (other than the delivery of a Revolving Credit Borrowing Request). Any notice given by L/C Issuer or Administrative Agent pursuant to this **Section 2.3(c)(i)** may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to **Section 2.3(c)(i)** make funds available (and Administrative Agent may apply Cash Collateral provided for this purpose) for the account of L/C Issuer at Administrative Agent’s Principal Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by Administrative Agent, whereupon, subject to the provisions of **Section 2.3(c)(iii)**, each Revolving Credit Lender that so makes funds available shall be deemed to have made a Revolving Credit Loan (or, if the conditions set forth in **Section 5.2** are not satisfied, an L/C Borrowing as further described in **clause (iii)** below) to Borrower in such amount. Administrative Agent shall remit the funds so received to L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing because the conditions set forth in **Section 5.2** cannot be satisfied or for any other reason, Borrower shall be deemed to have incurred from L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Interest Rate. In such event, each Revolving Credit Lender’s payment to Administrative Agent for the account of L/C Issuer pursuant to **Section 2.2(c)(ii)** shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Credit Lender in satisfaction of its participation obligation under this **Section 2.2**.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this **Section 2.2(c)** to reimburse L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Credit Lender’s Applicable Percentage of such amount shall be solely for the account of L/C Issuer.

(v) Each Revolving Credit Lender’s obligation to make Revolving Credit Loans or L/C Advances to reimburse L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this **Section 2.3(c)**, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against L/C Issuer, Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Credit Lender’s obligation to make Revolving Credit Loans (but not its obligation to fund its pro rata share of L/C Advances) pursuant to this **Section 2.3(c)** is subject to the conditions set forth in **Section 5.2** (other than delivery by Borrower of a Revolving Credit Borrowing Request). No such making of an L/C Advance shall relieve or otherwise impair the obligation of Borrower to reimburse L/C Issuer for the amount of any payment made by L/C Issuer under any Letter of Credit, together with interest as provided herein.

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(vi) If any Revolving Credit Lender fails to make available to Administrative Agent for the account of L/C Issuer any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this **Section 2.3(c)** by the time specified in **Section 2.3(c)(ii)**, then, without limiting the other provisions of this Agreement, L/C Issuer shall be entitled to recover from such Revolving Credit Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by L/C Issuer in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Credit Lender’s Revolving Credit Loan included in the relevant Revolving Credit Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of L/C Issuer submitted to any



Revolving Credit Lender (through Administrative Agent) with respect to any amounts owing under this **clause (vi)** shall be conclusive absent manifest error.

(d) **Repayment of Participations.**

(i) At any time after L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Revolving Credit Lender's L/C Advance in respect of such payment in accordance with **Section 2.3(c)**, if Administrative Agent receives for the account of L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of Cash Collateral applied thereto by Administrative Agent), Administrative Agent will distribute to such Revolving Credit Lender its Applicable Percentage thereof in the same funds as those received by Administrative Agent.

(ii) If any payment received by Administrative Agent for the account of L/C Issuer pursuant to **Section 2.3(c)(i)** is required to be returned under any of the circumstances described in **Section 12.24** (including pursuant to any settlement entered into by L/C Issuer in its discretion), each Revolving Credit Lender shall pay to Administrative Agent for the account of L/C Issuer its Applicable Percentage thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Revolving Credit Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of Revolving Credit Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Obligations Absolute.** The obligation of Borrower to reimburse L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), L/C Issuer or any other Person, whether in connection

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with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by L/C Issuer of any requirement that exists for L/C Issuer's protection and not the protection of Borrower or any waiver by L/C Issuer which does not in fact materially prejudice Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC or the ISP, as applicable;

(vii) any payment by L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;



(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower or any Subsidiary; and

(ix) Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify L/C Issuer. Borrower shall be conclusively deemed to have waived any such claim against L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of L/C Issuer.** Each Revolving Credit Lender and Borrower agree that, in paying any drawing under a Letter of Credit, L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of L/C Issuer, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of L/C Issuer shall be liable to any Revolving Credit Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of Required Revolving Credit Lenders; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of L/C Issuer, Administrative Agent, any

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of their respective Related Parties nor any correspondent, participant or assignee of L/C Issuer shall be liable or responsible for any of the matters described in **clauses (i) through (viii) of Section 2.3(e)**; *provided, however*, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against L/C Issuer, and L/C Issuer may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by L/C Issuer's willful misconduct or gross negligence or L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("**SWIFT**") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) **Fronting Fee and Charges Payable to L/C Issuer.** Borrower shall pay directly to L/C Issuer for its own account a fronting fee with respect to each Letter of Credit issued, amended or extended, at a rate and on terms separately agreed between Borrower and L/C Issuer. In addition, Borrower shall pay directly to L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(h) **Conflict with Issuer Documents.** In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

#### Section 1.4 Fees.

(a) **Fee Letter.** Borrower agrees to pay to Administrative Agent and Arranger, for the account of Administrative Agent, Arranger and each Lender, as applicable, fees, in the amounts and on the dates set forth in the Fee Letter.

(b) **Letter of Credit Fees.** Borrower shall pay to Administrative Agent for the account of each Revolving Credit Lender in accordance, subject to **Section 12.22**, with its Applicable Percentage, a Letter of Credit fee (the "**Letter of Credit Fee**") for each Letter of Credit equal to the then-applicable Applicable Margin for Term SOFR Portions times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance



with **Section 1.8**. Letter of Credit Fees for a Letter of Credit shall be computed on a quarterly basis and be payable in arrears on the on the first Business Day of each April, July, October and January. If there is any change in the Applicable Margin for Term SOFR Portions during any quarter, the daily amount available to be drawn under each standby Letter of Credit shall be computed and multiplied by the Applicable Margin for Term SOFR Portions separately for each period during such quarter that such Applicable Margin for Term SOFR Portions was in effect. Notwithstanding anything to the contrary contained herein while any Event of Default exists, all Letter of Credit Fees shall accrue at the otherwise applicable rate *plus 2%*.

(c) **Commitment Fees.** Borrower agrees to pay to Administrative Agent for the account of each Lender in accordance, subject to **Section 12.22**, with its relevant Applicable

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Percentage, a commitment fee on (i) the daily average unused amount of the Revolving Credit Commitment of such Lender plus (ii) the daily average unused amount of the Delayed Draw Term Loan Commitment of such Lender, in each case, for the period from and including the date of this Agreement to and including (x) with respect to the Revolving Credit Commitments, the Maturity Date and (y) with respect to the Delayed Draw Term Loan Commitments, the date on which the Delayed Draw Term Loan Commitments are terminated pursuant to **Section 2.8(e)** (including at any time during which one or more of the conditions in **Article 5** is not met), at a rate equal to the Applicable Margin for the "Commitment Fee" then in effect as determined by reference to the table set forth in the definition of "Applicable Margin" in **Section 1.1**. For the purpose of calculating the commitment fee hereunder, the Commitment of each Revolving Credit Lender shall be deemed utilized by the amount of all outstanding Revolving Credit Loans and L/C Obligations, but not by the amount of any outstanding Swing Line Loans, owing to such Revolving Credit Lender whether directly or by participation. Accrued commitment fees shall be payable quarterly in arrears on the first day of each April, July, October, and January during the term of this Agreement and on the Maturity Date.

#### Section 1.5 **Payments Generally; Administrative Agent's Clawback.**

(a) **General.** All payments of principal, interest, and other amounts to be made by Borrower under this Agreement and the other Loan Documents shall be made to Administrative Agent for the account of Administrative Agent, L/C Issuer or Swing Line Lender or the pro rata accounts of the applicable Lenders, as applicable, at the Principal Office in Dollars and immediately available funds, without setoff, deduction, or counterclaim, and free and clear of all taxes at the time and in the manner provided herein. Payments by check or draft shall not constitute payment in immediately available funds until the required amount is actually received by Administrative Agent in full. Payments in immediately available funds received by Administrative Agent in the place designated for payment on a Business Day prior to 12:00 noon at such place of payment shall be credited prior to the close of business on the Business Day received, while payments received by Administrative Agent on a day other than a Business Day or after 12:00 noon on a Business Day shall not be credited until the next succeeding Business Day. If any payment of principal or interest on the Notes shall become due and payable on a day other than a Business Day, then such payment shall be made on the next succeeding Business Day. Any such extension of time for payment shall be included in computing interest which has accrued and shall be payable in connection with such payment. Administrative Agent is hereby authorized upon notice to Borrower to charge the account of Borrower maintained with Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder. To the extent that any Loan payment procedures set forth in this Article 2 conflict with the terms and provisions of any Sweep Agreement then in effect, the terms and provisions of such Sweep Agreement shall control.

(b) **Funding by Lenders; Presumption by Administrative Agent.** Unless Administrative Agent shall have received notice from a Lender, that such Lender will not make available to Administrative Agent such Lender's share of a Revolving Credit Borrowing, Administrative Agent may assume that such Lender has made such share available on such date in accordance with this Agreement and may, in reliance upon such assumption, make available to Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Revolving Credit Borrowing available to Administrative Agent, then the applicable Lender and Borrower severally agree to pay to 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 Borrower to but excluding the date of payment to Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by Borrower, the interest rate applicable to the applicable Borrowing. If Borrower and such

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Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Loan. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

(c) **Payments by Borrower; Presumption by Administrative Agent.** Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of L/C Issuer, Swing Line Lender or the applicable Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to L/C Issuer, Swing Line Lender or the applicable Lenders the amount due. With respect to any payment that Administrative Agent makes to any Lender, Swing Line Lender, L/C Issuer or other Secured Party as to which Administrative Agent determines (in its sole and absolute discretion) that any of the following applies (such payment referred to as the "**Rescindable Amount**"): (1) Borrower has not in fact made the corresponding payment to Administrative Agent; (2) Administrative Agent has made a payment in excess of the amount(s) received by it from Borrower either individually or in the aggregate (whether or not then owed); or (3) Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Secured Parties severally agrees to repay to Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Secured Party, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

#### Section 1.6 Evidence of Debt.

(a) The Loans made by Swing Line Lender and each Lender shall be evidenced by one or more accounts or records maintained by Swing Line Lender or such Lender and by Administrative Agent in the ordinary course of business; *provided* that such Lender or Administrative Agent may, in addition, request that such Loans be evidenced by the Notes. The Credit Extensions made by L/C Issuer shall be evidenced by one or more accounts or records maintained by L/C Issuer and by Administrative Agent in the ordinary course of business. The accounts or records maintained by Administrative Agent, L/C Issuer, Swing Line Lender and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by L/C Issuer, Swing Line Lender or any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

(b) In addition to the accounts and records referred to in **subsection (a)** above, each Revolving Credit Lender and Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Swing Line Loans. In the event of any conflict between the accounts and records maintained by Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

#### Section 1.7 Interest; Payment Terms.

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#### (a) Revolving Credit Loans – Payment of Principal and Interest; Revolving Nature.

(i) The unpaid principal amount of each Portion of the Revolving Credit Loans shall, subject to the following sentence and **Section 2.7(g)**, bear interest at the applicable Interest Rate. If at any time such rate of interest would exceed the Maximum Rate but for the provisions thereof limiting interest to the Maximum Rate, then any subsequent reduction shall not reduce the rate of interest on the Revolving Credit Loans below the Maximum Rate until the aggregate amount of interest accrued on the Revolving Credit Loans equals the aggregate amount of



interest which would have accrued on the Revolving Credit Loans if the interest rate had not been limited by the Maximum Rate. All accrued but unpaid interest on the principal balance of the Revolving Credit Loans shall be payable on each Payment Date and on the Maturity Date, *provided* that interest accruing at the Default Interest Rate pursuant to **Section 2.7(g)** shall be payable on demand.

(ii) The then Outstanding Amount of the Revolving Credit Loans and all accrued but unpaid interest thereon shall be due and payable on the Maturity Date. The unpaid principal balance of the Revolving Credit Loans at any time shall be the total amount advanced hereunder by Revolving Credit Lenders less the amount of principal payments made thereon by or for Borrower, which balance may be endorsed on the Revolving Credit Notes from time to time by Revolving Credit Lenders or otherwise noted in Revolving Credit Lenders' and/or Administrative Agent's records, which notations shall be, absent manifest error, conclusive evidence of the amounts owing hereunder from time to time.

**(b) Term Loan – Payment of Principal and Interest.**

(i) The unpaid principal amount of the Term Loans shall, subject to the following sentence and **Section 2.7(g)**, bear interest at the applicable Interest Rate. If at any time such rate of interest would exceed the Maximum Rate but for the provisions thereof limiting interest to the Maximum Rate, then any subsequent reduction shall not reduce the rate of interest on the Term Loans below the Maximum Rate until the aggregate amount of interest accrued on the Term Loans equals the aggregate amount of interest which would have accrued on the Term Loans if the interest rate had not been limited by the Maximum Rate. All accrued but unpaid interest on the principal balance of the Term Loans shall be payable on each Payment Date and on the Maturity Date, *provided* that interest accruing at the Default Interest Rate pursuant to **Section 2.7(g)** shall be payable on demand.

(ii) To the extent not otherwise required to be paid earlier as provided herein, Borrower shall repay the aggregate principal amount of all outstanding Term Loans in quarterly principal installments, payable on the last Business Day of each fiscal quarter of Borrower (commencing with the fiscal quarter ending June 30, 2024) (each, a "**Quarterly Payment Date**") in an amount equal to 2.50% of the aggregate principal balance of the Term Loans outstanding as of the Closing Date *plus* the aggregate original principal balance of all Term Loans funded after the Closing Date and prior to the first day of the fiscal quarter in which such Quarterly Payment Date falls. All outstanding principal and accrued interest and fees in respect of the Term Loans shall be due and payable in full on the Maturity Date or such earlier date as the Term Loans may be accelerated pursuant to the terms hereof. If any principal repayment installment to be made by Borrower shall come due on a day other than a Business Day, such principal repayment installment shall be due on the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees.

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**(c) Application.** Except as expressly provided herein to the contrary, all payments on the Obligations under the Loan Documents shall be applied in the following order of priority: (i) the payment or reimbursement of any expenses, costs or obligations (other than the Outstanding Amount thereof and interest thereon) for which Borrower shall be obligated or Administrative Agent, L/C Issuer, Swing Line Lender, or any Lender shall be entitled pursuant to the provisions of this Agreement, the Notes or the other Loan Documents; (ii) the payment of accrued but unpaid interest thereon; and (iii) the payment of all or any portion of the principal balance thereof then outstanding hereunder as directed by Borrower; *provided* that any prepayment of the Term Loans shall be applied to installments due thereon in the inverse order of maturity. If an Event of Default exists under this Agreement, the Revolving Credit Notes or under any of the other Loan Documents, any such payment shall be applied as provided in **Section 10.3** below.

**(d) Computation Period.** Interest on the Loans and all other amounts payable by Borrower hereunder on a per annum basis shall be computed on the basis of a 360-day year and the actual number of days elapsed (including the first day but excluding the last day) unless such calculation would result in a usurious rate, in which case interest shall be calculated on the basis of a 365-day year or 366-day year, as the case may be. In computing the number of days during which interest accrues, the day on which funds are initially advanced shall be included regardless of the time of day such advance is made, and the day on which funds are repaid shall be included unless repayment is credited prior to the close of business on the Business Day received. Each determination by Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**(e) Unconditional Payment.** Borrower is and shall be obligated to pay all principal, interest and any and all other amounts which become payable under any of the Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction



whatsoever and without any reduction for counterclaim or setoff whatsoever. If at any time any payment received by Administrative Agent hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under any Debtor Relief Law, then the obligation to make such payment shall survive any cancellation or satisfaction of the Obligations under the Loan Documents and shall not be discharged or satisfied with any prior payment thereof or cancellation of such Obligations, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable upon demand.

(f) **Partial or Incomplete Payments.** Remittances in payment of any part of the Obligations under the Loan Documents other than in the required amount in immediately available funds at the place where such Obligations are payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Administrative Agent in full in accordance herewith and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Administrative Agent of any payment in an amount less than the full amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

(g) **Default Interest Rate.** For so long as any Event of Default exists, regardless of whether or not there has been an acceleration of the Loans, and at all times after the maturity of the Loans (whether by acceleration or otherwise), and in addition to all other rights and remedies of Administrative Agent or Lenders hereunder, (i) interest shall accrue on the Outstanding Amount of the Loans at the Default Interest Rate and (ii) interest shall accrue on any past due amount (other than the outstanding principal balance) at the Default Interest Rate, and such accrued interest shall be immediately due and payable. Borrower acknowledges that it would be extremely difficult or impracticable to determine Administrative Agent's or Lenders' actual

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damages resulting from any late payment or Event of Default, and such accrued interest are reasonable estimates of those damages and do not constitute a penalty.

#### Section 1.8 Voluntary Termination or Reduction of Commitments; Prepayments.

(a) **Voluntary Termination or Reduction of Commitments.** Borrower may, upon written notice to Administrative Agent, terminate the Revolving Credit Commitments or the Term Loan Commitments, or from time to time permanently reduce the Revolving Credit Commitments or Term Loan Commitments; *provided* that (i) any such notice shall be received by Administrative Agent not later than 11:00 a.m. three (3) Business Days (or such shorter period as Administrative Agent may agree in its sole discretion) prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$1,000,000 in excess thereof, and (iii) Borrower shall not terminate or reduce the Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Revolving Credit Exposure of all Revolving Credit Lenders would exceed the aggregate amount of the Revolving Credit Commitments of the Revolving Credit Lenders. Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction. Any reduction of the Revolving Credit Commitments or Term Loan Commitments shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender or the Term Loan Commitment of each Term Loan Lenders, as applicable, according to its relevant Applicable Percentage. All fees accrued until the effective date of any termination of the Revolving Credit Commitments or Term Loan Commitments shall be paid on the effective date of such termination.

(b) **Voluntary Prepayments.** Subject to the conditions set forth below and except as set forth in any Sweep Agreement, Borrower shall have the right, at any time and from time to time upon at least three (3) Business Days prior written notice to Administrative Agent, to prepay the principal of the Term Loans, the Revolving Credit Loans or the Swing Line Loans in full or in part. If there is a prepayment of all or any portion of the principal of the Term Loans, the Revolving Credit Loans or the Swing Line Loans on or before the Maturity Date, whether voluntary or because of acceleration or otherwise, such prepayment shall also include any and all accrued but unpaid interest on the amount of principal being so prepaid through and including the date of prepayment, plus any other sums which have become due to Lenders under the other Loan Documents on or before the date of prepayment, but which have not been fully paid.

(c) **Mandatory Prepayment of Revolving Credit Facility.** If at any time the Revolving Credit Exposure of the Revolving Credit Lenders exceeds the aggregate amount of the Revolving Credit Commitments of the Revolving Credit Lenders then in effect, then Borrower shall immediately prepay the entire amount of such excess to Administrative Agent, for the ratable account of Revolving Credit Lenders and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided, however*, that Borrower shall not be required to Cash Collateralize L/C



Obligations pursuant to this **Section 2.8(c)** unless after the prepayment in full of the Revolving Credit Loans, the Revolving Credit Exposure of the Revolving Credit Lenders exceeds the aggregate amount of the Revolving Credit Commitments of the Revolving Credit Lenders then in effect. Each prepayment required by this **Section 2.8(c)** shall be applied, *first*, to any Base Rate Portions then outstanding, and, *second*, to any Term SOFR Portions then outstanding, and if more than one Term SOFR Portion is then outstanding, to such Term SOFR Portions in such order as Borrower may direct, or if Borrower fails to so direct, as Administrative Agent shall elect.

(d) **Mandatory Prepayment of Loans.**

(i) Concurrently with the receipt of the Net Cash Proceeds from any Disposition pursuant to **Section 8.7(e)**, Borrower shall prepay the Loans in an aggregate

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principal amount equal to 100% of such Net Cash Proceeds (or if appropriate, 100% of any such Net Cash Proceeds that remain after deducting any amount reinvested by Borrower and its Subsidiaries during the one hundred eighty (180)-day period described in **Section 8.7(e)**).

(ii) Concurrently with (A) the consummation by any Obligated Party of any Equity Issuance (other than to another Obligated Party or in connection with an Acquisition permitted hereunder) or (B) the issuance by any Obligated Party any Debt (other than Debt expressly permitted pursuant to **Section 8.1**), Borrower shall, unless otherwise waived with the prior written consent of Required Lenders, prepay the Loans in the amount equal to 50% of the Net Cash Proceeds thereof.

(iii) Concurrently with the receipt by any Obligated Party of Net Cash Proceeds from a Casualty Event, Borrower shall prepay the Loans in an amount equal to 100% of the Net Cash Proceeds thereof other than Net Cash Proceeds that are used within ninety (90) days of such Casualty Event to repair or replace the equipment, fixed assets or real property in respect of which such Net Cash Proceeds were received.

(iv) Each prepayment of the Loans under **clauses (i) – (iii)** above shall be applied as follows: *first*, to reduce in inverse order of maturity the remaining scheduled principal installments of the Term Loans; *second*, to the extent of any excess, to ratably repay Swing Line Loans and L/C Borrowings until paid in full; *third*, to the extent of any excess, to repay any Revolving Credit Loans until paid in full; and *fourth*, to the extent of any excess, to Cash Collateralize the remaining L/C Obligations.

(v) On the date that is thirty-one (31) days after the funding of any Term Loan Borrowing (excluding the Existing Term Loans) (or, if such date is not a Business Day, on the next succeeding Business Day), Borrower shall prepay the Term Loans in an amount equal to the portion of such Term Loan Borrowing not theretofore used to finance the Acquisition described in the information delivered to Administrative Agent pursuant to **Section 5.2(e)** in respect of such Term Loan Borrowing (including, for the avoidance of doubt, the financing of any costs, expenses and fees paid by Borrower or any Subsidiary in connection with such Acquisition). Such prepayment shall be applied to reduce in inverse order of maturity the remaining scheduled principal installments of the Term Loans.

(e) **Automatic Termination of the Delayed Draw Term Loan Commitments.** The Delayed Draw Term Loan Commitments of all of the Lenders shall immediately and automatically be terminated upon the earlier to occur of the first date on which any Delayed Draw Term Loans are funded pursuant to the terms hereof and the Delayed Draw Commitment Termination Date.

**Section 1.9 Uncommitted Increase in Commitments.**

(a) **Request for Increase.** Provided there exists no Default, upon notice to Administrative Agent (which shall promptly notify the Lenders), Borrower may from time to time request (i) the establishment of one or more new term loan commitments (each, an **“Incremental Term Loan Commitment”**) pursuant to an Incremental Term Loan Facility and (ii) an increase in the Revolving Credit Commitments (each such increase, an **“Revolving Commitment Increase”** and, together with each Incremental Term Loan Commitment, each, an **“Incremental Commitment”**), in each case, for an aggregate amount not to exceed, for all such requests under clauses (i) or (ii), \$40,000,000 and for all such requests under clause (ii), \$15,000,000; provided that any such request for an Incremental Term Loan Facility or Revolving Commitment Increase shall be in a minimum amount of the lesser of (x) \$5,000,000 (or such



lesser amount as may be approved by the Administrative Agent) and (y) the entire remaining amount available under this **Section 2.9(a)**.

(b) **Incremental Lenders.** An Incremental Commitment may be provided by any existing Lender or other Person that is an Eligible Assignee (each such existing Lender or other Person that agrees to provide an Incremental Term Loan Commitment, an **"Incremental Term Loan Lender"** and each such existing Lender or other Person that agrees to provide a Revolving Commitment Increase, a **"Revolving Facility Increasing Lender"** and, together with each Incremental Term Loan Lender, each, an **"Incremental Lender"**); provided that each Incremental Lender shall be subject to the consent (in each case, not to be unreasonably withheld or delayed) of the Administrative Agent and, with respect to each Revolving Facility Increasing Lender, each L/C Issuer and each Swing Line Lender. Notwithstanding anything herein to the contrary, no Lender shall have any obligation to agree to provide an Incremental Commitment pursuant to this **Section 2.9** and any election to do so shall be in the sole discretion of such Lender.

(c) **Terms of Incremental Commitments.** Unless otherwise agreed by Administrative Agent and the Lenders (including any Incremental Lender with regard to such Incremental Commitment):

(i) The outstanding principal balance of the Credit Extensions made under each Incremental Term Loan Facility (other than quarterly installments made pursuant to **Section 2.7(b)**), together with all interest and fees with respect thereto, shall be due and payable no earlier than the Maturity Date;

(ii) The weighted average life to maturity of any Incremental Term Loan Facility shall be no shorter than the weighted average life to maturity of the Term Loan outstanding immediately before giving effect to such Incremental Term Loan Facility,

(iii) The interest margins and amortization schedule for any such Incremental Term Loan Facility shall be determined by the Borrower and the lenders of such Incremental Term Loan Facility (subject to the preceding **clause (ii)**); provided that, in the event that the all-in-yield for any Incremental Term Loan Facility is greater than the all-in-yield for the Term Loans outstanding immediately before giving effect to such Incremental Term Loan Facility, then the Applicable Margin for such outstanding Term Loans shall be increased to the extent necessary so that the all-in-yield for such Incremental Term Loan Facility is not higher than the all-in-yield for the such outstanding Term Loans; and

(iv) (A) any Revolving Commitment Increase shall be subject to the same terms and documentation as the Revolving Credit Facility, and (B) any Incremental Term Loan Facility shall be on terms (excluding pricing terms), when taken as whole, more restrictive than those applicable to the Revolving Credit Facility and the then-existing Term Loan Facility.

(d) **Increase Effective Date.**

(i) Administrative Agent and Borrower shall determine the effective date for an Incremental Term Loan Facility or Revolving Commitment Increase pursuant to this **Section 2.9** (an **"Increase Effective Date"**) and, if applicable, the final allocation of such Incremental Commitments among the Persons providing such Incremental Term Loan Facility or Revolving Commitment Increase; provided that such date shall be a Business Day at least ten (10) Business Days after delivery of the request for such Incremental Term Loan Facility or Revolving Commitment Increase (unless otherwise approved by the Administrative Agent) and at least thirty (30) days prior to the Maturity Date.

(ii) In order to effect such Incremental Term Loan Facility or Revolving Commitment Increase, Borrower, the applicable Incremental Lender(s) and Administrative Agent (but no other Lenders or Persons) shall enter into one or more joinder agreements or incremental



amendments, each in form and substance satisfactory to Borrower and Administrative Agent, pursuant to which the applicable Incremental Lender(s) will provide the applicable Incremental Commitment(s).

(iii) Effective as of the applicable Increase Effective Date, subject to the terms and conditions set forth in this **Section 2.9**, (A) each Incremental Term Loan Commitment shall be a Term Loan Commitment hereunder and each Revolving Commitment Increase shall be a Revolving Credit Commitment hereunder and, in each case, **Schedule 2.01** shall be updated accordingly to reflect such Incremental Commitment, each Incremental Lender providing such Incremental Commitment shall be, and have all the rights of, a Lender and a Term Loan Lender or Revolving Credit Lender, as applicable, and the Credit Extensions made by it on such Increase Effective Date pursuant to this **Section 2.9** shall be Term Loans, Revolving Credit Loans or Letters of Credit, as applicable, for all purposes of this Agreement and (B) The amount of the installments due on the Term Loans as set forth in **Section 2.7(b)** shall be increased by Administrative Agent (but without the consent of any Lender) on a pro rata basis to reflect such increase.

(e) **Conditions to Effectiveness of Incremental Commitments.** Notwithstanding the foregoing, no Incremental Commitments shall be effective unless:

(i) Administrative Agent shall have received from Borrower a certificate of each Obligated Party dated as of the Increase Effective Date signed by a Responsible Officer of such Obligated Party certifying and attaching the resolutions adopted by such Obligated Party approving or consenting to such Incremental Commitment,

(ii) Administrative Agent shall have received from Borrower a certificate signed by a Responsible Officer of Borrower, certifying that, before and after giving effect to such Incremental Commitment, (A) the representations and warranties contained in **Article 6** and the other Loan Documents (i) that contain a materiality qualification, are true and correct on and as of the Increase Effective Date and (ii) that do not contain a materiality qualification, are true and correct in all material respects on and as of the Increase Effective Date, and, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or in the case of such representations and warranties that are subject to a materiality qualification, in all respects) as of such earlier date, and except that for purposes of this **Section 2.9**, the representations and warranties contained in **Section 6.2** shall be deemed to refer to the most recent statements furnished pursuant to **clauses (a) and (b)**, respectively, of **Section 7.1**, (B) no Default exists or shall exist, and (C) Borrower is and shall be in Pro Forma Compliance with **Article 9**; and

(iii) the Administrative Agent shall have received such legal opinions, Guarantee reaffirmations and other documents reasonably requested by the Administrative Agent in connection therewith.

(f) **Adjustments to Revolving Outstandings.** On each Increase Effective Date with respect to each Revolving Commitment Increase, (i) if there are Revolving Credit Loans then outstanding, Borrower shall prepay such Revolving Credit Loans (and pay any additional amounts required pursuant to **Section 3.5** in connection therewith), and borrow Revolving Credit Loans from the Lenders, as shall be necessary in order that, after giving effect to such prepayments and borrowings, all Revolving Credit Loans will be held ratably by the Revolving

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Credit Lenders in accordance with their respective Revolving Credit Commitments after giving effect to the applicable Revolving Commitment Increase and (ii) if there are Swing Line Loans or Letters of Credit then outstanding, the participations of the Revolving Credit Lenders in such Swing Line Loans or Letters of Credit, as the case may be, will be automatically adjusted to reflect the Applicable Percentages of all the Revolving Credit Lenders (including each Incremental Lender) after giving effect to the applicable Revolving Commitment Increase.

(g) **Conflicting Provisions.** This **Section 2.9** shall supersede any provisions in **Section 12.23** or **12.10** to the contrary.

#### Section 1.10 Cash Collateral.

(a) **Certain Credit Support Events.** If (i) L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) Borrower shall be required to provide Cash Collateral pursuant to **Section 10.2**, or (iv) there shall exist a Defaulting Lender, Borrower shall immediately (in the case of **clause (iii)** above) or within one (1) Business Day (in all other cases) following any request by Administrative Agent or L/C



Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to **clause (iv)** above, after giving effect to **Section 12.22(a)(iv)** and any Cash Collateral provided by the Defaulting Lender).

(b) **Grant of Security Interest.** Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) Administrative Agent, for the benefit of Administrative Agent, L/C Issuer, Swing Line Lender and Lenders, and agrees to maintain, a first priority security interest in all such Cash Collateral, and all other property so provided as Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to **Section 2.10(c)**. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent or L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more blocked, non-interest bearing deposit accounts at BMO. Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this **Section 2.10** or **Sections 2.3, 10.2** or **12.22** in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) **Release.** Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with **Section 12.8(b)(vii)**)) or (ii) the determination by Administrative Agent and L/C Issuer that there exists excess Cash Collateral;

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provided, however, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (y) the Person providing Cash Collateral and L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

#### Section 1.11 Effect of Benchmark Transition Event.

(a) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (i) if a Benchmark Replacement is determined in accordance with **clause (a)** of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (ii) if a Benchmark Replacement is determined in accordance with **clause (b)** of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) **Benchmark Replacement Conforming Changes.** In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.



(c) **Notice; Standards for Decisions and Determinations.** Administrative Agent will promptly notify the Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to **Section 2.11**. Any determination, decision or election that may be made by Administrative Agent pursuant to this **Section 2.11**, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this **Section 2.11**.

(d) **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such

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Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Administrative Agent in its reasonable discretion or (B) the administration of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not or will not be representative for a Benchmark (including a Benchmark Replacement), then Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) **Benchmark Unavailability Period.** Upon the Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of Term SOFR Portions to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Portions. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

### ARTICLE 3

#### TAXES, YIELD PROTECTION AND INDEMNITY

##### Section 1.1 Increased Costs.

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in Term SOFR);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in **clauses (b)** through **(d)** of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;



and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit) or to

increase the cost to such Lender (or such other Recipient of participating in Swing Line Loans) or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital or Liquidity Requirements.** If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by such Lender or the Letters of Credit issued by L/C Issuer, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in **Sections 3.1(a) or (b)** and delivered to Borrower, shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to this **Section 3.1** shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that Borrower shall not be required to compensate a Lender pursuant to this **Section 3.1** for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) -month period referred to above shall be extended to include the period of retroactive effect thereof).

**Section 1.2 Illegality.** If any Lender determines that any law or regulation has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make, maintain or fund Loans whose interest is determined by reference to Adjusted Term SOFR, or to determine or charge interest rates based upon Adjusted Term SOFR, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in any applicable interbank market, then, on notice thereof by such Lender to Borrower through Administrative Agent, (i) any obligation of such Lender to make or continue Term SOFR Portions or to convert Base Rate Portions to Term SOFR Portions shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Portions the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Portions of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Adjusted Term SOFR component of the Base Rate, in each case until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), prepay or, if applicable, convert all Term SOFR Portions of such Lender to Base Rate Portions (the interest rate on which



Base Rate Portions of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Adjusted Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Portions to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Portions and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon Adjusted Term SOFR, Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Adjusted Term SOFR component thereof until Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Adjusted Term SOFR. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted.

**Section 1.3 Inability to Determine Rates.** Subject to **Section 2.11**, if, on or prior to the first day of any Interest Period for any Borrowing of Term SOFR Portions:

(a) Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that "Adjusted Term SOFR" cannot be determined pursuant to the definition thereof, or

(b) Administrative Agent determines that (i) for any reason in connection with any request for a Term SOFR Portion or a conversion thereto or a continuation thereof that Adjusted Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Portion does not adequately and fairly reflect the cost to the Lender of funding such Loan or (ii) that the making or funding of Term SOFR Portions has become impracticable,

then Administrative Agent shall forthwith give notice thereof to the Borrower, whereupon until Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, the obligations of the Lenders to create, continue, or effect by conversion Term SOFR Portions shall be suspended (and any existing Term SOFR Portions shall be automatically converted into Base Rate Portions upon the end of the applicable Interest Period therefor).

**Section 1.4 Taxes.**

(a) **Defined Terms.** For purposes of this Section, the term "applicable law" includes FATCA.

(b) **Payment Free of Taxes.** Any and all payments by or on account of any obligation of 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 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 3.4**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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(c) **Payment of Other Taxes by Borrower.** Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) **Indemnification by Borrower.** Borrower shall indemnify each Recipient, within ten (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 3.4**) 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 (other than expenses attributable to the failure or delay by such Recipient to make such written demand to Borrower within nine (9) months of becoming aware that such Indemnified Taxes under this **Section 3.4** have been levied, imposed or asserted against it), 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 Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.



(e) **Indemnification by Lenders.** Each Lender shall severally indemnify Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 12.8** 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 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 Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes 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 Administrative Agent to such Lender from any other source against any amount due to Administrative Agent under this **Section 3.4(e)**.

(f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this **Section 3.4**, Borrower shall deliver to 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 Administrative Agent.

(g) **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 Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or 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 Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or 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 (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 3.4(g)(ii)(A), (ii)(B)** and **(ii)(D)** below) shall not

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be required if in such 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 Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and 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 Borrower or Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and 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 Borrower or 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, executed originals of IRS Form W-8BEN (or W-8BEN-E, as applicable) 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 W-8BEN-E, as applicable) 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) executed originals 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 I-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 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) executed originals of IRS Form W-8BEN (or W-8BEN-E, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or W-8BEN-E, as applicable), a U.S. Tax Compliance Certificate substantially in the form of **Exhibit I-2** or **Exhibit I-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 I-4** on behalf of each such direct and indirect partner;

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(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and 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 Borrower or Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or 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 Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or 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 Borrower or Administrative Agent as may be necessary for Borrower and 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 Borrower and Administrative Agent in writing of its legal inability to do so.

(h) **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 3.4** (including by the payment of additional amounts pursuant to this **Section 3.4**), 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 3.4** 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 **Section 3.4(h)** (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 **Section 3.4(h)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 3.4(h)** 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 **Section 3.4(h)** 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.

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(i) **Survival.** Each party's obligations under this **Section 3.4** shall survive the resignation or replacement of 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.

**Section 1.5 Compensation for Losses.** Upon demand of any Lender (with a copy to Administrative Agent) from time to time, Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Term SOFR Portion on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by Borrower (for a reason other than the failure of such Lender to lend a Term SOFR Portion) to prepay, borrow, continue or convert any Term SOFR Portion on the date or in the amount notified by Borrower; or

(c) any assignment of a Term SOFR Portion on a day other than the last day of the Interest Period therefor as a result of a request by Borrower pursuant to **Section 3.6(b)**;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

**Section 1.6 Mitigation of Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under **Section 3.1**, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.4**, then such Lender shall (at the request of Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 3.1** or **Section 3.4**, 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. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under **Section 3.1**, or if 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 3.4** and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with **Section 3.6(a)**, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 12.8**), all of its interests, rights (other than its existing rights to payments pursuant to **Section 3.1** or **Section 3.4**) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided that*:

(i) Borrower shall have paid to Administrative Agent the assignment fee (if any) specified in **Section 12.8**;

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(ii) such Lender shall have received payment of an amount equal to the Outstanding Amount of its Loans and L/C Advances, and accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any



amounts under **Section 3.5**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under **Section 3.1** or payments required to be made pursuant to **Section 3.4**, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

**Section 1.7 Survival.** All of Borrower's obligations under this *Article 3* shall survive termination of the Commitments, repayment of all other Obligations hereunder, and resignation of Administrative Agent.

## ARTICLE 4

### SECURITY

**Section 1.1 Collateral.** To secure full and complete payment and performance of the Obligations, Borrower shall, and shall cause the other Obligated Parties to, execute and deliver or cause to be executed and delivered all of the Security Documents required by Administrative Agent covering the Collateral. Borrower shall execute, cause to be executed, deliver and cause to be filed or authorize the filing of, in each case, as applicable, such further documents and instruments, including without limitation, UCC financing statements and intellectual property security agreements, as Administrative Agent, in its sole discretion, deems necessary or desirable to create, evidence, preserve, and perfect its liens and security interests in the Collateral and maintain the priority thereof as required by the Loan Documents.

**Section 1.2 Setoff.** If an Event of Default exists, Administrative Agent and each Lender shall have the right to set off against the Obligations under the Loan Documents, at any time and without notice to Borrower, any and all deposits (general or special, time or demand, provisional or final) or other sums at any time credited by or owing from Administrative Agent or such Lender to Borrower whether or not the Obligations under the Loan Documents are then due; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff: (a) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of *Section 12.22* and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Secured Parties; and (b) such Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations under the Loan Documents owing to such Defaulting Lender as to which it exercised such right of setoff. Each amount set off shall be paid to Administrative Agent for application to the Obligations under the Loan Documents in the order set forth in *Section 10.3*. As further security for the Obligations,

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Borrower hereby grants to Secured Parties a security interest in all money, instruments, and other Property of Borrower now or hereafter held by Administrative Agent or such Lender, including, without limitation, Property held in safekeeping. In addition to Administrative Agent's and each Lender's right of setoff and as further security for the Obligations, Borrower hereby grants to Secured Parties a security interest in all deposits (general or special, time or demand, provisional or final) and other accounts of Borrower now or hereafter on deposit with or held by Administrative Agent or such Lender and all other sums at any time credited by or owing from Administrative Agent or such Lender to Borrower. The rights and remedies of Administrative Agent and each Lender hereunder are in addition to other rights and remedies (including, without limitation, other rights of setoff) which Administrative Agent or such Lender may have.

**Section 1.3 Authorization to File Financing Statements.** Borrower and each other Obligated Party that has granted a security interest in connection herewith authorizes Administrative Agent to complete and file, from time to time, financing statements naming Borrower or such other Obligated Party, as applicable, as debtor.



## ARTICLE 5

### CONDITIONS PRECEDENT

**Section 1.1 Initial Extension of Credit.** The obligation of Lenders to make an initial Credit Extension hereunder is subject to the following conditions precedent:

(a) **Loan Documentation.** Administrative Agent shall have received all of the following, each dated (unless otherwise indicated or otherwise specified by Administrative Agent) the Closing Date, in form and substance satisfactory to Administrative Agent:

(i) **Credit Agreement.** Counterparts of this Agreement, duly executed by each Lender and Borrower;

(ii) **Resolutions.** Resolutions of the Board of Directors (or other governing body) of Borrower and each other Obligated Party certified by the Secretary or an Assistant Secretary (or a Responsible Officer or other custodian of records) of such Person which authorize the execution, delivery, and performance by such Person of this Agreement and the other Loan Documents to which such Person is or is to be a party;

(iii) **Incumbency Certificate.** A certificate of incumbency certified by a Responsible Officer of each Obligated Party certifying the names of the individuals or other Persons authorized to sign this Agreement and each of the other Loan Documents to which Borrower and each other Obligated Party is or is to be a party (including the certificates contemplated herein) on behalf of such Person together with specimen signatures of such individual Persons;

(iv) **Certificate Regarding Consents and Approvals.** A certificate of a Responsible Officer of each Obligated Party either (I) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Obligated Party and the validity against such Obligated Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (II) stating that no such consents, licenses or approvals are so required;

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(v) **Closing Certificate.** A certificate signed by a Responsible Officer of the Borrower certifying that the conditions specified in **Sections 5.2(b), (c) and (d)** have been satisfied;

(vi) **Constituent Documents.** The Constituent Documents and all amendments thereto for Borrower and each other Obligated Party that is not a natural person, with the formation documents included in the Constituent Documents being certified as of a date acceptable to Administrative Agent by the appropriate government officials of the state of incorporation or organization of Borrower and each other Obligated Party, and all such Constituent Documents being accompanied by certificates that such copies are complete and correct, given by an authorized representative acceptable to Administrative Agent;

(vii) **Governmental Certificates.** Certificates of the appropriate government officials of the state of incorporation or organization of Borrower and each other Obligated Party as to the existence and good standing of Borrower and each other Obligated Party, each dated within thirty (30) days prior to the date of the initial Credit Extension;

(viii) **Notes.** The Notes executed by Borrower in favor of each Lender requesting Notes;

(ix) **Guaranty.** A Guaranty, dated as of the Closing Date, duly executed by each Guarantor;

(x) **Security Agreement.** A Security Agreement, dated as of the Closing Date, executed by Borrower and the other Obligated Parties;

(xi) **[Reserved];**

(xii) **Lien Searches.** The results of UCC, tax lien and judgment lien searches showing all financing statements and other documents or instruments on file against Borrower and each other Obligated Party in the appropriate filing offices, such search to be as



of a date no more than thirty (30) days prior to the date of the initial Credit Extension, and reflecting no Liens against any of the intended Collateral other than Liens being released or assigned to Administrative Agent concurrently with the initial Credit Extension;

(xiii) **Opinions of Counsel.** A favorable opinion of Norton Rose Fulbright US LLP, legal counsel to Borrower and Guarantors, as to such matters as Administrative Agent may reasonably request, as to such matters as Administrative Agent may reasonably request;

(xiv) **Attorneys' Fees and Expenses.** Evidence that the costs and expenses (including reasonable attorneys' fees) referred to in **Section 12.1**, to the extent invoiced, shall have been paid in full by Borrower;

(xv) **Perfection.** Evidence that all actions, recordings and filings that Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Documents have been taken (including, without limitation, (A) proper financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that Administrative Agent may deem necessary or desirable, (B) delivery of any certificates and instruments representing any securities constituting Collateral accompanied by undated stock

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powers or instruments of transfer executed in blank (to the extent not presently in Administrative Agent's possession), and (C) execution and delivery of account control agreements, in form and substance satisfactory to Administrative Agent, with respect to any deposit accounts maintained with any bank or financial institution other than BMO or any Affiliate thereof pursuant to **Section 7.12**;

(xvi) **[Reserved];** and

(xvii) **Closing Fees.** Evidence that any other fees due on or before the Closing Date have been paid.

(b) **Diligence.**

(i) **Due Diligence.** Administrative Agent shall have completed a due diligence investigation of Borrower and its Subsidiaries in scope, and with results, satisfactory to Administrative Agent, and shall have been given such access to the management, records, books of account, contracts, customer and supplier arrangements, and properties of Borrower and its Subsidiaries and shall have received such financial, business and other information regarding each of the foregoing Persons and businesses as it shall have requested. Administrative Agent shall have completed background checks on certain members of management, the results of which are reasonably satisfactory to Administrative Agent; and

(ii) **"Know your customer;" Beneficial Ownership; Etc.**(A) Upon the reasonable request of any Lender, Borrower shall have provided to Administrative Agent for distribution to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, in each case at least five (5) days prior to the Closing Date and (B) at least three (3) days prior to the Closing Date, any Obligated Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Obligated Party.

(c) **No Material Adverse Event.** Since December 31, 2022, there shall not have occurred any event, condition or state of facts which could reasonably be expected to result in a Material Adverse Event.

(d) **Insurance.** Administrative Agent shall have received evidence of the insurance required by **Section 7.5**, including, for the avoidance of doubt, endorsements to each insurance policy covering Collateral naming Administrative Agent as loss payee and each insurance policy covering liabilities naming Administrative Agent as additional insured.

(e) **Treasury Management Services.** Borrower and its Subsidiaries shall be in compliance with **Section 7.12**.

(f) **[Reserved].**



(g) **Other.** Administrative Agent and the Lenders shall have received such other documents, instruments, agreements and information as reasonably requested by Administrative Agent or any Lender, including, but not limited to, information regarding litigation, tax, accounting, labor, insurance, pension liabilities (actual or contingent), real

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estate leases, environmental matters, material contracts, debt agreements, property ownership, contingent liabilities and management of the Obligated Parties and their respective Subsidiaries.

For purposes of determining compliance with the conditions set forth in this **Section 5.1**, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or be satisfied with, each document or other matter required thereunder to be consented to or approved by or be acceptable or satisfactory to a Lender unless Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**Section 1.2 All Extensions of Credit.** The obligation of Lenders to make any Credit Extension hereunder (including the initial Credit Extension) is subject to the following additional conditions precedent:

(a) **Request for Credit Extension.** Administrative Agent shall have received in accordance with this Agreement, as the case may be, a Revolving Credit Borrowing Request, Letter of Credit Application or Swing Line Loan Request, as applicable, pursuant to Administrative Agent's requirements and executed by a Responsible Officer of Borrower;

(b) **No Default.** No Default shall have occurred and be continuing, or would result from or after giving effect to such Credit Extension;

(c) **No Material Adverse Event.** No Material Adverse Event shall have occurred and no circumstance shall exist that could be a Material Adverse Event;

(d) **Representations and Warranties.** All of the representations and warranties contained in **Article 6** and in the other Loan Documents shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date of such Borrowing, and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects, in each case with the same force and effect as if such representations and warranties had been made on and as of such date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or in the case of such representations and warranties that are subject to a materiality qualification, in all respects) as of such earlier date, and except that for purposes of this **Section 5.2**, the representations and warranties contained in **Section 6.2** shall be deemed to refer to the most recent statements furnished pursuant to **Section 7.1(a)** and **(b)**, respectively;

(e) **Incremental Term Loan Conditions.** With respect to any request for a Credit Extension under the Incremental Term Loan Commitments,

(i) not less than eight (8) Business Days before the date of the proposed Credit Extension, Borrower shall have delivered to Administrative Agent the following documents and information concerning the Acquisition to be financed with the proceeds of such Credit Extension: (A) drafts of each material document, instrument and agreement to be executed in connection with such Acquisition, (B) an acquisition summary with respect to the Person and/or business or division to be acquired, such summary to include a reasonably detailed description thereof (including financial information) and operating results (including financial statements for the most recent 12-month period for which they are available and as otherwise applicable), the terms and conditions,

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including economic terms, of the proposed Acquisition, a reasonably detailed sources and uses statement with respect to such Acquisition and Borrower's calculation of EBITDA (calculated after giving Pro Forma Effect to such Acquisition) relating thereto, and (C) such other documents or information as the Administrative Agent shall have reasonably requested with respect to such Acquisition, including, without limitation, (x) the full name and jurisdiction of organization of any new Subsidiary created or acquired for the purpose of effecting such Acquisition, (y) copies of historical and projected pro forma financial statements of the entity or line of business to be acquired in connection with such Acquisition, and (z) a detailed description of assets to be acquired in connection with such Acquisition;

(ii) immediately after giving effect to such Credit Extension and the Acquisition to be financed with the proceeds thereof, (A) Borrower shall be in Pro Forma Compliance with **Section 9.2**; and (B) the Leverage Ratio (calculated on a Pro Forma Basis) shall not exceed then applicable maximum Leverage Ratio as set forth in **Section 9.1** minus 0.25;

(iii) not less than three (3) Business Days before the proposed date of such Credit Extension, Administrative Agent shall have received a certificate of Borrower executed on its behalf by a Responsible Officer of Borrower, demonstrating in reasonable detail compliance with the foregoing **clause (ii)**, and Administrative Agent shall not have objected in writing to Borrower's certificate delivered pursuant to this **clause (iii)**; *provided that* Administrative Agent will not make any such objection unless it has a good faith basis for believing that Borrower's *pro forma* calculations are not reasonable, and that as a result thereof, Borrower will not be in Pro Forma Compliance with the financial covenants as set forth in **clause (ii)** following such proposed Acquisition; and

(iv) the Acquisition proposed by Borrower to be financed with the proceeds of such Credit Extension shall be consummated in compliance with the requirements of **Section 8.5(e)**; and

(f) **Delayed Draw Term Loan Conditions.** With respect to any request for a Credit Extension under the Delayed Draw Term Loan Commitments (a "**Proposed DDTL**"), Administrative Agent shall have received a written certification from Borrower certifying that (i) the amount of the Proposed DDTL is equal to the amount of the Arroyo Earnout then owing under the Arroyo Acquisition Agreement, and (ii) the proceeds of such Proposed DDTL will be used exclusively to pay the Arroyo Earnout.

(g) **Availability.** After giving effect to any requested Credit Extension, (i) the total Revolving Credit Exposure of the Revolving Credit Lenders shall not exceed the aggregate Revolving Credit Commitments of the Revolving Credit Lenders in effect as of the date of such Credit Extension and (ii) the Term Loan Commitment shall not be less than \$0.

Each Credit Extension hereunder shall be deemed to be a representation and warranty by Borrower that the conditions specified in this **Section 5.2** have been satisfied on and as of the date of the applicable Credit Extension.

**Section 1.3 Credit Extensions in Respect of MIRE Event.** Notwithstanding the foregoing, no MIRE Event may be closed until the date that is (a) if there are no Mortgaged Properties in a flood zone, five (5) Business Days or (b) if there are any Mortgaged Properties in a flood zone, thirty (30) days (in each case, the "**Notice Period**"), after Administrative Agent has

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delivered to Lenders the following documents in respect of such Mortgaged Property: (i) a completed flood hazard determination from a third party vendor; (ii) if such Mortgaged Property is located in a "special flood hazard area", (A) a notification to the applicable Obligated Party of that fact and (if applicable) notification to the applicable Obligated Party that flood insurance coverage is not available and (B) evidence of the receipt by the applicable Obligated Party of such notice; and (iii) evidence of required flood insurance in compliance with the applicable regulations of the Board of Governors of the Federal Reserve System; *provided that* any such MIRE Event may be closed prior to the Notice Period if the Administrative Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

## ARTICLE 6

### REPRESENTATIONS AND WARRANTIES



To induce Administrative Agent and Lenders to enter into this Agreement, and to make Credit Extensions hereunder, Borrower represents and warrants to Administrative Agent and Lenders that:

**Section 1.1 Entity Existence.** Each of Borrower and its Subsidiaries (a) is duly incorporated or organized, as the case may be, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation or organization; (b) has all requisite power and authority to own its assets and carry on its business as now being or as proposed to be conducted; and (c) is qualified to do business in all jurisdictions in which the nature of its business makes such qualification necessary and where failure to so qualify could result in a Material Adverse Event. Each of Borrower and the other Obligated Parties has the power and authority to execute, deliver, and perform its obligations under this Agreement and the other Loan Documents to which it is or may become a party.

**Section 1.2 Financial Statements; Etc.** Borrower has delivered to Administrative Agent audited financial statements of Borrower and its Subsidiaries as at and for the fiscal year ended December 31, 2022 and unaudited financial statements of Borrower and its Subsidiaries as at and for each fiscal quarter ended thereafter through and including the fiscal quarter ended December 31, 2023. Such financial statements are true and correct in all material respects, have been prepared in accordance with GAAP, and fairly and accurately present, on a consolidated basis, the financial condition of Borrower and its Subsidiaries as of the respective dates indicated therein and the results of operations for the respective periods indicated therein. Neither Borrower nor any of its Subsidiaries has any material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments, unrealized or anticipated losses from any unfavorable commitments except as referred to or reflected in such financial statements. No Material Adverse Event has occurred since the effective date of the audited financial statements referred to in this **Section 6.2**. All projections delivered by Borrower to Administrative Agent and Lenders have been prepared in good faith, with care and diligence and using assumptions that are reasonable under the circumstances at the time such projections were prepared and delivered to Administrative Agent and Lenders and all such assumptions are disclosed in the projections. Other than the Debt listed on **Schedule 8.1** and Debt otherwise permitted by **Section 8.1**, Borrower and each Subsidiary have no Debt.

**Section 1.3 Action; No Breach.** The execution, delivery, and performance by each of Borrower and each other Obligated Party of this Agreement and the other Loan Documents to which such Person is or may become a party and compliance with the terms and provisions hereof and thereof have been duly authorized by all requisite action on the part of such Person and do not and will not (a) violate or conflict with, or result in a breach of, or require any consent under (i) the Constituent Documents of such Person, (ii) any applicable law, rule, or regulation or

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any order, writ, injunction, or decree of any Governmental Authority or arbitrator, or (iii) any agreement or instrument to which such Person is a party or by which it or any of its Properties is bound or subject which could result in a Material Adverse Event, or (b) constitute a default under any such agreement or instrument which could result in a Material Adverse Event, or result in the creation or imposition of any Lien upon any of the revenues or assets of such Person.

**Section 1.4 Operation of Business.** Each of Borrower and its Subsidiaries possesses all licenses, permits, consents, authorizations, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, necessary to conduct its respective businesses substantially as now conducted and as presently proposed to be conducted, and neither Borrower nor any of its Subsidiaries is in violation of any valid rights of others with respect to any of the foregoing which could result in a Material Adverse Event.

**Section 1.5 Litigation and Judgments.** Except as specifically disclosed in **Schedule 6.5** as of the Closing Date, there is no action, suit, investigation, or proceeding before or by any Governmental Authority or arbitrator pending, or to the knowledge of Borrower, threatened against or affecting Borrower, any of its Subsidiaries, or any other Obligated Party that could, if adversely determined, result in a Material Adverse Event. There are no outstanding judgments against Borrower, any of its Subsidiaries, or any other Obligated Party.

**Section 1.6 Rights in Properties; Liens.**

(a) Each of Borrower and its Subsidiaries has good and indefeasible title to or valid leasehold interests in its respective Properties, including the Properties reflected in the financial statements described in **Section 6.2**, and none of the Properties of Borrower or any of its Subsidiaries is subject to any Lien, except Permitted Liens.



(b) **Schedule 6.6(b)** sets forth a complete and accurate list of all real estate Leases under which Borrower or any of its Subsidiaries is the lessee on the Closing Date, showing as of such date the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof. Each such Lease is the legal, valid and binding obligation of the lessor thereof, enforceable in accordance with its terms, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other applicable Laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

**Section 1.7 Enforceability.** This Agreement constitutes, and the other Loan Documents to which Borrower or any other Obligated Party is a party, when delivered, shall constitute legal, valid, and binding obligations of such Person, enforceable against such Person in accordance with their respective terms, except as limited by Debtor Relief Laws.

**Section 1.8 Approvals.** No authorization, approval, or consent of, and no filing or registration with, any Governmental Authority or third party is or will be necessary for the execution, delivery, or performance by Borrower or any other Obligated Party of this Agreement and the other Loan Documents to which such Person is or may become a party or the validity or enforceability thereof.

**Section 1.9 Taxes.** Each of Borrower and its Subsidiaries has filed all material tax returns (federal, state, and local) required to be filed, including all material income, franchise, employment, Property, and sales tax returns, and has paid all of their respective liabilities for taxes, assessments, governmental charges, and other levies that are due and payable, other than taxes the payment of which is being contested in good faith and by appropriate proceedings and reserves for the payment of which are being maintained in accordance with GAAP. Borrower

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knows of no pending investigation of Borrower or any of its Subsidiaries by any taxing authority or of any pending but unassessed tax liability of Borrower or any of its Subsidiaries. Neither Borrower nor any Subsidiary thereof is party to any tax sharing agreement.

**Section 1.10 Use of Proceeds; Margin Securities.** The proceeds of the Revolving Credit Borrowings shall be used by Borrower for working capital in the ordinary course of business, to pay costs and fees associated with the Transaction, and for other general corporate purposes including Acquisitions permitted pursuant to **Section 8.5(e)**. The proceeds of the Term Loans shall be used as provided in **Section 8.20**. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T, U, or X of the Board of Governors of the Federal Reserve System), and no part of the proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock.

**Section 1.11 ERISA.** Each Plan that is intended to qualify under *Section 401(a)* of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. No application for a funding waiver or an extension of any amortization period pursuant to *Section 412* of the Code has been made with respect to any Plan. There are no pending or, to the knowledge of Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. There has been no Prohibited Transaction or violation of the fiduciary responsibility rules with respect to any Plan. No ERISA Event has occurred or is reasonably expected to occur. No Plan has any Unfunded Pension Liability. No Obligated Party or ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under *Section 4007* of ERISA). No Obligated Party or ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under *Section 4219* of ERISA, would result in such liability) under *Section 4201* or *4243* of ERISA with respect to a Multiemployer Plan. No Obligated Party or ERISA Affiliate has engaged in a transaction that could be subject to *Section 4069* or *4212(c)* of ERISA.

**Section 1.12 Disclosure.** No statement, information, report, representation, or warranty made by Borrower or any other Obligated Party in this Agreement or in any other Loan Document or furnished to Administrative Agent or any Lender in connection with this Agreement or any of the transactions contemplated hereby contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not misleading. There is no fact known to Borrower which is a Material Adverse Event, or which Borrower reasonably believes might in the future be a Material Adverse Event that has not been disclosed in writing to Administrative Agent and each Lender.



Section 1.13 **Subsidiaries.** Borrower has no Subsidiaries other than those listed on **Schedule 6.13** (and those Subsidiaries formed or acquired after the Closing Date in compliance with **Section 7.13**), and **Schedule 6.13** sets forth, as of the Closing Date, the jurisdiction of incorporation or organization of each such Subsidiary and the percentage of Borrower's ownership interest in such Subsidiary. All of the outstanding capital stock or other equity interests of each Subsidiary described on **Schedule 6.13** has been validly issued, is fully paid, and is nonassessable. Except as set forth on **Schedule 6.13** or as created by the Loan Documents, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments of any nature relating to any equity interests of Borrower or any Subsidiary.

Section 1.14 **Agreements.** Neither Borrower nor any of its Subsidiaries is a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or

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subject to any charter or corporate or other organizational restriction, in each case which could result in a Material Adverse Event. Neither Borrower nor any of its Subsidiaries is in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party which could result in a Material Adverse Event.

Section 1.15 **Compliance with Laws.** Neither Borrower nor any of its Subsidiaries is in violation in any material respect of any law, rule, regulation, order, or decree of any Governmental Authority or arbitrator.

Section 1.16 **Inventory.** All inventory of Borrower and its Subsidiaries has been and will hereafter be produced in material compliance with all applicable Laws, rules, regulations, and governmental standards, including, without limitation, the minimum wage and overtime provisions of the Fair Labor Standards Act (29 U.S.C. §§ 201-219).

Section 1.17 **Regulated Entities.** Neither Borrower nor any of its Subsidiaries is (a) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940 or (b) subject to regulation under any other federal or state statute, rule or regulation limiting its ability to incur Debt, pledge its assets or perform its obligations under the Loan Documents.

Section 1.18 **Environmental Matters.**

(a) Each of Borrower and its Subsidiaries, and all of its respective Properties, assets, and operations are in material compliance with all Environmental Laws. Borrower is not aware of, nor has Borrower received notice of, any past, present, or future conditions, events, activities, practices, or incidents which may interfere with or prevent the compliance or continued compliance in all material respects of Borrower and its Subsidiaries with all Environmental Laws;

(b) Each of Borrower and its Subsidiaries has obtained all material permits, licenses, and authorizations that are required under applicable Environmental Laws, and all such permits are in good standing and Borrower and its Subsidiaries are in compliance with all of the terms and conditions of such permits;

(c) No Hazardous Materials exist on, about, or within or have been used, generated, stored, transported, disposed of on, or released from any of the Properties or assets of Borrower or any of its Subsidiaries. The use which Borrower and its Subsidiaries make and intend to make of their respective Properties and assets will not result in the use, generation, storage, transportation, accumulation, disposal, or Release of any Hazardous Material on, in, or from any of their Properties or assets;

(d) Neither Borrower nor any of its Subsidiaries nor any of their respective currently or previously owned or leased Properties or operations is subject to any outstanding or threatened order from or agreement with any Governmental Authority or other Person or subject to any judicial or docketed administrative proceeding with respect to (i) failure to comply with Environmental Laws, (ii) Remedial Action, or (iii) any Environmental Liabilities arising from a Release or threatened Release;

(e) There are no conditions or circumstances associated with the currently or previously owned or leased Properties or operations of Borrower or any of its Subsidiaries that could reasonably be expected to give rise to any Environmental Liabilities;

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(f) Neither Borrower nor any of its Subsidiaries is a treatment, storage, or disposal facility requiring a permit under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., regulations thereunder or any comparable provision of state law. Borrower and its Subsidiaries are in material compliance with all applicable financial responsibility requirements of all Environmental Laws;

(g) Neither Borrower nor any of its Subsidiaries has filed or failed to file any notice required under applicable Environmental Law reporting a Release; and

(h) No Lien arising under any Environmental Law has attached to any property or revenues of Borrower or any of its Subsidiaries.

**Section 1.19 Intellectual Property.** As of the Closing Date, all material Intellectual Property owned or used by Borrower and its Subsidiaries is listed, together with application or registration numbers, where applicable, in **Schedule 6.19**. Each Person identified on **Schedule 6.19** owns, or is licensed to use, all Intellectual Property necessary to conduct its business as currently conducted except for such Intellectual Property the failure of which to own or license could result in a Material Adverse Event. Each Person identified on **Schedule 6.19** will maintain the patenting and registration of all material Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or other appropriate Governmental Authority, and each Person identified on **Schedule 6.19** will promptly, but in any event within ten (10) Business Days following its acquisition thereof, patent or register, as the case may be, all new material Intellectual Property and notify Administrative Agent in writing five (5) Business Days prior to filing any such new patent or registration.

**Section 1.20 Foreign Assets Control Regulations and Anti-Money Laundering.** Each Obligated Party and each Subsidiary of each Obligated Party is and will remain in compliance in all material respects with all United States economic sanctions Laws, Executive Orders and implementing regulations as promulgated by OFAC, and all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. No Obligated Party and no Subsidiary or Affiliate of any Obligated Party (a) is a Person designated by the United States government on the list of the Specially Designated Nationals and Blocked Persons (the "**SDN List**") with which a United States Person cannot deal with or otherwise engage in business transactions, (b) is a Person who is otherwise the target of United States economic sanction Laws such that a United States Person cannot deal or otherwise engage in business transactions with such Person, or (c) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of United States economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited under United States law.

**Section 1.21 Patriot Act.** The Obligated Parties, each of their Subsidiaries, and each of their Affiliates are in compliance with (a) the Trading with the Enemy Act, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B Chapter V, as amended), and all other enabling legislation or executive order relating thereto, (b) the Patriot Act, and (c) all other federal or state Laws relating to "know your customer" and anti-money laundering rules and regulations. No part of the proceeds of any Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

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**Section 1.22 Insurance.** The properties of Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where Borrower or the applicable Subsidiary operates.

**Section 1.23 Solvency.** Borrower and the Obligated Parties on a consolidated basis are Solvent and have not entered into any transaction with the intent to hinder, delay or defraud a creditor.



Section 1.24 **Security Documents.** The provisions of the Security Documents are effective to create in favor of Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable Lien (subject to Permitted Liens) on all right, title and interest of the respective Obligated Parties party thereto in the Collateral. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Security Documents, no filing or other action will be necessary to perfect such Liens in Collateral.

Section 1.25 **Businesses.** The Borrower is presently engaged directly or through its Subsidiaries in the temporary staffing industry supplying temporary workers to a variety of customers across a diverse set of industries, including, without limitation, pursuant to (a) temporary staffing to permanent hiring arrangements, (b) permanent hiring to direct hire arrangements and (c) so-called "payrolling" arrangements.

Section 1.26 **Labor Matters.** There are no labor controversies pending, or to the best knowledge of Borrower, threatened against Borrower or any of its Subsidiaries which could result in a Material Adverse Event.

Section 1.27 **Brokers.** No broker or finder brought about the obtaining, making or closing of the Loans or Transactions, and no Obligated Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

Section 1.28 **Sanctions.** None of (a) Borrower, any Subsidiary or, to the knowledge of Borrower, any of their respective directors, officers, employees or affiliates or (b) to the knowledge of Borrower, any agent or representative of Borrower or any Subsidiary that will act in any capacity in connection with or benefit from any Credit Extension is a Sanctioned Person or currently the subject or target of any Sanctions.

Section 1.29 **Anti-Corruption Laws.** Borrower and its Subsidiaries have conducted their business in compliance with all Anti-Corruption Laws and have instituted and maintained policies and procedures to promote and achieve compliance with such Anti-Corruption Laws.

Section 1.30 **EEA Financial Institutions.** No Obligated Party is an EEA Financial Institution.

Section 1.31 **Beneficial Ownership Certificate.** As of the Closing Date, the information included in any Beneficial Ownership Certification delivered to any Lender on or before the Closing Date, if applicable, is true and correct in all respects.

Section 1.32 **No Default.** No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

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## ARTICLE 7

### AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding or any Letter of Credit shall remain outstanding or any Lender has any Commitment hereunder:

Section 1.1 **Reporting Requirements.** Borrower will furnish to Administrative Agent (with copies for each Lender):

(a) **Borrower Annual Financial Statements.** As soon as available, but in any event within ninety (90) days after the end of each fiscal year of Borrower, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and certified by Whitley Penn LLP, or other independent certified public accountants of recognized standing reasonably acceptable to Administrative Agent, to the effect that such report has been prepared in accordance with GAAP and containing no material qualifications or limitations on scope.

(b) **Quarterly Financial Statements.** As soon as available, and in any event within forty-five (45) days after the last day of each fiscal quarter of Borrower (other than the fourth fiscal quarter of any fiscal year of Borrower), commencing with the fiscal quarter of Borrower ending March 31, 2024, a copy of an unaudited financial report of Borrower and its Subsidiaries as of the end of such fiscal quarter and for the portion of the fiscal year then ended, containing, on a consolidated basis, balance sheets and statements of income, retained earnings, and



cash flow, all in reasonable detail certified by a Responsible Officer of Borrower to have been prepared in accordance with GAAP and to fairly and accurately present (subject to year-end audit adjustments) the financial condition and results of operations of Borrower and its Subsidiaries, on a consolidated basis, as of the dates and for the periods indicated therein;

(c) **[Reserved]**;

(d) **Compliance Certificate.** Concurrently with the delivery of each of the financial statements referred to in **Sections 7.1(a)** and **(b)**, a Compliance Certificate (i) stating that to the best of the knowledge of the chief financial officer of Borrower executing same, no Default has occurred and is continuing, or if a Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto, (ii) showing in reasonable detail the calculations demonstrating compliance with the covenants set forth in **Article 9** and (iii) containing such other certifications set forth therein. For any financial statements delivered electronically by the chief financial officer of Borrower in satisfaction of the reporting requirements set forth in **clause (a)** or **(b)** preceding that are not accompanied by the required Compliance Certificate, the chief financial officer of Borrower shall nevertheless be deemed to have certified the factual matters described in this **clause (d)** with respect to such financial statements; *provided, however*, that such deemed certificate shall not excuse or be construed as a waiver of Borrower's obligation to deliver the required Compliance Certificate.

(e) **Projections.** As soon as available, but in any event within forty-five (45) days after the end of each fiscal year of Borrower, forecasts prepared by management of

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Borrower, in form and substance reasonably satisfactory to Administrative Agent, of consolidated balance sheets of income or operations and cash flows of Borrower and its Subsidiaries on a monthly basis for the immediately following fiscal year.

(f) **Management Letters.** Promptly upon receipt thereof, a copy of any management letter or written report submitted to Borrower or any of its Subsidiaries by independent certified public accountants with respect to the business, condition (financial or otherwise), operations, prospects, or Properties of Borrower or any of its Subsidiaries;

(g) **Notice of Litigation.** Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any Governmental Authority or arbitrator affecting Borrower or any of its Subsidiaries which, if determined adversely to Borrower or such Subsidiary, could reasonably be expected to be a Material Adverse Event;

(h) **Notice of Default.** As soon as possible and in any event within five days after the occurrence of any Default, a written notice setting forth the details of such Default and the action that Borrower has taken and proposes to take with respect thereto;

(i) **ERISA Reports.** Promptly after the receipt thereof, copies of all notices which any Borrower or ERISA Affiliate receives from the PBGC, the IRS, or the U.S. Department of Labor under ERISA; as soon as possible and in any event within five (5) days after Borrower or any ERISA Affiliate knows or has reason to know that any ERISA Event or Prohibited Transaction has occurred with respect to any Plan, a certificate of the chief financial officer of Borrower setting forth the details as to such ERISA Event or Prohibited Transaction and the action that Borrower proposes to take with respect thereto; annually, copies of the notice described in **Section 101(f)** of ERISA that Borrower or ERISA Affiliate receives with respect to a Plan or Multiemployer Plan;

(j) **Change of Control.** As soon as possible and in any event within five (5) days after the occurrence thereof, written notice of any Change of Control.

(k) **Reports to Other Creditors.** Promptly after the furnishing thereof, copies of any material statement or report furnished to any other party pursuant to the terms of any indenture, loan, or credit or similar agreement and not otherwise required to be furnished to Administrative Agent pursuant to any other clause of this **Section 7.1**;

(l) **Notice of Material Adverse Event.** As soon as possible and in any event within five (5) days after the occurrence thereof, written notice of any event or circumstance that could reasonably be expected to result in a Material Adverse Event;



(m) **Publicly Filed Materials.** Promptly after the filing of any documents by Borrower with the U.S. Securities Exchange Commission, written notice of such filing and confirmation that such documents have been made available on Borrower's website;

(n) **[Reserved];** and

(o) **General Information.** Promptly, such other information concerning Borrower, any of its Subsidiaries, or any other Obligated Party as Administrative Agent, or any Lender through Administrative Agent, may from time to time reasonably request.

All representations and warranties set forth in the Loan Documents with respect to any financial information concerning Borrower or any Guarantor shall apply to all financial information delivered to Lender by Borrower, such Guarantor, or any Person purporting to be a Responsible Officer of Borrower or such Guarantor or other representative of Borrower or such Guarantor

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regardless of the method of such transmission to Lender or whether or not signed by Borrower, such Guarantor, or such Responsible Officer or other representative, as applicable.

**Section 1.2 Maintenance of Existence; Conduct of Business.** Borrower shall, and shall cause each of its Subsidiaries to, preserve and maintain its existence and all of its leases, privileges, licenses, permits, franchises, qualifications, and rights that are necessary or desirable in the ordinary conduct of its business, except to the extent a failure to so preserve and maintain could not result in a Material Adverse Event. Borrower shall, and shall cause each of its Subsidiaries to, conduct its business in an orderly and efficient manner in accordance with good business practices.

**Section 1.3 Maintenance of Properties.** Borrower shall, and shall cause each of its Subsidiaries to, maintain, keep, and preserve all of its Properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, except to the extent failure to do so could not reasonably be expected to result in a Material Adverse Event.

**Section 1.4 Taxes and Claims.** Borrower shall, and shall cause each of its Subsidiaries to, pay or discharge at or before maturity or before becoming delinquent (a) all taxes, levies, assessments, and governmental charges imposed on it or its income or profits or any of its Property, and (b) all lawful claims for labor, material, and supplies, which, if unpaid, might become a Lien upon any of its Property; *provided, however*, that neither Borrower nor any of its Subsidiaries shall be required to pay or discharge any tax, levy, assessment, or governmental charge which is being contested in good faith by appropriate proceedings diligently pursued, and for which adequate reserves in accordance with GAAP have been established.

**Section 1.5 Insurance.**

(a) Borrower shall, and shall cause each of its Subsidiaries to, maintain insurance with financially sound and reputable insurance companies in such amounts and covering such risks as is usually carried by corporations engaged in similar businesses and owning similar Properties in the same general areas in which Borrower and its Subsidiaries operate, including without limitation, to the extent any Mortgaged Property is located in a "special flood hazard area", flood insurance, which flood insurance shall be acceptable to the Lenders; *provided* that in any event Borrower will maintain and cause each of its Subsidiaries to maintain property insurance and comprehensive general liability insurance reasonably satisfactory to Administrative Agent. Each insurance policy covering Collateral shall name Administrative Agent as loss payee and each insurance policy covering liabilities shall name Administrative Agent as additional insured, and each such insurance policy shall provide that such policy will not be cancelled or reduced without 30 days prior written notice to Administrative Agent.

(b) If Required Lenders agree in writing, in their reasonable discretion, then Borrower may apply the net proceeds of a casualty or condemnation (each a "**Loss**") to the repair, restoration, or replacement of the assets suffering such Loss, so long as (i) such repair, restoration, or replacement is completed within one hundred eighty (180) days after the date of such Loss (or such longer period of time agreed to in writing by Required Lenders), (ii) while such repair, restoration, or replacement is underway, all of such net proceeds are on deposit with Administrative Agent in a separate deposit account over which Administrative Agent has exclusive control, and (iii) such Loss did not cause an Event of Default. If an Event of Default occurs pursuant to which Administrative Agent exercises its rights to accelerate the Obligations under the Loan Documents as provided in **Section 10.2** or such repair, restoration, or replacement is not completed within one hundred eighty (180) days of the date of such Loss (or such longer period of time agreed to in writing by Required Lenders), then Administrative Agent

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may immediately and without notice to any Person apply all of such net proceeds to such Obligations, regardless of any other prior agreement regarding the disposition of such net proceeds.

**Section 1.6 Inspection Rights.** At any reasonable time and from time to time, Borrower shall, and shall cause each of its Subsidiaries to, (a) permit representatives of Administrative Agent or any Lender to examine, inspect, review, evaluate and make physical verifications and appraisals of the inventory and other Collateral and conduct field exams (which are anticipated to be annual, but which may be conducted more often at the discretion of Administrative Agent), including without limitation to conduct a field exam within ninety (90) days of the Closing Date, in any manner and through any medium that Administrative Agent or such Lender considers advisable, (b) to examine, copy, and make extracts from its books and records, (c) to visit and inspect its Properties, and (d) to discuss its business, operations, and financial condition with its officers, employees, and independent certified public accountants, in each instance, at Borrower's expense.

**Section 1.7 Keeping Books and Records.** Borrower shall, and shall cause each of its Subsidiaries to, maintain proper books of record and account in which full, true, and correct entries in conformity with GAAP shall be made of all dealings and transactions in relation to its business and activities.

**Section 1.8 Compliance with Laws.** Borrower shall, and shall cause each of its Subsidiaries to, comply in all material respects with all applicable Laws and decrees of any Governmental Authority or arbitrator, except to the extent that a failure to so comply could not reasonably be expected to result in a Material Adverse Event.

**Section 1.9 Compliance with Agreements.** Borrower shall, and shall cause each of its Subsidiaries to, comply in all material respects with all agreements, contracts, and instruments binding on it or affecting its Properties or business, except to the extent a failure to so comply could not result in a Material Adverse Event.

**Section 1.10 Further Assurances.** Borrower shall, and shall cause each of its Subsidiaries and each other Obligated Party to, execute and deliver such further agreements and instruments and take such further action as may be reasonably requested by Administrative Agent or any Lender to carry out the provisions and purposes of this Agreement and the other Loan Documents and to create, preserve, and perfect the Liens of Administrative Agent in the Collateral.

**Section 1.11 ERISA.** Borrower shall, and shall cause each of its Subsidiaries to, comply with all minimum funding requirements, and all other material requirements, of ERISA, if applicable, so as not to give rise to any liability thereunder.

**Section 1.12 Depository Relationship.** Borrower shall, and shall cause each of its Subsidiaries to, use BMO or Bank of Montreal as its principal depository bank and Borrower shall, and shall cause each of its Subsidiaries to, maintain BMO or Bank of Montreal as its principal depository bank, including for the maintenance of business, cash management, operating and administrative deposit accounts; *provided that*, notwithstanding the foregoing, Borrower and its Subsidiaries shall be permitted to maintain deposit accounts with banks other than BMO or Bank of Montreal (each such account, a "**Permitted Account**") in each city or town in which (a) Borrower or one or more of its Subsidiaries regularly pay the wages of employees residing in such city or town, (b) the applicable Laws of such state require that checks issued by employers in payment of employee wages in such state be payable in cash without discount at an established place of business in such state, and (c) neither BMO nor Bank of Montreal nor any Affiliate thereof maintains retail banking branches in such city or town; *provided, further, that*

within thirty (30) days after the Closing Date (or ten (10) Business Days after the opening of any Permitted Account after the Closing Date), Borrower shall, and shall cause any applicable Subsidiary to, deliver to Administrative Agent an account control agreement with respect to each Permitted



Account in form and substance satisfactory to Administrative Agent in its reasonable discretion.

#### Section 1.13 Additional Guarantors.

(a) Borrower shall notify Administrative Agent at the time that any Person becomes a Subsidiary, and promptly thereafter (and any event within twenty (20) days), except with respect to any Foreign Subsidiary (other than a Foreign Subsidiary required to comply with this **clause (a)** pursuant to **clause (b)(i)** below), (i) execute and deliver to Administrative Agent all Security Documents, stock certificates, stock powers and other agreements and instruments as may be reasonably requested by Administrative Agent to ensure that Administrative Agent has a perfected security interest in all ownership interests held by any Obligated Party in such Subsidiary, and (ii) cause such Person to (a) become a Guarantor by executing and delivering to Administrative Agent a Guaranty, (b) execute and deliver all Security Documents requested by Administrative Agent pledging to Administrative Agent for the benefit of the Secured Parties all of its Property (subject to such exceptions as Administrative Agent may permit or as otherwise allowed by this Agreement) and take all actions reasonably required by Administrative Agent to grant to Administrative Agent for the benefit of Secured Parties a perfected first priority security interest in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be reasonably requested by Administrative Agent, (c) with respect to each real property owned in fee simple by such Subsidiary: (i) the Mortgage and evidence of the proper recordation of each such Mortgage (or the delivery of any such Mortgage to the applicable title insurance company for recordation, on or immediately after the date of such delivery to such company) in the appropriate filing office, and (ii) the Owned Real Estate Support Documents with respect to such real property; and (d) deliver to Administrative Agent such other documents and instruments as Administrative Agent may require, including appropriate favorable opinions of counsel to such Person in form, content and scope reasonably satisfactory to Administrative Agent. Notwithstanding the foregoing, Administrative Agent shall not enter into any Mortgage acquired by any Obligated Party after the Closing Date until the date that is (a) if such Mortgaged Property relates to a property not located in a flood zone, five (5) Business Days or (b) if such Mortgaged Property relates to a property located in a flood zone, thirty (30) days, after Administrative Agent has delivered to the Lenders the following documents in respect of such Mortgaged Property: (i) a completed flood hazard determination from a third party vendor; (ii) if such Mortgaged Property is located in a "special flood hazard area", (A) a notification to the applicable Obligated Party of that fact and (if applicable) notification to the applicable Obligated Party that flood insurance coverage is not available and (B) evidence of the receipt by the applicable Obligated Party of such notice; (iii) evidence of required flood insurance in compliance with the applicable regulations of the Board of Governors of the Federal Reserve System; *provided* that in no event shall the Administrative Agent enter into any Mortgage under this **Section 7.13(a)** until the Administrative Agent shall have received confirmation from each Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

(b) Not later than ninety (90) days after the consummation of any Approved Foreign Acquisition (or such later date as Administrative Agent may agree in at its sole option), at the reasonable request of Administrative Agent, Borrower and its Subsidiaries shall have either (i) complied with **clause (a)** above with respect to one or more of the Foreign Subsidiaries acquired in such Approved Foreign Acquisition (as reasonably requested by Administrative Agent) or (ii) (x) granted to Administrative Agent a perfected security interest in 66% of the voting stock and 100% of the non-voting stock of each Foreign Subsidiary acquired in such Approved Foreign

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Acquisition and (y) delivered to Administrative Agent such other documents and instruments as Administrative Agent may have reasonably required in connection therewith.

#### Section 1.14 Anti-Corruption Laws and Sanctions.

(a) Borrower will not request any Credit Extension, and Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Credit Extension (i) 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, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(b) Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.



(c) Promptly following any request therefor, Borrower will deliver to Administrative Agent, for distribution to any Lender so requesting, all information and documentation reasonably requested by Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Beneficial Ownership Regulation.

Section 1.15 **Post-Closing Obligations.** Borrower shall complete delivery and/or performance of each item set forth on **Schedule 7.15** on or prior to the date indicated with respect to such item on **Schedule 7.15**.

## ARTICLE 8

### NEGATIVE COVENANTS

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding or any Letter of Credit shall remain outstanding or any Lender has any Commitment hereunder:

Section 1.1 **Debt.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, incur, create, assume, or permit to exist any Debt, except:

- (a) The Obligations under the Loan Documents and Obligations existing or arising under Bank Product Agreements other than Hedge Agreements;
- (b) Existing Debt described on **Schedule 8.1**;
- (c) Purchase money Debt and Capitalized Lease Obligations not to exceed \$750,000 in the aggregate at any time outstanding;
- (d) To the extent considered Debt, performance-based earn-out payments of Borrower and its Subsidiaries in respect of Acquisitions;  
and
- (e) Hedge Obligations existing or arising under Hedge Agreements permitted by **Section 8.16**; and

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- (f) Debt outstanding under the Horn Solutions Seller Note, so long as such Debt is subject to the Subordination Provisions.

Section 1.2 **Limitation on Liens.** Borrower shall not, and shall not permit any of its Subsidiaries to, incur, create, assume, or permit to exist any Lien upon any of its Property, assets, or revenues, whether now owned or hereafter acquired, except:

- (a) Existing Liens disclosed on **Schedule 8.2**;
- (b) Liens in favor of the Secured Parties or Administrative Agent for the benefit of Secured Parties;
- (c) Encumbrances consisting of minor easements, zoning restrictions, or other restrictions on the use of real property that do not (individually or in the aggregate) materially affect the value of the assets encumbered thereby or materially impair the ability of Borrower or its Subsidiaries to use such assets in their respective businesses, and none of which is violated in any material respect by existing or proposed structures or land use;
- (d) Liens for taxes, assessments, or other governmental charges which are not delinquent or which are being contested in good faith and for which adequate reserves in accordance with GAAP have been established;
- (e) Liens of mechanics, materialmen, warehousemen, carriers, or other similar statutory Liens securing obligations that are not yet due and are incurred in the ordinary course of business;
- (f) Liens resulting from good faith deposits to secure payments of workmen's compensation or other social security programs (other than Liens imposed by ERISA) or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, contracts (other than for payment of Debt), or leases made in the ordinary course of business; and



(g) Purchase money Liens on specific property to secure Debt used to acquire such Property and Liens securing Capitalized Lease Obligations with respect to specific leased property, in each case to the extent permitted in **Section 8.1(d)**.

**Section 1.3 Mergers, Etc.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, become a party to a merger or consolidation, or purchase or otherwise acquire all or substantially all of the assets of any Person or any shares or other evidence of beneficial ownership of any Person, or wind-up, dissolve, or liquidate, except that (a) any Subsidiary may merge or consolidate with Borrower so long as Borrower is the surviving entity, (b) any Subsidiary may merge or consolidate with another Subsidiary so long as if a Subsidiary that is a Guarantor is involved in such merger or consolidation, such Guarantor is the surviving entity and (c) in connection with any Acquisition permitted under **Section 8.5(e)**, any Borrower or any Subsidiary may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; *provided* that (i) in the case of any such merger or consolidation to which Borrower is a party, Borrower shall be the surviving Person, and (ii) in the case of any such merger or consolidation to which any Subsidiary (but not Borrower) is a party, (x) the Person surviving such merger shall be a wholly-owned Subsidiary of Borrower and (y) if a Subsidiary that is a Guarantor is involved in such merger or consolidation, such Guarantor is the surviving entity.

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**Section 1.4 Restricted Payments.** Borrower shall not declare or make, and shall not permit any of its Subsidiaries to declare or make, any Restricted Payments or incur any obligation (contingent or otherwise) to do so; *provided, however*, that (a) Subsidiaries shall be permitted to make Restricted Payments to Borrower or any Guarantors, (b) Borrower and its Subsidiaries may make Restricted Payments consisting solely of its equity interests and (c) Borrower may make Permitted Distributions.

**Section 1.5 Loans; Investments; Acquisitions.** Borrower shall not make, and shall not permit any of its Subsidiaries to, directly or indirectly, consummate any Acquisitions or make, hold or maintain, any advance, loan, extension of credit, or capital contribution to or investment in, or purchase any stock, bonds, notes, debentures, or other securities of, any Person, except:

- (a) Existing investments described on **Schedule 8.5**;
- (b) Readily marketable direct obligations of the United States of America or any agency thereof with maturities of one (1) year or less from the date of acquisition;
- (c) Fully insured certificates of deposit with maturities of one (1) year or less from the date of acquisition issued by either (i) any commercial bank operating in the United States of America having capital and surplus in excess of \$50,000,000.00 or (ii) any Lender;
- (d) Commercial paper of a domestic issuer if at the time of purchase such paper is rated in one (1) of the two (2) highest rating categories of Standard and Poor's Corporation or Moody's Investors Service;
- (e) Acquisitions (including investments resulting in an Acquisition) where:
  - (i) the business, division or assets acquired are for use, or the Person acquired is engaged in, one of the businesses described in **Section 6.25**;
  - (ii) (A) with respect to any acquired Person, either (x) such Person has its principal place of business, conducts its primary business functions and maintains substantially all of its properties and assets in the United States or Canada or (y) the Acquisition of such Person has been approved in writing by the Administrative Agent (with the consent of the Required Lenders), and (B) with respect to any business, division or assets acquired, either (x) such business, division or assets shall be primarily used and/ or operated, as the case may be, in the United States or Canada, both before and after such Acquisition or (y) the Acquisition of such business, division or assets has been approved in writing by the Administrative Agent (with the consent of the Required Lenders);
  - (iii) such Acquisition shall be consummated on a non-hostile basis and, in all material respects, in accordance with applicable Laws;
  - (iv) immediately before and after giving effect to such Acquisition, no Default or Event of Default shall exist;



(v) (A) the aggregate Acquisition Consideration for all such Acquisitions during the term of this Agreement shall not exceed \$100,000,000, and (B) the aggregate Acquisition Consideration for any individual Acquisition shall not exceed \$40,000,000;

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(vi) the business, division or Person acquired shall not have a negative EBITDA after giving effect to reasonable *pro forma* adjustments which are approved by Administrative Agent;

(vii) immediately after giving effect to such Acquisition (including any Credit Extensions made in connection therewith), (A) Borrower shall be in Pro Forma Compliance with **Section 9.2**; and (B) the Leverage Ratio (calculated on a Pro Forma Basis) shall not exceed then applicable maximum Leverage Ratio as set forth in **Section 9.1** *minus* 0.25;

(viii) to the extent not previously delivered with respect to such Acquisition pursuant to **Section 5.2(e)**, not less than eight (8) Business Days before the date of the Acquisition, Borrower shall have delivered to Administrative Agent the following documents and information concerning such Acquisition: (A) drafts of each material document, instrument and agreement to be executed in connection with such Acquisition, (B) an acquisition summary with respect to the Person and/or business or division to be acquired, such summary to include a reasonably detailed description thereof (including financial information) and operating results (including financial statements for the most recent 12-month period for which they are available and as otherwise applicable), the terms and conditions, including economic terms, of the proposed Acquisition, a reasonably detailed sources and uses statement with respect to such Acquisition and Borrower's calculation of EBITDA (calculated after giving Pro Forma Effect to such Acquisition) relating thereto, and (C) such other documents or information as the Administrative Agent shall have reasonably requested with respect to such Acquisition, including, without limitation, (x) the full name and jurisdiction of organization of any new Subsidiary created or acquired for the purpose of effecting such Acquisition, (y) copies of historical and projected *pro forma* financial statements of the entity or line of business to be acquired in connection with such Acquisition, and (z) a detailed description of assets to be acquired in connection with such Acquisition;

(ix) after giving effect to such Acquisition (including any Credit Extensions made in connection therewith), there shall be at least \$10,000,000 in Revolving Credit Availability;

(x) to the extent not previously delivered with respect to such Acquisition pursuant to **Section 5.2(e)**, not less than three (3) Business Days before such Acquisition, Administrative Agent shall have received a certificate of Borrower executed on its behalf by a Responsible Officer of Borrower, (A) demonstrating in reasonable detail compliance with the foregoing **clause (vii)** and (B) certifying compliance with the foregoing **clauses (iii), (iv), (v) and (vi)**, and Administrative Agent shall not have objected in writing to Borrower's certificate delivered pursuant to this **clause (x)**; *provided that* Administrative Agent will not make any such objection unless it has a good faith basis for believing that Borrower's *pro forma* calculations are not reasonable, and that as a result thereof, Borrower will not be in Pro Forma Compliance with the financial covenants as set forth in **clause (vii)** following such proposed Acquisition;

(xi) with respect to any Person to be acquired in connection with such Acquisition, Administrative Agent shall have received a financial audit or quality of earnings report for such Person, in either case, prepared by an accounting firm acceptable to Administrative Agent in its reasonable discretion; and

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(xii) to the extent applicable, the provisions of **Section 7.13** have been satisfied, thereby causing Administrative Agent to have a perfected first priority Lien on all assets, including equity interests, that are acquired in the Acquisition;



- (f) Investments in Subsidiaries that are Guarantors;
- (g) Investments consisting of Hedge Agreements permitted under **Section 8.16**;
- (h) Advances or extensions of credit in the form of accounts receivable incurred in the ordinary course of business and upon terms common in the industry for such accounts receivable; and
- (i) Advances to employees for the payment of expenses in the ordinary course of business not to exceed \$25,000 in aggregate amount outstanding at any time.

**Section 1.6 Transactions With Affiliates.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into any transaction, including, without limitation, the purchase, sale, or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate of Borrower or such Subsidiary (excluding Borrower or any other Subsidiary), except in the ordinary course of and pursuant to the reasonable requirements of Borrower's or such Subsidiary's business, pursuant to a transaction which is otherwise expressly permitted under this Agreement, and upon fair and reasonable terms no less favorable to Borrower or such Subsidiary than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of Borrower or such Subsidiary.

**Section 1.7 Disposition of Assets.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly make any Disposition, except (a) Dispositions of inventory in the ordinary course of business, (b) Dispositions, for fair value, of worn-out and obsolete equipment not necessary or useful to the conduct of business, (c) Dispositions to Borrower or any other Subsidiary that is a Guarantor, (d) other Dispositions not to exceed \$100,000 in the aggregate in any fiscal year and (e) so long as there exists no Default immediately before and after giving effect to any such Disposition, Dispositions not otherwise permitted in *clauses (a) through (d)* above, the Net Cash Proceeds of which are used within one hundred eighty (180) days of such Disposition to purchase assets useful in the business of Borrower and its Subsidiaries, *provided* that (i) the aggregate amount of Net Cash Proceeds outstanding and pending reinvestment pursuant to this *clause (e)* shall not exceed \$100,000 at any time and (ii) if such Net Cash Proceeds are not used within such one hundred eighty (180) day period to purchase assets useful in the business of Borrower and its Subsidiaries, then such Net Cash Proceeds shall be applied in accordance with *Section 2.8(d)(i)*.

**Section 1.8 Sale and Leaseback.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into any arrangement with any Person pursuant to which it leases from such Person real or personal property that has been or is to be sold or transferred, directly or indirectly, by it to such Person.

**Section 1.9 Prepayment and Payment of Debt.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make any optional or voluntary payment, prepayment, repurchase or redemption of any Debt, except (a) the Obligations under the Loan Documents, (b) regularly scheduled payments of interest under the Horn Solutions Seller Note, so long as the Subordination Provisions remain in full force and effect, (c) earn-outs due and owing under the documentation governing any Permitted Acquisition so long as (i) immediately before to making such payment, no Default exists, (ii) immediately after giving effect to such

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payment (including any Credit Extensions made in connection therewith), there shall be at least \$2,000,000 in Revolving Credit Availability, and (iii) after giving Pro Forma Effect to such payment no Default exists or will exist and (d) a single repayment of the principal balance of the Horn Solutions Seller Note on or before December 12, 2024 so long as (i) immediately before to making such payment, no Default exists, (ii) immediately after giving effect to such payment (including any Credit Extensions made in connection therewith), there shall be at least \$10,000,000 in Revolving Credit Availability, and (iii) the aggregate amount of such payment shall not exceed \$4,368,000.

**Section 1.10 Nature of Business.** Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the businesses in which they are engaged as of the Closing Date.

**Section 1.11 Environmental Protection.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly (a) use (or permit any tenant to use) any of their respective Properties or assets for the handling, processing, storage, transportation, or disposal of any Hazardous Material, (b) generate any Hazardous Material in violation of Environmental Laws, (c) conduct any activity that is likely to cause a Release or threatened Release of any Hazardous Material in violation of Environmental Laws, or (d) otherwise conduct any activity or use any of their



respective Properties or assets in any manner that is likely to violate any Environmental Law or create any Environmental Liabilities for which Borrower or any of its Subsidiaries would be responsible.

**Section 1.12 Accounting.** Borrower shall not, and shall not permit any of its Subsidiaries to, change its fiscal year (without prior notice to Administrative Agent) or make any change (a) in accounting treatment or reporting practices, except as required by GAAP and disclosed to Administrative Agent and Lenders, or (b) in tax reporting treatment, except as required by law and disclosed to Administrative Agent and Lenders.

**Section 1.13 Burdensome Agreements.** Borrower shall not, and shall not permit any of its Subsidiaries or any Obligated Party to, enter into or permit to exist any arrangement or agreement, other than pursuant to this Agreement or any Loan Document, which (a) directly or indirectly prohibits Borrower, any of its Subsidiaries, or any Obligated Party from creating or incurring a Lien on any of its Property, revenues, or assets, whether now owned or hereafter acquired, (b) directly or indirectly prohibits any of its Subsidiaries, or any Obligated Party to make any payments, directly or indirectly, to Borrower by way of dividends, distributions, advances, repayments of loans, repayments of expenses, accruals, or otherwise or (c) in any way would be contravened by such Person's performance of its obligations hereunder or under the other Loan Documents.

**Section 1.14 Subsidiaries.** Borrower shall not, directly or indirectly, form or acquire any Subsidiary unless Borrower complies with the requirements of *Section 7.13*.

**Section 1.15 Amendments of Constituent Documents.** Borrower shall not, and shall not permit any of its Subsidiaries to, amend or restate any of their respective Constituent Documents in any manner that would be adverse to the interests of the Lenders.

**Section 1.16 Hedge Agreements.** Borrower shall not, and shall 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 Borrower or any Subsidiary of Borrower has actual exposure which have terms and conditions reasonably acceptable to Administrative Agent, and (b) other 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 Debt of Borrower or any of its Subsidiaries limited to the principal amount of such Debt

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which have terms and conditions reasonably acceptable to Administrative Agent; it being acknowledged and agreed by Administrative Agent that any Hedge Agreement entered into by Borrower and its Subsidiaries with any Lender or an Affiliate thereof for the reasons stated in *clause (a)* or *(b)* immediately preceding is acceptable to Administrative Agent.

**Section 1.17 OFAC.** Borrower shall not, and shall not permit any of its Subsidiaries to, fail to comply with the Laws, regulations and executive orders referred to in *Section 6.20* and *Section 6.21*.

**Section 1.18 Sanctions.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, Swing Line Lender, or otherwise) of Sanctions.

**Section 1.19 Anti-Corruption Laws.** Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

**Section 1.20 Use of Term Loan Proceeds.** Borrower shall not, nor shall it permit any Subsidiary to, use any proceeds of the Existing Term Loans or any Incremental Term Loans for any purpose other than the financing of Acquisitions and no such proceeds may be used for any Acquisition without the prior written consent of the Required Lenders and Administrative Agent. Borrower shall not, nor shall it permit any Subsidiary to, use any proceeds of the Delayed Draw Term Loans for any purpose other than the payment of any earnout payment owing by BGSF Professional under *Section 1.6(a)* of the Arroyo Acquisition Agreement (the "**Arroyo Earnout**").

## ARTICLE 9



## FINANCIAL COVENANTS

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding or any Letter of Credit shall remain outstanding or any Lender has any Commitment hereunder:

**Section 1.1 Leverage Ratio.** Borrower shall not permit, as of the last day of any fiscal quarter of Borrower ending in the following periods, the Leverage Ratio to be greater than the ratio set forth opposite such period:

Fiscal Quarters Ending	Maximum Leverage Ratio
Closing Date to March 31, 2026	3.00 to 1.00
June 30, 2026 to March 31, 2027	2.75 to 1.00
From and after June 30, 2027	2.50 to 1.00

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Notwithstanding the covenant levels set forth in above, at the election of Borrower given in writing to the Administrative Agent not less than three (3) Business Days before a Covenant Holiday Acquisition, commencing on the first day of the fiscal quarter during which such Covenant Holiday Acquisition is consummated, the Leverage Ratio shall be subject to a covenant adjustment period (the “**Covenant Holiday**”) during which the maximum Leverage Ratio permitted under this **Section 9.1** shall be equal to the then-applicable ratio set forth in the table above *plus* 0.25; *provided* that (a) the Covenant Holiday shall last for a period of four (4) fiscal quarters (or such shorter period as Borrower may request), and (b) there shall be no more than one Covenant Holiday during the term of this Agreement. For each testing period following the conclusion of the Covenant Holiday, the maximum permitted Leverage Ratio shall be as set forth in the table above. For the purposes of determining Pro Forma Compliance with the Leverage Ratio requirements set forth in **Section 5.2(e)** or **8.5(e)** during a Covenant Holiday, the adjustment to the then-applicable maximum Leverage Ratio set forth above shall be deemed made.

**Section 1.2 Fixed Charge Coverage Ratio.** Borrower shall not permit, as of the last day of any fiscal quarter of Borrower for the four fiscal quarter period then ending, the Fixed Charge Coverage Ratio for Borrower and its Subsidiaries on a consolidated basis to be less than 1.20 to 1.00.

## ARTICLE 10

### DEFAULT

**Section 1.1 Events of Default.** Each of the following shall be deemed an “*Event of Default*”:

(a) Borrower shall fail to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three (3) days after the same becomes due, any interest on any Loan or any commitment or other fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document;

(b) Borrower shall fail to provide to Administrative Agent and Lenders timely any notice of Default as required by **Section 7.1(h)** of this Agreement or Borrower shall breach any provision of **Sections 7.2, 7.5, 7.6, 7.13, Article 8 or Article 9** of this Agreement;

(c) Any representation or warranty made or deemed made by Borrower or any other Obligated Party (or any of their respective officers) in any Loan Document or in any certificate, report, notice, or financial statement furnished at any time in connection with this Agreement shall be false, misleading, or erroneous in any material respect (without duplication of any materiality qualifier contained therein) when made or deemed to have been made;

(d) Borrower or any of its Subsidiaries shall fail to perform, observe, or comply with any covenant, agreement, or term contained in this Agreement or any other Loan Document (other than as covered by **Sections 10.1(a)** and **(b)**), and such failure continues for more than thirty (30) days following the date such failure first began;



(e) Borrower or any of its Subsidiaries shall commence a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its

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debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or a substantial part of its Property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or shall make a general assignment for the benefit of creditors or shall generally fail to pay its debts as they become due or shall take any corporate action to authorize any of the foregoing;

(f) An involuntary proceeding shall be commenced against Borrower or any of its Subsidiaries seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its Property, and such involuntary proceeding shall remain undismissed and unstayed for a period of sixty (60) days;

(g) Borrower or any of its Subsidiaries shall fail to pay when due any principal of or interest on any Debt (other than the Obligations under the Loan Documents) in the amount of \$150,000 or more, or the maturity of any such Debt shall have been accelerated, or any such Debt shall have been required to be prepaid, repurchased, defeased or redeemed prior to the stated maturity thereof or any cash collateral in respect thereof to be demanded, or any event shall have occurred that permits (or, with the giving of notice or lapse of time or both, would permit) any holder or holders of such Debt or any Person acting on behalf of such holder or holders to accelerate the maturity thereof or require any such prepayment, repurchase, defeasance or redemption or any cash collateral in respect thereof to be demanded;

(h) There shall occur under any Hedge Agreement an Early Termination Date (as defined in such Hedge Agreement) resulting from (1) any event of default under such Hedge Agreement to which Borrower or any other Obligated Party is the Defaulting Party (as defined in such Hedge Agreement), or (2) any Termination Event (as so defined) under such Hedge Agreement as to which Borrower or any other Obligated Party is an Affected Party (as so defined) and, in either event, the Hedge Termination Value owed by Borrower or such other Obligated Party as a result thereof exceeds \$150,000;

(i) This Agreement or any other Loan Document shall cease to be in full force and effect or shall be declared null and void or the validity or enforceability thereof shall be contested or challenged by Borrower or any of its Subsidiaries, or Borrower or any of its Subsidiaries shall deny that it has any further liability or obligation under any of the Loan Documents, or any Lien created by the Loan Documents shall for any reason cease to be a valid, first priority perfected Lien upon any of the Collateral purported to be covered thereby;

(j) Any of the following events shall occur or exist with respect to Borrower or any ERISA Affiliate: (i) any ERISA Event occurs with respect to a Plan or Multiemployer Plan, or (ii) any Prohibited Transaction involving any Plan; and in each case above, such event or condition, together with all other events or conditions, if any, have subjected or could in the reasonable opinion of Administrative Agent subject Borrower or any ERISA Affiliate to any tax, penalty, or other liability to a Plan, a Multiemployer Plan, the PBGC, the IRS, the U. S. Department of Labor, or otherwise (or any combination thereof) which in the aggregate exceed or could reasonably be expected to exceed \$150,000;

(k) A Change of Control shall occur;

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(l) Borrower or any of its Subsidiaries, or any of their material Properties, revenues, or assets, shall become subject to an order of forfeiture, seizure, or divestiture (whether under RICO or otherwise) and the same shall not have been discharged within 30 days from the date of entry thereof;

(m) Borrower or any of its Subsidiaries shall fail to discharge within a period of thirty (30) days after the commencement thereof any attachment, sequestration, or similar proceeding or proceedings involving an aggregate amount in excess of \$150,000 against any of its assets or Properties;

(n) A final judgment or judgments for the payment of money in excess of \$150,000 in the aggregate shall be rendered by a court or courts against Borrower or any of its Subsidiaries and the same shall not be discharged (or provision shall not be made for such discharge), or a stay of execution thereof shall not be procured, within thirty (30) days from the date of entry thereof and Borrower, such Subsidiary, or such Obligated Party shall not, within such period of thirty (30) days, or such longer period during which execution of the same shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal;

(o) The subordination provisions related to any Subordinated Debt or any other agreement, document or instrument governing any Subordinated Debt shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect, or any Person shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations under the Loan Documents, for any reason shall not have the priority contemplated by this Agreement or any such subordination provisions; or

(p) Any Security Document shall cease to create valid perfected first priority liens (subject to Permitted Liens) on the Collateral purported to be covered thereby.

**Section 1.2 Remedies Upon Default.** If any Event of Default shall occur and be continuing, then Administrative Agent may, with the consent of Required Lenders, or shall, at the direction of Required Lenders, without notice do any or all of the following: (a) terminate the Commitments of Lenders (except for funding obligations of outstanding Letters of Credit), (b) terminate the obligations of L/C Issuer to make L/C Credit Extensions, (c) require that Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto), (d) terminate the commitment of Swing Line Lender to make Swing Line Loans, or (e) declare the Obligations under the Loan Documents or any part thereof to be immediately due and payable, and the same shall thereupon become immediately due and payable, without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower; *provided, however*, that upon the occurrence of an Event of Default under *Section 10.1(e)* or *(f)*, the Commitments of Lenders shall automatically terminate (except for funding obligations of outstanding Letters of Credit), the obligations of L/C Issuer to make L/C Credit Extensions shall automatically terminate, the obligation of Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, the commitment of Swing Line Lender to make Swing Line Loans shall automatically terminate, and the Obligations under the Loan Documents shall become immediately due and payable, in each case without notice, demand, presentment, notice of dishonor, notice of acceleration, notice of intent to accelerate, notice of intent to demand, protest, or other formalities of any kind, all of which are hereby expressly waived by Borrower. In addition to the foregoing, if any Event of Default shall occur and be continuing, Administrative Agent may, with the consent of Required Lenders, or shall, at the direction of Required Lenders, exercise all rights and remedies available to it and Lenders in law or in equity, under the Loan Documents, or otherwise.

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**Section 1.3 Application of Funds.** After the exercise of remedies provided for in *Section 10.2* (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by Administrative Agent in the following order:

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to Administrative Agent) payable to Administrative Agent in its capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to Lenders and L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and L/C Issuer) arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this *clause Second* payable to them;



*Third*, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among Lenders and L/C Issuer in proportion to the respective amounts described in this **clause Third** payable to them;

*Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings and constituting unpaid Bank Product Obligations, ratably among Lenders and Bank Product Providers in proportion to the respective amounts described in this **clause Fourth** held by them;

*Fifth*, to Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by Borrower pursuant to **Sections 2.2 and 2.10**;

*Sixth*, to payment of that remaining portion of the Obligations, ratably among the Lenders and Bank Product Providers in proportion to the respective amounts described in this **clause Sixth** held by them; and

*Last*, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by law.

Notwithstanding the foregoing, Bank Product Obligations shall be excluded from the application described above if Administrative Agent has not received written notice thereof, together with supporting documentation as Administrative Agent may request from the applicable Bank Product Provider, *provided* that no such notice shall be required for any Bank Product Agreement for which Administrative Agent or any Affiliate of Administrative Agent is the applicable Bank Product Provider. Each Bank Product Provider that is not a party to this Agreement that has given notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of Administrative Agent pursuant to the terms of **Article 11** hereof for itself and its Affiliates as if a “Lender” party hereto.

**Section 1.4 Performance by Administrative Agent.** If Borrower shall fail to perform any covenant or agreement contained in any of the Loan Documents, then Administrative Agent may perform or attempt to perform such covenant or agreement on behalf of Borrower. In such event, Borrower shall, at the request of Administrative Agent, promptly pay to Administrative Agent any amount expended by Administrative Agent in connection with

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such performance or attempted performance, together with interest thereon at the Default Interest Rate from and including the date of such expenditure to but excluding the date such expenditure is paid in full. Notwithstanding the foregoing, it is expressly agreed that Administrative Agent shall not have any liability or responsibility for the performance of any covenant, agreement, or other obligation of Borrower under this Agreement or any other Loan Document.

## ARTICLE 11

### AGENCY

#### Section 1.1 Appointment and Authority.

(a) Each of the Lenders, L/C Issuer and Swing Line Lender hereby irrevocably appoints BMO to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this **Article 11** are solely for the benefit of Administrative Agent, Lenders, L/C Issuer and Swing Line Lender, and neither Borrower nor any other Obligated Party shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including for itself and its Affiliates in their capacities as potential Bank Product Providers) and L/C Issuer hereby irrevocably appoints and authorizes Administrative Agent to act as the agent of such Lender and L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the



Obligated Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by Administrative Agent pursuant to **Section 11.5** for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of Administrative Agent, shall be entitled to the benefits of all provisions of this **Article 11** and **Article 12** (including **Section 12.1(b)**), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

**Section 1.2 Rights as a Lender.** The Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, Borrower or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to Lenders.

**Section 1.3 Exculpatory Provisions.**

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(a) Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that Administrative Agent is required to exercise as directed in writing by Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that Administrative Agent shall not be required to take any action that, in its opinion or upon the advice of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity.

(b) Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of Required Lenders (or such other number or percentage of Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 10.2** and **11.9**), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. **SUCH LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER THE LIABILITY ARISES FROM THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF ADMINISTRATIVE AGENT.** Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to Administrative Agent in writing by Borrower, a Lender, L/C Issuer or Swing Line Lender.

(c) Neither Administrative Agent nor any Related Party thereof shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in **Article 5** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.



**Section 1.4 Reliance by Administrative Agent.** Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to

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have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Credit Extension, that by its terms must be fulfilled to the satisfaction of a Lender, L/C Issuer or Swing Line Lender, Administrative Agent may presume that such condition is satisfactory to such Lender, L/C Issuer or Swing Line Lender unless Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. Administrative Agent may consult with legal counsel (who may be counsel for Borrower), 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 1.5 Delegation of Duties.** Administrative Agent may perform any and all 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 Administrative Agent. Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this *Article 11* shall apply to any such sub agent and to the Related Parties of Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of this facility as well as activities as Administrative Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

**Section 1.6 Resignation of Administrative Agent.**

(a) Administrative Agent may at any time give notice of its resignation to Lenders, L/C Issuer, Swing Line Lender and Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right, in consultation with Borrower (so long as no Event of Default has occurred and is continuing), to appoint a successor, which shall be a bank with an office in Dallas, Texas, or any other city in the Dallas/Fort Worth, Texas metroplex, or an Affiliate of any such bank with an office in Dallas, Texas, or any other city in the Dallas/Fort Worth, Texas metroplex. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by Required Lenders) (the "**Resignation Effective Date**"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of Lenders, L/C Issuer and Swing Line Lender, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. After the Resignation Effective Date, the provisions of this *Article 11* relating to or indemnifying or releasing Administrative Agent shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to **clause (d)** of the definition thereof, Required Lenders may, to the extent permitted by applicable law, by notice in writing to Borrower and such Person remove such Person as Administrative Agent and, in consultation with Borrower, appoint a successor. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by Required Lenders) (the "**Removal Effective Date**"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of

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any Collateral held by Administrative Agent on behalf of Secured Parties under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity, fee or expense payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender, L/C Issuer or Swing Line Lender, as applicable, directly, until such time, if any, as Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this **Article 11**, **Section 12.1**, and **Section 12.2** shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by BMO as Administrative Agent pursuant to this **Section** shall also constitute its resignation as L/C Issuer and Swing Line Lender. If BMO resigns as L/C Issuer or Swing Line Lender, it shall retain all the rights of L/C Issuer and/or Swing Line Lender, as applicable, provided for hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer, all L/C Obligations with respect thereto, and all Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require Revolving Credit Lenders to (i) make Revolving Credit Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.3(c)** and (ii) make Revolving Credit Loans or fund risk participations in outstanding Swing Line Loans pursuant to **Section 2.2(c)**. Upon the appointment by Borrower of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (b) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to BMO to effectively assume the obligations of BMO with respect to such Letters of Credit. Upon the appointment by Borrower of a successor Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Swing Line Lender and (b) the retiring Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents.

**Section 1.7 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender, L/C Issuer and Swing Line Lender expressly acknowledges that neither Administrative Agent nor any other Lender nor any Related Party thereto has made any representation or warranty to such Person and that no act by Administrative Agent or any other Lender hereafter taken, including any review of the affairs of Borrower, shall be deemed to constitute any representation or warranty by Administrative Agent or any Lender to any other Lender. Each Lender, L/C Issuer and Swing Line Lender acknowledges that it has, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and L/C Issuer also acknowledges that it

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will, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except for notices, reports and other documents expressly required to be furnished to the Lenders or Swing Line Lender by Administrative Agent hereunder, Administrative Agent shall not have any duty or responsibility to provide any Lender, L/C Issuer or Swing Line Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), or creditworthiness of Borrower or the value of the Collateral or other Properties of Borrower or any other Person which may come into the possession of Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.



**Section 1.8 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Obligated Party, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations under the Loan Documents that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, L/C Issuer, Swing Line Lender, and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, L/C Issuer, Swing Line Lender, and Administrative Agent and their respective agents and counsel and all other amounts due Lenders, L/C Issuer, Swing Line Lender, and Administrative Agent under **Section 12.1** or **Section 12.2**) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender, L/C Issuer and Swing Line Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, L/C Issuer and Swing Line Lender, as applicable, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under **Section 12.1** or **Section 12.2**.

**Section 1.9 Collateral and Guaranty Matters.**

(a) The Secured Parties irrevocably authorize Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any property granted to or held by Administrative Agent under any Loan Document (x) upon termination of all Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Bank Product Agreements as to which arrangements satisfactory to the applicable Bank Product Provider shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made), (y) that is sold or otherwise disposed of or to be sold or otherwise disposed of as

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part of or in connection with any sale or other disposition permitted under the Loan Documents, or (z) if approved, authorized or ratified in writing by Required Lenders or all Lenders, as applicable, under **Section 12.10**;

(ii) to subordinate any Lien on any property granted to or held by Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by **Section 8.2**; and

(iii) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by Administrative Agent at any time, Required Lenders will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this **Section 11.9**.

(b) Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Administrative Agent's Lien thereon, or any certificate prepared by any Obligated Party in connection therewith, nor shall Administrative Agent be responsible or liable to Lenders for any failure to monitor or maintain any portion of the Collateral.

**Section 1.10 Bank Product Agreements.** No Bank Product Provider who obtains the benefits of **Section 10.3**, any Guaranty Agreements or any Collateral by virtue of the provisions hereof or of any Guaranty Agreement or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the



release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Security Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this **Article 11** to the contrary, Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Obligations unless Administrative Agent has received written notice of such Bank Product Obligations, together with such supporting documentation as Administrative Agent may request, from the applicable Bank Product Provider. Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Obligations arising under Bank Product Agreements upon termination of all Commitments and payment in full of all Obligations under the Loan Documents (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made).

**Section 1.11 Erroneous Payments.** Notwithstanding anything to the contrary in this Agreement, if at any time Administrative Agent determines (in its sole and absolute discretion) that it has made a payment hereunder in error to any Lender, Swing Line Lender, L/C Issuer or other Secured Party, whether or not in respect of an Obligation due and owing by Borrower or any Obligated Parties at such time, where such payment is a Rescindable Amount, then in any such event, each such Person receiving a Rescindable Amount severally agrees to repay to Administrative Agent forthwith on demand the Rescindable Amount received by such Person in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined

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by Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender, each Swing Line Lender, each L/C Issuer and each other Secured Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another), “good consideration”, “change of position” or similar defenses (whether at law or in equity) to its obligation to return any Rescindable Amount. Administrative Agent shall inform each Lender, Swing Line Lender, L/C Issuer or other Secured Party that received a Rescindable Amount promptly upon determining that any payment made to such Person comprised, in whole or in part, a Rescindable Amount. Each Person’s obligations, agreements and waivers under this **Section 11.11** shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, Swing Line Lender or L/C Issuer, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

## ARTICLE 12

### MISCELLANEOUS

#### Section 1.1 Expenses.

(a) Borrower hereby agrees to pay on demand: (i) all reasonable costs and expenses of Administrative Agent, L/C Issuer, Swing Line Lender and their Related Parties in connection with the preparation, negotiation, execution, and delivery of this Agreement and the other Loan Documents and any and all amendments, modifications, renewals, extensions, supplements, waivers, consents and ratifications thereof and thereto, including, without limitation, the reasonable fees and expenses of legal counsel, advisors, consultants, and auditors for Administrative Agent, L/C Issuer, Swing Line Lender and their Related Parties; (ii) all costs and expenses of Administrative Agent, L/C Issuer, Swing Line Lender and each Lender in connection with any Default and the enforcement of this Agreement or any other Loan Document, including, without limitation, court costs and fees and expenses of legal counsel, advisors, consultants, and auditors for Administrative Agent, L/C Issuer, Swing Line Lender and each Lender; (iii) all reasonable costs and expenses incurred by L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; (iv) all transfer, stamp, documentary, or other similar taxes, assessments, or charges levied by any Governmental Authority in respect of this Agreement or any of the other Loan Documents; (v) all costs, expenses, assessments, and other charges incurred in connection with any filing, registration, recording, or perfection of any Lien contemplated by this Agreement or any other Loan Document; and (vi) all other costs and expenses incurred by Administrative Agent, L/C Issuer, Swing Line Lender and any Lender in connection with this Agreement or any other Loan Document, any litigation, dispute, suit, proceeding or action, the enforcement of its rights and remedies, and the protection of its interests in bankruptcy, insolvency or other legal proceedings, including, without limitation, all costs, expenses, and other charges (including Administrative Agent’s and such Lender’s and L/C Issuer’s and Swing Line Lender’s internal charges) incurred in connection with



evaluating, observing, collecting, examining, auditing, appraising, selling, liquidating, or otherwise disposing of the Collateral or other assets of Borrower. Borrower shall be responsible for all expenses described in this **clause (a)** whether or not any Credit Extension is ever made. Any amount to be paid under this **Section 12.1** shall be a demand obligation owing by Borrower and if not paid within thirty (30) days of demand shall bear interest, to the extent not prohibited by and no in violation of applicable Law, from the date of expenditure until paid at a rate per annum equal to the Default Interest Rate. The obligations of Borrower under this **Section 12.1** shall survive payment of the Revolving Credit Notes and other obligations hereunder and the assignment of any right hereunder.

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(b) To the extent that Borrower for any reason fails to indefeasibly pay any amount required under **Section 12.1(a)** or **Section 12.2** to be paid by it to Administrative Agent, L/C Issuer or Swing Line Lender (or any sub-agent thereof) or any Related Party of Administrative Agent, L/C Issuer or Swing Line Lender (or any sub-agent thereof), each Lender severally agrees to pay to Administrative Agent, L/C Issuer or Swing Line Lender (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); *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 Administrative Agent, L/C Issuer or Swing Line Lender (or any such sub-agent) or against any Related Party of Administrative Agent, L/C Issuer or Swing Line Lender (or any sub-agent thereof) acting for Administrative Agent or Swing Line Lender (or any such sub-agent) in connection with such capacity. EACH LENDER ACKNOWLEDGES THAT SUCH PAYMENTS MAY BE IN RESPECT OF LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES ARISING OUT OF OR RESULTING FROM THE SOLE, CONTRIBUTORY, COMPARATIVE, CONCURRENT OR ORDINARY NEGLIGENCE OF THE PERSON (OR THE REPRESENTATIVES OF THE PERSON) TO WHOM SUCH PAYMENTS ARE TO BE MADE.

**Section 1.2 INDEMNIFICATION.** BORROWER SHALL INDEMNIFY ADMINISTRATIVE AGENT, L/C ISSUER, SWING LINE LENDER, EACH LENDER AND EACH RELATED PARTY THEREOF FROM, AND HOLD EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) TO WHICH ANY OF THEM MAY BECOME SUBJECT WHICH DIRECTLY OR INDIRECTLY ARISE FROM OR RELATE TO (A) THE NEGOTIATION, EXECUTION, DELIVERY, PERFORMANCE, ADMINISTRATION, OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS, (B) ANY OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS, (C) ANY BREACH BY BORROWER OF ANY REPRESENTATION, WARRANTY, COVENANT, OR OTHER AGREEMENT CONTAINED IN ANY OF THE LOAN DOCUMENTS, (D) THE PRESENCE, RELEASE, THREATENED RELEASE, DISPOSAL, REMOVAL, OR CLEANUP OF ANY HAZARDOUS MATERIAL LOCATED ON, ABOUT, WITHIN, OR AFFECTING ANY OF THE PROPERTIES OR ASSETS OF BORROWER OR ANY OF ITS SUBSIDIARIES OR ANY OTHER OBLIGATED PARTY, (E) ANY LOAN OR LETTER OF CREDIT OR USE OR PROPOSED USE OF THE PROCEEDS THEREFROM (INCLUDING ANY REFUSAL BY THE L/C ISSUER 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) OR (F) ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, RELATING TO ANY OF THE FOREGOING. WITHOUT LIMITING ANY PROVISION OF THIS AGREEMENT OR OF ANY OTHER LOAN DOCUMENT, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT EACH PERSON TO BE INDEMNIFIED UNDER THIS SECTION SHALL BE INDEMNIFIED FROM AND HELD HARMLESS AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RESULTING FROM THE SOLE, CONTRIBUTORY, COMPARATIVE, CONCURRENT OR ORDINARY NEGLIGENCE OF SUCH PERSON (OR THE REPRESENTATIVES OF SUCH PERSON). Any amount to be paid under this **Section 12.2** shall be a demand obligation owing by Borrower and if not paid within ten (10) days of demand shall bear interest, to the extent not prohibited by and not in violation of applicable Law, from the date of expenditure until paid at a

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rate per annum equal to the Default Interest Rate. The obligations of Borrower under this **Section 12.2** shall survive payment of the Revolving Credit Notes and other obligations hereunder and the assignment of any right hereunder.

**Section 1.3 Limitation of Liability.** None of Administrative Agent, L/C Issuer, Swing Line Lender, or any Lender, or any Affiliate, officer, director, employee, attorney, or agent of any of the foregoing, shall have any liability with respect to, and Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by Borrower or any other Obligated Party in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents. Borrower hereby waives, releases, and agrees not to sue Administrative Agent, L/C Issuer, Swing Line Lender, or any Lender, or any Affiliates, officers, directors, employees, attorneys, or agents of any of the foregoing for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents.

**Section 1.4 No Duty.** All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Administrative Agent, any Lender, L/C Issuer or Swing Line Lender shall have the right to act exclusively in the interest of Administrative Agent or such Lender or Swing Line Lender and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to Borrower or any of Borrower's equity holders, Affiliates, officers, employees, attorneys, agents, or any other Person.

**Section 1.5 Lenders Not Fiduciary.** The relationship between Borrower and Administrative Agent, Arranger and each Lender, L/C Issuer and Swing Line Lender is solely that of debtor and creditor, and none of Administrative Agent, Arranger, any Lender, L/C Issuer or Swing Line Lender has any fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Administrative Agent, Arranger and each Lender, L/C Issuer and Swing Line Lender to be other than that of debtor and creditor.

**Section 1.6 Equitable Relief.** Borrower recognizes that in the event Borrower fails to pay, perform, observe, or discharge any or all of the Obligations, any remedy at law may prove to be inadequate relief to Administrative Agent or Lenders L/C Issuer or Swing Line Lender. Borrower therefore agrees that Administrative Agent, any Lender, L/C Issuer or Swing Line Lender, if Administrative Agent or such Lender, L/C Issuer or Swing Line Lender so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

**Section 1.7 No Waiver; Cumulative Remedies.** No failure on the part of Administrative Agent, any Lender, L/C Issuer or Swing Line Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. The rights and remedies provided for in this Agreement and the other Loan Documents are cumulative and not exclusive of any rights and remedies provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Obligated Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and

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maintained exclusively by, Administrative Agent in accordance with **Section 10.2** for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as Swing Line Lender) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with **Section 4.2** (subject to the terms of **Section 12.23**), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Obligated Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to Administrative Agent pursuant to **Section 10.2** and (ii) in addition to the matters set forth in



**clauses (b), (c) and (d)** of the preceding proviso and subject to **Section 12.23**, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### Section 1.8 Successors and Assigns.

(a) **Successors and Assigns Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or transfer any of its rights, duties, or obligations under this Agreement or the other Loan Documents without the prior written consent of Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of **Section 12.8(b)**, (ii) by way of participation in accordance with the provisions of **Section 12.8(d)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 12.8(e)** (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 12.8(d)** and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts.** (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment(s) and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in **Section 12.8(b)(i)(B)** in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and (B) in any case not described in **Section 12.8(b)(i)(A)**, the aggregate amount of the Commitment(s) (which for this purpose includes Loans outstanding hereunder) or, if the applicable Commitment is not then in effect, the Outstanding Amount of the 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 Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than, with respect to assignments of Revolving Credit Commitments and Revolving Credit Loans, \$5,000,000 and, with respect to assignments of Term Loan Commitments and Term

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Loans, \$1,000,000, in each case, unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment(s) assigned, except that this **clause (ii)** shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by **Section 12.8(b)(i)(B)** and, in addition: (A) the consent of Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within five (5) Business Days after having received notice thereof; (B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Revolving Credit Commitment or Revolving Credit Loans if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund, (C) the consent of L/C Issuer shall be required for any assignment in respect of the Revolving Credit Facility, and (D) the consent of Swing Line Lender shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; *provided* that Administrative Agent may, in its sole discretion, elect



to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons.** No such assignment shall be made to (A) Borrower, or any of Borrower's Affiliates or Subsidiaries or any other Obligated Party or (B) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing persons described in this **clause (B)**.

(vi) **No Assignment to Natural Persons.** No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) **Certain Additional Payments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to such assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by such Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to: (A) pay and satisfy in full all payment liabilities then

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owed by such Defaulting Lender to Administrative Agent or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Administrative Agent pursuant to **Section 12.8(c)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement 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 **Section 12.1** and **Section 12.2** with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided* that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any party hereunder arising from that Lenders' having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **subsection** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 12.8(d)**. Upon the consummation of any assignment pursuant to this **Section 12.8(b)**, if requested by the transferor or transferee Lender, the transferor Lender, Administrative Agent and Borrower shall make appropriate arrangements so that replacement Revolving Credit Notes are issued to such transferor Lender (if applicable) and new Revolving Credit Notes or, as appropriate, replacement Revolving Credit Notes, are issued to the assignee.

(c) **Register.** Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at one of its offices in Dallas, Texas a copy of each Assignment and Assumption delivered to it and a Register. The entries in the Register shall be conclusive absent manifest error, and Borrower, Administrative Agent and Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to a Participant in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) Borrower, Administrative Agent, and Lenders shall continue to



deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 12.1(b)** without regard to the existence of any participation.

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

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Participant, agree to any amendment, modification or waiver described in **Section 12.10** which requires the consent of all Lenders and affects such Participant. Borrower agrees that each Participant shall be entitled to the benefits of **Sections 3.1, 3.5 and 3.4** (subject to the requirements and limitations therein, including the requirements under **Section 3.4(g)** (it being understood that the documentation required under **Section 3.4(g)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; *provided* that such Participant (A) agrees to be subject to the provisions of **Section 3.6** as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under **Sections 3.1 or 3.4**, 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 Borrower's request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of **Section 3.6** with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 4.2** as though it were a Lender; *provided* that such Participant agrees to pay to Administrative Agent any amount set-off for application to the Obligations under the Loan Documents as required pursuant to **Section 4.2**; *provided, further* that such Participant agrees to be subject to **Section 12.23** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a Participant Register; *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (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) 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, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) **Dissemination of Information.** Borrower and each other Obligated Party authorizes Administrative Agent and each Lender to disclose to any actual or prospective purchaser, assignee or other recipient of a Lender's Commitment, any and all information in Administrative Agent's or such Lender's possession concerning Borrower, the other Obligated Parties and their respective Affiliates.

**Section 1.9 Survival.** All representations and warranties made in this Agreement or any other Loan Document or in any document, statement, or certificate furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the other Loan Documents, and no investigation by Administrative Agent or any Lender or any closing shall affect the representations and warranties or the right of Administrative Agent or any Lender to rely upon them. Without prejudice to the survival of any other obligation of Borrower hereunder, the obligations of Borrower under **Sections 12.1 and 12.2** shall survive repayment of the Obligations and termination of the Commitments.

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**Section 1.10 Amendment.** The provisions of this Agreement and the other Loan Documents to which Borrower is a party may be amended or waived only by an instrument in writing signed by Required Lenders (or by Administrative Agent with the consent of Required Lenders) and Borrower and acknowledged by Administrative Agent; *provided, however*, that no such amendment or waiver shall:

- (a) waive any condition set forth in **Section 5.1** (other than **Section 5.1(a)(xvii)**), without the written consent of each Lender;
- (b) extend or increase any Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 10.2**) without the written consent of such Lender;
- (c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayment) of principal, interest, fees or other amounts due to Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;
- (d) reduce the principal of, or the rate of interest specified herein on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; *provided, however*, that only the consent of Required Lenders shall be necessary to adjust the Default Interest Rate or to waive any obligation of Borrower to pay interest at such rate;
- (e) change any provision of this **Section 12.10** or the definition of “Required Lenders” or “Required Revolving Credit Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender (or each Revolving Credit Lender, in the case of a change in the definition of Required Revolving Credit Lenders);
- (f) change **Section 10.3** in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;
- (g) release any material Guaranty or all or substantially all of the Collateral (in each case, except as provided herein) without the written consent of each Lender; or
- (h) (i) expressly subordinate any of the Obligations to any other Debt or (ii) expressly subordinate the Lien securing any of the Obligations on all or substantially all of the Collateral to any other Lien securing any other Debt (except as provided in **Section 11.9**), in each case, without the consent of each Lender;

and, *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement, and (iii) no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (and

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any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment(s) of any Defaulting Lender may not be increased or extended without the consent of such Lender; and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

#### **Section 1.11 Notices.**



(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in **Section 12.11(b)**), 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 facsimile as set forth on **Schedule 12.11**. 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 electronic communications, to the extent provided in **Section 12.11(b)** shall be effective as provided in **Section 12.11(b)**.

(b) **Electronic Communications.** Notices and other communications to Lenders and hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to **Article 2** if such Lender has notified Administrative Agent that it is incapable of receiving notices under **Article 2** by electronic communication. Administrative Agent or 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 Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing **clause (i)**, of notification that such notice or communication is available and identifying the website address therefor; *provided* that, for both **clauses (i)** and **(ii)** above, if such facsimile, email or other electronic communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) **Change of Address, etc.** Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto, **Schedule 12.11** shall be deemed to be amended by each such change, and Administrative Agent is authorized, in its discretion, from time to time to reflect each such change in an amended **Schedule 12.11** provided by Administrative Agent to each party hereto.

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(d) **Platform.**

(i) Borrower agrees that Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Lenders, L/C Issuer or Swing Line Lender by posting the Communications on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Agent Parties have any liability to Borrower, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of Borrower's or Administrative Agent's transmission of communications through the Platform.

(iii) Borrower and each other Obligated Party (by its, his or her execution of a Loan Document) hereby authorizes Administrative Agent, each Lender, Swing Line Lender and their respective counsel and agents to communicate and transfer documents and other information (including confidential information) concerning this transaction or Borrower or any other Obligated Party and the business affairs of Borrower and such other Obligated Parties via the Internet or other electronic communication without regard to the lack of security of such communications.

**Section 1.12 Governing Law; Venue; Service of Process.**



(a) **Governing Law.** This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of Texas (without reference to applicable rules of conflicts of Laws), except to the extent the Laws of any jurisdiction where Collateral is located require application of such Laws with respect to such Collateral.

(b) **Jurisdiction.** Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against Administrative Agent, any Lender, L/C Issuer Swing Line Lender or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of Texas sitting in Dallas County, and of the United States District Court of the Northern District of Texas, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such Texas State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that Administrative Agent, any Lender, L/C Issuer or Swing Line Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against Borrower or its properties in the courts of any jurisdiction.

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(c) **Waiver of Venue.** Borrower irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other 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 applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) **Service of Process.** Each party hereto irrevocably consents to service of process in the manner provided for notices in **Section 12.11**. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

**Section 1.13 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Except as provided in **Section 5.1**, this Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

**Section 1.14 Severability.** Any provision of this Agreement or any other Loan Document held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held to be invalid or illegal. Furthermore, in lieu of such invalid or unenforceable provision there shall be added as a part of this Agreement or the other Loan Documents a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**Section 1.15 Headings.** The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**Section 1.16 Construction.** Borrower, Administrative Agent and each Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by Borrower, Administrative Agent and each Lender.

**Section 1.17 Independence of Covenants.** All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default if such action is taken or such condition exists.

**Section 1.18 WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY



ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER

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AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.18.

**Section 1.19 Additional Interest Provision.** It is expressly stipulated and agreed to be the intent of Borrower, Administrative Agent and each Lender at all times to comply strictly with the applicable law governing the maximum rate or amount of interest payable on the indebtedness evidenced by any Note, any Loan Document, and the Related Indebtedness (or applicable United States federal law to the extent that it permits any Lender to contract for, charge, take, reserve or receive a greater amount of interest than under applicable law). If the applicable law is ever judicially interpreted so as to render usurious any amount (a) contracted for, charged, taken, reserved or received pursuant to any Note, any of the other Loan Documents or any other communication or writing by or between Borrower and any Lender related to the transaction or transactions that are the subject matter of the Loan Documents, (b) contracted for, charged, taken, reserved or received by reason of Administrative Agent's or any Lender's exercise of the option to accelerate the maturity of any Note and/or the Related Indebtedness, or (c) Borrower will have paid or Administrative Agent or any Lender will have received by reason of any voluntary prepayment by Borrower of any Note and/or the Related Indebtedness, then it is Borrower's, Administrative Agent's and Lenders' express intent that all amounts charged in excess of the Maximum Rate shall be automatically canceled, ab initio, and all amounts in excess of the Maximum Rate theretofore collected by Administrative Agent or any Lender shall be credited on the principal balance of any Note and/or the Related Indebtedness (or, if any Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of any Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; *provided, however*, if any Note or Related Indebtedness has been paid in full before the end of the stated term thereof, then Borrower, Administrative Agent and each Lender agree that Administrative Agent or any Lender, as applicable, shall, with reasonable promptness after Administrative Agent or such Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Rate, either refund such excess interest to Borrower and/or credit such excess interest against such Note and/or any Related Indebtedness then owing by Borrower to Administrative Agent or such Lender. Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Administrative Agent or such Lender, Borrower will provide written notice to Administrative Agent or any Lender, advising Administrative Agent or such Lender in reasonable detail of the nature and amount of the violation, and Administrative Agent or such Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against the Note to which the alleged violation relates and/or the Related Indebtedness then owing by Borrower to Administrative Agent or such Lender. All sums contracted for, charged, taken, reserved or received by Administrative Agent or any Lender for the use, forbearance or detention of any debt evidenced by any Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of such Note and/or the Related Indebtedness (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of any Note and/or the Related Indebtedness does not exceed the Maximum Rate from time to time in effect and applicable to such Note and/or the Related Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Notes and/or any of the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Administrative Agent or any Lender to accelerate the

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maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

**Section 1.20 Ceiling Election.** To the extent that any Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Rate payable on any Note and/or any other portion of the Obligations under the Loan Documents, such Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303. To the extent United States federal law permits any Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, such Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, any Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

**Section 1.21 USA Patriot Act Notice.** Administrative Agent and each Lender hereby notifies Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies Borrower and each other Obligated Party, which information includes the name and address of Borrower and each other Obligated Party and other information that will allow Administrative Agent and such Lender to identify Borrower and each other Obligated Party in accordance with the Patriot Act. In addition, Borrower agrees to (a) ensure that no Person who owns a controlling interest in or otherwise controls Borrower or any Subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the OFAC, the Department of the Treasury or included in any Executive Order, (b) not to use or permit the use of proceeds of the Obligations to violate any of the foreign asset control regulations of the OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, or cause its Subsidiaries to comply, with the applicable Laws.

#### **Section 1.22 Defaulting Lenders.**

(a) **Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) **Waivers and Amendments.** Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "**Required Lenders**" and in **Section 12.10**.

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Article 10** or otherwise) or received by Administrative Agent from a Defaulting Lender shall be applied at such time or times as may be determined by Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; second, with respect to a Defaulting Lender that is a Revolving Credit Lender, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to L/C Issuer or Swing Line Lender hereunder; third, with respect to a Defaulting Lender that is a Revolving Credit Lender, to Cash Collateralize L/C Issuer's Fronting Exposure, if any, with respect to such Defaulting Lender in accordance with **Section 2.10**; fourth with respect to a Defaulting Lender that is a Revolving Credit Lender, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Revolving Credit Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent;

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fifth, with respect to a Defaulting Lender that is a Revolving Credit Lender, if so determined by Administrative Agent and 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 Revolving Credit Loans under this Agreement and (y) Cash Collateralize L/C Issuer's future Fronting Exposure, if any, with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with **Section 2.10**; sixth, to the payment of any amounts owing to Lenders, L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, L/C Issuer or Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; 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 L/C Borrowings in respect of which such



Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or Letters of Credit were issued at a time when the conditions set forth in **Section 5.2** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by Lenders pro rata in accordance with the Commitments under the applicable Facility without giving effect to **Section 12.22(a)(iv)**. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) **Certain Fees.**

(A) No Defaulting Lender shall be entitled to receive any fee payable under **Section 2.4(c)** or for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to **Section 2.10**.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to **clause (A)** or **(B)** above, Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to **clause (iv)** below, (y) pay to L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) **Reallocation of Applicable Percentages to Reduce Fronting Exposure.** All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with

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their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in **Section 5.2** are satisfied at the time of such reallocation (and, unless Borrower shall have otherwise notified Administrative Agent at such time, Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. Subject to **Section 12.27**, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) **Cash Collateral; Repayment of Swing Line Loans.** If the reallocation described in **clause (a)(iv)** above cannot, or can only partially, be effected, Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable law, first, prepay Swing Line Loans in an amount equal to Swing Line Lender's Fronting Exposure and second, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in **Section 2.10**.

(b) **Defaulting Lender Cure.** If Borrower, Administrative Agent, L/C Issuer and Swing Line Lender agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by Lenders in accordance with their Applicable Percentages (without giving effect to **Section 12.22(a)(iv)**), whereupon such Lender will cease to be a Defaulting Lender; *provided that* no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and *provided, further,* that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.



**Section 1.23 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it or other obligations hereunder, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall:

(a) notify Administrative Agent of such fact; and

(b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, *provided that*:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

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(ii) the provisions of this **Section 12.23** shall not be construed to apply to: (A) any payment made by or on behalf of Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender); (B) the application of Cash Collateral provided for in **Section 2.10**, or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to Borrower or any Affiliate thereof (as to which the provisions of this **Section 12.23** shall apply).

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 Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

**Section 1.24 Payments Set Aside.** To the extent that any payment by or on behalf of Borrower is made to Administrative Agent, L/C Issuer, Swing Line Lender or any Lender, or Administrative Agent, L/C Issuer, Swing Line Lender or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent, L/C Issuer, Swing Line Lender or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender, L/C Issuer and Swing Line Lender severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of Lenders, L/C Issuer and Swing Line Lender under **clause (b)** of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**Section 1.25 Confidentiality.** Each of Administrative Agent, L/C Issuer, Swing Line Lender and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners) or any Governmental Authority, quasi-Governmental Authority or legislative committee, (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement or any other Loan Document, (e) 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, (f) subject to its being under a duty of confidentiality no less restrictive than this **Section 12.25**, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any actual or prospective counterparty (or its Related Parties) to any Hedge Agreement relating to Borrower and its obligations, (iii) any actual or prospective purchaser of a Lender or its holding company, (iv) any rating agency or any similar



organization in connection with the rating of Borrower or the Facilities or (v) the CUSIP Service Bureau or any similar organization in connection with the issuance and monitoring of CUSIP numbers with respect to the Facilities, (g) with the consent of

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Borrower, or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this **Section 12.25** or (ii) becomes available to Administrative Agent, L/C Issuer, Swing Line Lender, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Borrower. For purposes of this **Section 12.25**, "Information" means all information received from Borrower or any Subsidiary relating to Borrower or any Subsidiary or any of their respective businesses which is clearly identified as confidential, other than any such information that is available to Administrative Agent, L/C Issuer, Swing Line Lender or any Lender on a nonconfidential basis prior to disclosure by Borrower or a Subsidiary; *provided* that, in the case of information received from Borrower or any Subsidiary 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 12.25** 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.

**Section 1.26 Electronic Execution of Assignments and Certain Other Documents.** The words "execute," "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable 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.

**Section 1.27 NOTICE OF FINAL AGREEMENT.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

**Section 1.28 Acknowledgement and Consent to Bail-In of Affected 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 Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it,

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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 the applicable Resolution Authority.

**Section 1.29 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge 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 or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the 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.

(b) As used in this Section 12.29, the following terms have the following meanings:

“**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**Covered Entity**” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b)
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

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“**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.

“**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).

#### **Section 1.30 Amendment and Restatement.**

(a) Effective as of the Closing Date, this Agreement amends and restates in its entirety the Original Credit Agreement. This Agreement and the other Loan Documents govern the present relationship among the Obligated Parties, the Administrative Agent and the Lenders. This Agreement, however, is in no way intended, nor shall it be construed, to affect, replace, impair or extinguish the creation, attachment, perfection or priority of the security interests in, and other Liens on, the Collateral, which security interests and other Liens each of the Obligated Parties, by this Agreement, acknowledges, reaffirms and confirms to Administrative Agent and the Lenders. In addition, except as



otherwise provided in the Loan Documents, all obligations and liabilities and indebtedness of any Obligated Party created or existing under, pursuant to, or as a result of, the Original Credit Agreement shall continue in existence within the definition of "Obligations" under this Agreement, which obligations, liabilities and indebtedness the Obligated Parties, by this Agreement, acknowledge, reaffirm, confirm and assume. The Obligated Parties agree that any outstanding commitment to make advances or otherwise extend credit under the Original Credit Agreement to any Obligated Party and each other obligation of any Person (other than a Obligated Party) which is a party to the Original Credit Agreement are hereby terminated. The Obligated Parties represent and warrant that none of them have assigned or otherwise transferred any of their respective rights arising under the Original Credit Agreement. Amounts in respect of interest, fees and other amounts payable to or for the account of Administrative Agent and Lenders shall be calculated (i) in accordance with the provisions of the Original Credit Agreement with respect to any period (or a portion of any period) ending prior to the Closing Date (and such amounts shall be payable to the applicable Persons a party to the Original Credit Agreement in accordance with the Original Credit Agreement) and (ii) in accordance with the provisions of this Agreement with respect to any period (or a portion of any period) commencing on or after the Closing Date.

(b) To the extent not expressly amended and restated on the Closing Date, the Loan Documents (as defined in the Original Credit Agreement) executed in connection with the Original Credit Agreement and in effect prior to the Closing Date (the "**Existing Loan Documents**") shall continue in full force and effect, are hereby ratified, reaffirmed and confirmed in all respects, and shall, for the avoidance of doubt, constitute "Loan Documents" under this Agreement; provided that in any event, all commitments to lend, all commitments to arrange or extend financial accommodations (including letters of credit) and all obligations of BMO and/or the "Lenders" under the Existing Loan Documents shall be replaced and superseded by the commitments and obligations hereunder. On and after the Closing Date, (i) such Existing Loan Documents shall each be deemed to be amended to the extent necessary to give effect to the provisions of this Agreement and the other Loan Documents being entered into on the Closing Date, (ii) all references to or terms defined by reference to the Original Credit Agreement in such Existing Loan Documents shall be deemed to refer to the Original Credit Agreement, as amended and restated hereby and (iii) all references to any Article, Section or sub-clause of the Original Credit Agreement in any such Existing Loan Document shall be deemed to be references to the corresponding provisions of this Agreement. The terms of the Loan Documents that correspond to the Existing Loan Documents that have been amended and restated as of the Closing Date shall govern for any period occurring on or

after the Closing Date, and the terms of such Existing Loan Documents prior to their amendment and restatement on the Closing Date shall govern for any period beginning before the Closing Date and ending on the day immediately preceding Closing Date.

(c) The parties hereto acknowledge and agree that this amendment and restatement is limited as written and is not a consent to any other amendment, restatement or waiver or other modification, whether or not similar and, except as expressly provided herein or in any Loan Document, all terms and conditions of this Agreement and the Loan Documents remain in full force and effect unless otherwise specifically amended hereby or by any Loan Documents.

#### Section 1.31 **Reallocation of Loans and Commitment Amounts.**

(a) On the Closing Date, each Lender and each Exiting Lender is hereby deemed to assign to the other Lenders (other than any other Exiting Lender) pursuant to **Section 12.8**, notwithstanding that no Assignment and Assumption may be executed and delivered to Administrative Agent, and such Lenders are hereby deemed to purchase from such other Lenders, at the outstanding principal amount thereof, such interests in the Revolving Credit Loans, Revolving Credit Commitments, Term Loans and the Term Loan Commitments (each as defined in the Existing Agreement), as applicable, outstanding on the Closing Date, as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Credit Loans, Revolving Credit Commitments, Term Loans and Term Loan Commitments, as applicable, are held by the Lenders ratably in accordance with their respective shares set forth on **Schedule 2.1**.

(b) Each Exiting Lender hereby consents to (i) this Agreement and the transactions contemplated hereby and (ii) the assignment of such Exiting Lender's Revolving Credit Loans, Revolving Credit Commitments, Term Loans and the Term Loan Commitments (each as defined in the Existing Agreement), as applicable, in accordance with the pro forma Revolving Credit Loans, Revolving Credit Commitments, Term Loans and the Term Loan Commitments set forth on **Schedule 2.1** notwithstanding that no Assignment and Assumption may be executed and delivered to Administrative Agent. From and after the Closing Date, no Exiting Lender will constitute a "Lender" hereunder or have any further



rights to consent to any further amendment, restatement, amendment and restatement, supplement, waiver, forbearance or modification of any type to any Loan Documents or with respect to any Obligated Party or the Collateral.

(c) From and after the Closing Date, Administrative Agent shall make all payments in respect of the Loans assigned or deemed assigned pursuant to this **Section 12.31** (including payments of interest, fees and other amounts) to each assignor Lender for amounts which have accrued up to but excluding the Closing Date and to the applicable assignee Lenders for amounts which have accrued from and after the Closing Date.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows]*

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[BGSF] Amended and Restated Credit Agreement

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EXECUTED to be effective as of the date first written above.

BORROWER:

BGSF, INC.

By: /s/ John Barnett

Name: John Barnett

Title: Chief Financial Officer

Signature Page to  
Amended and Restated Credit Agreement

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ADMINISTRATIVE AGENT AND LENDER:

BMO BANK N.A.

By: /s/ Blake Beavers

Name: R. Blake Beavers

Title: Director

Signature Page to  
Amended and Restated Credit Agreement



SOLE LEAD ARRANGER AND SOLE BOOK RUNNER:

BMO CAPITAL MARKETS CORP.

By:

Name:

Title:

Signature Page to  
Amended and Restated Credit Agreement

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LENDER:

BANK OF AMERICA, N.A.

By: /s/ Desaree Lopez

Name: Desaree Lopez

Title: Senior Vice President

Signature Page to  
Amended and Restated Credit Agreement

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LENDER:

INDEPENDENT BANK

By: /s/ Catherine M. Young

Name: Catherine M. Young

Title: Vice President

Signature Page to  
Amended and Restated Credit Agreement



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LENDER:

TEXAS CAPITAL BANK

By: /s/ Cat Roemer

Name: Cat Roemer

Title: Assistant Vice President

Signature Page to  
Amended and Restated Credit Agreement

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EXITING LENDER:

CITIBANK, N.A.

By: /s/ Tyler Amspacher

Name: Tyler Amspacher

Title: Vice President

Signature Page to  
Amended and Restated Credit Agreement

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## SCHEDULE 2.1

### Commitments and Existing Term Loans

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Lender	Revolving Credit Commitment	Existing Term Loans	Delayed Draw Term Loan Commitment	Total Commitments and Existing Term Loans
BMO Bank, N.A.	\$11,373,801.91	\$9,667,731.63	\$1,208,466.46	\$22,250,000.00
Bank of America, N.A.	\$10,223,642.17	\$8,690,095.85	\$1,086,261.98	\$20,000,000.00
Independent Bank	\$9,201,277.96	\$7,821,086.26	\$977,635.78	\$18,000,000.00
Texas Capital Bank	\$9,201,277.96	\$7,821,086.26	\$977,635.78	\$18,000,000.00
TOTAL	\$40,000,000.00	\$34,000,000.00	\$4,250,000.00	\$78,250,000.00

[BGSF] Amended and Restated Credit Agreement

Schedule 2.1

Exhibit 21.1

Subsidiaries

Name of Subsidiary	Jurisdiction of Formation
BG Personnel, LP	Texas
BG Personnel LLC	Delaware
BGSF Professional, LLC	Delaware
B G Staff Services, Inc.	Texas
BG Finance and Accounting, Inc.	Delaware
BG California Finance & Accounting, Inc.	Delaware
BG California IT Staffing, Inc.	Delaware
BG California Multifamily Staffing, Inc.	Delaware
EdgeRock Technologies Holdings, Inc.	Delaware
EdgeRock Technologies, LLC	Massachusetts
BG Personnel of Texas, LLC	Texas

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement No. 333-259971 on Form S-3, and No. 333-251192, No. 333-251193, No. 333-218869, No. 333-193014, and No. 333-193014 333-274809 on Form S-8 of BGSF, Inc., of our reports dated March 15, 2023 March 14, 2024, relating to the consolidated financial statements, and the effectiveness of BGSF, Inc.'s internal control over financial reporting, appearing in this Annual Report on Form 10-K of BGSF, Inc. for the fiscal year ended January 1, 2023 December 31, 2023.

/s/ Whitley Penn LLP

Dallas, Plano, Texas

March 15, 2023 14, 2024



## CERTIFICATIONS

I, Beth Garvey, certify that:

1. I have reviewed this Annual Report on Form 10-K of BGSF, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2023 14, 2024

/s/ Beth Garvey

Beth Garvey

Chair, President, and Chief Executive Officer

(Principal Executive Officer)

## CERTIFICATIONS

I, Dan Hollenbach, John Barnett, certify that:

1. I have reviewed this Annual Report on Form 10-K of BGSF, Inc.;



2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2023 14, 2024

/s/ Dan Hollenbach John Barnett

Dan Hollenbach John Barnett

Chief Financial Officer and Secretary

(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. § 1350,

AS ADOPTED PURSUANT TO § 906

OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing of the Annual Report on Form 10-K of BGFSF, Inc., a Delaware corporation (the "Company"), for the fiscal year ended January 1, 2023 December 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of such officer's knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.



Date: March 15, 2023 14, 2024

/s/ Beth Garvey

Beth Garvey  
Chair, President, and Chief Executive Officer  
(Principal Executive Officer)

/s/ Dan Hollenbach John Barnett

Dan Hollenbach John Barnett  
Chief Financial Officer and Secretary  
(Principal Financial Officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906 has been provided to BGSF, Inc. and will be retained by BGSF, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

## BGSF, INC.

### CLAWBACK POLICY

#### Introduction

The Board of Directors (the "Board") of BGSF, Inc., a Delaware corporation (the "Company"), believes that it is in the best interests of the Company and its shareholders to create and maintain a culture that emphasizes integrity and accountability and that reinforces the Company's pay-for-performance compensation philosophy. The Board has therefore adopted this policy (this "Policy") which provides for the recoupment of certain executive compensation in the event of an accounting restatement resulting from material noncompliance with financial reporting requirements under the U.S. federal securities laws. This Policy is designed to comply with Section 10D of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 303A.14 of the New York Stock Exchange Listed Company Manual (the "Clawback Listing Standards").

#### Administration

This Policy shall be administered by the Board or, if so designated by the Board, the Compensation Committee, in which case references herein to the Board shall be deemed references to the Compensation Committee. Any determinations made by the Board shall be final and binding on all affected individuals.

#### Covered Executives

This Policy applies to the Company's current and former executive officers, as determined by the Board in accordance with the definition in Section 10D of the Exchange Act and the Clawback Listing Standards, and such other officers or employees who may from time to time be deemed subject to the Policy by the Board ("Covered Executives").

#### Recoupment; Accounting Restatement

In the event the Company is required to prepare an accounting restatement of its financial statements due to the Company's material noncompliance with any financial reporting requirement under the applicable U.S. federal securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period, the Board will require reimbursement or forfeiture of any excess Incentive Compensation received by any Covered Executive during the three completed fiscal years immediately preceding the date on which the Company is required to prepare an accounting restatement.

#### Incentive Compensation



For purposes of this Policy, "Incentive Compensation" means any of the following, provided that such compensation is granted, awarded, vested, earned, or paid based wholly or in part on the attainment of a financial reporting measure:

- Annual bonuses and other short- and long-term cash incentives
- Stock options
- Stock appreciation rights
- Restricted stock
- Restricted stock units
- Performance shares
- Performance units

Financial reporting measures include:

- Company stock price
- Total shareholder return
- Revenues
- Net income

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- Earnings before interest, taxes, depreciation, and amortization (EBITDA)
  - Adjusted EBITDA
  - Funds from operations
  - Liquidity measures such as working capital or operating cash flow
  - Return measures such as return on invested capital or return on assets
  - Earnings measures such as earnings per share
  - Adjusted EPS

#### **Excess Incentive Compensation: Amount Subject to Recovery**

The amount to be recovered will be the excess of the Incentive Compensation paid to the Covered Executive based on the erroneous data over the Incentive Compensation that would have been paid to the Covered Executive had it been based on the restated results, as determined by the Board, without regard to any taxes paid by the Covered Executive in respect of the Incentive Compensation paid based on the erroneous data.

If the Board cannot determine the amount of excess Incentive Compensation received by the Covered Executive directly from the information in the accounting restatement, then it will make its determination based on a reasonable estimate of the effect of the accounting restatement.

#### **Method of Recoupment**

The Board will determine, in its sole discretion, the method for recouping Incentive Compensation hereunder which may include, without limitation:

- requiring reimbursement of cash Incentive Compensation previously paid;
- seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer, or other disposition of any equity-based awards;
- offsetting the recouped amount from any compensation otherwise owed by the Company to the Covered Executive;
- cancelling outstanding vested or unvested equity awards; and/or
- taking any other remedial and recovery action permitted by applicable law, as determined by the Board.

#### **No Indemnification**

The Company shall not indemnify any Covered Executives against the loss of any incorrectly awarded Incentive Compensation.

#### **Interpretation**



The Board is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. It is intended that this Policy be interpreted in a manner that is consistent with the requirements of Section 10D of the Exchange Act, any applicable rules or standards adopted by the Securities and Exchange Commission, and the Clawback Listing Standards.

#### **Effective Date**

This Policy shall be effective as of December 1, 2023 (the “Effective Date”) and shall apply to Incentive Compensation that is received by Covered Executives on or after October 2, 2023, even if such Incentive Compensation was approved, awarded, or granted to Covered Executives prior to October 2, 2023.

#### **Amendment; Termination**

The Board may amend this Policy from time to time in its discretion and shall amend this Policy as it deems necessary to reflect any final rules or regulations adopted by the Securities and Exchange Commission under Section 10D of the Exchange Act and to comply with the Clawback Listing Standards

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and any other rules or standards adopted by a national securities exchange on which the Company's securities are listed. The Board may terminate this Policy at any time.

#### **Other Recoupment Rights**

Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company or any of its subsidiaries pursuant to the terms of any similar policy in any employment agreement, equity award agreement, stock option agreement, restricted stock agreement, or similar agreement and any other legal remedies available to the Company or any of its subsidiaries.

#### **Relationship to Other Plans and Agreements**

The Board intends that this Policy will be applied to the fullest extent of applicable law. The Board may require that any employment agreement, equity award agreement, stock option agreement, restricted stock agreement, or similar agreement entered into on or after the Effective Date shall, as a condition to the grant of any benefit thereunder, require a Covered Executive to agree to abide by the terms of this Policy. In the event of any inconsistency between the terms of the Policy and the terms of any employment agreement, equity award agreement, stock option agreement, or restricted stock agreement, or similar agreement under which Incentive Compensation has been granted, awarded, vested, earned, or paid to a Covered Executive, whether or not deferred, the terms of the Policy shall govern.

#### **Acknowledgment**

The Covered Executive shall sign an acknowledgment form in which they acknowledge that they have read and understand the terms of the Policy and are bound by the Policy.

#### **Impracticability**

The Company (at the direction of the Board) (or, if applicable, a subsidiary thereof) shall recover any excess Incentive Compensation in accordance with this Policy unless such recovery would be impracticable, as determined by the Board in accordance with Rule 10D-1 of the Exchange Act and the listing standards of the national securities exchange on which the Company's securities are listed.

Notwithstanding anything to the contrary herein, the Company and its subsidiaries have no obligation to seek recoupment of amounts that are granted, awarded, vested, earned, or paid based solely upon the occurrence or non-occurrence of non-financial events. Such exempt compensation includes, without limitation, base salary, time-vesting awards, compensation awarded on the basis of the achievement of metrics that are not financial reporting measures, and compensation awarded solely at the discretion of the Board, the Compensation Committee, or a group composed entirely of independent members of the Board, provided that such amounts are in no way contingent on, and were not in any way granted, awarded, vested, earned, or paid on the basis of, the achievement of any financial reporting measure.

#### **Successors**

This Policy shall be binding and enforceable against all Covered Executives and their beneficiaries, heirs, executors, administrators, or other legal representatives.







#### DISCLAIMER

THE INFORMATION CONTAINED IN THE REFINITIV CORPORATE DISCLOSURES DELTA REPORT™ IS A COMPARISON OF TWO FINANCIALS PERIODIC REPORTS. THERE MAY BE MATERIAL ERRORS, OMISSIONS, OR INACCURACIES IN THE REPORT INCLUDING THE TEXT AND THE COMPARISON DATA AND TABLES. IN NO WAY DOES REFINITIV OR THE APPLICABLE COMPANY ASSUME ANY RESPONSIBILITY FOR ANY INVESTMENT OR OTHER DECISIONS MADE BASED UPON THE INFORMATION PROVIDED IN THIS REPORT. USERS ARE ADVISED TO REVIEW THE APPLICABLE COMPANY'S ACTUAL SEC FILINGS BEFORE MAKING ANY INVESTMENT OR OTHER DECISIONS.

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