

REFINITIV

DELTA REPORT

10-K

MCS - MARCUS CORP

10-K - DECEMBER 28, 2023 COMPARED TO 10-K - DECEMBER 29, 2022

The following comparison report has been automatically generated

TOTAL DELTAS	5755
CHANGES	557
DELETIONS	4220
ADDITIONS	978

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

FORM 10-K

(Mark One)

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

For the fiscal year ended **December 29, 2022** **December 28, 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 **1-12604**

THE MARCUS CORPORATION

(Exact name of registrant as specified in its charter)

Wisconsin

39-1139844

(State or other jurisdiction of incorporation or organization)

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

100 East Wisconsin Avenue, Suite 1900
Milwaukee, Wisconsin

53202-4125

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: **(414) 905-1000**

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common stock, \$1.00 par value	MCS	New York Stock Exchange

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 filing requirements for the past 90 days. Yes ☒ No ☐

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		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 any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

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

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

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 registrant's common equity held by non-affiliates as of **June 30, 2022** **June 29, 2023** was approximately **\$290,623,850** **\$288,096,465**. This value includes all shares of the registrant's common stock, except for treasury shares and shares beneficially owned by the registrant's directors and executive officers listed in Part I below.

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common stock outstanding at **February 28, 2023** **February 27, 2024** – **24,445,596** **24,706,056**

Class B common stock outstanding at **February 28, 2023** **February 27, 2024** – **7,085,118** **7,016,354**

Portions of the registrant's definitive Proxy Statement for its **2023** **2024** annual meeting of shareholders, which will be filed with the Commission under Regulation 14A within 120 days after the end of our fiscal year, will be incorporated by reference into Part III to the extent indicated therein upon such filing.

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PART I

Special Note Regarding Forward-Looking Statements

Certain matters discussed in this Annual Report on Form 10-K and the accompanying annual report to shareholders, particularly in the Shareholders' Letter and Management's Discussion and Analysis, are "forward-looking statements" intended to qualify for the safe harbors from liability established by the Private Securities Litigation Reform

Act of 1995. These forward-looking statements may generally be identified as such because the context of such statements include words such as we “believe,” “anticipate,” “expect” or words of similar import. Similarly, statements that describe our future plans, objectives or goals are also forward-looking statements. Such forward-looking statements are subject to certain risks and uncertainties which may cause results to differ materially from those expected, including, but not limited to, the following: (1) the adverse effects **the COVID-19 pandemic, or future pandemics** may have on our theatre and hotels and resorts businesses, results of operations, liquidity, cash flows, financial condition, access to credit markets and ability to service our existing and future indebtedness; (2) the availability, in terms of both quantity and audience appeal, of motion pictures for our theatre division **(particularly following (including disruptions in the COVID-19 pandemic, during which the release dates for certain motion pictures have been postponed) production of films due to events such as a strike by actors, writers or directors or future pandemics)**; (3) the effects of theatre industry dynamics such as the maintenance of a suitable window between the date such motion pictures are released in theatres and the date they are released to other distribution channels; (4) the effects of adverse economic conditions in our markets; (5) the effects of adverse economic conditions on our ability to obtain financing on reasonable and acceptable terms, if at all; (6) the effects on our occupancy and room rates caused by the relative industry supply of available rooms at comparable lodging facilities in our markets; (7) the effects of competitive conditions in our markets; (8) our ability to achieve expected benefits and performance from our strategic initiatives and acquisitions; (9) the effects of increasing depreciation expenses, reduced operating profits during major property renovations, impairment losses, and preopening and start-up costs due to the capital intensive nature of our business; (10) the effects of changes in the availability of and cost of labor and other supplies essential to the operation of our business; (11) the effects of weather conditions, particularly during the winter in the Midwest and in our other markets; (12) our ability to identify properties to acquire, develop and/or manage and the continuing availability of funds for such development; (13) the adverse impact on business and consumer spending on travel, leisure and entertainment resulting from terrorist attacks in the United States, other incidents of violence in public venues such as hotels and movie theatres or epidemics; and (14) a disruption in our business and reputational and economic risks associated with civil securities claims brought by shareholders. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control and difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements. Our forward-looking statements are based upon our assumptions, which are based upon currently available information. Shareholders, potential investors and other readers are urged to consider these factors carefully in evaluating the forward-looking statements and are cautioned not to place undue reliance on such forward-looking statements. The forward-looking statements made herein are made only as of the date of this Form 10-K and we undertake no obligation to publicly update such forward-looking statements to reflect subsequent events or circumstances.

Item 1. Business.

General

We are engaged primarily in two business segments: movie theatres and hotels and resorts.

As of **December 29, 2022** **December 28, 2023**, our theatre operations included **85 79** movie theatres with **1,064 993** screens throughout 17 states (Wisconsin, Illinois, Iowa, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Arkansas, Colorado, Georgia, Kentucky, Louisiana, New York, Pennsylvania, Texas and Virginia). We also operate a family entertainment center, **Funset Boulevard**, that is adjacent to one of our theatres in Appleton, Wisconsin. As of the date of this Annual Report, we are the 4th largest theatre circuit in the United States.

As of **December 29, 2022** **December 28, 2023**, our hotels and resorts operations included seven wholly-owned and operated hotels and resorts in Wisconsin, Illinois, and Nebraska. We also manage **nine eight** hotels, resorts and other properties for third parties in Wisconsin, California, Minnesota, Nevada, Nebraska, Illinois, Iowa, and Pennsylvania. As of **December 29, 2022** **December 28, 2023**, we owned or managed approximately **4,900 4,400** hotel and resort rooms.

Both of these business segments are discussed in detail below. For information regarding the revenues, operating income or loss, assets and certain other financial information of these segments for the last three full fiscal years, please see our consolidated financial statements and the accompanying Note **14 13** in Part II below.

Strategic Plans

Please see our discussion under “Current Plans” in Item 7 – Management’s Discussion and Analysis of Financial Condition and Results of Operations.

Theatre Operations

At the end of fiscal **2022, 2023**, we owned or operated **85 79** movie theatre locations with a total of **1,064 993** screens in Wisconsin, Illinois, Iowa, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Arkansas, Colorado, Georgia, Kentucky, Louisiana, New York, Pennsylvania, Texas and Virginia. We averaged **12.6 screens per location at the end of fiscal 2023 and 12.5 screens per location at the end of fiscal 2022 and fiscal 2021 and 12.3 screens per location at the end of fiscal 2020, 2021**. Our **85 79** company-owned facilities include **50 47** megaplex theatres (12 or more screens), representing approximately **70% 71%** of our total screens, **34 31** multiplex theatres (two to 11 screens) and one single-screen theatre.

We invested approximately **\$391 million \$406 million**, excluding acquisitions, to further enhance the movie-going experience and amenities in new and existing theatres over the last **nine-plus ten-plus** years. These investments include:

New theatres. In October 2019, we opened the eight-screen Movie Tavern® by Marcus theatre in Brookfield, Wisconsin. This theatre became the first Movie Tavern by Marcus in Wisconsin. It includes eight auditoriums, each with laser projection and comfortable DreamLoungerSM recliner seating, a full-service bar and food and drink center, and a new delivery-to-seat service model that also allows guests to order food and beverage via our mobile phone application or in-theatre kiosk. We will consider additional sites for potential new theatre locations in both new and existing markets in the future.

Theatre acquisitions. In addition to building new theatres, acquisitions of existing theatres or theatre circuits has also been a viable growth strategy for us. In 2019, we acquired the assets of Movie Tavern®, a New Orleans-based industry leading circuit known for its in-theatre dining concept featuring chef-driven menus, premium quality food and drink and luxury seating. Now branded Movie Tavern by Marcus, the acquired circuit consisted of 208 screens at 22 locations in nine states – Arkansas, Colorado, Georgia, Kentucky, Louisiana, New York, Pennsylvania, Texas and Virginia. The **purchase price consisted of \$30 million in cash and 2,450,000 shares of our common stock**,

for a total purchase price of approximately \$139.3 million. The acquisition of the Movie Tavern circuit increased our total number of screens at that time by an additional 23%.

The COVID-19 pandemic had a significant impact on the theatre exhibition industry. Following in recent years, the pandemic, theatre operators continue to face industry has faced significant on-going challenges, including supply chain disruptions impacting following the COVID-19 pandemic that impacted movie production during fiscal 2021 and fiscal 2022, and labor strikes by the Writers Guild of America (WGA) and the Screen Actors Guild - American Federation of Television and Radio Artists (SAG-AFTRA) that resulted in a post-production backlog that has prolonged shutdown in film production during fiscal 2023. These disruptions resulted in delays of movie releases and a reduced number of films available for theatrical release. A number of theatre operators have filed for bankruptcy relief and many others continue to face difficult financial circumstances. Although we will prioritize our own finances, we will continue to consider potential acquisitions as well as consider management agreements which may possibly lead to opportunities to own. The movie theatre industry is very fragmented, with approximately 50% of United States screens owned by the three largest theatre circuits and the other 50% owned by an estimated 800 smaller operators, making it very difficult to predict when acquisition opportunities may arise. We do not believe that we are geographically constrained, and we believe that we may be able to add value to certain theatres through our various proprietary amenities and operating expertise.

DreamLounger recliner additions. These luxurious, state-of-the-art recliners allow guests to go from upright to a full-recline position in seconds. These seat changes require full auditorium remodels to accommodate the necessary 84 inches of legroom, resulting in the loss of approximately 50% of the existing traditional seats in an average auditorium. To date, the addition of DreamLoungers has increased attendance at each of our applicable theatres, outperforming nearby competitive theatres and growing the overall market attendance in most cases. From fiscal 2019 through fiscal 2021, we added DreamLounger seating at eight acquired Movie Tavern or Marcus Wehrenberg theatres and one newly built Movie Tavern by Marcus theatre. As of December 29, 2022 December 28, 2023, we offered all DreamLounger recliner seating in 66 theatres, representing approximately 78% 84% of our theatres. Including our premium, large format (PLF) auditoriums with recliner seating, as of December 29, 2022 December 28, 2023, we offered our DreamLounger recliner seating in approximately 81% 87% of our screens, a percentage we believe to be the highest among the largest theatre chains in the nation.

UltraScreen DLX® and SuperScreen DLX® (DreamLounger eXperience) and ScreenX conversions. We introduced one of the first PLF presentations to the industry when we rolled out our proprietary UltraScreen® concept over 20 years ago. We later introduced our UltraScreen DLX concept by combining our premium, large-format presentation with DreamLounger recliner seating and Dolby® Atmos™ immersive sound to elevate the movie-going experience for our guests. Most of our PLF screens now include the added feature of heated DreamLounger recliner seats. In fiscal 2023 we introduced our first ScreenX auditorium featuring 270-degree projection providing guests with an immersive viewing experience. From fiscal 2019 through fiscal 2022, 2023, we converted one existing screen at an acquired theatre to UltraScreen DLX, opened one new UltraScreen DLX at an acquired theatre, converted 35 38 existing screens at acquired theatres to SuperScreen DLX, and opened one new SuperScreen DLX auditorium at a newly built Movie Tavern by Marcus theatre. As of December 29, 2022 December 28, 2023, we had 31 UltraScreen DLX auditoriums, one traditional UltraScreen auditorium, 89 SuperScreen DLX auditoriums (a slightly smaller screen than an UltraScreen but with the same DreamLounger seating and Dolby Atmos sound), one ScreenX and three IMAX® PLF screens at 66 65 of our theatre locations. As of December 29, 2022 December 28, 2023, we offered at least one PLF screen in approximately 78% 82% of our theatres – once again a percentage we believe to be the highest percentage among the largest theatre chains in the nation. Our PLF screens generally have higher per-screen revenues and draw customers from a larger geographic region compared to our standard screens, and we charge a premium price to our guests for this experience. During fiscal 2022, 2023, we converted four one existing screens screen to SuperScreen DLX and one existing screen to ScreenX, and we continue to evaluate opportunities to convert additional existing screens to SuperScreen DLX and ScreenX auditoriums.

Signature cocktail and dining concepts. We have continued to further enhance our food and beverage offerings within our existing theatres. We believe our 50-plus years of food and beverage experience in the hotel and restaurant businesses provides us with a unique advantage and expertise that we can leverage to further grow revenues in our theatres. The concepts we are expanding include:

- *Take Five® Lounge, Take Five Express and The Tavern* – These full-service bars offer an inviting atmosphere and a chef-inspired dining menu, along with a complete selection of cocktails, locally-brewed beers and wines. We also offer full liquor service through the concession stand at two theatres. We acquired 22 new operate 19 bars known as *The Tavern Tavern*. In conjunction with our Movie Tavern acquisition and opened an additional *Tavern* at our Brookfield, Wisconsin Movie Tavern by Marcus theatre in fiscal 2019. We closed three Movie Tavern by Marcus theatres in fiscal 2020 and fiscal 2021. We added one *Take Five Lounge* outlet in fiscal 2021 to a Marcus Wehrenberg theatre that underwent a complete renovation. As of December 29, 2022 December 28, 2023, we offered bars/full liquor service at 49 theatres, representing approximately 58% 62% of our theatres. We are currently evaluating opportunities to add bar service to additional locations.
- *Zaffiro's® Express* – These outlets offer lobby dining that includes appetizers, sandwiches, salads, desserts and our signature Zaffiro's THINCREDIBLE® handmade thin-crust pizza. In select locations without a *Take Five Lounge* outlet, we offer beer and wine at the Zaffiro's Express outlet. We opened one new Zaffiro's Express outlet during fiscal 2019 at our Movie Tavern by Marcus location in Brookfield, Wisconsin, and our Our number of theatres with this concept totaled 29 as of December 29, 2022 December 28, 2023, representing approximately 45% 49% of our theatres (excluding our in-theatre dining Movie Tavern theatres). We also operate three Zaffiro's® Pizzeria and Bar full-service restaurants.
- *Reel Sizzle®* – This signature dining concept serves menu items inspired by classic Hollywood and the iconic diners of the 1950s. We offer Americana fare like burgers and chicken sandwiches prepared on a griddle behind the counter, along with chicken tenders, crinkle-cut fries, ice cream and signature shakes. Our Movie Tavern by Marcus in Brookfield, Wisconsin includes a *Reel Sizzle*. We added one *Reel Sizzle* outlet in fiscal 2021 to a Marcus Wehrenberg theatre that underwent a complete renovation. As of December 29, 2022 December 28, 2023, we operated nine *Reel Sizzle* outlets.

- Other in-lobby dining – We also operate one *Hollywood Café* at an existing theatre, and three of the Marcus Wehrenberg theatres offer in-lobby dining concepts sold through the concession stand. Including these additional concepts, as of **December 29, 2022** **December 28, 2023**, we offered one or more in-lobby dining concepts in 39 theatres, representing approximately **60%** **66%** of our theatres (excluding our in-theatre dining Movie Tavern theatres).
- In-theatre dining – As of **December 29, 2022** **December 28, 2023**, we offered in-theatre dining with a complete menu of drinks and chef-prepared salads, sandwiches, entrées and desserts at 29 theatres, **and a total of 229 auditoriums**, operating under the names *Big Screen Bistro*SM, *Big Screen Bistro Express*SM, *BistroPlex*[®] and *Movie Tavern by Marcus*, representing approximately **34%** **37%** of our theatres.

We offer a “Value Tuesday” promotion at every theatre in our circuit that includes discounted admission, concessions, food and non-alcoholic **beverage** **beverages** to our loyalty program members. We have seen our Tuesday attendance increase dramatically since the introduction of the Tuesday promotion. We believe this promotion has increased movie-going frequency and reached a customer who may have stopped going to the movies because of price. **We introduced** **During the last week of the first quarter of fiscal 2023,** **we implemented several pricing changes to our Value Tuesday** **promotions** **promotion across our theatre circuit, which historically offered \$5 admission and free complementary-size popcorn to our loyalty program members. Our new Value Tuesday promotion features \$6 admission for members of our free Magical Movie Rewards[®] (MMR) loyalty members at our Marcus Wehrenberg theatres immediately upon acquisition in December 2016 program, \$7 admission for non-MMR customers, and did the same thing in February 2019 replaces free complementary-size popcorn with our acquired Movie Tavern theatres. We experienced an increase in Tuesday performance at the Marcus Wehrenberg theatres a 20% discount on all concessions, food and Movie Tavern theatres after adding this promotion. non-alcoholic beverages for MMR members.** We also offer a “Student Thursday” promotion at all of our locations that has been well received by that particular customer segment. In addition, we offer a “Young-at-Heart” program for seniors on Friday **afternoons that was also introduced to our Movie Tavern locations during our fiscal 2019 first quarter.**

In response to the COVID-19 pandemic, we introduced Marcus Private Cinema (“MPC”) in the fourth quarter of fiscal 2020. Under this program, a guest may purchase an entire auditorium for a fixed charge, ranging from \$99 to \$275 (depending upon the film and number of weeks it has been in theatres). Early on, sales attributable to our MPC program exceeded expectations, offsetting reduced traditional attendance at that time. As new film content became available and as vaccines were rolled out and theatre comfort level improved, the demand for these dedicated shows has slowed. At its peak during the majority of the weeks during our fiscal 2021 first quarter, we averaged over 1,500 MPC events per week, accounting for approximately 21% of our admission revenues during those weeks. While we have continued to offer the MPC program as a strategy to supplement non-peak business periods, as the pandemic has subsided it is no longer significant to our admission revenues, **afternoons.**

We offer what we believe to be a best-in-class customer loyalty program called Magical Movie **Reward**SM, **Rewards**. We currently have approximately **5.1** **5.9** million members enrolled in the program. Approximately 45% of all box office transactions and **40%** **38%** of total transactions in our theatres during fiscal **2022** **2023** were completed by registered members of the loyalty program. The program allows members to earn points for each dollar spent and access special offers available only to members. The rewards are redeemable at the box office, concession stand or at the many Marcus Theatres[®] food and beverage venues. In addition, we have partnered with Movio, a global leader in data analysis for the cinema industry, to allow more targeted communication with our loyalty members. The software provides us with insight into customer preferences, attendance habits and general demographics, which we believe **will help** **helps** us deliver customized communication to our members. In turn, members of this program can enjoy and plan for a more personalized movie-going experience. The program also gives us the ability to cost effectively promote non-traditional programming and special events, particularly during non-peak time periods. We believe that this **will result** **results** in increased movie-going frequency, more frequent visits to the concession stand, increased loyalty to Marcus Theatres and ultimately, improved operating results.

We continue to enhance our mobile ticketing capabilities, our downloadable Marcus Theatres mobile application, and our *marcustheatres.com* website. We added food and beverage ordering capabilities to our mobile application at all of our theatres in fiscal 2020. We have continued to install additional theatre-level technology, such as new ticketing **and food and beverage purchasing** kiosks, digital menu boards and concession advertising monitors. Each of these enhancements is designed to improve **the** customer **interactions, experience,** both at the theatre and through mobile platforms and other electronic devices.

The addition of digital technology throughout our circuit (we offer digital cinema **or laser** projection on 100% of our screens) has provided us with additional opportunities to obtain non-motion picture alternative content programming from other new and existing content providers, including live and pre-recorded performances of the Metropolitan Opera, as well as sports, concerts and other events, at many of our locations. We offer weekday and weekend alternative content programming at many of our theatres across our circuit. This special programming includes classic movies, live performances, comedy shows and children’s performances. We believe this type of programming is more impactful when presented on the big screen and provides an opportunity to continue to expand our audience base beyond traditional moviegoers.

Revenues for the theatre business, and the motion picture industry in general, are heavily dependent on the general audience appeal of available films, together with studio marketing, advertising and support campaigns, factors over which we have no control. Blockbusters have historically accounted for a significant portion of our total admission revenues – in the years before the COVID-19 pandemic, our top 15 performing films accounted for 48% of our fiscal 2019 total admission revenues and 42% of our fiscal 2018 total admission revenues. With fewer films released in **recent the** years **due to following** the pandemic, our top 15 films accounted for 55% and 63% of our fiscal 2021 and 2022 total admission revenues, respectively.

With an increase in the number films released in fiscal 2023, our top 15 films accounted for 49% of total admission revenues.

We obtain our films from several national motion picture production and distribution companies, and we are not dependent on any single motion picture supplier. Our booking, advertising, concession purchases and promotional activities are handled centrally by our administrative staff.

We strive to provide our movie patrons with high-quality picture and sound presentation in clean, comfortable, safe, attractive and contemporary theatre environments. All of our movie theatre complexes feature digital cinema **or laser projection** technology; either digital sound, Dolby Atmos or other stereo sound systems; acoustical ceilings; side wall

insulation; engineered drapery folds to eliminate sound imbalance, reverberation and distortion; tiled floors; cup-holder chair-arms; and computer-controlled heating, air conditioning and ventilation. We offer stadium seating, a tiered seating system that permits unobstructed viewing, at substantially all of our screens. Computerized box offices permit all of our movie theatres to sell tickets in advance and all of our theatres offer reserved seating. Our theatres are accessible to persons with disabilities and provide wireless headphones for hearing-impaired moviegoers. Other amenities at certain theatres include touch-screen, computerized, self-service ticket kiosks, which simplify advance ticket purchases. We have an agreement to allow moviegoers to buy tickets on Fandango, the largest online ticket-seller, or directly through our website or app.

Our goals from digital cinema included delivering an improved film presentation to our guests, increasing scheduling flexibility, providing a platform for additional 3D presentations as needed, as well as maximizing the opportunities for alternate programming that may be available with this technology. As of **December 29, 2022** **December 28, 2023**, we had the ability to offer digital 3D presentations in **360,338**, or approximately 34%, of our screens, including the vast majority of our *UltraScreens*. We have the ability to increase the number of digital 3D capable screens we offer to our guests in the future as needed, based on the number of digital 3D films anticipated to be released during future periods and our customers' response to these 3D releases.

We sell food and beverage concessions in all of our movie theatres. We believe that a wide variety of food and beverage items, properly merchandised, increases concession revenue per patron. Although popcorn and soda remain the traditional favorites with moviegoers, we continue to upgrade our available concessions by offering varied choices. For example, some of our theatres offer hot dogs, pizza, ice cream, pretzel bites, frozen yogurt, coffee, mineral water and juices. We have also added self-serve soft drink dispensers and grab-and-go candy, frozen treat and bottled drink kiosks to many of our theatres. In recent years, we have added signature cocktail and dining concepts as described above. The response to our new food and beverage offerings has been very positive, and we have plans to continue to expand these food and beverage concepts at additional locations in the future.

We have a variety of ancillary revenue sources in our theatres, with the largest related to the sale of pre-show and lobby advertising (through our current advertising providers, Screenvision and National CineMedia). We also obtain ancillary revenues from corporate and group meeting sales, sponsorships, internet surcharge fees and alternate auditorium uses. We continue to pursue additional strategies to increase our ancillary revenue sources, including the addition of a post transaction click-through advertising agreement with ROKT during fiscal 2021.

We also own a family entertainment center, *Funset Boulevard*, adjacent to our 14-screen movie theatre in Appleton, Wisconsin. *Funset Boulevard* features a 40,000 square foot Hollywood-themed indoor amusement facility that includes a restaurant, party room, laser tag center, virtual reality games, arcade, outdoor miniature golf course and batting cages.

Hotels and Resorts Operations

Owned and Operated Hotels and Resorts

The Pfister® Hotel

We own and operate The Pfister Hotel, which is located in downtown Milwaukee, Wisconsin. The Pfister Hotel is a full-service luxury hotel and has 307 guest rooms (including 71 luxury suites), the exclusive *Pfister VIP Club Lounge*, two restaurants (including our signature restaurant, *Mason Street Grill*), three cocktail lounges, a state-of-the-art WELL Spa® + Salon, a high-tech executive boardroom, high-end retail space leased to tenants and a 275-car parking ramp. The Pfister also has 25,000 square feet of banquet and convention facilities, including one of the largest ballrooms in the Milwaukee metropolitan area. In **2022, 2023**, The Pfister Hotel earned its **46th 47th** consecutive AAA Four Diamond Award from the American Automobile Association, which represents every year the award has been in existence. **USA Today 10Best Readers' Choice 2023** named The Pfister Hotel **number six on their list of the Top 10 Historic Hotels in the U.S.** Also in **2022, 2023**, The Pfister was recognized for the **fourth fifth** year in a row as a top hotel in the Midwest in *Condé Nast Traveler's* Readers' Choice Awards and was featured as the number one downtown Milwaukee hotel by *U.S. News & World Report*. The Pfister

currently holds the TripAdvisor® Travelers' Choice distinction and is a member of Preferred Hotels and Resorts, an organization of independent luxury hotels and resorts, and Historic Hotels of America. **In During** fiscal 2023, **the hotel's ballrooms and meeting space were renovated and, in 2024, we plan to begin a renovation complete renovations of the lobby meeting space and historic building tower guest rooms at The Pfister Hotel. rooms.**

The Hilton Milwaukee City Center

We own and operate the 729-room Hilton Milwaukee City Center. The hotel has three restaurants (including our first *Miller Time® Pub & Grill* and the award-winning *Milwaukee ChopHouse*), a cocktail lounge, a *Starbucks®* outlet and an 870-car parking ramp. Directly connected to the Wisconsin Center convention facility by skywalk, the hotel offers more than 30,000 square feet of meeting and event spaces with state-of-the-art technologies. In **2022, 2023**, the Hilton Milwaukee City Center was recognized as a top hotel in Milwaukee by *U.S. News & World Report*.

Hilton Madison Monona Terrace

We own and operate the 240-room Hilton Madison Monona Terrace in Madison, Wisconsin. The Hilton Madison Monona Terrace is connected by skywalk to the Platinum LEEDS and GBAC certified Monona Terrace Community and Convention Center offering over 250,000 square feet of meeting space. The hotel has six meeting rooms totaling approximately 6,000 square feet, an indoor swimming pool and a fitness center. Audrey Kitchen + Bar offers all day dining and the lobby bar also offers food service daily. The Hilton

Madison Monona Terrace was awarded American Automobile Association's Best of Housekeeping Award in 2022. A major renovation of this hotel was completed in 2019, including common areas and guestrooms.

The Grand Geneva® Resort & Spa

We own and operate the Grand Geneva Resort & Spa in Lake Geneva, Wisconsin. This destination resort is located on 1,300 acres and includes 356 guest rooms, 29 studio, one, two and three bedroom villas, the exclusive *Geneva Club Lounge*, over 60,000 square feet of banquet, meeting and exhibit space, including 13,000 square feet of ballroom space, three specialty restaurants, two cocktail lounges, two championship golf courses, a ski hill, indoor and outdoor tennis courts, three swimming pools, a state-of-the-art WELL Spa + Salon and fitness complex, horse stables and an on-site airport. In 2022, 2023, Grand Geneva Resort & Spa earned its 25th 26th consecutive AAA Four Diamond Award from the American Automobile Association. The resort was also recognized as one of the top resorts in the Midwest in *Condé Nast Traveler's Readers' Choice Awards*, named as one of *Travel & Leisure's* World's Best in the Midwest and named among the Best Resorts in Wisconsin by a Platinum Award Winner from *U.S. News & World Report Smart Meetings*. The resort currently holds the TripAdvisor® Travelers' Choice badge, a distinction and was named it has earned for over 10 consecutive years. Major renovations to the TripAdvisor® Award of Excellence Hall of Fame. A major renovation of Grand Geneva Resort & Spa have been recently completed, including the reception and lobby bar areas was completed in 2021, and a renovation of the guest rooms in 2023. Renovations to the resort's ballrooms and meeting spaces is space are currently underway and is expected to will be completed in 2023, 2024.

AC Hotel Chicago Downtown

Pursuant to a long-term lease, we operate the AC Hotel Chicago Downtown, a 226-room hotel in Chicago, Illinois. Located in the heart of Chicago's Magnificent Mile district for shopping, dining and entertainment, the AC Hotel by Marriott lifestyle brand targets the millennial traveler searching for a design-led hotel in a vibrant location with high-quality service. The AC Hotel Chicago Downtown features urban, simplistic and clean designs with European aesthetics and elegance, the latest technology and communal function spaces. Amenities include the AC Lounge, a bar area with cocktails, craft beers, wine and tapas, and the AC Kitchen, serving a European-inspired breakfast menu. The AC Hotel Chicago Downtown also features an indoor swimming pool, fitness room, 3,000 square feet of meeting space and an on-site parking facility. Our SafeHouse® Chicago is in space connected to this hotel and the The hotel has additional retail or restaurant space available to lease.

The Lincoln Marriott Cornhusker Hotel

We own and operate The Lincoln Marriott Cornhusker Hotel in downtown Lincoln, Nebraska. The Lincoln Marriott Cornhusker Hotel is a 300 room, full service hotel with 45,600 square feet of meeting space and a *Miller Time Pub & Grill*. We also own the Cornhusker Office Plaza, which is a seven story building with a total of 85,592 square feet of net leasable office space connected to the hotel by a three story atrium that is used for local events and exhibits. The In 2023, the hotel was named #7 of highlighted as a top three hotel in Nebraska and also featured as the Top 15 Hotels number one hotel in the Midwest Lincoln by *Condé Nast Traveler's U.S. News & World Report. Readers' Choice Awards in 2022*.

Saint Kate® – The Arts Hotel

We own and operate Saint Kate – The Arts Hotel, located in the heart of Milwaukee's theatre and entertainment district. Saint Kate – The Arts Hotel features 219 art-inspired guestrooms, 13,000 square feet of flexible meeting space, 11 event rooms and three restaurants, as well as two bars and lounge areas. The hotel also includes a theatre with programming that features lectures and theatrical and musical performances, six unique gallery and other event spaces that host rotating exhibitions, screenings, workshops and more. In 2022, 2023, Saint Kate – The Arts Hotel earned the AAA Four Diamond Award from the American Automobile Association, was recognized as a top hotel in the Midwest for the fourth

year in a row in the *Condé Nast Traveler's Readers' Choice Awards* and was highlighted as a top three the number two hotel in Milwaukee by *U.S. News & World Report*.

The Skirvin Hilton

From 2006 through fiscal 2022 we were the 60% principal equity partner and operator of The Skirvin Hilton hotel in Oklahoma City, Oklahoma, a 225 room historic hotel. On December 16, 2022, we sold The Skirvin Hilton for \$36.75 million. See Note 54 in the financial footnotes to the accompanying consolidated financial statements for further discussion of the sale transaction.

Managed Hotels, Resorts and Other Properties

We also manage hotels, resorts and other properties for third parties, typically under long-term management agreements. Revenues from these management contracts may include both base management fees, often in the form of a fixed percentage of defined revenues, and incentive management fees, typically calculated based upon defined profit performance. We may also earn fees for technical and preopening services before a property opens, for renovation project management and for ongoing accounting and technology services.

We manage the Hyatt Regency Schaumburg in Schaumburg, Illinois, which was renovated in 2019. Hyatt Regency Schaumburg is conveniently located approximately 15 miles from Chicago O'Hare International Airport and 30 miles from downtown Chicago and is near some of Chicagoland's most popular attractions and energetic business hubs.

This 468-room hotel has more than 30,000 square feet of indoor and outdoor meeting and event space and versatile venues such as a 3,100 square foot terrace. The hotel and its event venues feature the latest audiovisual and state-of-the-art technology, innovative on-site catering and complimentary parking for guests.

We manage The Garland hotel in North Hollywood, California. The Garland hotel features 257 guest rooms and suites, over 23,000 square feet of meeting and event space - including a 130-seat theater, a ballroom, and an outdoor event venue ideal for weddings and social events, a well-equipped fitness center, an outdoor swimming pool with two hot tubs, and a successful on-site restaurant, The Front Yard. The mission-style hotel is located on seven acres near Universal Studios Hollywood and serves as a preferred hotel for the theme park. The Garland has held the TripAdvisor® Travelers' Choice Award for eight nine consecutive years. In 2022, 2023, The Garland was recognized with multiple awards during fiscal 2023 including as a Top Hotel in Los Angeles in the Condé Nast Traveler's Readers' Choice Awards for the eighth year since rebranding, as well as a Top 10 Hotel in Greater Los Angeles as ranked by the 2022 2023 Travel + Leisure World's Best Awards. The Front Yard has received national recognition as one of OpenTable's Top 100 Restaurants for Outdoor Dining in the USA in 2022 as well as the recognition in the TripAdvisor® Travelers' Choice Awards for three consecutive years. The hotel and restaurant were both recognized by the Muse Hotel Awards with Platinum recognition in the World-Class Classic Boutique Hotel and Hotel F&B categories, respectively.

We manage the Hilton Minneapolis/Bloomington in Bloomington, Minnesota. The This hotel offers 257 256 rooms, 9,200 11,667 square feet of meeting space, an indoor swimming pool, and a fitness center. This center, and the Bloomington ChopHouse and Olive Lounge. The hotel has a contemporary feel and has been a service leader within the industry with recent awards including Hilton's 2022 Quarterly Brighter Together Blue Energy Award, Wine Spectator's 2022 Award of Excellence, Sun Current Newspaper's Hilton's 2022 Best Happy Hour Annual Brighter Together Award and Hilton's 2021 Hilton Strong Award. Wine Spectator's 2023 Award of Excellence. Additionally in 2022, the hotel was ranked as #2 Best Hotel in Bloomington, Minnesota by U.S. News & World Report and #20 for Best Hotels in Minnesota.

We manage the Omaha Marriott Downtown at The Capitol District hotel. The 333-room, 12-story full service hotel serves as an anchor for the Capitol District, an upscale urban destination dining and entertainment community in downtown Omaha, Nebraska. The hotel currently holds the TripAdvisor® Travelers' Choice distinction and is ranked the #1 hotel in Omaha by TripAdvisor® and was a top finalist for Best of Omaha. Marriott International recognized this property as Hotel of the Year, Classic Premium for the 2019 year. In 2021, The Omaha Marriott Downtown was awarded the prestigious Omaha Metropolitan Area Tourism Award for "Best Hotel" by Visit Omaha, as well as The Reader's Choice for "Best Hotel." The hotel was the 2022 Gold Winner for World Class City Hotel presented by the Muse Hotel

Awards. The Omaha Marriott Downtown was also awarded first place in the 2023 Best of B2B recognition for Best Hotel in Omaha. The hotel has held the title of Nebraska's Leading Hotel by World Travel Awards for three consecutive years.

In August 2021, we assumed management of We manage the newly transitioned Hyatt Regency Coralville Hotel & Conference Center in Coralville, Iowa. The 286-room 288-room hotel is the anchor for the thriving Iowa River Landing District, which is home to many local shops, restaurants, and upscale residential condos as well as the event and entertainment venues, including Xstream Arena and Green State Fieldhouse. Iowa River Landing Arena. Hyatt Regency Coralville, a 2023 TripAdvisor Traveler's Choice Award Winner, is located just a few miles from the University of Iowa Iowa's college athletic events, museums, and brings in activity for college athletics, as well as events. more. The hotel's refreshed conference center includes approximately 70,000 over 80,000 square feet of event space including two ballrooms, two outdoor terraces, expansive pre-function space, an exhibit hall, and breakout meeting rooms to accommodate many types of events. A comprehensive renovation of the hotel's guestrooms restaurant and fitness room is underway center was completed in 2023 and its fully renovated restaurant, Watermill Kitchen + Bar, is anticipated to be completed open in the third quarter of 2023. early 2024.

In December 2021, we assumed management of We manage the 248-room Kimpton Hotel Monaco Pittsburgh. This hotel is our first full-service hotel in Pennsylvania and the first Kimpton in the Hotel and Resorts Division's portfolio. The hotel also includes approximately 11,300 square feet of meeting space, The Commoner® full-service restaurant and a seasonal rooftop beer garden. We own a 10% minority equity interest in this hotel. In 2023 the hotel received the AAA Four Diamond Award from the American

Automobile Association. For the fifth year in a row, the Hotel Monaco was recognized as the "Best Boutique Hotel" in Pittsburgh Magazine's 2023 Best of the 'Burgh Readers' Poll.

We managed the Hyatt Regency Schaumburg in Schaumburg, Illinois during fiscal 2021, 2022 and fiscal 2023. We ceased management of the hotel effective October 9, 2023 when the hotel was sold to new ownership. During fiscal 2021, we managed The DoubleTree by Hilton El Paso Downtown and the Courtyard by Marriott El Paso Downtown/Convention Center. We ceased management of both hotels effective February 28, 2022.

We also provide hospitality management services, including check-in, housekeeping and maintenance, for a vacation ownership development adjacent to the Grand Geneva Resort & Spa branded as the Holiday Inn Club Vacations at Lake Geneva Resort. The development includes 68 two-room timeshare units (136 rooms) and a timeshare sales center.

We also manage two condominium hotels under long-term management contracts. Revenues Our share of revenues from the rental of hotel rooms is larger at these management contracts are larger locations than typical hotel management contracts because, under an agreed-upon rental pool arrangement, programs, room revenues are shared at a defined percentage with individual condominium owners. In addition, we generally own all of the common other revenue producing areas of these facilities, including all restaurants, lounges, spas and gift shops, as applicable, and retain all of the revenues from these outlets.

We manage Timber Ridge Lodge & Waterpark, an indoor/outdoor waterpark and condominium hotel complex in Lake Geneva, Wisconsin. Timber Ridge Lodge & Waterpark is a 225-unit condominium hotel on the same campus as the Grand Geneva Resort & Spa. Timber Ridge Lodge & Waterpark also has meeting rooms totaling 3,500 square feet, a general store, a restaurant, a snack bar and an entertainment arcade. The indoor waterpark at the hotel was fully renovated in 2023. In 2023, Timber Ridge was named #4 in USA Today's 10Best Indoor Waterparks.

We manage the Platinum Hotel & Spa, a condominium hotel in Las Vegas, Nevada just off the Las Vegas Strip, and own the hotel's public space. The Platinum Hotel & Spa has 255 one and two-bedroom suites. This non-gaming, non-smoking hotel also has a lounge, an indoor-outdoor heated pool and 14,897 square feet of meeting space, including 6,336 square feet of outdoor space. We own 16 previously unsold condominium units at the Platinum Hotel & Spa.

We own two the SafeHouse restaurants restaurant in Milwaukee, Wisconsin and Chicago, Illinois. SafeHouse is an iconic, Wisconsin. The spy-themed restaurant and bar that has operated in Milwaukee for over 56 55 years, making it a Milwaukee icon for locals and has been tourists alike. We have owned by us for approximately seven years. The and operated SafeHouse since 2015. A second SafeHouse location in Chicago, Illinois was opened closed in 2017. March 2023.

Our Wisconsin Hospitality Linen Service (WHLS) business unit provides commercial laundry services for our hotel and resort properties in Wisconsin and for other unaffiliated hotels in the Midwest. WHLS processed nearly 16 million pounds of linen each year prior to the COVID-19 pandemic over 16 and over 14 million pounds of linen in 2022, 2023 and 2022, respectively. WHLS has been a leader in commercial laundry services for the hospitality industry in the Midwest for over 25 years.

We operate many award-winning restaurants and lounges within our hotel portfolio that have earned distinctions such as the TripAdvisor® Travelers' Choice, Best Of Awards, OpenTable Diner's Choice Awards, and the Wine Spectator Award of Excellence.

Competition

Both of our businesses experience intense competition from national, regional and local chain and franchise operations, some of which have substantially greater financial and marketing resources than we have. Most of our facilities are located in close proximity to competing facilities.

Our movie theatres compete with large national movie theatre operators, such as AMC Entertainment, Cinemark and Regal Cinemas, as well as with a wide array of smaller first-run exhibitors. Movie exhibitors also face competition from a number of other movie exhibition delivery systems, such as streaming services, premium video-on-demand (PVD), digital downloads, video-on-demand, pay-per-view television, DVDs and network and syndicated television. We also face competition from other forms of entertainment competing for the public's leisure time and disposable income including, but not limited to, sporting events, live performance arts, and concerts.

Our hotels and resorts compete with the hotels and resorts operated and/or franchised by Hyatt Corporation, Marriott Corporation, Hilton Worldwide and others, along with other regional and local hotels and resorts. Increasingly, we also face competition from new channels of distribution in the travel industry, such as peer-to-peer inventory sources that allow travelers to book stays on websites that facilitate short-term rental of homes and apartments from owners, thereby providing an alternative to hotel rooms, such as Airbnb, Vrbo and HomeAway. We compete for hotel management agreements with a wide variety of national, regional and local management companies based upon many factors, including the value and quality of our management services, our reputation, our ability and willingness to invest our capital in joint venture projects, the level of our management fees and our relationships with property owners and investors.

We believe that the principal factors of competition in both of our businesses, in varying degrees, are the price and quality of the product, quality and location of our facilities and customer service. We believe that we are well positioned to compete on the basis of these factors.

Seasonality

Excluding the impact of the COVID-19 pandemic, our Our first fiscal quarter typically produces the weakest operating results in our hotels and resorts division due primarily to the effects of reduced travel during the winter months. Our second and third fiscal quarters often produce our strongest operating results because these periods coincide with the typical summer seasonality of the movie theatre industry and the summer strength of the lodging business. Due to the fact that the week between Christmas and New Year's Eve is historically one of the strongest weeks of the year for our theatre division, the specific timing of the last Thursday in December has an impact on the results of our fiscal first and fourth quarters in that division, particularly when we have a 53-week year.

Environmental Regulation

Federal, state and local environmental legislation has not had a material effect on our capital expenditures, earnings or competitive position. However, our activities in acquiring and selling real estate for business development purposes have been complicated by the continued emphasis that our personnel must place on properly analyzing real estate sites for potential environmental problems. This circumstance has resulted in, and is expected to continue to result in, greater time and increased costs involved in acquiring and selling properties associated with our various businesses.

Additionally, in connection with our ownership, management, and development of properties, we are subject to various federal, state, and local laws, ordinances, and regulations relating to environmental protection. Under some of these laws, a current or former owner or operator of real property may be held liable for the costs of investigating or remediating hazardous or toxic substances or wastes on, under, or in such real property, as well as third-party sites where the owner or operator sent wastes for disposal. Such laws may impose liability without regard to whether the owner or operator knew, or was at fault in connection with, the presence or release of such hazardous substances or wastes. Although we are not aware of any current material obligations for investigating or remediating hazardous substances or wastes at our owned properties, the future discovery of substances or wastes at any of our owned properties, or the failure to remediate such contaminated property properly, could adversely affect our ability to develop or sell such real estate, or to borrow using such real estate as collateral. In addition, the costs of investigating or remediating contamination at our properties or at properties where we sent substances or wastes for disposal, may be substantial.

We are also subject to various requirements, including those contained in environmental permits required for our operations, governing air emissions, effluent discharges, the use, management, and disposal of hazardous substances and wastes, and health and safety. From time to time, we may be required to manage, abate, or remove mold, lead, or asbestos-containing materials at our properties. We believe our properties and operations are in compliance, in all material respects, with all federal, state, and local environmental laws and ordinances. However, additional operating costs and capital expenditures could be incurred if additional or more stringent requirements are enacted in the future.

Human Capital and Corporate Responsibility

Our focus on "People Pleasing People" is at the heart of how we care for our guests, customers and employees. We recognize that our success is dependent on our employees' commitment to delivering quality service to our guests and customers. Therefore, our strategic priorities include continuing to develop a committed team dedicated to service and fostering a diverse and inclusive culture that prioritizes wellbeing and emphasizes development and growth for all employees.

Employees

As of ~~December 29, 2022~~ ~~December 28, 2023~~, we had approximately ~~8,050~~ ~~7,780~~ employees, approximately ~~61%~~ ~~64%~~ of whom were employed on a variable or part-time basis. A number of our employees at The Pfister Hotel and the Hilton Milwaukee City Center are covered by collective bargaining agreements which will expire on June 30, 2024, February 15, 2025, December 31, 2025 and May 31, 2028. A number of our employees at the AC Chicago Hotel are covered by a collective bargaining agreement which expires December 23, 2024. As of the end of fiscal ~~2022, 2023~~, approximately ~~5%~~ ~~6%~~ of our employees were covered by collective bargaining agreements, ~~none~~ of which ~~approximately 3%~~ were covered by an agreement that will expire before ~~December 28, 2023~~ ~~December 26, 2024~~.

Employee Wellbeing and Retention

We believe our employees are among our most important resources and are critical to our continued success. We focus significant attention on attracting and retaining talented and experienced individuals to manage and support our operations, and our management team routinely reviews employee turnover rates at various levels of the organization. Management also reviews employee engagement and satisfaction surveys to monitor employee morale and receive feedback on a variety of issues. We pay our employees competitively and offer a broad range of company-paid benefits, which we believe are competitive with others in our industry. Both of our operating divisions ~~are experiencing~~ ~~have experienced~~ challenges related to ~~a labor shortage~~ ~~shortages~~ that ~~has~~ ~~have~~ arisen as the country ~~emerges~~ ~~emerged~~ from the pandemic. Difficulties in hiring new associates has, ~~at times~~, impacted our ability to service our increasing customer counts in both theatres and hotels and ~~has~~ increased labor costs.

Diversity and Inclusion

We are committed to hiring, developing and supporting a diverse and inclusive workplace. Our management teams and all of our employees are expected to exhibit and promote honest, ethical and respectful conduct in the workplace. All of our employees must adhere to a code of conduct that sets standards for appropriate behavior and includes required annual training on preventing, identifying, reporting and stopping any type of unlawful discrimination.

Website Information and Other Access to Corporate Documents

Our corporate website is www.marcuscorp.com. All of our Form 10-Ks, Form 10-Qs and Form 8-Ks, and amendments thereto, are available free of charge on this website as soon as practicable after they have been filed with the SEC. We are not including the information contained on our website as part of, or incorporating it by reference into, this Annual Report. In addition, our corporate governance guidelines and the charters for our Audit Committee, Compensation Committee and Corporate Governance and Nominating Committee are available free of charge on our website. If you would like us to mail you a copy of our corporate governance guidelines or a committee charter, please contact Thomas F. Kissinger, Senior Executive Vice President, General Counsel and Secretary, The Marcus Corporation, 100 East Wisconsin Avenue, Suite 1900, Milwaukee, Wisconsin 53202-4125.

Item 1A. Risk Factors.

The following risk factors and other information included in this Annual Report on Form 10-K should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations. If any of the following risks occur, our business, financial condition, operating results, and cash flows could be materially adversely affected.

Operational Risks

The COVID-19 pandemic had material adverse effects on our theatre and hotels and resorts businesses, results of operations, liquidity, cash flows, financial condition, access to credit markets and ability to service our existing and future indebtedness, and the COVID-19 pandemic, or future pandemics may have similar material adverse effects in the future.

The COVID-19 pandemic had an unprecedented impact on both of our business segments. As an operator of movie theatres, hotels and resorts, restaurants and bars, each of which consists of spaces where customers and guests gather in close proximity, our businesses were significantly impacted by protective actions that federal, state and local governments took to control the spread of the pandemic. These actions included, among other things, declaring national and state emergencies, encouraging social distancing, restricting freedom of movement and congregation, mandating non-essential business closures and/or capacity restrictions, issuing shelter-in-place, quarantine and stay-at-home orders, and issuing masking and/or vaccination mandates.

Although we do not believe it will be necessary to reclose or again reduce operating levels at our theatres and hotels, we ~~We~~ cannot predict ~~when the effects of the COVID-19 pandemic will fully subside, the effect of any variants on government guidance or consumer behavior,~~ if a similar or different pandemic may occur again in the ~~future or when our theatres business will return to normal levels,~~ ~~future~~. The longer and more severe the pandemic, including repeat or cyclical outbreaks or future pandemics, the more severe the adverse effects will be on our businesses, results of operations, liquidity, cash flows, financial condition, access to credit markets and ability to service our existing and future indebtedness.

Even when the COVID-19 pandemic fully subsides, we cannot guarantee that we will recover as rapidly as other industries. While we have resumed normal operations at our theatres and hotels and resorts, there is continued uncertainty as to the pace of reaching full capacity and our financial performance. Because we operate in several different jurisdictions, government directives related to customer behavior and our operations may vary within our theatres and hotels and resorts. Fears and concerns regarding the COVID-19 pandemic or future pandemics could cause our customers to again avoid assembling in public spaces, for some time despite even in the relaxation or removal/absence of government directives that had been in place, or restrictions. We would have no control over and cannot predict the length of any future required closure of or restrictions on our theatres and hotels and resorts due to the COVID-19 pandemic or future pandemics. If we are unable to generate revenues due to a future prolonged period of closure, or do not experience significant increases in our businesses volumes at our reopened theatres and hotels and resorts, this would negatively impact our ability to remain in compliance with our debt covenants, meet our payment obligations and fund capital projects. In such an event, we would either seek covenant waivers or attempt to amend our debt covenants, though there is no certainty that we would be successful in such efforts. If we are not successful in such efforts, our lenders could declare a default and require immediate repayment of amounts owing under our Credit Agreement and senior notes, which could have a material adverse effect on our ability to operate our business. Additionally, we could seek additional liquidity through the issuance of new debt or equity. Our ability to obtain additional financing and the terms of any such additional financing would depend in part on factors outside of our control, and we may be unable to obtain such additional financing on acceptable terms or at all.

The lack of both the quantity and audience appeal of motion pictures may adversely affect our financial results.

The financial results of our movie theatre business and the motion picture industry in general are heavily dependent on the general audience appeal of available films, together with studio marketing, advertising and support campaigns, factors over which we have no control. The relative success of our movie theatre business will continue to be largely dependent upon the quantity and audience appeal of films made available by the movie studios and other producers. Poor performance of films, a disruption in the production of films due to events such as a strike by actors, writers or directors, or a reduction in the marketing efforts of the film distributors to promote their films could have an adverse impact on our business and results of operations. During fiscal 2020, fiscal 2021 and fiscal 2022 in recent years our industry experienced a significant reduction in the quantity of films available to exhibit in theatres, theatres following disruptions in movie production during the COVID-19 pandemic. We expect the quantity of new film releases available for theatrical exhibition to continue during fiscal 2024 to be lower than historical levels during fiscal 2023 as negatively impacted by the industry continues to rebound from disruptions in shutdown of movie production during the COVID-19 pandemic, WGA and SAG-AFTRA labor strikes that occurred during fiscal 2023. Studios may also determine that certain types of films will not be released for theatrical exhibition and will go straight to streaming services, further impacting the quantity of films available. Also, our quarterly results of operations are significantly dependent on the quantity and audience appeal of films that we exhibit during each quarter. As a result, our quarterly results may be unpredictable and somewhat volatile.

Our financial results may be adversely impacted by unique factors affecting the theatre exhibition industry, such as the shrinking video release window, the increasing piracy of feature films and the increasing use of alternative film distribution channels and other competing forms of entertainment.

Over the last decade, the average video release window, which represents the time that elapses from the date of a film's theatrical release to the date a film is released to other channels, including streaming services, video on-demand ("VOD") and DVD, has decreased from approximately six months to approximately 45 days and in some more limited instances, films have been immediately released to such alternative channels without any theatrical release. In the past, more than one studio has discussed their interest in creating a new, Some studios have created shorter premium VOD ("PVOD") window and in one case, an agreement was reached between a studio and several large exhibitors, windows, including ourselves, that includes a 17-day PVOD window for certain films and a 31-day 30 to 60-day PVOD window for certain more successful films. In addition, some studios have released certain films theatrically and on their proprietary streaming services on the same day and date. Although other studios have not taken this approach and several have reaffirmed their commitment to an exclusive theatrical distribution window for film releases, we can provide no assurance that these release windows, which are determined by the film studios and are subject to negotiation and acceptance by exhibitors, will not shrink further, which could have an adverse impact on our movie theatre business and results of operations.

Piracy of motion pictures is prevalent in many parts of the world. Technological advances allowing the unauthorized dissemination of motion pictures increase the threat of piracy by making it easier to create, transmit and distribute high quality unauthorized copies of such motion pictures. The day and date release of films to studios' proprietary streaming services has shortened the timing for availability of high quality unauthorized copies of such motion pictures. The proliferation of unauthorized copies and piracy of motion pictures may have an adverse effect on our movie theatre business and results of operations.

We face competition for movie theatre patrons from a number of alternative motion picture distribution channels, such as DVD, network, cable and satellite television, video on-demand, pay-per-view television, digital downloads and streaming services. The number of streaming services has been increasing and, in some cases, streaming services are producing theatrical-quality original content that is bypassing the theatrical release window entirely. Periodically, internet ticketing intermediaries introduce services and products with the stated intention of increasing movie-going frequency. The actual impact these services and products may have on our relationship with the customer and our results of operations is unknown at this time. We also compete with other forms of entertainment competing for our patrons' leisure time and disposable income such as concerts, amusement parks, sporting events, family and sports entertainment centers, home entertainment systems, video games and portable entertainment devices including tablet computers and smart phones. An increase in popularity of these alternative film distribution channels and competing forms of entertainment may have an adverse effect on our movie theatre business and results of operations.

A deterioration in relationships with film distributors could adversely affect our ability to obtain commercially successful films or increase our costs to obtain such films.

We rely on the film distributors for the motion pictures shown in our theatres. Our business depends to a significant degree on maintaining good relationships with these distributors. Deterioration in our relationships with any of the major film distributors could adversely affect our access to commercially successful films or increase our costs to obtain such films and adversely affect our business and results of operations. Because the distribution of motion pictures is in large part regulated by federal and state antitrust laws and has been the subject of numerous antitrust cases and consent decrees, we cannot ensure a supply of motion pictures by entering into long-term arrangements with major distributors. Rather, we must compete for licenses on a film-by-film and theatre-by-theatre basis and are required to negotiate licenses for each film and for each theatre individually. We are periodically subject to audits on behalf of the film distributors to ensure that we are complying with the applicable license agreements.

The relative industry supply of available rooms at comparable lodging facilities may adversely affect our financial results.

Historically, a material increase in the supply of new hotel rooms in a market can destabilize that market and cause existing hotels to experience decreasing occupancy, room rates and profitability. If such over-supply occurs in one or more of our major markets, we may experience an adverse effect on our hotels and resorts business and results of operations.

Each of our business segments and properties experience ongoing intense competition.

In each of our businesses, we experience intense competition from national, regional and local chain and franchise operations, some of which have substantially greater financial and marketing resources than we have. Most of our facilities are located in close proximity to other facilities which compete directly with ours. The motion picture exhibition industry is fragmented and highly competitive with no significant barriers to entry. Theatres operated by national and regional circuits and by small independent exhibitors compete with our theatres, particularly with respect to film licensing, attracting patrons and developing new theatre sites. Moviegoers are generally not brand conscious and often choose a theatre based on its location, its selection of films and its amenities. With respect to our hotels and resorts division, our ability to remain competitive and to attract and retain business and leisure travelers depends on our success in distinguishing the quality, value and efficiency of our lodging products and services from those offered by others. If we are unable to compete successfully in either of our divisions, this could adversely affect our results of operations.

Changes in the availability of and the cost of labor could adversely affect our business.

Our business could be adversely impacted by increases in labor costs, including wages and benefits (which are two of our most significant costs) including those increases triggered by regulatory actions regarding wages, scheduling and benefits; increased health care and workers' compensation insurance costs; increased wages and costs of other benefits necessary to attract and retain high quality employees with the right skill sets and increased wages, benefits and costs related to the COVID-19 pandemic. sets. A constrained labor market may result in increasing levels of employee turnover, making it increasingly difficult to locate and hire sufficient numbers of employees and to train employees to deliver a consistently high-quality customer experience, which could materially harm our business and results of operations. Furthermore, we have experienced, and could continue to experience, a shortage of labor for theatres and hotels and resorts positions, which could decrease the pool of available qualified talent for key functions. Labor shortages may also result in an increased use of contractors to perform certain operations and may result in higher costs.

Supply chain disruptions may negatively impact our operating results.

We rely on a limited number of suppliers for certain products, supplies and services. Shortages, delays, or interruptions in the availability of food and beverage items and other supplies to our theatres and restaurants may be caused by adverse weather conditions; natural disasters; governmental regulation; pandemic-related supply chain impacts; recalls; commodity availability; seasonality; public health crises or pandemics; labor issues or other operational disruptions; the inability of our suppliers to manage adverse business conditions, obtain credit or remain solvent; or other conditions beyond our control. Such shortages, delays or interruptions could adversely affect the availability, quality, and cost of the items we buy and the operations of our business. Supply chain risk could increase our costs and limit the availability of products that are critical to our operations.

During the recovery from the impacts of the COVID-19 pandemic, we have, with regard to certain items, experienced difficulties in maintaining a consistent supply, seen delays in production and deliveries, been required to identify alternative suppliers, and suspended sales regionally or entirely. These issues may continue to occur, and we plan to minimize the impact by focusing on the supply of those items with the greatest impact on our sales and operations.

Adverse weather conditions, particularly during the winter in the Midwest and in our other markets, may adversely affect our financial results.

Poor weather conditions adversely affect business and leisure travel plans, which directly impacts our hotels and resorts division. In addition, theatre attendance on any given day may be negatively impacted by adverse weather conditions. In particular, adverse weather during peak movie-going weekends or holiday periods may negatively affect our results of operations. Adverse winter weather conditions may also increase our snow removal and other maintenance costs in both of our divisions.

Our results are seasonal, resulting in unpredictable and varied quarterly results.

Our first fiscal quarter typically produces the weakest operating results in our hotels and resorts division due primarily to the effects of reduced travel during the winter months. Our second and third fiscal quarters often produce our strongest operating results because these periods coincide with the typical summer seasonality of the movie theatre industry and the summer strength of the lodging business. Due to the fact that the week between Christmas and New Year's Eve is historically one of the strongest weeks of the year for our theatre division, the specific timing of the last Thursday in December has an impact on the results of our fiscal first and fourth quarters in that division, particularly when we have a 53-week year.

Our properties are subject to risks relating to acts of God, terrorist activity and war and any such event may adversely affect our financial results.

Acts of God, natural disasters, war (including the potential for war), terrorist activity (including threats of terrorist activity), incidents of violence in public venues such as hotels and movie theatres, pandemics and epidemics (such as COVID-19, SARS, bird flu and swine flu), travel-related accidents, as well as political unrest and other forms of civil strife and geopolitical uncertainty may adversely affect the lodging and movie exhibition industries and our results of operations. Terrorism or other similar incidents may significantly impact business and leisure travel or consumer choices regarding out-of-home entertainment options and consequently demand for hotel rooms or movie theatre attendance may suffer. In addition, inadequate preparedness, contingency planning, insurance coverage or recovery capability in relation to a major incident or crisis may prevent operational continuity and consequently impact the reputation of our businesses.

If the amount of sales made through third-party internet travel intermediaries increases significantly, consumer loyalty to our hotels could decrease and our revenues could fall.

We expect to derive most of our business from traditional channels of distribution. However, consumers now use internet travel intermediaries regularly. Some of these intermediaries are attempting to increase the importance of price and general indicators of quality (such as "four-star downtown hotel") at the expense of brand/hotel identification. These agencies hope that consumers will eventually develop brand loyalties to their reservation system rather than to our hotels. If the amount of sales made through internet travel intermediaries increases significantly and consumers develop stronger loyalties to these intermediaries rather than to our hotels, we may experience an adverse effect on our hotels and resorts business and results of operations.

Financial Risks

Adverse economic conditions in our markets may adversely affect our financial results.

Downturns or adverse economic conditions affecting the United States economy generally, and particularly downturns or adverse economic conditions in the Midwest and in our other markets, adversely affect our results of operations, particularly with respect to our hotels and resorts division. Poor economic conditions including those resulting from the COVID-19 pandemic, can significantly adversely affect the demand of business and group travel customers, which have historically been among the largest customer segments for our hotels and resorts division. Specific economic conditions that may directly impact travel, including financial instability of air carriers and increases in gas and other fuel prices, may adversely affect our results of operations. Additionally, although our theatre business has historically performed well during economic downturns as consumers seek less expensive forms of out-of-home entertainment, a significant reduction in consumer confidence or disposable income in general may temporarily affect the demand for motion pictures or severely impact the motion picture production industry, which, in turn, may adversely affect our results of operations.

Our businesses are heavily capital intensive and preopening and start-up costs, increasing depreciation expenses and impairment charges may adversely affect our financial results.

Both our movie theatre and hotels and resorts businesses are heavily capital intensive. Purchasing properties and buildings, constructing buildings, renovating and remodeling buildings and investing in joint venture projects all require substantial upfront cash investments before these properties, facilities and joint ventures can generate sufficient revenues to pay for the upfront costs and positively contribute to our profitability. In addition, many growth opportunities, particularly for our hotels and resorts division, require lengthy development periods during which significant capital is committed and preopening costs and early start-up losses are incurred. We expense these preopening and start-up costs as incurred. As a result, our results of operations may be adversely affected by our significant levels of capital investments. Additionally, to the extent we capitalize our capital expenditures, our depreciation expenses may increase, thereby adversely affecting our results of operations. Several of our hotels are scheduled for significant reinvestment in the next one to two years.

We periodically consider whether indicators of impairment of long-lived assets held for use are present. Demographic changes, economic conditions and competitive pressures may cause some of our properties to become unprofitable. Deterioration in the performance of our properties could require us to recognize impairment losses, thereby adversely affecting our results of operations.

Adverse economic conditions, including disruptions in the financial markets, may adversely affect our ability to obtain financing on reasonable and acceptable terms, if at all, and impact our ability to achieve certain of our growth objectives.

We expect that we will require additional financing over time, the amount of which will depend upon a number of factors, including the number of theatres and hotels and resorts we acquire and/or develop, the amount of capital required to refurbish and improve existing properties, the amount of existing indebtedness that requires repayment in a given year and the cash flow generated by our businesses. Downturns or adverse economic conditions affecting the United States economy generally, and the United States equity and credit markets specifically, may adversely impact our ability to obtain additional short-term and long-term financing on reasonable terms or at all, which would negatively impact our liquidity and financial condition. As a result, a prolonged downturn in the equity or credit markets would also limit our ability to achieve our growth objectives.

We may not be able to obtain capital when desired on favorable terms, if at all, and we may not be able to obtain capital or complete acquisitions through the use of equity or without dilution to our shareholders.

We may need additional financing to execute on our current or future business strategies, including to develop new or enhance existing products and services, acquire businesses and technologies, or otherwise to respond to competitive pressures.

If we raise additional funds through the issuance of equity or convertible debt securities, the percentage ownership of our shareholders could be significantly diluted, and newly-issued securities may have rights, preferences or privileges senior to those of existing shareholders. If we accumulate additional funds through debt financing, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, thus limiting funds available for our business activities. We cannot provide assurances that additional financing will be available on terms favorable to us, or at all. If adequate funds are not available or are not available on acceptable terms, when we desire them, our ability to fund our operations, take advantage of unanticipated opportunities, develop or enhance our products and services, or otherwise respond to competitive pressures would be significantly limited. Any of these factors could harm our results of operations.

Our ability to pay dividends may be limited or otherwise restricted.

For certain periods during fiscal 2020, all of fiscal 2021 and certain periods during fiscal 2022, we suspended the payment of dividends on shares of our common stock. We resumed paying a quarterly dividend in September 2022. **Our ability to pay dividends is currently limited by the terms of our debt agreements, which contain restrictions on the ability of our board of directors to declare or pay dividends on shares of our common stock.** Under our debt agreements, we may pay a cash dividend **up to a specified amount**, provided we have satisfied certain financial covenants in, and are not in default under, the debt agreements. Ultimately, the declaration of future dividends on our common stock will be at the discretion of our board of directors and will depend upon many factors, including our results of operations, financial condition, earnings, capital requirements, limitations in our debt agreements and legal requirements.

Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to repay our debt.

Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including our Convertible Senior Notes due 2025 ("Convertible Notes"), depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our businesses may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as reducing or delaying investments or capital expenditures, selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations and have an adverse effect on our business and results of operations.

We may not have the ability to raise the funds necessary to settle conversions of the Convertible Notes in cash or to repurchase the Convertible Notes upon a fundamental change, and our current and future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the Convertible Notes.

If we settle the Convertible Notes by cash, or a combination of cash and shares of our common stock upon the occurrence of a fundamental change as described in the indenture governing the Convertible Notes, we will be required to make cash payments in respect of the Convertible Notes being converted. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of Convertible Notes being surrendered or converted. In addition, our ability to repurchase the Convertible Notes or to pay cash upon conversions of the Convertible Notes may be limited by law, by regulatory authority or by agreements governing our future indebtedness. Our failure to repurchase Convertible Notes at a time when the repurchase is required by the indenture governing the Convertible Notes or to pay any cash payable on future conversions of the Convertible Notes as required by such indenture would constitute a default under such indenture. A default under the indenture governing the Convertible Notes or the fundamental change itself could also lead to a default under agreements governing our existing or future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the Convertible Notes or make cash payments upon conversions of the Convertible Notes.

The conditional conversion feature of the Convertible Notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion feature of the Convertible Notes is triggered, holders of Convertible Notes will be entitled to convert the Convertible Notes at any time during specified periods at their option. If one or more holders elect to convert their Convertible Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their Convertible Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

Conversion of the Convertible Notes would dilute the ownership interest of existing stockholders, or may otherwise depress the price of our common stock.

The conversion of some or all of the Convertible Notes would dilute the ownership interests of existing stockholders to the extent we deliver shares of our common stock upon conversion of any of the Convertible Notes. The Convertible Notes may from time to time in the future be convertible at the option of their holders prior to their scheduled terms under certain circumstances. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. The conversion rate is subject to adjustment for certain events, including distributions and dividends paid to holders of common stock, which results in increased dilution to common stockholders to the extent we deliver shares of our common stock upon conversion of any of the Convertible Notes. In addition, the existence of the Convertible Notes may encourage short selling by market participants because the conversion of the Convertible Notes could be used to satisfy short positions, or anticipated conversion of the Convertible Notes into shares of our common stock could depress the price of our common stock.

We are subject to counterparty risk with respect to the Convertible Notes Capped Call Transactions.

The Capped Call Counterparties are financial institutions or affiliates of financial institutions, and we will be subject to the risk that one or more of such Capped Call Counterparties may default under the Capped Call Transactions. Our exposure to the credit risk of the Capped Call Counterparties will not be secured by any collateral. If any Capped Call Counterparty becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at that time under our transactions with that counterparty. Our exposure will depend on many factors but, generally, the increase in our exposure will be correlated to the increase in our common stock market price and in the volatility of the market price of our common stock. In addition, upon a default by the Capped Call Counterparty, we may suffer adverse tax consequences and more dilution than we currently anticipate with respect to our common stock. We can provide no assurance as to the financial stability or viability of any Capped Call Counterparty.

Strategic Risks

We may not achieve the expected benefits and performance of our strategic initiatives and acquisitions.

Our key strategic initiatives in our theatre and hotels and resorts divisions often require significant capital expenditures to implement. We expect to benefit from revenue enhancements and/or cost savings as a result of these initiatives. However, there can be no assurance that we will be able to generate sufficient cash flow from these initiatives to provide the return on investment we anticipated from the required capital expenditures.

There also can be no assurance that we will be able to generate sufficient cash flow to realize anticipated benefits from any strategic acquisitions that we may enter into. Although we have a history of successfully integrating acquisitions into our existing theatre and hotels and resorts businesses, any acquisition may involve operating risks, such as (1) the difficulty of assimilating and integrating the acquired operations and personnel into our current business; (2) the potential disruption of our ongoing business; (3) the diversion of management's attention and other resources; (4) the possible inability of management to maintain uniform standards, controls, policies and procedures; (5) the risks of entering markets in which we have little or no expertise; (6) the potential impairment of relationships with employees; (7) the possibility that any liabilities we may incur or assume may prove to be more burdensome than anticipated; and (8) the possibility the acquired property or properties do not perform as expected.

Our ability to identify suitable properties to acquire, develop and manage will directly impact our ability to achieve certain of our growth objectives.

A portion of our ability to successfully achieve our growth objectives in both our theatre and hotels and resorts divisions is dependent upon our ability to successfully identify suitable properties to acquire, develop and manage. Failure to successfully identify, acquire and develop suitable and successful locations for new lodging properties and theatres will substantially limit our ability to achieve these important growth objectives.

Our ability to identify suitable joint venture partners or raise investment funds to acquire, develop and manage hotels and resorts will directly impact our ability to achieve certain of our growth objectives.

In addition to acquiring or developing hotels and resorts or entering into management contracts to operate hotels and resorts for other owners, we have from time to time invested, and expect to continue to invest, in such projects as a joint venture partner. We have also indicated that we may act as an investment fund sponsor in order to acquire additional hotel properties. A portion of our ability to successfully achieve our growth objectives in our hotels and resorts division is dependent upon our ability to successfully identify suitable joint venture partners or raise investments funds to acquire, develop and manage hotels and resorts. Failure to successfully identify suitable joint venture partners or raise equity for an investment fund will substantially limit our ability to achieve these growth objectives.

Investing through partnerships or joint ventures decreases our ability to manage risk.

Joint venture partners may have shared control or disproportionate control over the operation of our joint venture assets. Therefore, our joint venture investments may involve risks such as the possibility that our joint venture partner in an investment might become bankrupt or not have the financial resources to meet its obligations, or have economic or business interests or goals that are inconsistent with our business interests or goals, or be in a position to take action contrary to our instructions or requests or contrary to our policies or objectives. Consequently, actions by our joint venture partners might subject hotels and resorts owned by the joint venture to additional risk. Further, we may be unable to take action without the approval of our joint venture partners. Alternatively, our joint venture partners could take actions binding on the joint venture without our consent.

Legal, Regulatory and Compliance Risks

Recalls of food products and associated costs could adversely affect our reputation and financial condition.

We may be found liable if the consumption of any of the food products we sell in our theatres or hotels causes illness or injury. We are also subject to recalls by product manufacturers or if food products become contaminated. Recalls could result in losses due to the cost of the recall, the destruction of the product and lost sales due to the unavailability of the product for a period of time.

We are subject to substantial government regulation, which could entail significant cost.

We are subject to various federal, state and local laws, regulations and administrative practices affecting our business, and we must comply with provisions regulating health and sanitation standards, equal employment, environmental, and licensing for the sale of food and alcoholic beverages. Our properties must also comply with Title III of the Americans with Disabilities Act of 1990 (the "ADA"). Compliance with the ADA requires that public accommodations "reasonably accommodate" individuals with disabilities and that new construction or alterations made to "commercial facilities" conform to accessibility guidelines unless "structurally impracticable" for new construction or technically infeasible for alterations. Non-compliance with the ADA could result in the imposition of injunctive relief, fines or an award of damages to private litigants or additional capital expenditures to remedy such noncompliance. Changes in existing laws or implementation of new laws, regulations and practices could also have a significant impact on our business. For example, a significant portion of our staff level employees are part-time workers who are paid at or near the applicable minimum wage in the relevant jurisdiction. Increases in the minimum wage and implementation of reforms requiring the provision of additional benefits would increase our labor costs.

We are subject to complex taxation and could be subject to changes in our tax rates, the adoption of new tax legislation or exposure to additional tax liabilities.

We are subject to different forms of taxation in the federal, state and local jurisdictions where we operate. Current economic and political conditions make tax rates in any jurisdiction subject to significant change. Our future effective tax rate could be affected by changes in the mix of earnings in jurisdictions with differing tax rates, changes in the valuation of deferred tax assets and liabilities, or changes in tax laws or their interpretation. In addition, the tax authorities may not agree with the determinations we have made and such disagreements could result in lengthy legal disputes and, ultimately, in the payment of additional amounts for tax, interest and penalties. If our effective tax rate were to

increase, or if the ultimate determination of our taxes owed in the U.S. or any of our jurisdictions is for an amount in excess of amounts previously accrued, our operating results, cash flows and financial condition could be adversely affected.

General Risks

Our business and operations could be negatively affected if we become subject to any securities litigation or shareholder activism, which could cause us to incur significant expense, hinder execution of our business strategy and impact our stock price.

While we are currently not subject to any securities litigation or shareholder activism, due to the potential volatility of our stock price and for a variety of other reasons, we may in the future become the target of securities litigation or shareholder activism. Securities litigation and shareholder activism, including potential proxy contests, could result in substantial costs and divert the attention of our management and board of directors and resources from our business.

Additionally, such securities litigation and shareholder activism could give rise to perceived uncertainties as to our future, adversely affect our relationships with service providers and make it more difficult to attract and retain qualified personnel. Also, we may be required to incur significant legal fees and other expenses related to any securities litigation or activist shareholder matters. Further, our stock price could be subject to significant fluctuation or otherwise be adversely affected by the events, risks and uncertainties of any securities litigation or shareholder activism.

Our stock price may be volatile, which could result in securities class action litigation against us.

The market price of our common stock could be subject to wide fluctuations in response to, among other things, the risk factors described in this report, and other factors beyond our control, such as fluctuations in the valuation of companies perceived by investors to be comparable to us and research analyst coverage about our business.

Furthermore, the stock markets have experienced price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political and market conditions, such as recessions, interest rate changes or international currency fluctuations, have and may continue to affect the market price of our common stock.

In the past, many companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may become the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business. See "Risks related to our business and industry—Our business and operations could be negatively affected if we become subject to any securities litigation or shareholder activism, which could cause us to incur significant expense, hinder execution of business strategy and impact our stock price."

Certain provisions of our articles of incorporation and bylaws and of Wisconsin law could prevent a takeover that shareholders consider favorable and could also reduce the market price of our stock.

Our articles of incorporation and our bylaws contain provisions that could delay or prevent a merger, acquisition or other change in control that shareholders may consider favorable, including transactions in which shareholders might otherwise receive a premium for their shares. These provisions may also prevent or delay attempts by shareholders to replace or remove our current management or members of our board of directors.

We rely on our information systems to conduct our business, and any failure to protect our information systems and other confidential information against cyber attacks or other information security breaches or any failure or interruption to the availability of our information systems could have a material adverse effect on our business.

The operation of our business depends on the efficient and uninterrupted operation of our and our service providers' information technology systems. Our information technology systems, and those of our service providers, may become unavailable or may fail to perform as anticipated, for any reason, including cyber attacks, loss of power, or human error. Information security risks have generally increased in recent years because of the proliferation of new technologies and the increased sophistication and activities of perpetrators of cyber attacks. Our and our service providers' information technology systems have experienced, and may experience in the future, cyber attacks and other security incidents, and any significant interruption in or failure of our information systems, or those of our service providers, or any breach of our or their information systems or other confidential information could disrupt our business, result in the disclosure or misuse of confidential or proprietary information, damage our reputation, expose us to litigation, increase our costs or cause losses. As cyber and other information security threats continue to evolve, we may be required to expend additional resources to continue to enhance our information security measures or to investigate and remediate any information security vulnerabilities.

Additionally, the legal and regulatory environment surrounding information security and privacy in the United States is constantly evolving. Violation or non-compliance with any of these laws or regulations, contractual requirements relating to data security and privacy, or with our own privacy and security policies, either intentionally or unintentionally, or through the acts of intermediaries could have a material adverse effect on our brands, reputation, business, financial condition and results of operations, as well as subject us to significant fines, litigation, losses, third-party damages and other liabilities.

Item 1B. Unresolved Staff Comments.

None.

Item 1C. Cybersecurity.

Cybersecurity Governance

We are committed to protecting our intellectual property, customer and employee data, and the information technology systems critical to keeping our customers, employees, contractors and others aligned and allowing our operations to function properly. Our Board of Directors and its committees are involved on an ongoing basis in the oversight of our material enterprise-related risks, including cybersecurity risks. Our processes for oversight of cybersecurity-related risks are fully integrated into our overall enterprise risk management program, which is led by our General Counsel. We assign a member of our executive management team to report material information to our Board of Directors regarding each of our most significant enterprise risks. We have identified a separate risk for enterprise cybersecurity. The Audit Committee, in connection with the Chief Information Officer, provides primary oversight for cybersecurity risk for the company.

The information security operations team within our information technology function reports to our Chief Information Officer, who regularly updates our Board of Directors and the Audit Committee. The function is governed by various policies on different aspects of cybersecurity. Our Board of Directors and the Audit Committee, as applicable, then reviews such information, including management's proposed mitigation strategies and plans, to monitor our progress on mitigating the risks.

Our Chief Information Officer and General Counsel meet regularly with the Board of Directors and its committees to review relevant areas including:

- Key metrics of the information security/cybersecurity program;
- The purchase of cybersecurity risk insurance to mitigate exposure to the company;
- Monitoring and testing of backup and disaster recovery process;
- Cybersecurity incident response and remediation procedures; and
- Metrics of the company's training and compliance program on information security and awareness of cyber risk.

In addition, we have a management Cybersecurity Committee, which functions as a steering committee, to provide oversight and strategic direction for the cybersecurity program. The Cybersecurity Committee is comprised of our Chief Information Officer & Theatres Chief Information Technology Officer ("CIO"), Hotels Chief Information Technology Officer, Vice President of Information Security, General Counsel, and Chief Financial Officer. The Cybersecurity Committee meets quarterly to review the cybersecurity program, including risks and the status of key initiatives.

Our CIO has served in various roles in information technology for over 35 years. Our Hotels Chief Information Technology Officer holds an undergraduate degree in business administration and a master's degree in management of information systems and has served in various roles in information technology for over 30 years. Our Vice President of Information Security has served in various roles in information technology and information security for over 15 years, and has attained the professional certifications of PCI-ISA and PCI-DSS. Our General Counsel and Chief Financial Officer each hold undergraduate and graduate degrees in their respective fields, and each have significant experience managing risks at the company and at similar companies, including risks arising from cybersecurity threats.

Cybersecurity Risk Management Strategy

In addition to our Cybersecurity Committee, an information security operations team is in place, which monitors the environment for cybersecurity incidents on a continuous basis. We have also established incident response plans to assess and manage cybersecurity incidents. These plans, which are tested at least annually, include escalation procedures based on the nature and severity of the incident. The most critical incidents, which could be material to the company, are escalated to the Cybersecurity Committee. The Cybersecurity Committee, in coordination with internal and external advisors and legal counsel, is responsible for determining the materiality of cybersecurity incidents and coordinating any necessary disclosures. A materiality decision framework, which includes both quantitative and qualitative factors, is in place to guide the materiality decision. Critical cybersecurity incidents which are determined to be material are escalated to the Audit Committee, and when appropriate, to the Board of Directors.

We provide regular, mandatory training for personnel regarding cybersecurity threats as a means to equip our personnel with effective knowledge, tools, and awareness to address cybersecurity threats, and to communicate our evolving information security policies, standards, processes and practices. The personnel training occurs at the time of hiring and at least once annually thereafter. The Cybersecurity Committee, along with other members of executive management, practices the incident response process through an annual tabletop exercise facilitated by external consultants.

We engage in the periodic assessment and testing of our policies, standards, processes and practices that are designed to address cybersecurity threats and incidents. These efforts include a wide range of activities, including audits, assessments, tabletop exercises, threat modeling, vulnerability testing, disaster recovery testing, and other exercises focused on evaluating the effectiveness of our cybersecurity measures and planning. We regularly engage third parties to perform assessments on our cybersecurity measures, including information security maturity assessments, audits and independent reviews of our information security control environment and operating effectiveness. The results of such assessments, audits and reviews are reported to the Audit Committee and the Board of Directors, and we adjust our cybersecurity policies, standards, processes and practices as necessary based on the information provided by these assessments, audits and reviews.

A third-party risk management program is in place to address the risks posed by third parties. Through this program, the company evaluates the type of data that is shared with the third party and gains an understanding of the third party's cybersecurity risk profile. Higher risk third parties complete a vendor security self-assessment designed to provide a deeper level of understanding of the third party's risks and controls. Based on the results of this assessment, the entity may be added to our third-party monitoring solution, which provides updates and alerts related to the company's externally facing security posture.

Cybersecurity Threats

Cybersecurity threats, including as a result of any previous cybersecurity incidents, have not materially affected or are reasonably likely to affect the company, including its business strategy, results of operations or financial condition.

Item 2. Properties.

We own the real estate of a substantial portion of our facilities, including, as of **December 29, 2022** **December 28, 2023**, The Pfister Hotel, the Hilton Milwaukee City Center, the Hilton Madison at Monona Terrace, the Grand Geneva Resort & Spa, Saint Kate – The Arts Hotel, The Lincoln Marriott Cornhusker Hotel, and the majority of our theatres. We lease the remainder of our facilities. As of **December 29, 2022** **December 28, 2023**, we also managed one hotel for a joint venture in which we have a minority interest and **87** hotels, resorts and other properties that are owned by a third party. Additionally, we own surplus land and several former operating properties. All of our properties are suitably maintained and adequately utilized to cover the respective business segment served.

Our owned, leased and managed properties are summarized, as of **December 29, 2022** **December 28, 2023**, in the following table:

Business Segment	Business Segment	Operation	Owned ⁽¹⁾	Leased from Unrelated Parties ⁽²⁾	Managed for Related Parties	Managed for Unrelated Parties	Business Segment	Total Number of Facilities in Operation	Owned ⁽¹⁾	Leased from Unrelated Parties ⁽²⁾	Managed for Related Parties	Managed for Unrelated Parties
Theatres:	Theatres:											
Movie Theatres	Movie Theatres	85	48	37	—	—						
Movie Theatres												
Movie Theatres												
Family Entertainment Center	Family Entertainment Center	1	1	—	—	—						
Hotels and Resorts:	Hotels and Resorts:											
Hotels												
Hotels												
Hotels	Hotels	14	5	1	1	7						
Resorts	Resorts	1	1	—	—	—						
Other Properties ⁽³⁾	Other Properties ⁽³⁾	3	—	2	—	1						
Total	Total	104	55	40	1	8						

(1) Four of the movie theatres are on land leased from unrelated parties.

(2) The **37** **36** theatres leased from unrelated parties have a total of **400** **390** screens. One UltraScreen adjacent to an owned theatre is leased from an unrelated party.

(3) Includes a vacation ownership development adjacent to the Grand Geneva Resort & Spa owned by Orange Lake Resort & Country Club of Orlando, Florida, for which we provide hospitality management services and **two the SafeHouse restaurants restaurant** located in Milwaukee, Wisconsin and Chicago, Illinois, both of which we lease from an unrelated party and which are **is** managed by our hotels and resorts division.

Certain of the individual properties or facilities identified above are subject to purchase money or construction mortgages or commercial lease financing arrangements, but we do not consider these encumbrances, individually or in the aggregate, to be material.

All of our operating property leases expire on various dates after the end of fiscal **2023** **2024** (assuming we exercise all of our renewal and extension options), except for one operating movie theatre.

Item 3. Legal Proceedings.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

INFORMATION ABOUT OUR EXECUTIVE OFFICERS

Each of our executive officers is identified below together with information about each officer's age, position and employment history for at least the past five years:

Name	Position	Age
Stephen H. Gregory S. Marcus	Chairman of the Board,	87
Gregory S. Marcus	President and Chief Executive Officer	58 59
Thomas F. Kissinger	Senior Executive Vice President, General Counsel and Secretary and Director	62 63
Chad M. Paris	Chief Financial Officer and Treasurer	42
Mark A. Gramz	41 President, Marcus Theatres Corporation	69
Michael R. Evans	President, Marcus Hotels & Resorts	53

Stephen H. Marcus has been our Chairman of the Board since December 1991. He served as our Chief Executive Officer from December 1988 to January 2009 and as our President from December 1988 until January 2008. Mr. Marcus has worked at our company for 61 years.

Gregory S. Marcus joined our company in March 1992 as Director of Property Management/Corporate Development. He was promoted in 1999 to our Senior Vice President – Corporate Development and became an executive officer in July 2005. He has served as our President since January 2008 and was elected our Chief Executive Officer in January 2009. He was elected to serve on our Board of Directors in October 2005, 2005 and was elected Chairman of the Board in May 2023. He is the son of Stephen H. Marcus, our Chairman of the Board, Emeritus.

Thomas F. Kissinger joined our company in August 1993 as our Secretary and Director of Legal Affairs. In August 1995, he was promoted to our General Counsel and Secretary and in October 2004, he was promoted to Vice President, General Counsel and Secretary. In August 2013, he was promoted to Senior Executive Vice President, General Counsel and Secretary. He also formerly served as interim President of Marcus Hotels & Resorts. Prior to August 1993, Mr. Kissinger was an associate with the law firm of Foley & Lardner LLP for five years. He was elected to our Board of Directors in August 2023.

Chad M. Paris joined our company in October 2021 as Corporate Controller and Treasurer. Mr. Paris was promoted to Chief Financial Officer and Treasurer effective May 15, 2022, following the retirement of Douglas A. Neis. Prior to joining The Marcus Corporation, he served as Senior Vice President and Chief Financial Officer at Jason Group, Inc., formerly Jason Industries, Inc. (“Jason Group”), a Milwaukee-based global manufacturing company, from August 2017 to April 2021. Prior to joining Jason Group in June 2014, Mr. Paris was an Audit Senior Manager at the accounting firm of Deloitte & Touche LLP, beginning his career in finance with the firm in August 2005.

Mark A. Gramz joined our company in 1971 as a part time associate. He served in various roles with the company before being named general manager of a theatre in 1976, and continued to serve in this role for other area theatres before being named district manager in 1987. In 1991, he was promoted to vice president of operations for southern Wisconsin and become senior vice president of operations in 1997. In 2012, he was named executive vice president of Marcus Theatres, and was promoted to President of Marcus Theatres in October 2022.

Michael R. Evans joined our company in January 2020 as the President of Marcus Hotels & Resorts. Prior to joining Marcus Hotels & Resorts, Evans was the Chief Executive Officer of Apex Capital Ventures LLC, a real estate company that he founded in 2017 to focus on the development and acquisition of hotels, resorts, and branded residences. Evans previously served as Chief Operating Officer for MGM Hospitality, a division of MGM Resorts International.

Our executive officers are generally elected annually by our Board of Directors after the annual meeting of shareholders. Each executive officer holds office until his successor has been duly qualified and elected or until his earlier death, resignation or removal.

PART II

Item 5. Market for the Company’s Common Equity, Related Shareholder Matters and Issuer Repurchases of Equity Securities.

(a) Stock Performance Graph

The following information in this Item 5 of this Annual Report on Form 10-K is not deemed to be “soliciting material” or to be “filed” with the SEC or subject to Regulation 14A or 14C under the Securities Exchange Act of 1934 or to the liabilities of Section 18 of the Securities and Exchange Act of 1934 and will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent we specifically incorporate it by reference into such a filing.

Set forth below is a graph comparing the annual percentage change during our last five full fiscal years in our cumulative total shareholder return (stock price appreciation on a dividend reinvested basis) of our Common Shares to the cumulative total return of: (1) a composite peer group index selected by us, and (2) companies included in the Russell 2000 Index. The composite peer group index is comprised of the Dow Jones U.S. Hotels Index (weighted 35%) and a theatre index that we selected that includes Cinemark Holdings, Inc. (weighted 65%).

The indices within each composite peer group index are weighted to approximate the relative annual revenue contributions of each of our business segments to our total annual revenues over the past several fiscal years. The shareholder returns of the companies included in the Dow Jones U.S. Hotels Index and the theatre index that we selected are weighted based on each company’s relative market capitalization as of the beginning of the presented periods.

From December 28, 2017 December 27, 2018 to December 29, 2022 December 28, 2023

1706

		12/28/17	12/27/18	12/26/19	12/31/20	12/30/21	12/29/22						
		12/27/18						12/27/18	12/26/19	12/31/20	12/30/21	12/29/22	12/28/23
The Marcus Corporation	The Marcus Corporation	\$100.00	\$144.08	\$124.20	\$51.68	\$68.82	\$54.96						
Russell 2000 Index	Russell 2000 Index	100.00	87.07	111.28	132.85	152.76	121.70						
Composite Peer Group Index(1)	Composite Peer Group Index(1)	100.00	97.29	112.40	75.33	80.94	51.40						

(1) Weighted 35% for the Dow Jones U.S. Hotels Index and 65% for the Company-selected Theatre Index.

(b) Market Information

Our Common Stock, \$1 par value, is listed and traded on the New York Stock Exchange under the ticker symbol "MCS." Our Class B Common Stock, \$1 par value, is neither listed nor traded on any exchange.

On **March 1, 2023** **February 27, 2024**, there were **1,266** **1,211** shareholders of record of our Common Stock and **36** **33** shareholders of record of our Class B Common Stock.

(c) Stock Repurchases

The following table sets forth information with respect to purchases made by us or on our behalf of our Common Stock during the period indicated.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Programs ⁽¹⁾	Maximum Number of Shares that May Yet be Purchased Under the Plans or Programs ⁽¹⁾
September 30 29 – November 3 2	—	\$ —	—	2,522,646 2,428,138
November 4 3 – December 1 November 30	—	—	—	2,522,646 2,428,138
December 2 1 – December 29 28	—	—	—	2,522,646 2,428,138
Total	—	\$ —	—	2,522,646 2,428,138

(1) Through **December 29, 2022** **December 28, 2023**, our Board of Directors had authorized the repurchase of up to 11.7 million shares of our outstanding Common Stock. Under these authorizations, we may repurchase shares of our Common Stock from time to time in the open market, pursuant to privately negotiated transactions or otherwise. As of **December 29, 2022** **December 28, 2023**, we had repurchased approximately **9.2** **million** **9.3** **million** shares of our Common Stock under these authorizations. The repurchased shares are held in our treasury pending potential future issuance in connection with employee benefit, option or stock ownership plans or other general corporate purposes. These authorizations do not have an expiration date.

Item 6. Reserved.

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

General

We report our consolidated and individual segment results of operations on a 52- or 53-week fiscal year ending on the last Thursday in December. We divide our fiscal year into three 13-week quarters and a final quarter consisting of 13 or 14 weeks. Our primary operations are reported in two business segments: theatres, and hotels and resorts.

Fiscal **2020** was a 53-week year, beginning on December 27, 2019 and ending on December 31, 2020. Fiscal 2021 was a 52-week year, beginning on January 1, 2021 and ending on December 30, 2021. Fiscal 2022 was a 52-week year, beginning on December 31, 2021 and ending on December 29, 2022. **Fiscal 2023 was a 52-week year, beginning on December 30, 2022 and ending on December 28, 2023.**

Fiscal **2020**, fiscal 2021 and fiscal 2022 results by quarter were significantly impacted by the COVID-19 pandemic, which **began late in our fiscal 2020 first quarter and impacted our results for the remainder of fiscal 2020**, throughout fiscal 2021 and during the first half of fiscal 2022. Under normal conditions, our first fiscal quarter typically produces the weakest operating results in our hotels and resorts division due primarily to the effects of reduced travel during the winter months. The quality of film product in any given quarter typically impacts the operating results in our theatre division. Our second and third fiscal quarters generally produce our strongest operating results because these periods coincide with the typical summer seasonality of the movie theatre industry and the summer strength of the lodging business. Due to the fact that the week between Christmas and New Year's Eve is historically one of the strongest weeks of the year for our theatre division, the specific timing of the last Thursday in December impacts the results of our fiscal first and fourth quarters in that division, particularly when we have a 53-week year.

This Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") generally discusses fiscal **2023** and fiscal 2022 **items and year-to-year comparisons between fiscal 2023 and fiscal 2022**. Discussions of fiscal 2021 items and year-to-year comparisons between fiscal 2022 and fiscal 2021. Discussions of fiscal **2020 items and year-to-year comparisons between fiscal 2021 and fiscal 2020** that are not included in this MD&A can be found in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of the Company's Annual Report on Form 10-K for the fiscal year ended **December 30, 2021** **December 29, 2022**. Within this MD&A amounts for totals, subtotals, and variances may not recalculate exactly within tables due to rounding as they are calculated using the unrounded numbers.

Impact of the COVID-19 Pandemic

The COVID-19 pandemic had an unprecedented impact on the world and both of our business **segments**, **segments during fiscal 2020, fiscal 2021 and fiscal 2022**. As an operator of movie theatres, hotels and resorts, restaurants and bars, each of which consists of spaces where customers and guests gather in close proximity, our businesses were significantly impacted by protective actions that federal, state and local governments took to control the spread of the pandemic, and our customers' reactions or responses to such actions. The extent of these protective actions and their impact on our businesses dissipated throughout fiscal 2022.

We began fiscal 2022 with all of The COVID-19 pandemic did not materially impact our theatres open with normal operating days and hours. While still below pre-COVID-19 levels, attendance has continued to gradually improve as the number of vaccinated individuals increased, more films are released, and customers indicate increasing willingness to return to movie theatres. We remain optimistic that the theatre industry is in the process of rebounding and will continue to benefit from a return to normalcy.

We still expect a return to "normalcy" in theatres to be driven by an increase in the quality and quantity of new films released in theatres and the return of consumer comfort with public gatherings. The appearance of variants of the virus has resulted in changing government guidance on indoor activities in some communities, which impacted consumer comfort early in fiscal 2022. Industry customer surveys indicate that consumer comfort increased throughout 2022, reaching a post-pandemic high comfort level in January 2023. Total theatre division revenues, expressed as a percentage of fiscal 2019 pre-pandemic revenues were 47% in fiscal 2021, and improved to 71% in fiscal 2022. We believe the continued revenue shortfall in fiscal 2022 compared to 2019 was driven primarily by a reduced quantity of wide-release films available for theatrical release.

We began fiscal 2022 with all eight of our company-owned and managed hotels open. All of our restaurants and bars in our hotels and resorts were open during a majority of fiscal 2022, operating in some cases with reduced operating hours. The majority of our hotels and restaurants are now generating revenues at or above pre-pandemic levels, while at certain hotels that primarily serve group business, revenues remain below pre-pandemic levels with improving occupancy and business travel activity increasing. The future economic environment will also have a significant impact on the pace of our return to "normal" hotel operations.

During fiscal 2020 and fiscal 2021, we received \$31.5 million and \$5.9 million, respectively, of tax refunds from our fiscal 2019 tax return. During the first quarter of fiscal 2021, we filed income tax refund claims of \$24.2 million related to our fiscal 2020 tax return, with the primary benefit derived from net operating loss carrybacks to prior years. We received approximately \$1.8 million of this refund in July 2021, and the remaining \$22.3 million refund, plus interest, was received in February 2022. We also generated additional income tax loss carryforwards results during fiscal 2021 that will benefit future years.

During the fourth quarter of fiscal 2020 and continuing into fiscal 2021, a number of states elected to provide grants to certain businesses most impacted by the COVID-19 pandemic, utilizing funds received by the applicable state under provisions of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "CARES Act") or subsequent federal relief programs. We received \$4.9 million of these prior year grants in January 2021. We were awarded and received an additional \$1.3 million in theatre grants during the first quarter of fiscal 2021 and an additional \$1.9 million in hotel grants during the third quarter of fiscal 2021. We were also awarded an additional \$4.5 million in theatre grants during the fourth quarter of fiscal 2021, the majority of which was not received until January 2022. All of these grants further contributed to our current strong liquidity position.

Maintaining and protecting a strong balance sheet has always been a core philosophy of The Marcus Corporation during our 87-year history, and, despite the COVID-19 pandemic, our financial position remains strong. A detailed description of our liquidity as of December 29, 2022 is described below in the "Liquidity" section of this MD&A. We cannot assure that 2023. For discussion regarding the impact of the COVID-19 pandemic will cease and related economic conditions on our results for fiscal 2022 and fiscal 2021, see "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of the Company's Annual Report on Form 10-K for the fiscal year ended December 29, 2022. For discussion regarding potential impacts of future pandemics refer to have a material adverse effect the discussion of our operational risks and financial risks found above in "Risk Factors" in Part I, Item 1A of this Annual Report on both our theatre and hotels and resorts businesses, results of operations, cash flows, financial condition, access to credit markets and ability to service our existing and future indebtedness, Form 10-K.

Current Plans

Our aggregate cash capital expenditures, acquisitions and purchases of interests in, and contributions to, joint ventures were \$38.8 million during fiscal 2023, compared to \$36.8 million during fiscal 2022 compared to and \$19.5 million during fiscal 2021 and \$21.4 million during fiscal 2020, 2021. We currently estimate that cash capital expenditures will increase during fiscal 2023 2024 to the \$60 - \$75 million range. range with significant investments in our hotels division as discussed below. We will, however, continue to monitor our operating results and economic and industry conditions so that we may adjust our plans accordingly.

Our current strategic plans include the following goals and strategies:

Theatres

- Maximize and leverage our current assets in a post-pandemic world. We have invested approximately \$391 million \$406 million to further enhance the movie-going experience and amenities in new and existing theatres over the last nine-plus ten-plus years. These investments have included:
 - DreamLoungerSM recliner seating additions. As of December 29, 2022 December 28, 2023, we offered all DreamLounger recliner seating in 66 theatres, representing approximately 78% 84% of our theatres. Including our premium, large format (PLF) auditoriums with recliner seating, as of December 29, 2022 December 28, 2023, we offered our DreamLounger recliner seating in approximately 81% 87% of our screens, a percentage we believe to be the highest among the largest theatre chains in the nation.
 - UltraScreen DLX[®] and, SuperScreen DLX[®] (DreamLounger eXperience) and ScreenX conversions. As of December 29, 2022 December 28, 2023, we had a total of 124 125 premium large format ("PLF") screens at 66 65 of our theatre locations (31 UltraScreen DLX auditoriums, one traditional UltraScreen[®] auditorium, 89 SuperScreen DLX auditoriums - a slightly smaller screen than an UltraScreen but with the same DreamLounger seating and Dolby Atmos sound - and three IMAX[®] PLF screens). In fiscal 2023, we introduced our first ScreenX auditorium featuring 270-degree projection providing guests with an immersive viewing experience. As of December 29, 2022 December 28, 2023, we offered at least one PLF screen in approximately 78% 82% of our theatres - once again a percentage we believe to be the highest percentage among the largest theatre chains in the nation. Our PLF screens generally have higher per-screen revenues and draw customers from a larger geographic region compared to our standard screens, and we charge a premium price to our guests for this experience.
 - Signature cocktail and dining concepts. We have continued to further enhance our food and beverage offerings within our existing theatres. We believe our 50-plus years of food and beverage experience in the hotel and restaurant businesses provides us with a unique advantage and expertise that we can leverage to further grow revenues in our theatres. As of December 29, 2022 December 28, 2023, we offered bars/full liquor service under the concepts Take Five[®] Lounge, Take Five Express and The Tavern at 49 theatres, representing approximately 58% 62% of our theatres. As of December 29, 2022 December 28, 2023, we also offered one or more in-lobby dining concepts, including the pizza concept Zaffiro's[®] Express and hamburger and other Americana fare concept Reel Sizzle[®], in 39 theatres, representing approximately 60% 66% of our theatres (excluding

(excluding our in-theatre dining theatres). In select locations without a *Take Five Lounge* outlet, we offer beer and wine at the *Zaffiro's Express* outlet. We also operate three *Zaffiro's® Pizzeria and Bar* full-service restaurants.

- In-theatre dining concepts. As of December 29, 2022 December 28, 2023, we offered in-theatre dining with a complete menu of drinks and chef-prepared salads, sandwiches, entrées and desserts at 29 theatres and a total of 229 227 auditoriums, operating under the names *Big Screen Bistros*SM, *Big Screen Bistro Express*SM, *BistroPlex*SM and *Movie Tavern by Marcus*, representing approximately 34% 37% of our theatres.

During fiscal 2023 2024 and beyond, we expect to execute on a number of strategies to further maximize and leverage our existing assets in a post-pandemic world. These strategies are expected to include:

- Opportunistically expanding the number of our PLF formats described above to meet consumer demand. Our guests have shown a strong preference for viewing blockbuster films on the largest screen available. Our goal is to have multiple PLF auditoriums in as many theatres as physically and financially viable in order to provide PLF formats to our guests for more than one blockbuster film at a time.
- Expanding and evolving our food and beverage operations described above. We will continue to test new concepts and enhance our existing concepts in order to provide further options to our guests and increase

our average concession/food and beverage revenues per person. Strategies may also include expanded sports programming, live bingo and other entertainment options in our signature bars.

- Evolving and reenergizing investing in what we believe to be our best-in-class customer loyalty program called *Magical Movie Rewards*SM ("MMR"). We currently have approximately 5.1 5.9 million members enrolled in the program. Approximately 45% of all box office transactions and 40% 38% of total transactions in our theatres during fiscal 2022 2023 were completed by registered members of the loyalty program. We believe that this program contributes to increased movie-going frequency, more frequent visits to the concession stand, increased loyalty to Marcus Theatres and, ultimately, improved operating results. In fiscal 2024, we plan to make additional investments in technology that will provide further insights into loyalty data on customer preferences, habits and tendencies, facilitating more targeted and effective marketing efforts that are tailored to MMR members.
- Modernizing pricing strategies based upon consumer demand. We currently offer a number of very successful pricing promotions, including "Value Tuesday," "Student Thursday" and "Young-at-Heart" program for seniors on Friday afternoons. We believe these promotions have increased movie going frequency and reached a customer who may have stopped going to the movies because of price, without adversely impacting the movie-going habits of our regular weekend customers. During fiscal 2021, we introduced *Marcus Private Cinema* ("MPC"), a program that allows guests the opportunity to purchase an entire auditorium for up to 20 of his or her friends and family for a fixed charge. Conversely, we charge a higher ticket price for PLF screens and have implemented higher pricing on Friday and Saturday evenings during certain peak moviegoing times of the year. We expect to continue to optimize revenue management and implement additional pricing strategies based upon consumer demand.
- Expanding the use of technology in all facets of our business. We continue to enhance our mobile ticketing capabilities, our downloadable Marcus Theatres mobile application and our *marcustheatres.com* website. We added food and beverage ordering capabilities to our mobile application at all of our theatres in fiscal 2020. In fiscal 2024 we plan to make additional investments in our website technology to further improve ease-of-use and the overall customer experience for both ticketing and food and beverage ordering. We have continued to install additional theatre-level technology, such as new ticketing and food ordering kiosks, new digital menu boards and concession advertising monitors. Each of these enhancements is designed to improve customer interactions, both at the theatre and through mobile platforms and other electronic devices, while enhancing add-on food and beverage sales opportunities through promotion and on-screen offers. We also believe that maximizing the use of these technology enhancements will reduce the impact of improve labor shortages that we productivity and others are currently facing. efficiency.
- Exploring new lobby monetization initiatives. Lobby innovations may include, but not be limited to, unique experiential displays, video and redemption games and other interactive options for our guests.
- Executing multiple strategies designed to further increase revenues and improve the profitability of our existing theatres. These strategies include various cost control efforts, as well as plans to expand ancillary

theatre revenues, such as pre-show advertising, lobby advertising, post transaction click-through advertising, additional corporate and group sales and sponsorships.

- Continually evaluating the financial viability of our existing assets. During fiscal 2021, we made the decision to not reopen three theatres that had previously closed due to the COVID-19 pandemic, consisting of one former budget-oriented theatre and two Movie Tavern theatres with leases that were expiring within the next year. During the first quarter of fiscal 2023, we closed made decisions to close several underperforming theatres, including three owned theatres in Minnesota and two owned theatres and one owned leased theatre in Minnesota, Wisconsin. In evaluating the viability of our theatres we consider financial performance, lease terms (if applicable), future maintenance capital requirements, strategic importance and opportunities to consolidate our operations within local markets, among other factors.
- Regularly upgrading and remodeling our theatres to keep them fresh. To maintain our existing theatres and accomplish the strategies noted above and below, we currently anticipate that our fiscal 2023 2024 capital expenditures in this division will total approximately \$15 - \$20 million.
- Re-invent and modernize the out-of-home entertainment experience.** Our goal continues to be to introduce and create entertainment destinations that further define and enhance the customer value proposition for movie-going and the overall out-of-home entertainment experience. Strategies to achieve this goal are expected to include:
 - Launching a subscription program that encourages more frequent movie-going, particularly for non-blockbuster films. In January fiscal 2022, we introduced two such programs, branded MovieFlex_{SM} and

MovieFlex_{SM}+, in three separate markets as part of our initial test of this strategy. We expect to expand our subscription programs to additional markets in fiscal 2023, 2024.

- Introducing Expanding electronic passports with packaged film series. In January fiscal 2023, we launched Marcus Passport, a program that allows customers to purchase a passport ticket with access to every movie that is playing as part of a Marcus Theatres film series, priced at a discount to purchasing tickets for each movie individually. Our film series showcase multiple movies that celebrate specific genres, holidays, franchises, filmmakers and more. The program launched with a Best Picture Passport featuring the ten Academy Awards Best Picture nominees, followed by additional series throughout the year including winter and a summer Kids Passport Dream Passports each featuring twelve family films, films, Flashback Cinema Passport, Hunger Games Passport, The Chosen Passport, Disney Pixar Passport and a holiday Seasons' Screening Passport. We expect to continue to expand our Marcus Passport offerings in fiscal 2024.
- Testing and subsequently implementing additional entertainment options within theatre auditoriums. Examples of initiatives may include sports bars for viewing live sports (possibly with online gambling where available), sports gaming, and interactive live bingo auditoriums. In March fiscal 2022, we introduced a sports viewing auditorium, branded The Wall_{SM}, in our theatre in Gurnee, Illinois as part of our initial test of this strategy. The Wall combines multi-screen sports viewing with our complete in-theatre dining food and beverage menu, providing customers a premium sports bar experience. We continue to evaluate potential expansion of similar sports viewing auditoriums in additional theatres and markets.
- Further socializing the overall experience for our guests. This strategy will include targeting future movie-goers with relevant and desired experiences through new and creative marketing approaches, including the use of technology to tailor communications to individual guest preferences. For example, we have partnered with Movio, a global leader in data analysis for the cinema industry, to allow more targeted communication with our loyalty members. The software provides us with insight into customer preferences, attendance habits and general demographics, which we believe will help us deliver customized communication to our members. In turn, members of this program can enjoy and plan for a more personalized movie-going experience.
- Exploring new viewing experiences for our guests. For example, we currently offer a 4DX auditorium at one of our theatres. 4DX delivers an immersive multi-sensory cinematic experience, including synchronized motion seats and environmental effects such as water, wind, fog, scent and more, to enhance the action on screen. In the first quarter of fiscal 2023, we plan to convert converted one of our existing auditoriums to a ScreenX auditorium. ScreenX is a panoramic film format that presents films with expanded, dual-sided, 270-degree 270-degree screens projected on the walls in a theatre. We will consider additional experiential offerings in the future.
- Exploring new content sources and deliveries to supplement existing mainstream movie content. The addition of digital technology throughout our circuit (we offer digital cinema projection on 100% of our screens) has provided us with additional opportunities to obtain non-motion picture programming from other new and existing content providers, including live and pre-recorded performances of the Metropolitan Opera, as well as sports, concerts and other events, at many of our locations. We offer weekday and weekend alternate programming at many of our theatres across our circuit. The special programming includes classic movies, faith-based content, live performances, comedy shows and children's performances. We believe this type of programming is more impactful when presented on the big screen and provides an opportunity to continue to expand our audience base beyond traditional moviegoers. Our MMR program also gives us the ability to cost effectively promote non-traditional programming and special events, particularly during non-peak time periods.
- Strategic growth.** Our long-term plans for growth in our theatre division may include evaluating opportunities for new theatres and screens. Growth opportunities that we may explore in the future include:

- New builds. In October 2019, we opened the eight-screen Movie Tavern® by Marcus theatre in Brookfield, Wisconsin. This theatre became the first Movie Tavern by Marcus in Wisconsin. It includes eight auditoriums, each with laser projection and comfortable DreamLounger recliner seating, a full-service bar and food and drink center, and a new delivery-to-seat service model that also allows guests to order food and beverage via our mobile phone application or in-theatre kiosk. We will consider additional sites for potential new theatre locations in both new and existing markets in the future.

- Management contracts and/or taking over existing theatre leases. The COVID-19 pandemic has been challenging for all theatre operators. In some cases, existing theatres have been returned to landlords. We

will consider either managing theatres for existing owners/landlords or entering into new, financially viable lease arrangements if such opportunities arise.

- Acquisitions. Acquisitions of existing theatres or theatre circuits has also been a viable growth strategy for us. In February 2019, we acquired the assets of Movie Tavern®, a New Orleans-based industry leading circuit known for its in-theatre dining concept featuring chef-driven menus, premium quality food and drink and luxury seating. The acquired circuit consisted of 208 screens at 22 locations in nine states. The purchase price consisted primarily of shares of our common stock. The acquisition of the Movie Tavern circuit increased our total number of screens at that time by an additional 23%.

Now branded Movie Tavern by Marcus, we subsequently introduced new amenities to select Movie Tavern theatres, including our proprietary PLF screens and DreamLounger recliner seating, signature programming, such as Value Tuesday with discounted concessions, food and non-alcoholic beverages for loyalty members, and proven marketing, loyalty and pricing programs that will continue to benefit Movie Tavern guests in the future.

As noted above, the COVID-19 pandemic has and industry labor strikes have been challenging for all theatre operators. A number of theatre operators have filed for bankruptcy relief and many others are facing difficult financial circumstances. Although we will prioritize our own finances, we will continue to evaluate the opportunities that these challenging situations create, and will consider potential acquisitions in the future. The movie theatre industry is very fragmented, with approximately 50% of United States screens owned by the three largest theatre circuits and the other 50% owned by an estimated 800 smaller operators, making it very difficult to predict when acquisition opportunities may arise. We do not believe that we are geographically constrained, and we believe that we may be able to add value to certain theatres through our various proprietary amenities and operating expertise.

- Management contracts and/or taking over existing theatre leases. In some cases, existing theatres have been returned to landlords. We will consider either managing theatres for existing owners/landlords or entering into new, financially viable lease arrangements if such opportunities arise.

Hotels and Resorts

- Operational excellence and financial discipline. We have always been, and will continue to be, focused on improving the quality of the guest experience, our portfolio of assets, and our associate working environment, with a long-term view of financial success and profitability. During fiscal 2023 2024 and beyond, we expect to execute on a number of strategies to further maximize and leverage our existing assets in a post-pandemic world. assets. These strategies are expected to include:

- Multiple strategies that are intended to further grow the division's revenues and profits. Our focus on accelerating excellence will continue in fiscal 2023, 2024, with guest experience at the forefront. Strategies will include leveraging our food and beverage expertise to further distinguish us from our competition. In addition to rebuilding our banquet and catering business as group demand improves, we will leverage hotel food and

beverage concepts developed by our Marcus Restaurant Group, featuring premier brands such as *Mason Street Grill*, *ChopHouse®*, *Miller Time® Pub & Grill* and *SafeHouse®* restaurants.

- Sales, marketing and revenue management strategies designed to further increase our profitability. The priority will be to focus on capitalizing on strong leisure and improving group demand trends, driving average daily rate, maximizing revenue per available room, optimizing event space and growing ancillary revenues.
- Human resource and technology strategies designed to achieve operational excellence and improve the associate work environment, while adapting to a changing labor market. We will continue to focus on

developing our customer service delivery and technology enhancements to improve customer interactions through mobile platforms and other customer touch points.

- A continued focus on financial discipline in an inflationary environment through operating efficiency and cost management without sacrificing our commitment to operational excellence.

- Portfolio management. We have invested approximately ~~\$177 million~~ \$199 million to further enhance our hotels and resorts portfolio over the last ~~9~~ 10 years. These investments have included:

- Hotel renovations. We regularly renovate and update our hotels and resorts. For example, ~~in fiscal 2021~~ at the Grand Geneva Resort & Spa we renovated the lobby ~~and in fiscal 2022 we 2021,~~ completed guest room renovations in fiscal 2023 and began a guest room and meeting space renovation project that is expected to be completed in fiscal ~~2023~~ 2024. At The Pfister Hotel, we completed a ballroom and meeting space renovation in fiscal 2023 and began a guest room renovation project that is expected to be completed in fiscal 2024.
- Hotel branding changes. We closed the InterContinental Milwaukee in early January 2019 and undertook a substantial renovation project that converted this hotel into the unbranded experiential arts hotel, Saint Kate - The Arts Hotel. The newly renovated hotel reopened during June 2019.

Our future plans for our hotels and resorts division also include continued reinvestment in our existing properties to maintain and enhance their value. We anticipate additional reinvestments during fiscal ~~2023~~ 2024 and fiscal ~~2024~~ 2025 at the Grand Geneva Resort & Spa, The Pfister Hotel and the Hilton Milwaukee City Center. To maintain our existing hotels and resorts, we currently anticipate that our fiscal ~~2023~~ 2024 capital expenditures in this division will total approximately ~~\$45 \$40 - \$55 million~~ \$50 million.

We have been very opportunistic in our past hotel investments as we have, on many occasions, acquired assets at favorable terms and then improved the properties and operations to create value. Unlike our theatre assets where the majority of our return on investment comes from the annual cash flow generated by operations, a portion of the return on our hotel investments is derived from effective portfolio management, which includes determining the proper branding strategy for a given asset, the proper level of investment and upgrades and identifying an effective divestiture strategy for the asset when appropriate. As a result, we may periodically explore opportunities to monetize all or a portion of one or more owned hotels. In December 2022, we sold The Skirvin Hilton for \$36.75 million. We ~~will redeploy~~ have redeployed the sale proceeds, net of mortgage debt and land lease retirement, into other investment opportunities in our hotel business that we believe will provide more attractive investment returns.

We will consider many factors as we actively review opportunities to execute this strategy, including income tax considerations, the ability to retain management, pricing and individual market considerations. We evaluate strategies for our hotels on an asset-by-asset basis. We have not set a specific goal for the number of hotels that may be considered for this strategy, nor have we set a specific timetable. It is possible that we may sell a particular hotel or hotels during fiscal ~~2023~~ 2024 or beyond if we determine that such action is in the best interest of our shareholders.

- Strategic growth. Transactional activity in the hotel industry has been limited during the last three years due to the pandemic and its lingering effects and the ~~rising higher~~ cost of debt capital for financing hotel acquisitions. ~~Although we will prioritize our own finances, our~~ Our hotels and resorts division expects to continue to seek opportunities to invest in new hotels and increase the number of rooms under management in the future. Growth opportunities that we may explore in the future include:

- Seeking opportunities where we may act as an investment fund sponsor or joint venture partner in acquiring additional hotel properties. We continue to believe that opportunities to acquire high-quality

hotels at reasonable valuations will be present in the future for well-capitalized companies, and we believe that there are partners available to work with us when the appropriate hotel assets are identified. Advantages of this growth strategy include the ability to accelerate our growth through smaller investments in an increased number of properties, while earning management fees and potentially receiving a promoted interest in the hotel investments.

In ~~December~~ fiscal 2021, we formed a joint venture with funds managed by Searchlight Capital Partners ("Searchlight"), a leading global private investment firm, to co-invest in lifestyle hotels, resorts and high-quality full-service properties. Through this joint venture, we acquired the Kimpton Hotel Monaco

Pittsburgh in December 2021, which we manage. We hope to acquire additional hotels using this strategy in fiscal ~~2023~~ 2024 and beyond.

- Pursuing additional management contracts for other owners, some of which may include small equity investments similar to the investments we have made in the past with strategic equity partners. Although total revenues from an individual hotel management contract are significantly less than from an owned hotel, the operating margins are generally significantly higher due to the fact that all direct costs of operating the property are typically borne by the owner of the property. Management contracts provide us with an opportunity to increase our total number of managed rooms without a significant investment, thereby increasing our returns on equity. We may also pursue the acquisition of other hotel management companies that would provide our management portfolio with additional scale and capabilities to accelerate our growth.

In ~~August~~ fiscal 2021, we assumed management of the Coralville Hotel & Conference Center in Coralville, Iowa. Owned by the City of Coralville, this 286-room hotel was recently rebranded under the Hyatt Regency brand as Hyatt Regency Coralville Hotel & Conference Center. A comprehensive renovation of the hotel's guestrooms, restaurant and fitness room ~~is underway and is anticipated to be~~ was completed in ~~the third quarter of~~ fiscal 2023. Conversely, we will occasionally lose management contracts due to various circumstances.

Corporate

- We periodically review opportunities to make investments in long-term growth opportunities that may not be entirely related to our two primary businesses (but typically have some connection to entertainment, food and beverage, hospitality, real estate, etc.). We expect to continue to review such opportunities in the future.
- In addition to operational and growth strategies in our operating divisions, we will continue to seek additional opportunities to enhance shareholder value, including strategies related to our dividend policy and share repurchases. We increased our regular quarterly common stock cash dividend rate by 6.3% 40% during the first quarter of fiscal 2020, prior to temporarily suspending dividend payments in response to the COVID-19 pandemic.

The Credit Agreement currently allows us, if we believe it is in the best interest of our shareholders, to return capital to shareholders through dividends or share repurchases, up to a maximum of \$1.55 million per quarter (approximately \$0.05/share/quarter if a dividend). During the third quarter of fiscal 2022, 2023, increasing our Board of Directors elected to reinstate our quarterly dividend, declaring a quarterly cash dividend of from \$0.05 to \$0.07 per share of common stock and \$0.045 per share of Class B common stock, which was paid in the third and fourth quarters of fiscal 2022. The current restriction on dividends and share repurchases will remain in place until the first quarter of fiscal 2023 and we have returned to our financial covenants in place prior to the restriction, stock. In prior years, we have periodically paid special dividends and repurchased shares of our common stock under our existing Board of Directors stock repurchase authorizations.

- We will also continue to evaluate opportunities to sell real estate when appropriate, allowing us to benefit from the underlying value of our real estate assets. When possible, we will attempt to avail ourselves of the provisions of Internal Revenue Code §1031 related to tax-deferred like-kind exchange transactions. We are actively marketing a number of pieces of surplus real estate and other non-core real estate. During the fourth quarter of fiscal 2020, we sold two land parcels and a former budget theatre, generating total proceeds of approximately \$3.0 million. During fiscal 2021, we sold an equity interest in a joint venture, several land parcels, another former budget theatre and an operating retail center, generating total proceeds of \$22.1 million. During fiscal 2022, we sold surplus land parcels generating total proceeds of \$4.9 million. During fiscal 2023, we sold one surplus land parcel and two former theatres generating total proceeds of \$4.2 million. We believe we may receive total sales proceeds from real estate sales during the next fiscal year totaling approximately \$5 \$3 - \$10 million \$5 million, depending upon demand for the real estate in question.

The actual number, mix and timing of our potential future new facilities and expansions and/or divestitures will depend, in large part, on industry and economic conditions, our financial performance and available capital, the competitive environment, evolving customer needs and trends, and the availability of attractive acquisition and investment opportunities. It is likely that our growth goals and strategies will continue to evolve and change in response to these and other factors, and there can be no assurance that we will achieve our current goals. Each of our goals and strategies are subject to the various risk factors discussed above in this Annual Report on Form 10-K.

Results of Operations

Consolidated Financial Comparisons

The following table sets forth revenues, operating income (loss), other income (expense), net earnings (loss) attributable to The Marcus Corporation and net earnings (loss) per diluted common share for the past three fiscal years (in millions, except for per share and percentage change data) :

		F22 v. F21				F21 v. F20		
	F2022	F2021	Amt.	Pct.	F2020	Amt.	Pct.	
F23 v. F22								
	F2023							
Revenues	Revenues	\$677.4	\$458.2	\$219.2	47.8 %	\$ 237.7	\$220.6	92.8 %
Operating income (loss)	Operating income (loss)	8.3	(41.5)	49.8	120.0 %	(178.4)	137.0	76.8 %
Other income (expense), net	Other income (expense), net	(10.3)	(17.5)	7.3	41.7 %	(17.4)	(0.2)	(0.9)%
Net earnings attributable to noncontrolling interests	Net earnings attributable to noncontrolling interests	2.9	—	2.9	—	—	—	100.0 %
Net loss attributable to The Marcus Corporation		\$ (12.0)	\$ (43.3)	\$ 31.3	72.3 %	\$ (124.9)	\$ 81.6	65.3 %
Net loss per common share - diluted		\$ (0.39)	\$ (1.42)	\$ 1.03	72.5 %	\$ (4.13)	\$ 2.71	65.6 %
Net earnings (loss) attributable to The Marcus Corporation	Net earnings (loss) attributable to The Marcus Corporation	\$ 14.8		\$ (12.0)		\$26.8		223.6 %

Net earnings (loss) per common share - diluted	Net earnings (loss) per common share - diluted	\$ 0.46	\$ (0.39)	\$0.85	217.9 %
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Fiscal 2022 2023 versus Fiscal 2021 2022

Revenues, operating income, (loss), net loss earnings (loss) attributable to The Marcus Corporation and net loss earnings (loss) per diluted common share improved significantly during fiscal 2022 2023 compared to fiscal 2021, 2022. Increased revenues and operating income from both our theatre division and hotels and resorts division contributed to the improvement in our operating income, net earnings (loss) attributable to The Marcus Corporation and net earnings (loss) per diluted common share during fiscal 2022 2023 compared to fiscal 2021, 2022, as customers continued to return to both theatres following the pandemic. Increased revenues and operating income from our theatres and hotels and resorts as division at comparable hotels (excluding the impact of the COVID-19 pandemic subsidized sale of The Skirvin Hilton) also contributed to the improvement of these measures during fiscal 2023 compared to fiscal 2022.

Net loss earnings attributable to The Marcus Corporation and net earnings per diluted common share during fiscal 2022 was 2023 were positively impacted by a decrease in interest expense compared to fiscal 2021 and a gain on the sale of The Skirvin Hilton during fiscal 2022, partially offset by decreased gains on disposition of property, equipment and other assets, 2022.

Net loss attributable to The Marcus Corporation and net loss per diluted common share during fiscal 2022 were positively impacted by a \$3.4 million gain on the sale of The Skirvin Hilton (net of \$2.9 million of net earnings attributable to noncontrolling interests), and was negatively impacted by an increase in income tax expense a \$7.4 million adjustment to valuation allowances as described below.

Our operating loss income during fiscal 2023 was negatively impacted by impairment charges of approximately \$1.1 million, or approximately \$0.02 per diluted common share, related to two permanently closed theatres and surplus real estate that we intend to sell. Our operating income during fiscal 2022 was negatively impacted by impairment charges of approximately \$1.5 million, or approximately \$0.04 per diluted common share, related to two operating theatres. Our operating loss during fiscal 2021 was favorably impacted by nonrecurring state government grants and federal tax credits of approximately \$10.7 million, or approximately \$0.25 per diluted common share, and was negatively impacted by impairment charges of approximately \$5.8 million, or approximately \$0.14 per diluted common share, primarily related to two operating theatres, three permanently closed theatres and surplus real estate that we intend to sell, theatres.

Operating losses expenses from our corporate items, which include amounts not allocable to the business segments, decreased increased during fiscal 2022 2023 compared to fiscal 2021 2022 due primarily to reduced increased short-term and long-term incentive compensation expenses.

Investment loss income was insignificant \$2.4 million during fiscal 2022 2023 compared to an insignificant investment income of \$0.6 million loss during fiscal 2021, 2022. Investment income (loss) includes interest earned on cash and cash equivalents, as well as increases/decreases in the value of marketable securities and increases in the cash surrender value of a life insurance policy. Investment income (loss) during fiscal 2023 2024 may vary compared to fiscal 2022, 2023, primarily dependent upon changes in the value of marketable securities.

Interest expense totaled \$15.3 million \$12.7 million during fiscal 2022, 2023, a decrease of \$3.4 million \$2.6 million, or 18.2% 16.9%, compared to interest expense of \$18.7 million \$15.3 million during fiscal 2021, 2022. The decrease in interest expense during fiscal 2022 2023 was due primarily to lower borrowings, partially offset by an increase in our average interest rate, as discussed in the Liquidity section of this

MD&A below. Interest expense during fiscal 2022 2023 included approximately \$1.6 million \$1.1 million of nonrecurring additional interest payable on our convertible notes incurred related to the removal of the restrictive legend and assignment of an unrestricted CUSIP on the convertible notes. In addition, interest expense during fiscal 2023 included approximately \$1.5 million in noncash amortization of debt issuance costs. During fiscal 2023, 2024, we estimate that noncash amortization of debt issuance costs will be approximately \$1.5 million \$1.4 million, excluding the impact of any new debt issuance costs. We currently expect our total interest expense to decrease during fiscal 2023 2024 primarily due to decreased borrowings. Changes in our borrowing levels due to variations in our operating results, capital expenditures, acquisition opportunities (or the lack thereof) and asset sale proceeds, among other items, may impact,

either favorably or unfavorably, our actual reported interest expense in future periods, as may changes in short-term interest rates.

We incurred other expense of \$2.1 million \$1.8 million during fiscal 2022, a decrease 2023, an increase of approximately \$0.4 million, or 15.1%, \$0.8 million compared to other expense of \$2.5 million \$1.1 million during fiscal 2021, 2022. Other expense consists primarily of the non-service cost components of our periodic pension costs. Based upon information from an actuarial report for our pension plans, we expect costs and net gains (losses) on disposition of property, equipment and other expense to be approximately \$2.2 million assets. Net losses on disposition of property, equipment and other assets were insignificant during fiscal 2023.

We reported net Net gains on disposition of property, equipment and other assets of approximately were \$1.1 million and \$3.2 million, respectively, during fiscal 2022 and fiscal 2021, 2022. The net gains on disposition of property, equipment and other assets during fiscal 2022 included the sale of surplus land, partially offset by losses on items disposed of during the year by both divisions. The net gains on disposition of property, equipment and other assets during fiscal 2021 included the sale of surplus land, the sale of an equity investment in a joint venture, the sale of a former budget movie theatre and the sale of a retail center, partially offset by losses on items disposed of during the year by

both divisions. The timing of our periodic sales and disposals of property, equipment and other assets results in variations each year in the gains or losses that we report on dispositions of property, equipment and other assets. We anticipate the potential for additional disposition gains or losses from periodic sales of property, equipment and other assets, during fiscal 2023 2024 and beyond, as discussed in more detail in the "Current Plans" section of this MD&A. Based upon information from an actuarial report for our pension plans, we expect other expense to be approximately \$2.0 million during fiscal 2024.

We reported a gain on sale of hotel of \$6.3 million during fiscal 2022 resulting from the sale of The Skirvin Hilton on December 16, 2022. See Note 5 4 in the accompanying consolidated financial statements for further discussion of the sale transaction.

We reported equity losses from an unconsolidated joint venture of approximately \$0.1 million and \$0.1 million, respectively, during fiscal 2022 2023 and fiscal 2021 2022. The equity losses in both years consist of our pro-rata share of losses from the Kimpton Hotel Monaco Pittsburgh in Pittsburgh, Pennsylvania, acquired in mid-December 2021 and in which we have a 10% minority ownership interest.

The operating results of one majority-owned hotel, The Skirvin Hilton, are included in the hotels and resorts division revenue and operating income (loss) during fiscal 2020, fiscal 2021 and fiscal 2022 through the date of its sale, and the after-tax net earnings or loss attributable to noncontrolling interests is deducted from or added to net earnings (loss) on the consolidated statements of earnings (loss). As a result of the noncontrolling interest balance reaching zero during the second quarter of fiscal 2020, we did not report additional net losses attributable to noncontrolling interests during the remainder of fiscal 2020 and fiscal 2021. In fiscal 2022, we reported net earnings attributable to noncontrolling interests of \$2.9 million, which result from the gain on the sale of The Skirvin Hilton attributable to noncontrolling interests.

We reported income tax expense during fiscal 2022 2023 of \$7.1 million \$6.9 million compared to an \$7.1 million in fiscal 2022. Our fiscal 2023 income tax benefit expense was favorably impacted by \$0.8 million of \$15.7 million in reductions to valuation allowances related to deferred tax assets for state net operating loss carryforwards for which the ultimate realization is uncertain (net of federal benefit), offset by \$1.2 million of negative impact primarily from excess compensation subject to deduction limitations. Our fiscal 2021. 2023 effective income tax rate was 31.7%. Excluding the impact of the valuation allowance adjustment (net of federal benefit) and the excess compensation deduction limitations, our effective income tax rate during fiscal 2023 was 30.1%.

Our fiscal 2022 income tax expense was negatively impacted by \$7.4 million of valuation allowances related to deferred tax assets for state net operating loss carryforwards for which the ultimate realization is uncertain (net of federal benefit), and by \$0.8 million of impact primarily from excess compensation subject to deduction limitations. Our fiscal 2022 effective income tax rate, after adjusting for earnings (losses) from noncontrolling interests that are not tax-effected because the entity involved is a tax pass-through entity, was (147.6)%. Excluding the negative impact of the valuation allowance adjustment (net of federal benefit) and the excess compensation deduction limitations, our effective income tax rate during fiscal 2022 was 20.2%. Our fiscal 2021 effective income tax rate was 26.6%. We currently anticipate that our fiscal 2023 2024 effective income tax rate may be in the 24-26% 28-32% range, excluding any potential further changes in federal or state income tax rates, valuation allowance adjustments or other one-time tax benefits.

Weighted-average diluted shares outstanding were was 41.0 million during fiscal 2023 and includes shares from the conversion of the convertible notes. Weighted-average diluted shares outstanding was 31.5 million during fiscal 2022, and 31.4 million during fiscal 2021. excludes shares from the conversion of the convertible notes as their inclusion would have an anti-dilutive effect. All per share data in this MD&A is presented on a fully diluted basis, however, for periods when we report a net loss, common stock equivalents are excluded from the computation of diluted loss per share as their inclusion would have an anti-dilutive effect. In future periods, weighted-average diluted shares will include shares from the conversion of convertible notes to the extent conversion is dilutive in such periods.

Theatres

Our oldest and historically most profitable division is our theatre division. The theatre division contributed 60.2% 62.8% of our consolidated revenues and 30.2% 67.4% of our consolidated operating income (loss), excluding corporate items, during fiscal 2022, 2023, compared to 60.2% and 30.2%, respectively, during fiscal 2022 and 59.2% and 127.0%, respectively, during fiscal 2021 and 55.8% and 73.5%, respectively, during fiscal 2020, 2021. As of December 29, 2022 December 28, 2023, the theatre division operated theatres in Wisconsin, Illinois, Iowa, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Arkansas, Colorado, Georgia, Kentucky, Louisiana, New York, Pennsylvania, Texas and Virginia, and a family entertainment center in Wisconsin. The following tables set forth revenues, operating income (loss), operating margin, screens and theatre locations for the last three fiscal years:

F23 v. F22															
F2023									F2023	F2022	Amt.		Pct.		
		F22 v. F21				F21 v. F20									
	F2022	F2021	Amt.	Pct.	F2020	Amt.	Pct.								
(in millions, except percentages)															
(in millions, except percentages)															
(in millions, except percentages)															
(in millions, except percentages)															
Revenues	Revenues	\$407.7	\$271.2	\$136.5	50.3 %	\$132.6	\$138.6	104.5 %	Revenues	\$458.4	\$407.7	\$50.7	12.4	12.4	%
Operating income (loss)	Operating income (loss)	\$8.1	\$(27.6)	\$35.7	129.3 %	\$(121.4)	\$93.9	77.3 %	Operating income (loss)	36.2	8.1	8.1	28.1	28.1	346.9 %
Operating margin	Operating margin	2.0 %	(10.2)%		(91.6)%				Operating margin	7.9 %	2.0 %				(10

Number of screens and locations at period-end ⁽¹⁾⁽²⁾	F2022	F2021	F2020
Theatre screens	1,064	1,064	1,097
Theatre locations	85	85	89
Average screens per location	12.5	12.5	12.3

(1) Includes 6 screens at one location managed for another owner at the end of fiscal 2020.

(2) Includes 22 budget screens at two locations at the end of fiscal 2020. Compared to first-run theatres, budget theatres generally have lower box office revenues and associated film costs, but higher concession sales as a percentage of box office revenues.

Number of screens and locations at period-end	F2023	F2022	F2021
Theatre screens	993	1,064	1,064
Theatre locations	79	85	85
Average screens per location	12.6	12.5	12.5

The following table provides a further breakdown of the components of revenues for the theatre division for the last three fiscal years:

F23 v. F22														
F2023									F2023		F2022		Amn	
			F22 v. F21				F21 v. F20							
	F2022	F2021	Amt.	Pct.	F2020	Amt.	Pct.							
(in millions, except percentages)														
(in millions, except percentages)														
(in millions, except percentages)														
(in millions, except percentages)														
Admission revenues	Admission revenues	\$198.5	\$130.7	\$ 67.7	51.8 %	\$ 64.8	\$ 65.9	101.7 %	Admission revenues	\$229.2	\$ 180.2	\$198.5	\$ 30.7	15.5
Concession revenues	Concession revenues	180.2	118.7	61.5	51.8 %	56.7	62.0	109.2 %	Concession revenues	197.7	180.2	180.2	17.5	9.7
Other revenues	Other revenues	29.1	21.8	7.3	33.7 %	10.8	11.0	102.1 %	Other revenues	31.6	29.1	29.1	2.5	8.5
Total revenues before cost reimbursements	Total revenues before cost reimbursements	407.7	271.2	136.6	50.4 %	132.3	138.9	105.0 %	Total revenues before cost reimbursements	458.4	407.7	407.7	50.7	12.4
Cost reimbursements	Cost reimbursements	—	0.1	(0.1)	(100.0)%	0.3	(0.2)	(72.8)%	Cost reimbursements	—	—	—	—	—
Total revenues	Total revenues	\$407.7	\$271.2	\$136.5	50.3 %	\$132.6	\$138.6	104.5 %	Total revenues	\$458.4	\$ 407.7	\$ 50.7	12.4	

2023. Our operating income during fiscal 2022 2023 was negatively impacted by impairment charges of \$1.5 million \$1.1 million related to two operating theatre locations, permanently closed theatres and surplus real estate that we intend to sell, compared to impairment charges of \$5.8 million \$1.5 million during fiscal 2021 2022 related to two operating theatres, three permanently closed theatres and surplus theatre real estate. Conversely, nonrecurring state government grants from five states and federal tax credits totaling approximately \$7.2 million for COVID-19 relief favorably impacted our theatre division operating loss during fiscal 2021. theatres. In order to evaluate our fiscal 2022 theatre operating results, we believe it is also beneficial to compare our revenues to pre-pandemic levels.

The following table compares sets forth our percentage change in comparable theatre attendance during each quarter of fiscal 2023 compared to the components of revenues for same periods during fiscal 2022. In addition, the theatre division for fiscal 2022 to fiscal 2019:

	F22 v. F19			
	F2022	F2019	Amt.	Pct.
	(in millions, except percentages)			
Admission revenues	\$ 198.5	\$ 284.1	\$ (85.7)	(30.1)%
Concession revenues	180.2	231.2	(51.1)	(22.1)%
Other revenues	29.1	40.8	(11.7)	(28.8)%
Total revenues before cost reimbursements	407.7	556.2	(148.5)	(26.7)%
Cost reimbursements	—	0.9	(0.9)	(100.0)%
Total revenues	\$ 407.7	\$ 557.1	\$ (149.3)	(26.8)%

In order to better understand the current pace of the theatre industry recovery and our ability to outperform the industry, the following table compares the percentage change in our fiscal 2022 2023 comparable theatre admissions revenues to the corresponding percentage change in the United States box office revenues (as compiled by us from data received from Comscore, a national box office reporting service for the theatre industry) during each quarter of fiscal 2022 2023 compared to the same quarter during fiscal 2019; 2022:

	F22 v. F19				
	1st Qtr.(1)	2nd Qtr.	3rd Qtr.	4th Qtr.	Total(1)
Pct. change in Marcus admission revenues	-39.4 %	-24.0 %	-29.1 %	-34.3 %	-31.2 %
Pct. change in U.S. box office revenues	-44.1 %	-26.6 %	-32.1 %	-35.7 %	-34.0 %
Marcus performance vs. U.S.	+4.7 pts	+2.6 pts	+3.0 pts	+1.4 pts	+2.8 pts

(1) We acquired Movie Tavern theatres on February 1, 2019. The percentage change in Marcus admission revenues for the fiscal first quarter and fiscal year reflects the Movie Tavern acquisition on a pro forma basis for the acquisition as of the first day of fiscal 2019.

(comparable theatres)	F23 v. F22				
	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	Total
Pct. change in Marcus theatre attendance	13.9 %	-3.8 %	15.6 %	-3.5 %	5.0 %
Pct. change in Marcus admission revenues	24.1 %	9.7 %	29.8 %	4.1 %	16.2 %
Pct. change in U.S. box office revenues	26.3 %	13.6 %	37.6 %	5.6 %	20.2 %
Marcus performance vs. U.S. box office	-2.2 pts	-3.9 pts	-7.8 pts	-1.5 pts	-4.0 pts

According to the data received from Comscore, our comparable theatres outperformed underperformed the industry during fiscal 2022 2023 compared to fiscal 2019 2022 by 2.8 4.0 percentage points. Based upon this metric, we believe we have been one our underperformance is attributable to the more significant impact of lingering variants of COVID-19 in other regions of the top performing theatre circuits country than in our primarily Midwestern markets during the majority of fiscal 2022, representing a higher opportunity for growth in 2023 nationally than in our markets. We believe this is evidenced by the recovery in our admission revenues relative to pre-pandemic periods in fiscal 2019 compared with the overall recovery of the top 10 circuits U.S. box office. During fiscal 2023, our admission revenues for comparable theatres were 81.3% of admission revenues in the respective periods in fiscal 2019. This compares with U.S. box office receipts for the fiscal 2023 that were 79.4% of U.S. box office receipts for the respective 2019 periods, indicating that our recovery in admission revenues outperformed the U.S. box office recovery during the year. Additional data received and compiled by us from Comscore indicates our admission revenues during fiscal 2022 2023 represented approximately 3.2% 3.1% of the total admission revenues in the U.S. during the period (commonly referred to as market share in our industry). We believe our overall outperformance of the industry box office recovery has been attributable to the investments we have made in new features and amenities in our theatres and our implementation of innovative operating, pricing and marketing strategies that increased attendance relative to our peers, particularly at our acquired Movie Tavern locations. peers. Our goal is to continue our past pattern of outperforming the industry, but with the majority of our renovations now completed, our ability to do so in any given quarter will likely be partially dependent upon film mix, weather and the competitive landscape in our markets.

Total theatre attendance increased 47.2% during fiscal 2022 compared to fiscal 2021, when our theatres were closed for portions of the year and the number of new films released to movie theatres was more limited, resulting in increases in both admission revenues and concession revenues. Conversely, lingering customer concerns regarding visiting indoor businesses in early fiscal 2022 and a decrease in the number of new films negatively impacted attendance during fiscal 2022 as compared to fiscal 2019.

Our highest grossing films during fiscal 2022 2023 included *Top Gun: Maverick*, *Black Panther: Wakanda Forever*, *Doctor Strange in the Multiverse of Madness*, *Jurassic World: Dominion*, *Galaxy Vol. 3*, *Spider-Man: Across the Spider-Verse*, and *Minions: The Rise of Gru*. All of these five films debuted with an exclusive theatrical run prior to release on streaming services. This compares with four of the top five films in fiscal 2021 that debuted with an exclusive theatrical run and one film that was released "day-and-date" on streaming services. We believe such "day-and-date" releases negatively impact theatrical revenues, particularly in week two and beyond of a film's release. We also believe "day-and-date" releases increase piracy, further impacting potential revenues. Due to the impact of four particularly strong blockbusters (generally defined as films grossing more than \$100 million nationally) released during fiscal 2022 (*Top Gun: Maverick*, *Black Panther: Wakanda Forever*, *Doctor Strange in the Multiverse of Madness*, *Jurassic World: Dominion*), compared with only one extremely strong blockbuster released during fiscal 2021 (*Spider-Man: No Way Home*) the film slate during fiscal 2022 2023 was generally less weighted more towards our top movies compared to fiscal 2021, 2022, as evidenced by the fact that our top ten films during fiscal 2022 2023 accounted for 53% 39% of our total box office results, compared to 43% and 41% 52% (including event cinema) for the top ten films during fiscal 2021 and 2019, respectively, 2022, expressed as a percentage of the total admission revenues for the period. An increased A decreased reliance on just a few blockbuster films often has the effect of increasing decreasing our film rental costs during the period, as generally there is a more diverse mix of films to offset the better higher cost blockbuster films. Generally, the greater a particular film performs, the greater the film rental cost tends to be as a percentage of box office receipts. As a result of a more concentrated diverse film slate, our overall film rental cost increased decreased during fiscal 2022 compared to the prior year.

In total, we played 408 films and 336 alternate content attractions at our theatres during fiscal 2022 compared to 318 films and 200 alternate content attractions during fiscal 2021. Prior to the pandemic, we played a total of 285 films and 190 alternate content attractions at our theatres during fiscal 2019. The increase in films played in fiscal 2022 2023 compared to fiscal 2021 and fiscal 2019 is due to an increase in limited-release films, partially offset by a decrease in wide-release films. We have increased the number of limited-release films and alternative content that we play, including independent films, retro series, faith-based content and live events, in response to the slower recovery in the quantity of wide-release films and to promote moviegoing. A film is generally considered "wide release" if it is shown on over 600 screens nationally, and these films generally have the greatest impact on box office receipts. The quantity of wide-release films shown in our theatres and number of wide-release films provided by the six major studios increased during fiscal 2022 compared to fiscal 2021, but remained significantly below pre-pandemic levels. We played 85 wide-release films at our theatres during fiscal 2022 compared to 79 wide-release films during fiscal 2021. Prior to the pandemic, we played 117 wide-release films at our theatres during fiscal 2019. The slower recovery in the quantity of wide-release films available for theatrical exhibition following the pandemic is the primary driver of the prolonged recovery in attendance. 2022.

The quantity of films available for theatrical exhibition, including wide-release films, has been negatively impacted during fiscal 2022 2023 following disruptions in movie production during the COVID-19 pandemic and by COVID-19 related disruptions, the shutdown of movie production delays resulting from supply chain disruptions the WGA and a post-production backlog. SAG-AFTRA labor strikes that occurred during fiscal 2023. While the labor strikes were resolved in the fourth quarter of fiscal 2023 with film production resuming thereafter, we expect the quantity of new film releases available for theatrical exhibition during fiscal 2024 to be negatively impacted by the prolonged shutdown of movie production resulting in several film release dates shifting to fiscal 2025. While lead times for movie production to theatrical release are lengthy, based upon projected film and alternate content availability, we currently estimate that we may once again show an increased number of films and alternate content events on our screens during fiscal 2023 2025 compared to fiscal 2022, 2024, but we expect the number of wide-release films shown during fiscal 2024 to decrease compared to fiscal 2023.

Total theatre attendance at comparable theatre locations increased 5.0% during fiscal 2023 compared to remain fiscal 2022, primarily due to an increase in the number of wide release films, resulting in increases in both admission revenues and concession revenues. In total, we played 465 films and 283 alternate content attractions at our theatres during fiscal 2023 compared to 408 films and 336 alternate content attractions during fiscal 2022. The increase in films played in fiscal 2023 compared to fiscal 2022 is due to an increase in wide-release and limited-release films. In general, following the COVID-19 pandemic we have increased the number of limited-release films and alternative content that we play, including independent films, retro series, faith-based content and live events, in response to the slower recovery in the quantity of wide-release films and to promote moviegoing. The industry generally considers a film to be a "wide release" if it is shown on over approximately 1,500 theatres nationally, and these films generally have the greatest impact on box office receipts. The quantity of wide-release films shown in our theatres and number of wide-release films provided by the six major studios increased during fiscal 2023 compared to fiscal 2022, but remained below pre-pandemic levels. We played 110 wide-release films at our theatres during fiscal 2023 compared to 85 wide-release films during fiscal 2022. Prior to the pandemic, we played 117 wide-release films at our theatres during fiscal 2019. The slower recovery in the quantity of wide-release films available for theatrical exhibition following the pandemic and lower box office performances for certain genres of films are the primary drivers of the lower attendance compared to pre-pandemic periods.

Our average ticket price increased 3.1% 10.9% during fiscal 2022 2023 compared to fiscal 2021 2022, and increased was favorably impacted by 14.2% compared to fiscal 2019. A inflationary price increases, Value Tuesday pricing changes, an increase in the percentage of our weekly attendance on days other than Tuesday, a larger proportion of admission revenues from our proprietary premium large format screens 3D films and 3D films event cinema, including *Taylor Swift: The Eras Tour* (both with higher ticket prices) contributed to. During the increase in our average ticket price during fiscal 2022, as did inflationary price increases implemented during last week of the second first quarter of fiscal 2022, which was partially offset by \$3.00 promotional ticket pricing on National Cinema Day and a lower proportion of admission revenues from evening showings. During the fourth quarter of fiscal 2022, in select cities 2023, we market tested implemented several different pricing changes to our Value Tuesday promotion across our theatre circuit, which has historically offered \$5 admission and free complementary-size popcorn to our loyalty program members. We expect to implement pricing changes to Our new Value Tuesday across promotion features \$6 admission for members of our theatre circuit free Magical Movie Rewards (MMR) loyalty program and \$7 admission for non-MMR customers. These favorable increases were partially offset by a lower proportion of admission revenues from our PLF screens as a result of a more diverse film slate during the year that was concentrated on blockbuster films compared to fiscal 2022. The overall increase in average ticket price favorably impacted our admission revenues of our comparable theatres by \$21.9 million during the fiscal 2023, 2023 compared to fiscal 2022. We currently expect our average ticket price during fiscal 2024 to increase during remain consistent with fiscal 2023, but film mix and the impact of pricing strategies discussed in the "Current Plans" section above will likely impact our final result.

Our average concession revenues per person increased by 3.3% 5.2% during fiscal 2022 2023 compared to fiscal 2021, 2022, which was primarily due to inflationary increases in concession prices in response to increases in food and labor costs. Our costs and due to the net positive impact of changes to our Value Tuesday promotion, which replaced free complementary-size popcorn with a 20% discount on all concessions, food and non-alcoholic beverages for MMR members. We also believe average concession revenues per person increased was positively impacted by 27.5% during a new food and beverage menu introduced in the fourth quarter of fiscal 2022 compared to fiscal 2019. As customers have returned to "normal" activities such as going to the movie theatre, they have demonstrated a propensity to spend at a higher rate than before the pandemic.

closures. In addition, a portion of the 2022. The increase in our average concession revenues per person favorably impacted our concession revenues of our comparable theatres by \$9.4 million during the fiscal 2023 compared to fiscal 2019 may be attributed to shorter lines at our concession stand due to reduced attendance (during periods of high attendance, some customers do not purchase concessions because the line is too long). We also believe that an increased percentage of customers buying their concessions in advance using our website, kiosk or our mobile app likely contributed to higher average concession revenues per person, as our experience has shown that customers are more likely to purchase more items when they order and pay electronically. 2022. We expect to continue to report increased average concession revenues per person in future periods, but whether our customers will continue to spend at these current significantly higher levels in future periods is currently unknown.

Other revenues, which include management fees, pre-show advertising income, family entertainment center revenues, surcharge revenues, mobile app revenues, rental income and gift card breakage income, increased by \$7.3 million \$2.5 million during fiscal 2022 2023 compared to fiscal 2021 2022. The fluctuations in other revenue were primarily due to the impact of changes in attendance on internet surcharge ticketing fees and preshow advertising income. We currently expect other revenues (particularly pre-show advertising and surcharge revenues), to increase in fiscal 2023 if attendance increases as we anticipate.

The film product release schedule for fiscal 2023 2024 has solidified in recent months. Several films that have contributed to our early fiscal 2023 2024 first quarter results include *Avatar: The Way of Water*, *Puss in Boots: The Last Wish*, *Wonka*, *Mean Girls*, *M3GAN*, *A Man Called Otto*, *Bob Marley: One Love*, *Migration*, *Anyone But You*, *The Beekeeper* and *Ant-Man & Aquaman and the Wasp: Quantumania* *Lost Kingdom*. Although it is possible that schedule changes may occur, new films scheduled to be released during the remainder of fiscal 2023 2024 that have potential to perform very well include *Creed III*, *Scream VI*, *Shazam! Fury of the Gods*, *John Wick: Chapter 4*, *Dungeons & Dragons: Honor Among Thieves*, *The Super Mario Bros. Movie*, *Guardians of the Galaxy Vol. 3*, *Fast X*, *The Little Mermaid*, *Spider-Man: Across the Spiderverse*, *Transformers: Rise of the Beasts*, *Elemental*, *The Flash*, *Indiana Jones & The Dial of Destiny*, *The Marvels*, *Mission: Impossible - Dead Reckoning Part One*, *Barbie*, *Oppenheimer*, *The Haunted Mansion*, *Gran Turismo*, *Teenage Mutant Ninja Turtles: Mutant Mayhem*, *The Meg 2*, *Trolls 3*, *Hunger Games: The Ballad of Songbirds and Snakes*, *Wish*, *Dune: Part Two*, *Wonka*, *Kung Fu Panda 4*, *Ghostbusters: Frozen Empire*, *Godzilla x Kong: The Ghostbusters Sequel* *New Empire*, *The Fall Guy*, *If, Kingdom of the Planet of the Apes*, *Furiosa: A Mad Max Saga*, *The Garfield Movie*, *Inside Out 2*, *Ballerina*, *The Watchers*, *Bad Boys 4*, *It Ends With Us*, *A Quiet Place: Day One*, *Deadpool 3*, *Despicable Me 4*, *Twisters*, *Speak No Evil*, *Borderlands*, *Alien: Romulus*, *Kraven the Hunter*, *Beetlejuice 2*, *Wolfs*, *Transformers: One*, *Joker: Folie A Deux*, *Saw XI*, *Smile 2*, *Venom 3*, *White Bird*, *Alto Knights*, *The Amateur*, *Lord of the Rings: The War of the Rohirrim*, *Moana 2*, *White Bird*, *Karate Kid*, *Mufasa: The Lion King* and *Aquaman and Sonic the Lost Kingdom* *Hedgehog 3*.

Revenues for the theatre business and the motion picture industry in general are heavily dependent on the general audience appeal of available films, together with studio marketing, advertising and support campaigns and the maintenance of appropriate "windows" between the date a film is released in theatres and the date a motion picture is released to other channels, including premium video-on-demand ("PVOD"), video on-demand ("VOD"), streaming services and DVD. These are factors over which we have no control (see additional detail in the "Impact of COVID-19 Pandemic" section above). We currently believe that "day-and-date" film release experiments such as those tested during the pandemic will not become the norm. Throughout fiscal 2022 we saw a reduction in the number of films released day-and-date and an increase in the number of films with exclusive theatrical windows.

During fiscal 2022 2023, we made decisions to close several underperforming theatres, including three owned theatres in Minnesota and two owned theatres and one leased theatre in Wisconsin. During fiscal 2023, we converted four one existing screens screen to SuperScreen DLX and converted one existing screen to ScreenX to add additional premium large format PLF screens at four two of our theatres. Early in our fiscal 2023 first quarter we made the decision to close one of our owned theatres.

Hotels and Resorts

The hotels and resorts division contributed 39.8% 37.1% of our consolidated revenues during fiscal 2022, 2023, compared to 40.7% 39.8% and 44.0% 40.7%, respectively, during fiscal 2021 2022 and fiscal 2020, 2021. The hotels and resorts division contributed 69.8% 32.6% and 26.5% 69.8%, respectively, of consolidated operating income (loss), excluding corporate items, during fiscal 2022 2023 and fiscal 2020, 2022. During fiscal 2021 the hotels and resorts division contributed operating income compared with a consolidated operating loss, excluding corporate items. As of December 29, 2022 December 28, 2023, the hotels and resorts division owned and operated three full-service hotels in downtown Milwaukee, Wisconsin, a full-service destination resort in Lake Geneva, Wisconsin and full-service hotels in Madison, Wisconsin, Chicago, Illinois, and Lincoln, Nebraska. In addition, the hotels and resorts division managed eight hotels, resorts and other properties for other owners. Included in the eight managed properties is one hotel owned by a joint venture in which we have a minority interest and two condominium hotels in which we own some or all of the public space. The following tables set forth revenues, operating income (loss), operating margin and rooms data for the hotels and resorts division for the past three fiscal years:

	F23 v. F22				F22 v. F21			
	F2023	F2022	Amt.	Pct.	F2021	Amt.	Pct.	
(in millions, except percentages)								
Revenues	\$ 270.8	\$ 269.3	\$ 1.5	0.6 %	\$ 186.6	\$ 82.6	44.3 %	
Operating income	17.5	18.7	(1.2)	(6.3)%	5.9	12.8	218.8 %	
Operating margin	6.5 %	6.9 %			3.1 %			

Available rooms at period-end	F2023	F2022	F2021
Company-owned	2,406	2,406	2,628
Management contracts with joint ventures	248	248	248
Management contracts with condominium hotels	480	480	480
Management contracts with other owners	1,269	1,737	2,088
Total available rooms	4,403	4,871	5,444

The following table provides a further breakdown of the components of revenues for the hotels and resorts division for the last three fiscal years:

	F23 v. F22				F22 v. F21		
	F2023	F2022	Amt.	Pct.	F2021	Amt.	Pct.
	(in millions, except percentages)						
Room revenues	\$ 106.6	\$ 107.7	\$ (1.1)	(1.0)%	\$ 77.7	\$ 30.0	38.7 %
Food/beverage revenues	73.3	74.8	(1.6)	(2.1)%	47.1	27.8	58.9 %
Other revenues	53.5	53.1	0.4	0.8 %	43.2	9.9	22.9 %
Total revenues before cost reimbursements	233.4	235.7	(2.2)	(0.9)%	168.0	67.7	40.3 %
Cost reimbursements	37.4	33.6	3.8	11.3 %	18.7	15.0	80.0 %
Total revenues	\$ 270.8	\$ 269.3	\$ 1.5	0.6 %	\$ 186.6	\$ 82.6	44.3 %

Fiscal 2023 versus Fiscal 2022

On December 16, 2022 we completed the sale of The Skirvin Hilton in Oklahoma City, Oklahoma (we held a majority-ownership position in this hotel prior to its sale). The results of The Skirvin Hilton are included in our divisional and consolidated results of operations during fiscal 2022 through the date of the sale. In addition, the

Excluding The Skirvin Hilton from fiscal 2022 results, hotels and resorts division managed nine revenues increased 6.9% during fiscal 2023 compared to fiscal 2022. Excluding The Skirvin Hilton from fiscal 2022 results, hotels and resorts and other properties for other owners. Included in the nine managed properties is one hotel owned operating income during fiscal 2023 increased slightly compared to fiscal 2022, with higher revenues partially offset by a joint venture in which increased labor costs during fiscal 2023 as we have a minority interest and two condominium hotels in which we own some or all of the public space. The following increased our staffing levels to enhance customer experience compared to fiscal 2022 when various positions were unfilled due to staffing shortages.

tables set forth Total revenues operating income (loss), operating margin and rooms data for the hotels and resorts division for the past three fiscal years:

	F22 v. F21				F21 v. F20		
	F2022	F2021	Amt.	Pct.	F2020	Amt.	Pct.
	(in millions, except percentages)						
Revenues	\$ 269.3	\$ 186.6	\$ 82.6	44.3 %	\$ 104.6	\$ 82.0	78.4 %
Operating income (loss)	\$ 18.7	\$ 5.9	\$ 12.8	216.9 %	\$ (43.9)	\$ 49.8	113.4 %
Operating margin	6.9 %	3.1 %			(41.9)%		

Available rooms at period-end	F2022	F2021	F2020
Company-owned	2,406	2,628	2,628
Management contracts with joint ventures	248	248	333
Management contracts with condominium hotels	480	480	480
Management contracts with other owners	1,737	2,088	1,691
Total available rooms	4,871	5,444	5,132

The following table provides a further breakdown of the components of revenues for the hotels and resorts division for the last three fiscal years:

	F22 v. F21				F21 v. F20		
	F2022	F2021	Amt.	Pct.	F2020	Amt.	Pct.
	(in millions, except percentages)						
Room revenues	\$ 107.7	\$ 77.7	\$ 30.0	38.7 %	\$ 35.4	\$ 42.3	119.4 %
Food/beverage revenues	74.8	47.1	27.8	58.9 %	24.8	22.3	89.7 %
Other revenues	53.1	43.2	9.9	22.9 %	27.6	15.7	56.9 %
Total revenues before cost reimbursements	235.7	168.0	67.7	40.3 %	87.8	80.2	91.4 %
Cost reimbursements	33.6	18.7	15.0	80.0 %	16.9	1.8	10.7 %
Total revenues	\$ 269.3	\$ 186.6	\$ 82.6	44.3 %	\$ 104.6	\$ 82.0	78.4 %

Fiscal 2022 versus Fiscal 2021

Our hotels and resorts division revenues and operating income before cost reimbursements increased significantly 6.3% during fiscal 2022 compared to fiscal 2021 as travel demand continued to increase as 2022, excluding the COVID-19 pandemic subsided throughout fiscal 2022. impact of the sale of The Skirvin Hilton. All of our company-owned hotels and resorts contributed to the improved operating results revenue during fiscal 2022, with occupancy increasing at five of our seven owned hotels and average daily rate increasing at all seven of our company hotels compared to fiscal 2021. Strong leisure travel demand continued growth in fiscal 2022, and the return of group business in during fiscal 2022 resulted in increased revenues compared to fiscal 2021. 2022, while leisure travel softened slightly compared to fiscal 2022, normalizing near pre-pandemic demand levels. The increase in group revenues during fiscal 2022 has consequently led to an increase in banquet and catering revenues, positively impacting our food and beverage revenues as compared to fiscal 2021. In fiscal 2021, operating income benefited from nonrecurring state government grants and federal tax credits totaling approximately \$3.4 million. 2022.

Other revenues during fiscal 2022 and fiscal 2021 included ski, spa and golf revenues at our Grand Geneva Resort & Spa, management fees, laundry revenues, parking revenues and rental revenues. Other revenues increased during fiscal 2022 compared to fiscal 2021 primarily due to increased occupancies at our owned and managed hotels and resorts. resorts, higher golf and resort fees and higher laundry revenues, partially offset by lower ski revenues. Cost reimbursements increased during fiscal 2022 compared to fiscal 2021 as occupancy and revenue at managed hotels increased.

As a result of the significantly reduced revenues during fiscal 2021, we believe it is also beneficial to compare our revenues to pre-pandemic levels. The following table compares the components of revenues for the hotels and resorts division for fiscal 2022 to fiscal 2019:

	F22 v. F19			
	F2022	F2019	Amt.	Pct.
			(in millions, except percentages)	
Room revenues	\$ 107.7	\$ 105.9	\$ 1.8	1.7 %
Food/beverage revenues	74.8	74.7	0.2	0.2 %
Other revenues	53.1	46.5	6.6	14.1 %
Total revenues before cost reimbursements	235.7	227.1	8.6	3.8 %
Cost reimbursements	33.6	36.3	(2.6)	(7.3)%
Total revenues	\$ 269.3	\$ 263.4	\$ 5.9	2.3 %

Strong leisure travel demand more than offset lower transient and group business during fiscal 2022 compared to fiscal 2019, resulting in the division exceeding pre-pandemic revenue levels in fiscal 2022. Other revenues increased during fiscal 2022 compared to fiscal 2019, primarily due to increased revenues from one of our condominium hotels and increased ski and golf revenues at the Grand Geneva Resort & Spa, partially offset by decreased management fees. Cost reimbursements decreased during fiscal 2022 compared to fiscal 2019 primarily due to managing three fewer hotels.

The following table sets forth certain operating statistics, including our average occupancy percentage (number of occupied rooms as a percentage of available rooms), our average daily room rate ("ADR"), and our total revenue per available room ("RevPAR"), for company-owned properties:

Operating Statistics ⁽¹⁾	F2022	F2021	F22 v. F21	
			Amt.	Pct.
Occupancy percentage	61.8 %	48.1 %	13.7 pts	28.5 %
ADR	\$ 178.41	\$ 163.64	\$ 14.77	9.0 %
RevPAR	\$ 110.33	\$ 78.78	\$ 31.55	40.0 %

(1) These operating statistics represent averages of our comparable eight distinct company-owned hotels and resorts (including The Skirvin Hilton through its date of sale), branded and unbranded, in different geographic markets with a wide range of individual hotel performance. The statistics are not necessarily representative of any particular hotel or resort.

RevPAR increased at all eight of our company-owned properties during fiscal 2022 compared to fiscal 2021. The leisure travel customer continued to provide strong weekend business at the majority of our properties and growth in group business and transient business travel during weekdays resulted in occupancy increasing approximately 14 percentage points in fiscal 2022 compared to fiscal 2021. During fiscal 2022, our group business represented approximately 36% of our total rooms revenue, compared to approximately 29% during fiscal 2021, and 40% during fiscal 2019 prior to the pandemic – an indication that group business is recovering but remains below pre-pandemic levels. Non-group retail pricing remained very strong in the majority of our markets and significant leisure demand at Grand Geneva contributed to increased occupancy percentages and ADR.

As a result of the significantly reduced revenues during 2021, we believe it is also beneficial to compare our operating statistics to pre-pandemic levels. The following table sets forth certain operating statistics for fiscal 2021 and fiscal 2019, including our average occupancy percentage, our ADR, and our RevPAR, for company-owned properties:

F22 v. F19	F23 v. F22	F23 v. F22
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Operating Statistics ⁽¹⁾	Operating Statistics ⁽¹⁾	F2022	F2019	Amt.	Pct.	Operating Statistics ⁽¹⁾	F2023	F2022	Amt.	Pct.
Occupancy percentage	Occupancy percentage	62.3 %	73.6 %	(11.3) pts	(15.4)%	Occupancy percentage	63.7 %	60.7 %	3.0 pts	4.9 %
ADR	ADR	\$176.10	\$154.42	\$21.68	14.0 %	ADR	\$ 186.43	\$ 180.55	\$ 5.88	3.3 %
RevPAR	RevPAR	\$109.63	\$113.65	\$ (4.02)	(3.5)%	RevPAR	\$ 118.72	\$ 109.55	\$ 9.17	8.4 %

(1) These operating statistics represent averages of our comparable seven distinct company-owned hotels and resorts, (including The Skirvin Hilton through its date of sale), branded and unbranded, in different geographic markets with a wide range of individual hotel performance. The statistics are not necessarily representative of any particular hotel or resort. The statistics exclude Skirvin Hilton is not included in the Saint Kate, as this hotel was closed for fiscal 2022 statistics.

RevPAR increased at all seven of our company-owned properties during fiscal 2023 compared to fiscal 2022. Growth in group business primarily during weekdays resulted in occupancy increasing approximately 3 percentage points in fiscal 2023 compared to fiscal 2022. During fiscal 2023, our group business represented approximately 37.2% of our total rooms revenue, compared to approximately 35.6% during fiscal 2022, and 39.9% during fiscal 2019 prior to the pandemic – an indication that group business is recovering but remains below pre-pandemic levels. Non-group retail pricing remained strong in the majority of the first half of fiscal 2019.

our markets contributing to increased ADR.

According to data received from Smith Travel Research and compiled by us in order to analyze our fiscal 2022 2023 results, comparable “upper upscale” hotels throughout the United States experienced a decrease an increase in RevPAR of 2.0% 8.5% during fiscal 2022 2023 compared to fiscal 2019, 2022. Thus, we believe we underperformed our RevPAR growth of 8.4% generally performed in-line with the industry during fiscal 2022 by approximately 1.5 percentage points. We believe this underperformance results from the customer mix shift described above with an increase in the percentage of group business at lower daily rates and a decrease in the percentage of leisure customers at higher daily rates. While this shift is unfavorable to RevPAR, the higher mix of group business results in a corresponding increase in food and beverage revenues. We also believe our underperformance was impacted by two of our hotels that depend on citywide convention business that did not yet return in fiscal 2022, resulting in lower occupancy at these properties. In addition, we believe during fiscal 2022 leisure travel was stronger in other U.S. markets as travelers returned to flying and taking longer trips, particularly warm weather “fly-to” destinations in which we do not have a presence, which contributed to our underperformance, 2023.

Data received from Smith Travel Research for our various “competitive sets” – hotels identified in our specific markets that we deem to be competitors to our hotels – indicates that these hotels experienced a decrease an increase in RevPAR of 7.8% 9.1% during fiscal 2022 2023 compared to fiscal 2019, 2022. Thus, we believe we outperformed underperformed our competitive sets during fiscal 2022 2023 by approximately 4.3 0.7 percentage points.

In order We believe our underperformance to better understand our competitive sets during fiscal 2023 results primarily because occupancy at our hotels recovered earlier in fiscal 2022, particularly in the current pace of the hotel industry recovery, the following table sets forth the change in our average occupancy percentage, ADR and RevPAR for each quarterly period first quarter of fiscal 2022, than our competitive sets, which generally lagged our occupancy levels in fiscal 2022. This resulted in our competitive sets growing occupancy at a faster rate than our owned hotels during fiscal 2023 compared to the same quarters during fiscal 2019 (excluding prior year).

We generally expect our revenue trends to track or exceed the Saint Kate):

	F22 v. F19			
	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.
Occupancy percentage	(15.7) pts	(11.1) pts	(8.0) pts	(10.8) pts
ADR	11.5 %	9.3 %	16.6 %	15.3 %
RevPAR	(15.6)%	(6.3)%	5.3 %	(2.8)%

As noted above, overall industry trends for our segment of the leisure travel customer and returning group business provided the most demand during fiscal 2022. Leisure travel historically peaks industry, particularly in our fiscal third quarter and decreases during our fiscal first and fourth quarters as students go back to school and we experience colder weather in our predominantly Midwestern hotels. Transient business travel subsequent to the onset of the COVID-19 pandemic has remained significantly below fiscal 2019 levels. Our company-owned hotels, and in particular our largest hotels, respective markets. Hotel revenues have historically derived a significant portion of their revenues from group business, and tracked very closely with traditional macroeconomic statistics, such as a result, we are more susceptible to variations in RevPAR from quarter to quarter depending upon the strength of the group business market during that particular quarter. As indicated by the increase in ADR during fiscal 2022 compared to fiscal 2019, non-group retail pricing held relatively strong throughout the year, with most of any periodic fluctuations in ADR being due to reductions in market pricing resulting from the lack of transient business and group business travel midweek.

Gross Domestic Product. Looking to future periods, while overall occupancy in the U.S. continues to slowly increase, the rate of ADR growth has declined throughout fiscal 2023 following several years of significant growth and we expect lower ADR growth in recent months reaching its highest level since the start of the pandemic, fiscal 2024. In the near term, we expect most leisure travel demand will to normalize near pre-pandemic levels and group business to continue to come from the leisure travel segment, grow. Leisure travel in our markets has a seasonal component, peaking in the summer months and slowing down as children return to school and the weather turns colder. We are experiencing gradual increases in business travel as corporate training events, meetings, and conferences return and workers continue to increase the number of days in downtown offices reopen. Our company-owned offices.

In fiscal 2024, we expect to benefit from increases in business at our three hotels in downtown Milwaukee as the city hosts the Republican National Convention (“RNC”), which will occur during our fiscal third quarter. The RNC has favorably impacted our group room revenue and banquet and catering revenue bookings for fiscal 2024. We believe this event will not only favorably impact fiscal 2024, but has the potential to have experienced a decrease in group bookings compared positive long-term impact on the overall market as the first major event showcasing the city’s expanded convention center, Baird Center. The Baird Center expansion doubles the size of the overall convention center to pre-pandemic periods 1.3 million total square feet and brings the advance booking period for exhibition hall to 300,000 contiguous square feet, as well as expanded ballroom and meeting space. We expect the expansion will allow Baird Center to host a greater number of events has gotten shorter, each year, as well as hosting larger convention events.

As of the date of this report and excluding the impact of the RNC, our group room revenue bookings for fiscal 2023 2024 - commonly referred to in the hotels and resorts industry as “group pace” - is running approximately in-line with 10% ahead where we were at the same time of the year pre-pandemic, last year. Group room revenue bookings for fiscal 2024 2025 is running approximately 24% 43% ahead of where we were at the same time in early fiscal 2022 2023 for fiscal 2023, but behind where we were at the same time of the year pre-pandemic, 2024. Banquet and catering revenue pace for fiscal 2023 2024 and fiscal 2024 2025 is similarly running behind ahead of where we would typically be at this same time of the year pre-pandemic, which we believe is partially due to a shortening of the advance period for group bookings, last year. We are encouraged by continuing positive trends in group bookings for fiscal 2023 2024 and beyond.

Forecasting what future RevPAR growth or decline will be during the next 18 to 24 months is very difficult at this time. The non-group booking window remains very short, with most bookings occurring within seven days of arrival, making even short-term forecasts of future RevPAR growth difficult. Hotel revenues have historically tracked very closely with traditional macroeconomic statistics such as the Gross Domestic Product, so we will be monitoring the economic environment very closely. After past shocks to the system, such as the terrorist attacks on September 11, 2001 and the 2008 financial crisis, hotel demand took longer to recover than other components of the economy. Conversely, we now anticipate that hotel supply growth will be limited for the foreseeable future, which can be beneficial for our existing hotels. We are encouraged by the return of group business during fiscal 2022, which exceeded both our own and industry expectations. Most industry experts believe the recovery in transient business travel will continue slowly over the next several years. We will continue to focus on reaching the drive-to leisure market through aggressive campaigns promoting creative packages for our guests. Overall, we generally expect our revenue trends to track or exceed the overall industry trends for our segment of the industry, particularly in our respective markets.

During the first fourth quarter of fiscal 2022 2023 we ceased management of The DoubleTree by Hilton El Paso Downtown and Hyatt Regency Schaumburg in Schaumburg, Illinois when the Courtyard by Marriott El Paso Downtown/Convention Center hotel was sold to new ownership. As of the date of this filing, our current portfolio of hotels and resorts includes 16 15 owned and managed properties across the country.

As discussed in the “Current Plans” section of this MD&A, although we will prioritize our own finances, we will consider are considering a number of potential growth opportunities that may impact fiscal 2023 2024 and future period operating results. In addition, if we were to sell one or more hotels during fiscal 2023, 2024, our fiscal 2023 2024 operating results could be significantly impacted. The extent of any such impact will likely depend upon the timing and nature of the growth opportunity (pure management contract, management contract with equity, joint venture investment, or other opportunity) or divestiture (management retained, equity interest retained, etc.).

Adjusted EBITDA

Adjusted EBITDA is a measure used by management and our board of directors to assess our financial performance and enterprise value. We believe that Adjusted EBITDA is a useful supplemental measure for us and investors, as it eliminates certain expenses that are not indicative of our core operating performance and facilitates a comparison of our core operating performance on a consistent basis from period to period. We also use Adjusted EBITDA as a basis to determine certain annual cash bonuses and long-term incentive awards, to supplement GAAP measures of performance to evaluate the effectiveness of our business strategies, to make budgeting decisions, and to compare our performance against that of other peer companies using similar measures. Adjusted EBITDA is also used by analysts, investors and other interested parties as a performance measure to evaluate industry competitors.

Adjusted EBITDA is a non-GAAP measure of our financial performance and should not be considered as an alternative to net earnings (loss) as a measure of financial performance, or any other performance measure derived in accordance with GAAP. Additionally, Adjusted EBITDA is not intended to be a measure of liquidity or free cash flow for management’s discretionary use. Adjusted EBITDA has its limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP.

We define Adjusted EBITDA as net earnings (loss) attributable to The Marcus Corporation before investment income or loss, interest expense, other expense, gain or loss on disposition of property, equipment and other assets, impairment charges, equity earnings or losses from unconsolidated joint ventures, net earnings or losses attributable to noncontrolling interests, income taxes and depreciation and amortization, adjusted to eliminate the impact of certain items that we do not consider indicative of our core operating performance. These further adjustments are itemized below. You are encouraged to evaluate these adjustments and the reasons we consider them appropriate for supplemental analysis. In evaluating Adjusted EBITDA, you should be aware that in the future we will incur expenses that are the same as or similar to some of the items eliminated in the adjustments made to determine Adjusted EBITDA, such as acquisition expenses, preopening expenses, accelerated depreciation, impairment charges and other adjustments. Our presentation of Adjusted EBITDA should not be construed to imply that our future results will be unaffected by any such adjustments. Definitions and calculations of Adjusted EBITDA differ among companies in our industries, and therefore Adjusted EBITDA disclosed by us may not be comparable to the measures disclosed by other companies.

The following table sets forth Adjusted EBITDA by reportable operating segment for the last three fiscal years (in millions, except for variance percentage):

F23 v. F22					
F2023		F2023	F2022	Amt.	Pct.
F22 v. F21		F21 v. F20			

		F2022	F2021	Amt.	Pct.	F2020	Amt.	Pct.													
		(in millions, except percentages)																			
		(in millions, except percentages)																			
		(in millions, except percentages)																			
		(in millions, except percentages)																			
Theatres	Theatres	\$60.0	\$24.9	\$35.0	140.6	%	\$(42.2)	\$67.1	(159.1)%	Theatres	\$ 86.4	\$		\$ 60.0	\$	\$26.5	44.1	44.1	%	\$24.9	\$
Hotels and resorts	Hotels and resorts	38.9	24.4	14.5	59.4	%	(17.6)	42.0	(239.0)%	Hotels and resorts	37.7	38.9	38.9	(1.2)	(1.2)	(3.0)	(3.0)	%	24.4		
Corporate items	Corporate items	(13.8)	(14.3)	0.5	(3.3)%	(11.8)	(2.4)	20.5	%	Corporate items	(15.4)	(13.8)	(13.8)	(1.6)	(1.6)	11.9	11.9	%	(14.3)		
Adjusted EBITDA	Adjusted EBITDA	\$85.1	\$35.1	50.0	142.5	%	\$(71.6)	106.7	(149.0)%	Adjusted EBITDA	\$108.7	\$	\$ 85.1	23.6	23.6	27.8	27.8	%	\$ 35.1		

The following table sets forth our reconciliation of Adjusted EBITDA (in millions):

Depreciation and amortization	Depreciation and amortization	67.1	72.1	75.1
Share-based compensation expenses ⁽¹⁾	Share-based compensation expenses ⁽¹⁾	8.2	9.3	4.4
Property closure/reopening expenses ⁽²⁾⁽³⁾		—	—	11.5
Impairment charges ⁽⁴⁾		1.5	5.8	24.7
Government grants and federal tax credits ⁽⁵⁾		—	(10.7)	(7.0)
Insurance proceeds ⁽⁶⁾		—	—	(1.8)
Impairment charges ⁽²⁾				
Government grants and federal tax credits ⁽³⁾				
Total Adjusted EBITDA	Total Adjusted EBITDA	\$ 85.1	\$ 35.1	\$ (71.6)

The following tables sets forth our reconciliation of Adjusted EBITDA by reportable operating segment (in millions):

		F2022				F2021			
		Hotels & Corp.				Hotels & Corp.			
		Theatres	Resorts	Items	Total	Theatres	Resorts	Items	Total
Operating income (loss)		\$ 8.1	\$ 18.7	\$(18.5)	\$ 8.3	\$ (27.6)	\$ 5.9	\$(19.8)	\$(41.5)
		F2023				F2022			
		Theatres	Hotels & Resorts	Corp. Items	Total	Theatres	Hotels & Resorts	Corp. Items	Total
Operating income									
Depreciation and amortization	Depreciation and amortization	47.6	19.2	0.4	67.1	51.7	20.2	0.3	72.1
Loss (gain) on dispositions of property, equipment and other assets									
Share-based compensation ⁽¹⁾	Share-based compensation ⁽¹⁾	2.8	1.0	4.4	8.2	2.3	1.7	5.3	9.3
Impairment charges ^{(4) (2)}	Impairment charges ^{(4) (2)}	1.5	—	—	1.5	5.8	—	—	5.8
Government grants and federal tax credits ⁽⁵⁾		—	—	—	—	(7.2)	(3.4)	(0.1)	(10.7)
Adjusted EBITDA	Adjusted EBITDA	\$ 60.0	\$ 38.9	\$(13.8)	\$85.1	\$ 24.9	\$ 24.4	\$(14.3)	\$ 35.1
F2020									

	Theatres	Hotels & Resorts	Corp. Items	Total
Operating loss	\$ (121.4)	\$ (43.9)	\$ (13.1)	\$ (178.4)
Depreciation and amortization	53.5	21.1	0.5	75.1
Share-based compensation ⁽¹⁾	1.1	0.7	2.6	4.4
Property closure/reopening expenses ^{(2) (3)}	5.8	5.7	—	11.5
Impairment charges ⁽⁴⁾	24.7	—	—	24.7
Government grants and federal tax credits ⁽⁵⁾	(5.8)	(1.2)	—	(7.0)
Insurance proceeds ⁽⁶⁾	—	—	(1.8)	(1.8)
Adjusted EBITDA	\$ (42.2)	\$ (17.6)	\$ (11.8)	\$ (71.6)

	F2022				F2021			
	Theatres	Hotels & Resorts	Corp. Items	Total	Theatres	Hotels & Resorts	Corp. Items	Total
Operating income (loss)	\$ 8.1	\$ 18.7	\$ (18.5)	\$ 8.3	\$ (27.6)	\$ 5.9	\$ (19.8)	\$ (41.5)
Depreciation and amortization	47.6	19.2	0.4	67.1	51.7	20.2	0.3	72.1
Share-based compensation ⁽¹⁾	2.8	1.0	4.4	8.2	2.3	1.7	5.3	9.3
Impairment charges ⁽²⁾	1.5	—	—	1.5	5.8	—	—	5.8
Government grants and federal tax credits ⁽³⁾	—	—	—	—	(7.2)	(3.4)	(0.1)	(10.7)
Adjusted EBITDA	\$ 60.0	\$ 38.9	\$ (13.8)	\$ 85.1	\$ 24.9	\$ 24.4	\$ (14.3)	\$ 35.1

- (1) Non-cash expense related to share-based compensation programs.
- (2) Reflects nonrecurring costs related to the required closure of all of our movie theatres due to the COVID-19 pandemic, plus subsequent nonrecurring costs related to reopening theatres.
- (3) Reflects nonrecurring costs related to the closure of our hotels and resorts due to reduced occupancy as a result of the COVID-19 pandemic, plus subsequent nonrecurring costs related to reopening hotels.
- (4) Non-cash impairment charges related to two permanently closed theatres and surplus theatre real estate in fiscal 2023, two operating theatres in fiscal 2022 and two operating theatres, three permanently closed theatres and surplus theatre real estate for the in fiscal 2021 periods and intangible assets (trade name) and several theatre locations for the fiscal 2020, 2021.
- (5) (3) Reflects nonrecurring state government grants and federal tax credits awarded to our theatres and hotels for COVID-19 pandemic relief.
- (6) Reflects nonrecurring net insurance proceeds received for COVID-19 related insurance claims.

Liquidity and Capital Resources

Liquidity

Our movie theatre and hotels and resorts businesses when open and operating normally, each generate significant and relatively consistent daily amounts of cash, subject to previously-noted seasonality, because each segment's revenue is derived predominantly from consumer cash purchases. Under normal circumstances, we believe that these relatively consistent and predictable cash sources, as well as the availability of unused credit lines, would be adequate to support the ongoing operational liquidity needs of our businesses.

Maintaining and protecting a strong balance sheet has always been a core philosophy of The Marcus Corporation during our 87-year 88-year history, and despite the COVID-19 pandemic, our financial position remains strong. As of December 29, 2022 December 28, 2023, we had a cash balance of \$21.7 million \$55.6 million, \$221.8 million \$220.6 million of availability under our \$225.0 million revolving credit facility, and our debt-to-capitalization ratio was 0.28, 0.26, and our net leverage was 1.2 times net debt to Adjusted EBITDA. With our strong liquidity position, combined with cash generated from operations and proceeds from the sale of surplus real estate (discussed above under "Current Plans"), we believe we are positioned to meet our obligations as they come due and continue to sustain our operations throughout fiscal 2023 2024 and beyond, as well as our longer-term capital requirements, even if requirements.

The following table sets forth our properties continue reconciliations of Net Debt and Net Leverage (Net Debt to generate reduced revenues during these periods. In recognition Adjusted EBITDA) (in millions, except leverage ratio):

	December 28, 2023	December 29, 2022
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Long-term debt (GAAP measure) ⁽¹⁾	\$	169.9	\$	180.4
Finance lease obligations (GAAP measure) ⁽²⁾		15.3		17.5
Less: Cash and cash equivalents		(55.6)		(21.7)
Net Debt	\$	129.6	\$	176.2
Net Debt	\$	129.6	\$	176.2
Adjusted EBITDA		108.7		85.1
Net Leverage (Net Debt to Adjusted EBITDA)		1.19x		2.07x

(1) Represents total long-term debt, including the current portion of long-term debt.

(2) Represents total finance lease obligations, including the current portion of finance lease obligations.

We believe Net Leverage is a useful measure, as it provides management and investors an indication of our significantly improved financial condition and improving operating results, during the third quarter of fiscal 2022 we elected indebtedness less unrestricted cash relative to pay off our remaining short-term borrowings of \$46.6 million early (initially borrowed at the onset of the pandemic) and reinstate our quarterly dividend, earnings performance.

Credit Agreement

On January 9, 2020, we entered into a Credit Agreement with several banks, including JPMorgan Chase Bank, N.A., as Administrative Agent, and U.S. Bank National Association, as Syndication Agent. On April 29, 2020, we entered into the First Amendment, on September 15, 2020, we entered into the Second Amendment, on July 13, 2021, we entered into the Third Amendment, on July 29, 2022, we entered into the Fourth Amendment, and on February 10, 2023, we entered into the Fifth Amendment, and on October 16, 2023, we entered into the Sixth Amendment (the Credit Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Fifth Sixth Amendment, hereinafter referred to as the "Credit Agreement").

The Credit Agreement provides for a new five-year revolving credit facility that matures on January 9, 2025 October 16, 2028 with an initial maximum aggregate amount of availability of \$225 million. We may request an increase in the aggregate amount of availability under the Credit Agreement by an aggregate amount of up to \$125 million by increasing the revolving credit facility or adding one or more tranches of term loans. Our ability to increase availability under the Credit Agreement is subject to certain conditions, including, among other things, the absence of any default or event of default or material adverse effect under the Credit Agreement. In conjunction

The Sixth Amendment amended the Credit Agreement to, among other things: (i) revise the applicable interest rates for benchmark and ABR (defined below) loans to be determined by a net leverage ratio, rather than the previously used debt to capitalization ratio; (ii) revise the definition of consolidated EBITDA to exclude certain non-recurring costs and one-time expenses and exclude certain non-recurring recognized gains; (iii) exclude our hotel properties and certain theatre properties from the collateral under the Credit Agreement; (iv) revise the financial covenants to eliminate covenants regarding the consolidated fixed charge coverage ratio and consolidated debt to capitalization ratio and replace these covenants with a requirement that our consolidated net leverage ratio not exceed 3.50:1.00, provided that, with some limitations, such ratio may be increased to 4.00:1.00 for the First Amendment, we also added an initial \$90.8 million term loan facility that was scheduled to mature on September 22, 2021. In conjunction with the Third Amendment entered into early full fiscal quarter in our fiscal 2021 third quarter, the term loan facility was reduced to \$50.0 million which a material acquisition (in which aggregate consideration equals or exceeds \$30,000,000) is consummated and the maturity date was extended three fiscal quarters immediately thereafter; (v) replace the required consolidated fixed charge coverage ratio with a covenant that our interest coverage ratio at the end of any fiscal quarter not be less than 3.00:1.00; (vi) revise permitted indebtedness under the agreement to September 22, 2022. During include, among other items, (a) borrowings or finance lease obligations to finance capital expenditures up to \$40 million at any time outstanding, (b) indebtedness under our senior notes up to \$100 million at any time outstanding; (c) indebtedness of up to \$25 million in any new restricted subsidiaries at the third quarter of fiscal 2022, on July 29, 2022 we repaid \$46.6 million of short-term borrowings, repaying in full time such entity becomes a restricted subsidiary, (d) other indebtedness not exceeding \$50 million at any time outstanding and retiring (e) other indebtedness as long as the term loan facility.

During fiscal 2022 consolidated net leverage ratio is at least 0.25 less than otherwise required under the Credit Agreement; and prior (vii) revise the covenants to the Fifth Amendment, borrowings allow us to make investments as long as no default has occurred under the Credit Agreement, generally or would occur as a result of the investment, as long as the consolidated net leverage ratio is at least 0.25 less than otherwise required under the Credit Agreement.

Borrowings under the Credit Agreement bear interest at a variable rate equal to: to (i) LIBOR, subject to a 1% floor, plus a specified margin based upon our consolidated debt to capitalization ratio as of the most recent determination date; or (ii) the base rate (which is the highest of (a) the prime rate, (b) the greater of the federal funds rate and the overnight bank funding rate plus 0.50% or (c) the sum of 1% plus one-month LIBOR), subject to a 1% floor, plus a specified margin based upon our consolidated debt to capitalization ratio as of the most recent determination date. In addition, the Credit Agreement generally requires us to pay a facility fee equal to 0.125% to 0.25% of the total revolving commitment, depending on our consolidated debt to capitalization ratio, as defined in the Credit Agreement. However, pursuant to the First Amendment and the Second Amendment: (A) in respect of revolving loans, (1) we are charged a facility fee equal to 0.40% of the total revolving credit facility commitment and (2) the specified margin is 2.35% for LIBOR borrowings and 1.35% for ABR borrowings, which facility fee rate and specified margins will remain in effect until the end of the first fiscal quarter ending after the end of any period in which any portion of the term loan facility remains outstanding or the testing of any financial covenant in the Credit Agreement is suspended (the "specified period"); and (B) in respect of term loans, the specified margin is 2.75% for LIBOR borrowings and 1.75% for ABR borrowings, in each case, at all times.

Effective with the Fifth Amendment on February 10, 2023, the variable rate LIBOR benchmark in the Credit Agreement was replaced with the secured overnight financing rate ("SOFR"). Borrowings under the Credit Agreement now generally bear interest at a variable rate equal to: (i) SOFR, plus a credit spread adjustment of 0.10%, subject to a 0% floor, plus a specified margin based upon our consolidated debt to capitalization net leverage ratio as of the most recent determination date; date, or (ii) the alternate base rate ("ABR") (which is the highest of (a) the prime rate, (b) the greater of the federal funds rate and the overnight bank funding rate plus 0.50% or (c) the sum of 1% plus one-month SOFR plus a credit spread adjustment of 0.10%), subject to a 1% floor, plus a specified margin based upon our consolidated debt to capitalization net leverage ratio as of the most recent determination date. In addition, the Credit Agreement generally requires us to pay a facility fee equal to 0.125% to 0.25% date; provided, however, as of the total revolving commitment, depending on our consolidated debt to capitalization ratio, as defined in effective date of the Credit Agreement. However, pursuant to the First Sixth Amendment, the Second Amendment and the Fifth Amendment: (A) in respect of revolving loans, (1) we are charged a facility fee equal to 0.40% of the total revolving credit facility commitment and (2) the specified applicable margin is 2.35% 1.75% for SOFR borrowings and 1.35% 0.75% for ABR borrowings, which and will be adjusted for the first time thereafter based upon

our net leverage ratio as determined for the fiscal year ending December 28, 2023. We are required to pay a variable rate facility fee rate depending on our consolidated net leverage ratio; provided, however that such fee will be 0.25% and specified margins will remain in effect until the end of be adjusted for the first fiscal quarter ending after the end of any period in which the testing of any financial covenant in the Credit Agreement is suspended (the "specified period"); and (B) in respect of term loans, the specified margin is 2.75% for SOFR borrowings and 1.75% for ABR borrowings, in each case, at all times.

The Credit Agreement contains various restrictions and covenants applicable to us and certain of our subsidiaries. Among other requirements, the Credit Agreement (a) limits the amount of priority debt (as defined in the Credit Agreement) held by our restricted subsidiaries to no more than 20% of time thereafter based upon our consolidated total capitalization (as defined in the Credit Agreement), (b) limits our permissible consolidated debt to capitalization net leverage ratio to a maximum of 0.55 to 1.0, (c) requires us to maintain a consolidated fixed charge coverage ratio of at least 2.5 to 1.0 as of the end of determined for the fiscal quarter year ending March 30, 2023 and each fiscal quarter thereafter, (d) restricts our ability and certain of our subsidiaries' ability to incur additional indebtedness, pay dividends and other distributions (the restriction on dividends and other distributions does not apply to subsidiaries), and make voluntary prepayments on or defeasance of our 4.02% Senior Notes due August 2025, 4.32% Senior Notes due February 2027, the notes or certain other convertible securities, (e) requires our consolidated EBITDA not to be less than or equal to \$70 million as of December 29, 2022 for the four consecutive fiscal quarters then ending, (f) requires our consolidated liquidity not to be less than or equal to \$50 million as of the end of the fiscal quarter ending December 29, 2022, and (g) prohibits us and certain of our subsidiaries from incurring or making capital expenditures, in the aggregate for us and such subsidiaries, (i) during fiscal 2021 in excess of the sum of \$40.0 million plus certain adjustments, or (ii) during fiscal 2022 in excess of \$50 million plus certain adjustments.

Pursuant to the Credit Agreement, if, at any time during the specified period, we and certain of our subsidiaries' aggregate unrestricted cash on hand exceeds \$75 million, the Credit Agreement requires us to prepay revolving loans under the Credit Agreement by the amount of such excess, without a corresponding reduction in the revolving commitments under the Credit Agreement. December 28, 2023.

In connection with the Credit Agreement: (i) we and certain of our subsidiaries have pledged, subject to certain exceptions, security interests and liens in and on (a) substantially all of their respective personal property assets and (b) certain of their respective real property assets, in each case, to secure the Credit Agreement and related obligations; and (ii) certain of our subsidiaries have guaranteed our obligations under the Credit Agreement. The foregoing security interests, liens and guaranties will remain in effect until the Collateral Release Date (as defined in the Credit Agreement).

The Credit Agreement contains customary events of default. If an event of default under the Credit Agreement occurs and is continuing, then, among other things, the lenders may declare any outstanding obligations under the Credit Agreement to be immediately due and payable and exercise rights and remedies against the pledged collateral.

4.02% Senior Notes and 4.32% Senior Notes

On June 27, 2013, we entered into a Note Purchase Agreement (the "4.02% Senior Notes Agreement") with the several purchasers party to the 4.02% Senior Notes Agreement, pursuant to which we issued and sold \$50 million in aggregate principal amount of our 4.02% Senior Notes due August 14, 2025 (the "4.02% Notes") in a private placement exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"). We used the net proceeds from the issuance and sale of the 4.02% Notes to reduce existing borrowings under our revolving credit facility and for general corporate purposes. On December 21, 2016, we entered into a Note Purchase Agreement (the "4.32% Senior Notes Agreement") with the several purchasers party to the 4.32% Senior Notes Agreement, pursuant to which we issued and sold \$50 million in aggregate principal amount of our 4.32% Senior Notes due February 22, 2027 (the "4.32% Notes") and the 4.02% Notes, are together referred to hereafter as the "Notes") in a private placement exempt from the registration requirements of the Securities Act. We used the net proceeds of the sale of the 4.32% Notes to repay outstanding indebtedness and for general corporate purposes.

On February 10, 2023, we entered into an amendment to the 4.02% Senior Notes Agreement (the "4.02% Fifth Amendment"). The 4.02% Senior Notes Agreement, as previously amended and as amended by the 4.02% Fifth Amendment, is hereafter referred to as the "Amended 4.02% Senior Notes Agreement." On February 10, 2023 we entered into an amendment to the 4.32% Senior Notes Agreement (the "4.32% Fifth Amendment"). The 4.32% Senior Notes Agreement, as previously amended and as amended by the 4.32% Fifth Amendment, is hereafter referred to as the "Amended 4.32% Senior Notes Agreement." The Amended 4.02% Senior Notes Agreement and the Amended 4.32% Senior Notes Agreement are together referred to hereafter as the "Amended Senior Notes Agreements."

Interest on the 4.02% Notes is payable semi-annually in arrears on the 14th day of February and August in each year and at maturity. Interest on the 4.32% Notes is payable semi-annually in arrears on the 22nd day of February and August in each year and at maturity. Beginning on August 14, 2021 and on the 14th day of August each year thereafter to and including August 14, 2024, we will be required to prepay \$10 million of the principal amount of the 4.02% Notes. Additionally, we may make optional prepayments at any time upon prior notice of all or part of the Notes, subject to the payment of a make-whole amount (as defined in the Amended Senior Notes Agreements, as applicable). Furthermore, until the last day of the first fiscal quarter ending after the Collateral Release Date (as defined in the Amended Senior Notes Agreements, as applicable), we are required to pay a fee to each Note holder in an amount equal to 0.975% of the aggregate principal amount of Notes held by such holder. Such fee is payable quarterly (0.24375% of the aggregate principal amount of the Notes per quarter). The entire outstanding principal balance of the 4.32% Notes will be due and payable on February 22, 2027. The entire unpaid principal balance of the 4.02% Notes will be due and payable on August 14, 2025. The Notes rank pari passu in right of payment with all of our other senior unsecured debt.

The Amended In connection with entering into the Sixth Amendment to the Credit Agreement, on October 16, 2023, we and certain purchasers entered into the Sixth Amendment to: (i) the Note Purchase Agreement, dated December 21, 2016, for our 4.32% Senior Notes due February 22, 2027, and (ii) the Note Purchase Agreement, dated June 27, 2013, for our 4.02% Senior Notes due August 14, 2025 (collectively, the "Note Amendments" and such Note Purchase Agreements, contain various restrictions as previously amended and covenants applicable to us and certain of our subsidiaries. Among other requirements, as amended by the Note Amendments, the "Amended Senior Note Agreements"). The Note Amendments revise the Note Purchase Agreements so that the Amended Senior Notes Agreements (a) limit the amount of priority debt held by us or by our restricted subsidiaries to 20% of our consolidated total capitalization, (b) limit our permissible consolidated debt to 65% of our consolidated total capitalization, (c) require us to maintain a consolidated fixed charge coverage ratio of at least 2.5 to 1.0 as of the end of the fiscal quarter ending March 30, 2023 Note Agreements' covenants and each fiscal quarter thereafter, (d) require our consolidated EBITDA not to be less than or equal to \$70 million as of December 29, 2022 for the four consecutive fiscal quarters then ending, (e) require our consolidated liquidity not to be less than or equal to \$50 million as of the end of any fiscal quarter thereafter until and including the fiscal quarter ending December 29, 2022, and (f) prohibit us and certain of our subsidiaries from incurring or making capital expenditures, collateral provisions are consistent with those set forth in the aggregate for us and such subsidiaries, (i) during fiscal 2021 in excess of the sum of \$40.0 million plus certain adjustments, or (ii) during our 2022 fiscal year in excess of \$50 million plus certain adjustments. Credit Agreement.

In connection with the Amended Senior Notes Agreements: (i) we and certain of our subsidiaries have pledged, subject to certain exceptions, security interests and liens in and on (a) substantially all of their respective personal property assets and (b) certain of their respective real property assets, in each case, to secure the Notes and related

obligations; and

(ii) certain subsidiaries of ours have guaranteed our obligations under the Amended Senior Notes Agreements and the Notes. **The foregoing security interests, liens and guaranties will remain in effect until the Collateral Release Date.**

The Amended Senior Notes Agreements also contain customary events of default. If an event of default under the Amended Senior Notes Agreements occurs and is continuing, then, among other things, the purchasers may declare any outstanding obligations under the Amended Senior Notes Agreements and the Notes to be immediately due and payable and the Note holders may exercise their rights and remedies against the pledged collateral.

Convertible Notes

On September 17, 2020, we entered into a purchase agreement (the "Purchase Agreement") with J.P. Morgan Securities LLC, as representative of the several initial purchasers (the "Initial Purchasers"), to issue and sell \$100.05 million aggregate principal amount of our 5.00% Convertible Senior Notes due 2025 (the "Convertible Notes") of which an aggregate principal amount of \$13.05 million of Notes was issued pursuant to the exercise by the Initial Purchasers of their option to purchase additional Convertible Notes. We offered and sold the Convertible Notes to the Initial Purchasers in reliance on the exemption from registration provided by Section 4(a) (2) of the Securities Act, and for resale by the Initial Purchasers to persons reasonably believed to be qualified institutional buyers pursuant to the exemption from registration provided by Rule 144A under the Securities Act. We relied on these exemptions from registration based in part on representations made by the Initial Purchasers in the Purchase Agreement. The shares of the Company's common stock, par value \$1.00 per share (the "Common Stock"), issuable upon conversion of the Convertible Notes, if any, have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. To the extent that any shares of the Common Stock are issued upon conversion of the Convertible Notes, they will be issued in transactions anticipated to be exempt from registration under the Securities Act by virtue of Section 3(a)(9) thereof because no commission or other remuneration is expected to be paid in connection with conversion of the Convertible Notes and any resulting issuance of shares of the Common Stock. The Purchase Agreement includes customary representations, warranties and covenants by us and customary closing conditions. Under the terms of the Purchase Agreement, we agreed to indemnify the Initial Purchasers against certain liabilities.

The Convertible Notes were issued pursuant to an indenture (the "Indenture"), dated September 22, 2020, between our company and U.S. Bank National Association, as trustee. The net proceeds from the sale of the Convertible Notes were approximately \$78.6 million (after deducting the Initial Purchasers' fees and our estimated fees and expenses related to the offering and the cost of the capped call transactions). We used approximately \$16.9 million of net proceeds from the offering to pay the cost of the Capped Call Transactions (as defined below). We used the remainder of the net proceeds from the offering to repay borrowings under our revolving credit facility and for general corporate purposes. The Convertible Notes are senior unsecured obligations and rank (i) senior in right of payment to any of our indebtedness that is expressly subordinated in right of payment to the Convertible Notes; (ii) equal in right of payment to any of our unsecured indebtedness that is not so subordinated; (iii) effectively junior in right of payment to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and (iv) structurally junior to all indebtedness and other liabilities (including trade payables) of our subsidiaries.

The Convertible Notes bear interest from September 22, 2020 at a rate of 5.00% per year. Interest will be payable semiannually in arrears on March 15 and September 15 of each year, beginning on March 15, 2021. The Convertible Notes may bear additional interest under specified circumstances relating to our failure to comply with our reporting obligations under the Indenture or if the Convertible Notes are not freely tradable as required by the Indenture. The Convertible Notes will mature on September 15, 2025, unless earlier repurchased or converted. Prior to March 15, 2025, the Convertible Notes will be convertible at the option of the holders only under the following circumstances: (i) during any fiscal quarter commencing after the fiscal quarter ending on December 31, 2020 (and only during such fiscal quarter), if the last reported sale price of the Common Stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (ii) during the five business day period immediately after any five consecutive trading day period, or the measurement period, in which the trading price per \$1,000 principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Common Stock and the conversion rate on each such trading day; or (iii) upon the occurrence of specified corporate events. On or after March 15, 2025, the Convertible Notes will be convertible at the option of the holders at any time until the close of business on the second scheduled trading day immediately preceding the maturity date.

Upon conversion, the Convertible Notes may be settled, at our election, in cash, shares of Common Stock or a combination thereof. The initial conversion rate was 90.8038 shares of Common Stock per \$1,000 principal amount of the Convertible Notes (equivalent to an initial conversion price of approximately \$11.01 per share of Common Stock), representing an initial conversion premium of approximately 22.5% to the \$8.99 last reported sale price of the Common Stock on The New York Stock Exchange on September 17, 2020. The conversion rate is subject to adjustment for certain events, including distributions and dividends paid to holders of Common Stock. At **December 29, 2022** **December 28, 2023**, the adjusted conversion rate is **91.3657** **92.82** shares of Common Stock per \$1,000 principal amount of the Convertible Notes (equivalent to an adjusted conversion price of approximately **\$10.95** **\$10.77** per share of Common Stock). If we undergo certain fundamental changes, holders of Convertible Notes may require us to repurchase for cash all or part of their Convertible Notes for a purchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. In addition, if a make-whole fundamental change occurs prior to the maturity date, we will, under certain circumstances, increase the conversion rate for holders who convert Convertible Notes in connection with such make-whole fundamental change. We may not redeem the Convertible Notes before maturity and no "sinking fund" is provided for the Convertible Notes. The Indenture includes covenants customary for securities similar to the Convertible Notes, sets forth certain events of default after which the Convertible Notes may be declared immediately due and payable and sets forth certain types of bankruptcy or insolvency events of default involving our company and certain of our subsidiaries after which the Convertible Notes become automatically due and payable.

During our fiscal 2021 second, third and fourth quarters, all quarters during fiscal 2022 and **fiscal 2023**, and our fiscal **2023** **2024** first quarter, the Convertible Notes were (are) eligible for conversion at the option of the holders as the last reported sale price of the Common Stock was greater than or equal to 130% of the applicable conversion price for

at least 20 trading days during the last 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter. We have the ability to settle the conversion in Common Stock.

Capped Call Transactions

In connection with the pricing of the Convertible Notes on September 17, 2020, and in connection with the exercise by the Initial Purchasers of their option to purchase additional Convertible Notes on September 18, 2020, we entered into privately negotiated Capped Call Transactions (the "Capped Call Transactions") with certain of the Initial Purchasers and/or their respective affiliates and/or other financial institutions (the "Capped Call Counterparties"). The Capped Call Transactions are expected generally to reduce potential dilution of our common stock upon any conversion of the Convertible Notes and/or offset any cash payments we are required to make in excess of the principal amount of such converted Convertible Notes, as the case may be, in the event that the market price per share or our common stock, as measured under the terms of the Capped Call Transactions, is greater than the strike price of the Capped Call Transactions,

which initially corresponds to the conversion price of the Convertible Notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the Convertible Notes. If, however, the market price per share of our common stock, as measured under the terms of the Capped Call Transactions, exceeds the cap price of the Capped Call Transactions, there would nevertheless be dilution to the extent that such market price exceeds the cap price of the Capped Call Transactions. The cap price of the Capped Call Transactions was initially \$17.98 per share (in no event shall the cap price be less than the strike price of \$11.0128), which represents a premium of 100% over the last reported sale price of the Common Stock of \$8.99 per share on The New York Stock Exchange on September 17, 2020. Under the terms of the Capped Call Transactions, the cap price is subject to adjustment for certain events, including distributions and dividends paid to holders of Common Stock. At December 29, 2022 December 28, 2023, the adjusted cap price is approximately \$17.87 \$17.59 per share. The Capped Call Transactions are separate transactions entered into by us with the Capped Call Counterparties, are not part of the terms of the Convertible Notes and will not change the rights of holders of the Convertible Notes under the Convertible Notes and the Indenture.

Summary

The Credit Agreement and the senior notes impose various financial covenants applicable to The Marcus Corporation and certain of our subsidiaries. As of the date of this filing, we are in compliance with all of the financial covenants imposed by the Credit Agreement and the senior notes. Our long-term debt has scheduled annual principal payments, net of amortization of debt issuance costs, of \$10.4 million \$10.3 million in fiscal 2023 2024 and \$109.6 million in fiscal 2024, 2025. We believe that the actions we have taken will allow us to have sufficient liquidity to meet our obligations as they come due and to comply with our debt covenants for at least 12 months from the issuance date of the consolidated financial statements. However, future compliance with our debt covenants could be impacted if we are unable to return to closer-to-normal operations as currently expected, which could be impacted by matters that are not entirely in our control, such as the return of protective actions that federal, state statements and local governments took during the pandemic, the impact of any new variants of COVID-19 on customer behavior and the timing of new movie releases (as described in the Impact of the COVID-19 Pandemic section of this MD&A), or by changes in macroeconomic conditions. Future compliance with our debt covenants could also be impacted if the speed of recovery of our theatres and hotels and resorts businesses is slower than currently expected. For example, our current expectations are that our theatre division will continue to improve during fiscal 2023 (but still report results below comparable periods in fiscal 2019). Our current expectations for our hotels and resorts division are that we will continue to show improvement in fiscal 2023 compared to the prior year. We do not expect to return to pre-COVID-19 occupancy levels during fiscal 2023 due to an expected lag in business travel. It is possible that the impact of COVID-19 may be greater than currently expected across one or both of our divisions such that we may be unable to comply with our debt covenants in future periods. In such an event, we would either seek covenant waivers or attempt to amend our covenants, though there is no certainty that we would be successful in such efforts. beyond.

Financial Condition

Fiscal 2022 2023 versus Fiscal 2021 2022

Net cash provided by operating activities totaled \$93.2 million \$102.6 million during fiscal 2022, 2023, compared to net cash provided by operating activities of \$46.3 million \$93.2 million during fiscal 2021, 2022, an increase of \$47.0 million \$9.4 million. The increase in net cash provided by operating activities in fiscal 2022 2023 was due primarily to a reduced an increase in net loss income and favorable timing of payment of accounts payable and other accrued liabilities, partially offset by unfavorable timing in the collection of accounts receivable as compared to fiscal 2022 and collection of government grant receivables and receipt of refundable income taxes of \$22.7 million, partially offset by unfavorable timing in the payment of accrued compensation, accounts payable, and other accrued liabilities as compared to fiscal 2021, 2022 that did not recur.

Net cash used in investing activities during fiscal 2022 2023 totaled \$0.3 million \$36.7 million, compared to net cash provided by used in investing activities during fiscal 2021 2022 of \$10.9 million \$0.3 million, an increase of \$11.2 million \$36.4 million. The increase in net cash used by investing activities was primarily the result of an increase in capital expenditures, the receipt of \$4.9 million a decrease in cash proceeds from disposals of property, equipment and other assets during fiscal 2022 (compared to \$22.1 million of similar proceeds in fiscal 2021), 2023, and the nonrecurring receipt of \$11.4 million in conjunction with collection of a split dollar life insurance policy receivable in fiscal 2021, partially offset by the fact we received \$31.1 million in net proceeds from the sale of The Skirvin Hilton during fiscal 2022, 2022 with no hotel sales in fiscal 2023.

Total cash capital expenditures (including normal continuing capital maintenance and renovation projects) totaled \$38.8 million during fiscal 2023 compared to \$36.8 million during fiscal 2022, compared to \$17.1 million during fiscal 2021, an increase of \$19.8 million \$1.9 million, or 115.7% 5.2%. We incurred approximately \$12.1 million \$15.1 million of capital expenditures in our theatre division during fiscal 2023, including costs associated with the conversion of two existing auditoriums to a SuperScreen DLX® and a ScreenX auditorium and normal maintenance capital projects. We incurred approximately \$12.1 million of capital expenditures during fiscal 2022 in our theatre division, including costs associated with the conversion of four existing auditoriums to SuperScreen DLX® auditoriums and normal maintenance capital projects. We incurred approximately \$10.3 million of capital expenditures during fiscal 2021 in our theatre division, including costs associated with the renovation of a theatre and normal maintenance capital projects. We incurred

approximately \$24.5 million \$22.9 million of capital expenditures in our hotels and resorts division during fiscal 2022 2023, including costs related to the first second phase of a guest rooms renovation at the Grand Geneva Resort & Spa, ballroom and meeting space renovations at The Pfister Hotel and normal maintenance capital projects at our other company-owned hotels and resorts. We incurred capital expenditures in our hotels and resorts division during fiscal 2021 2022 of approximately \$6.8 million \$24.5 million, including costs related to the first phase of a lobby guest rooms renovation at the Grand Geneva Resort & Spa and normal maintenance capital projects. Our current estimated fiscal 2023 2024 cash capital expenditures, which we anticipate may be in the \$60 - \$75 million range, are described in greater detail in the "Current Plans" section of this MD&A.

Net cash used in financing activities during fiscal 2022 2023 totaled \$92.4 million \$30.5 million, compared to net cash used in financing activities during fiscal 2021 2022 of \$47.2 million \$92.4 million. During fiscal 2022 2023, we increased our borrowings under our revolving credit facility as needed to fund our cash needs and used excess cash to reduce our borrowings under our revolving credit facility. As short-term revolving credit facility borrowings became due, we replaced them as necessary with new short-term revolving credit facility borrowings. As a result, we added \$38.0 million of new short-term revolving credit facility borrowings, and we made \$38.0 million of repayments on short-term revolving credit facility borrowings during fiscal 2023. We ended fiscal 2023 with no outstanding borrowings under our revolving credit facility. We did not issue any new long-term debt during fiscal 2023.

During fiscal 2022, we increased our borrowings under our revolving credit facility as needed to fund our cash needs and used excess cash to reduce our borrowings under our revolving credit facility. As a result, we added \$100.0 million of new short-term revolving credit facility borrowings, and we made \$100.0 million of repayments on short-term revolving credit facility borrowings during fiscal 2022. We ended fiscal 2022 with no outstanding borrowings under our revolving credit facility. Net cash provided by operating activities during fiscal 2022 was used to repay \$47.5 million of short-term borrowings, including the early repayment and retirement of our term loan facility, as described above. We did not issue any new long-term debt during fiscal 2022.

During fiscal 2021, we increased our borrowings under our revolving credit facility as needed to fund our cash needs and used excess cash to reduce our borrowings under our revolving credit facility. As a result, we added \$178.5 million of new short-term revolving credit facility borrowings, and we made \$178.5 million of repayments on short-term revolving credit facility borrowings during fiscal 2021. We ended fiscal 2021 with no outstanding borrowings under our revolving credit facility. Net cash provided by operating activities during fiscal 2021 was used to repay \$40.3 million of short-term borrowings. We did not issue any new long-term debt during fiscal 2021. We received \$6.7 million in proceeds from borrowings against the cash surrender value of a life insurance policy during fiscal 2021.

Principal payments on long-term debt were approximately \$11.4 million during fiscal 2023, including a \$10.0 million installment payment on senior notes, compared to payments of \$35.7 million during fiscal 2022, including which included a \$10.0 million installment payment on senior notes and a \$24.1 million payment to retire mortgage notes in connection with the sale of The Skirvin Hilton, compared to payments of \$10.7 million during fiscal 2021, which included a \$10.0 million installment payment on senior notes. Hilton. Distributions to noncontrolling interests resulting from the sale of The Skirvin Hilton were \$0.8 million in fiscal 2023 and \$2.0 million in fiscal 2022.

Our debt-to-capitalization ratio (including short-term borrowings but excluding (excluding our finance and operating lease obligations) was 0.28 0.26 at December 29, 2022 December 28, 2023, compared to 0.37 0.28 at December 30, 2021 December 29, 2022. Based upon our current expectations for our fiscal 2023 2024 operating results and capital expenditures, we anticipate that our total long-term debt and debt-to-capitalization ratio may modestly decrease will remain at our current relatively low levels during fiscal 2023 2024. Our actual total long-term debt and debt-to-capitalization ratio at the end of fiscal 2023 2024 are dependent upon, among other things, our actual operating results, capital expenditures, asset sales proceeds and potential equity transactions during the year.

During fiscal 2022 2023 and fiscal 2021 2022 we did not repurchase any shares of our common stock in the open market. As of December 29, 2022 December 28, 2023, approximately 2.5 million 2.4 million shares of our common stock remained available for repurchase under prior Board of Directors repurchase authorizations. Under these authorizations, we may repurchase shares of our common stock from time to time in the open market, pursuant to privately-negotiated transactions or otherwise, depending upon a number of factors, including prevailing market conditions.

Beginning in We paid regular quarterly dividends totaling \$7.4 million during fiscal 2023. During the third quarter of fiscal 2023, we increased our regular quarterly common stock cash dividend by 40% to \$0.07 per common share. During fiscal 2022, the our Board of Directors elected to reinstate our quarterly dividend that had been suspended as a result of the COVID-19 pandemic, declaring a quarterly cash dividend of \$0.05 per share of common stock and \$0.045 per share on the Class B common stock. Quarterly dividends were paid in September and December 2022, totaling \$3.1 million in fiscal 2022. We did not make any dividend payments during fiscal 2021.

Our Credit Agreement, as amended, required us to temporarily suspend our quarterly dividend payments and prohibited us from repurchasing shares of our common stock in the open market through the end of fiscal 2021. Beginning with the first quarter of fiscal 2022, the Credit Agreement limited the total amount of quarterly dividend payments or share repurchases during the four subsequent quarters to no more than \$1.55 million per quarter, until we have returned to compliance with prior financial covenants under the Credit Agreement (specifically, the consolidated fixed charge coverage ratio) as tested starting with the fiscal quarter ending March 30, 2023 and each fiscal quarter thereafter, at which point we have the ability to declare quarterly dividend payments and/or repurchase shares of our common stock in the open market as we deem appropriate.

Contractual Obligations, Commercial Commitments and Future Uses of Cash

The following schedule details our contractual obligations at December 29, 2022 December 28, 2023 (in thousands):

Payments Due by Period					
Total	Less Than				After
	1 Year	1-3 Years	4-5 Years	5 Years	
Payments Due by Period					
Total	Less Than				After
	1 Year	1-3 Years	4-5 Years	5 Years	

Long-term debt	Long-term debt	\$180,437	\$10,432	\$120,049	\$ 49,956	\$ —
Interest on fixed-rate long term debt ⁽¹⁾	Interest on fixed-rate long term debt ⁽¹⁾	26,172	8,437	15,257	2,478	—
Pension obligations	Pension obligations	36,324	1,938	4,221	4,706	25,459
Operating lease obligations	Operating lease obligations	276,564	23,610	50,297	47,976	154,681
Finance lease obligations	Finance lease obligations	20,786	3,243	6,119	4,798	6,626
Construction commitments	Construction commitments	5,387	5,387	—	—	—
Total contractual obligations	Total contractual obligations	\$545,670	\$53,047	\$195,943	\$109,914	\$186,766

(1) Interest on variable-rate debt obligations is excluded due to significant variations that may occur in each year related to the amount of variable-rate debt and the accompanying interest rate. As of **December 29, 2022** **December 28, 2023** we had zero variable interest rate debt outstanding.

Additional detail describing our long-term debt is included in Note **7** **6** to our consolidated financial statements.

As of **December 29, 2022** **December 28, 2023**, we had no additional material purchase obligations other than those created in the ordinary course of business related to property and equipment, which generally have terms of less than 90 days. We had long-term obligations related to our employee benefit plans, which are discussed in detail in Note **10** **9** to our consolidated financial statements. We have not included uncertain tax obligations in the table of contractual obligations set forth above due to uncertainty as to the timing of any potential payments.

As of **December 29, 2022** **December 28, 2023**, we had entered into a new office lease that had not yet commenced. The new office lease is for an eleven year term beginning in fiscal 2024 and ending in fiscal 2035, excluding extension options. The contractual obligations related to the new office lease are included in operating lease obligations above, but are not included in operating lease liabilities in the consolidated balance sheet as of December 28, 2023 as the lease has not yet commenced.

As of **December 28, 2023**, we had no debt or lease guarantee obligations.

In connection with the mortgage loan obtained by the Kimpton Hotel Monaco Pittsburgh ("Monaco") joint venture, we provided an environmental indemnity and a "bad boy" guaranty that provides that the lender can recover losses from us for certain bad acts of the Monaco joint venture, such as but not limited to fraud, intentional misrepresentation, voluntary incurrence of prohibited debt, prohibited transfers of the collateral, and voluntary bankruptcy of the Monaco joint venture. Under the terms of the Monaco joint venture operating agreement, Searchlight has agreed to fully indemnify us under the "bad boy" guarantees for any losses other than those attributable to our own bad acts and has agreed to indemnify us to its proportionate liability under the environmental liability. Additional detail describing the Monaco joint venture is included in Note **13** **12** to our consolidated financial statements.

Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risk related to changes in interest rates, and we manage our exposure to this market risk by monitoring available financing alternatives.

As of **December 29, 2022** **December 28, 2023** we had zero variable interest rate debt outstanding. Our revolving credit facility, which has no outstanding borrowings as of **December 29, 2022** **December 28, 2023**, is our only existing credit facility that bears interest based on a variable rate. Our earnings may be affected by changes in short-term interest rates as a result of our borrowings under our revolving credit facility to the extent we have any such borrowings.

Fixed interest rate debt totaled **\$183.6 million** **\$171.8 million** as of **December 29, 2022** **December 28, 2023**, carried an average interest rate of **5.03%** **5.05%** and represented 100.0% of our total debt portfolio. Fixed interest rate debt included the following: senior notes bearing interest semiannually at fixed rates ranging from 4.02% to 4.32% **(plus a specified period fee of 0.975% described above)**, maturing in fiscal **2023** **2024** through 2027; convertible senior notes bearing interest of 5.0%, maturing in fiscal 2025 and other debt instruments bearing interest at 5.75%, maturing in fiscal 2025, and PPP loans bearing interest at 1.0%, maturing in fiscal 2025. The fair value of our fixed interest rate debt is subject to interest rate risk. Generally, the fair market value of our fixed interest rate debt will increase as interest rates fall and decrease as interest rates rise. As of **December 29, 2022** **December 28, 2023**,

the fair value of our **\$80.0 million** **\$70.0 million** of senior notes was approximately **\$71.3 million** **\$64.7 million**. As of **December 29, 2022** **December 28, 2023**, the fair value of our \$100.1 million of convertible senior notes was approximately **\$145.4 million** **\$148.8 million**.

The variable interest rate debt and fixed interest rate debt outstanding as of **December 29, 2022** **December 28, 2023** matures as follows (in thousands):

		F2023	F2024	F2025	F2026	F2027	Thereafter	Total							
			F2024						F2024	F2025	F2026	F2027	F2028	Thereafter	Total
Variable interest rate	Variable interest rate	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —							
Fixed interest rate	Fixed interest rate	11,434	11,368	110,443	—	50,000	—	183,245							
Debt issuance costs	Debt issuance costs	(1,002)	(1,003)	(759)	—	(44)	—	(2,808)							
Total debt	Total debt	\$10,432	\$10,365	\$109,684	\$ —	\$49,956	\$ —	\$180,437							

We periodically enter into interest rate swap agreements to manage our exposure to interest rate changes. These swaps involve the exchange of fixed and variable interest rate payments. Payments or receipts on the agreements are recorded as adjustments to interest expense.

On March 1, 2018, we entered into two interest rate swap agreements covering \$50.0 million of floating rate debt which **require** **required** us to pay interest at a defined fixed rate while receiving interest at a defined variable rate of one-month LIBOR. The first swap had a notional amount of \$25.0 million, expired on March 1, 2021 and had a fixed rate of 2.559%. The second swap had a notional amount of \$25.0 million, expired on March 1, 2023 and had a fixed rate of 2.687%. The interest rate swaps were considered effective for accounting purposes and qualified as cash flow hedges. These swap agreements did not materially impact our fiscal **2022 earnings and we do not expect the interest rate swap that expired on March 1, 2023 to materially impact our fiscal 2023 earnings.**

Critical Accounting Policies and Estimates

This MD&A is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of our financial statements requires us to make estimates and judgments that affect our reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities.

On an on-going basis, we evaluate our estimates associated with critical accounting policies. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following critical accounting policies affect the most significant judgments and estimates used in the preparation of our consolidated financial statements.

- **Long-lived & Other Intangible Assets:** We review long-lived assets, including property and equipment, operating lease right-of-use assets and our trade name intangible asset, for impairment at least annually, or whenever events or changes in circumstances indicate that the carrying amount of any such asset may not be recoverable. Such review is primarily done at the individual theatre or hotel property level, which represents the lowest level for which identifiable cash flows are largely independent of the cash flows of other asset groups. We use judgment to determine whether indicators of impairment exist. The determination of the occurrence of a triggering event is based upon our knowledge of the theatre and hospitality industries, historical experience such as recent operating results, location of the property, market conditions, recent events or transactions, and property-specific information available at the time of the assessment. When a triggering event occurs, judgment is also required in determining the assumptions and estimates to use within the recoverability analysis and when calculating the fair value of the asset if it is determined that the long-lived asset is not recoverable. In performing these analyses, we must make assumptions regarding the estimated future cash flows and other factors that a market participant would make to determine the fair value of the respective assets. The estimate of cash flows is based upon, among other things, certain assumptions about expected future operating performance and anticipated sales prices. Our estimates of cash flows are sensitive to assumed revenue growth rates and may differ from actual cash flows due to factors such as economic conditions, **the continuing impact of the COVID-19 pandemic,** changes to our business model or

changes in our operating performance and anticipated sales prices. For long-lived assets other than goodwill, if the sum of the undiscounted estimated cash flows is less than the current carrying value, we then prepare a fair value analysis of the asset. If the carrying value of the asset exceeds the fair value of the asset, we recognize an impairment loss, measured as the amount by which the carrying value exceeds the fair value of the asset. During fiscal **2023, we recorded before-tax impairment charges totaling \$1.1 million related to two permanently closed theatres and surplus real estate that we intend to sell.** During fiscal 2022, we recorded before-tax impairment charges totaling \$1.5 million related to two operating theatres. During fiscal 2021, we recorded **a before-tax impairment charges totaling charge of \$5.8 million related to two operating theatres, three permanently closed theatres and surplus real estate that we intend intended to sell.** During fiscal 2020, we recorded **a before-tax impairment charge of \$24.7 million related to our trade name intangible asset and multiple theatre locations.**

Depreciation expense is based on the estimated useful life of our assets. The life of the assets is based on a number of assumptions, including cost and timing of capital expenditures to maintain and refurbish the asset, as well as specific market and economic conditions. While management believes its estimates are reasonable, a

change in the estimated lives could affect depreciation expense and net earnings or the gain or loss on the sale of any of the assets.

- **Goodwill:** We review goodwill for impairment annually or more frequently if certain indicators arise. We perform our annual impairment test on the first day of our fiscal fourth quarter. Goodwill is tested for impairment at a reporting unit level, determined to be at an operating segment level. When reviewing goodwill for impairment, we consider the amount of excess fair value over the carrying value of the reporting unit, the period of time since the last quantitative test, and other factors to determine whether or not to first perform a qualitative test. When performing a qualitative test, we assess numerous factors to determine whether it is more likely than not that the fair value of our reporting unit is less than its carrying value. Examples of qualitative factors that we assess include our share price, our financial performance, market and competitive factors in our industry, and other events specific to the reporting unit. If we conclude that it is more likely than not that the fair value of our reporting unit is less than its carrying value, we perform a quantitative test by comparing the carrying value of the reporting unit to the estimated fair value. Primarily all of our goodwill relates to our theatre segment.

During the first three quarters of fiscal 2022, 2023, we determined that there were no indicators of impairment that would require an additional quantitative analysis during these interim periods. We performed our annual goodwill impairment test as of September 30, 2022 September 29, 2023 and determined that a quantitative analysis would be appropriate. In order to determine fair value, we used assumptions based on information available to us as of September 30, 2022 September 29, 2023, including both market data and forecasted cash flows. We then used this information to determine fair value and determined that the fair value of our theatre reporting unit exceeded our carrying value by a substantial amount and deemed that no impairment was indicated as of September 30, 2022 September 29, 2023. If we are unable to achieve our forecasted cash flow or if market conditions worsen, our goodwill could be impaired at a later date.

- **Income Taxes:** We are subject to U.S. federal and state income taxes in numerous state jurisdictions. Significant judgment is required in determining both our key assumptions utilized in the accounting for income taxes and the recording of the provision for income taxes and the related deferred tax assets and liabilities. We assess our income tax positions and record tax liabilities for all years subject to examination based upon management's evaluation of the facts and circumstances and information available at the reporting dates. For those income tax positions where it is more-likely-than-not that a tax benefit will be sustained upon the conclusion of an examination, we have recorded the largest amount of tax benefit having a cumulatively greater than 50% likelihood of being realized upon ultimate settlement with the applicable taxing authority assuming that it has full knowledge of all relevant information. For those tax positions that do not meet the more-likely-than-not threshold regarding the ultimate realization of the related tax benefit, no tax benefit has been recorded in the financial statements. We recognize deferred tax assets and liabilities for the future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases, net operating losses, tax credits and other carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. We regularly review our deferred tax assets for recoverability and establish a valuation allowance based on historical losses, projected future taxable income and the expected timing of the reversals of existing temporary differences. As a result of this review, we have established valuation allowances against certain of our deferred tax assets relating to state net operating loss carryforwards. As of December 29, 2022 December 28, 2023, valuation allowances against our deferred tax assets were \$12.4 million \$11.3 million, and were \$2.4 million \$12.4 million as of December 30,

2021, December 29, 2022. Future tax authority rulings and changes in tax laws, changes in projected levels of taxable income and future tax planning strategies could affect the actual effective tax rate and tax balances recorded.

Implementation of New Accounting Standards

During the first quarter of fiscal 2022, we adopted ASU Accounting Standards Update (ASU) No. 2021-10, *Government Assistance (Topic 832): Disclosures by Business Entities about Government Assistance*. The amendments in this update provide increased transparency of government assistance including the requirement of certain disclosures in a company's notes to the consolidated financial statements about transactions with a government. The adoption of the new standard did not have a material effect on our consolidated financial statements.

In March 2020, the FASB Financial Accounting Standards Board (FASB) issued ASU No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. The amendments in this update provide optional expedients and exceptions to the existing guidance on contract modifications and hedge accounting to ease the financial reporting burdens of the expected market transition from the London Interbank Offered Rate (LIBOR), or other interbank offered rates, to alternative reference rates such as the Secured Overnight Financing Rate (SOFR). ASU No. 2020-14 is optional, effective immediately, and may be elected over time as reference rate reform activities occur, generally through December 31, 2024. During the first quarter of fiscal 2023, in conjunction with the execution of the fifth amendment to our credit agreement (see Note 7 to the financial footnotes of the accompanying consolidated financial statements) 6), we elected SOFR as our ongoing reference rate. We believes that The adoption of the new standard will did not have a material effect on our consolidated financial statements.

Accounting Changes

For a description of recent accounting pronouncements, See Note 1 of the notes to our consolidated financial statements included in Part II, Item 8 of this annual report on Form 10-K.

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

The information required by this item is set forth in "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – Quantitative and Qualitative Disclosures About Market Risk" above.

Item 8. Financial Statements and Supplementary Data.

MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) of the Exchange Act. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in *Internal Control – Integrated Framework (2013)*, our management concluded that our internal control over financial reporting was effective as of **December 29, 2022** **December 28, 2023**. The Company's auditors, Deloitte & Touche LLP, have issued an attestation report on our internal control over financial reporting. That attestation report is set forth in this Item 8.

Gregory S. Marcus
President and Chief Executive Officer

Chad M. Paris
Chief Financial Officer and Treasurer

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of The Marcus Corporation

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of The Marcus Corporation and subsidiaries (the "Company") as of **December 29, 2022** **December 28, 2023** and **December 30, 2021** **December 29, 2022**, the related consolidated statements of earnings (loss), comprehensive income (loss), shareholders' equity and cash flows, for each of the three years in the period ended **December 29, 2022** **December 28, 2023**, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of **December 29, 2022** **December 28, 2023** and **December 30, 2021** **December 29, 2022**, and the results of its operations and its cash flows for each of the three years in the period ended **December 29, 2022** **December 28, 2023**, in conformity with accounting principles generally accepted in the United States of America.

We have also 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 **December 29, 2022** **December 28, 2023**, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated **March 2, 2023** **February 29, 2024**, expressed an unqualified opinion on the Company's internal control over financial ~~reporting~~.reporting.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's 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 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 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 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 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 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 financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the 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.

Long-Lived Assets – Theatres segment property and equipment, net and operating lease right-of-use assets – Assessment and Evaluation of Impairment – Refer to Note 1 and Note 43 to the financial statements

Critical Audit Matter Description

As of December 29, 2022, the Company had \$716 million of net assets, including property and equipment, net and \$195 million of operating lease right-of-use assets. The Company assesses long-lived assets for impairment at the individual hotel, theatre or surplus real estate property level whenever events or changes in circumstances indicate the carrying amount of an asset group may not be recoverable. During the year ended December 29, 2022, the Company recorded an impairment loss of \$1.5 million.

In assessing long-lived assets for indicators of potential impairment, the Company considered quantitative and qualitative factors, including evaluating the historical actual operating performance of the properties and assessing the impact of recent economic and industry events impacting the properties, including the recovery from the COVID-19 pandemic. Evaluating

whether these quantitative and qualitative factors represented an indicator of potential impairment required significant judgment by management.

When indicators of impairment were present, the Company determined if the individual theatre, or surplus real estate properties were recoverable by assessing whether the sum of the estimated undiscounted future cash flows attributable to such assets was less than their carrying amounts. In instances where the estimated undiscounted future cash flows attributable to these assets were less than the carrying amounts, the Company determined the fair value of the individual theatre, or surplus real estate properties and recorded an impairment loss based on the excess of the carrying amount over the fair value. The most significant assumption inherent in these recoverability and impairment analyses was the forecasted future cash flows (primarily driven by revenue growth rates for theatre properties and estimated sales prices for surplus real estate properties).

We identified the assessment and evaluation of impairment of long-lived assets for the Theatres segment property and equipment, net and operating lease right-of-use assets as a critical audit matter because of the subjectivity used by management when identifying and evaluating potential impairment indicators, and when estimating forecasted future cash flows in their recoverability and impairment analyses, which are impacted by the timing of recovery from the COVID-19 pandemic. A high degree of auditor judgment was required when performing audit procedures to evaluate whether management appropriately identified and evaluated potential impairment indicators, and when evaluating the reasonableness of management's forecasted future cash flows that were used in their recoverability and impairment analyses.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to management's assessment and evaluation of impairment for long-lived assets for the Theatres segment property and equipment, net and operating lease right-of-use assets included the following, among others:

- We tested the effectiveness of internal controls over the Company's assessment and evaluation of potential impairment for long-lived assets and over forecasted future cash flows that were used in their recoverability and impairment analyses.
- We evaluated the reasonableness of the information in the Company's impairment indicators analyses, and the corresponding forecasted future cash flows used in their recoverability and impairment analyses, by comparing the forecasts to (1) historical actual information, (2) internal communications between management and the Board of Directors and (3) forecasted information included in analyst and industry reports for the Company.
- For surplus real estate properties, we evaluated the reasonableness of the Company's forecasted cash flows resulting from planned sale of assets by (1) obtaining sales agreements executed after December 29, 2022, where applicable, (2) obtaining negotiated letters of intent to purchase, where applicable, and (3) comparing the Company's estimates to relevant real estate market data.
- We evaluated the Company's forecasted future cash flows for consistency with evidence obtained in other areas of the audit.

/s/ Deloitte & Touche LLP

Milwaukee, Wisconsin

March 2, 2023

We have served as the Company's auditor since 2008.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of The Marcus Corporation

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of The Marcus Corporation and subsidiaries (the “Company”) as of December 29, 2022 December 28, 2023, based on criteria established in Internal Control — Integrated Framework (2013) 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 December 29, 2022 December 28, 2023, based on criteria established in Internal Control — Integrated Framework (2013) issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 29, 2022 December 28, 2023, of the Company and our report dated March 2, 2023 February 29, 2024, expressed an unqualified opinion on those 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 Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company’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 included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

A company’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 generally accepted accounting principles. A company’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 company; (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 company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’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/ Deloitte & Touche LLP
Milwaukee, Wisconsin
March 2, 2023 February 29, 2024

THE MARCUS CORPORATION
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

December 28, 2023				December 28, 2023		December 29, 2022	
		December 29, 2022	December 30, 2021				
ASSETS							
ASSETS							
ASSETS		ASSETS					
CURRENT ASSETS:		CURRENT ASSETS:		CURRENT ASSETS:			
Cash and cash equivalents (Note 1)	Cash and cash equivalents (Note 1)		\$ 21,704	\$ 17,658			
Restricted cash (Note 1)	Restricted cash (Note 1)		2,802	6,396			
Accounts receivable, net of reserves (Note 6)			21,455	28,902			
Government grants receivable (Note 2)			—	4,335			
Refundable income taxes			—	22,435			
Accounts receivable, net of reserves (Note 5)							

Assets held for sale (Note 1)			
Assets held for sale (Note 1)			
Assets held for sale (Note 1)	Assets held for sale (Note 1)	460	4,856
Other current assets (Note 1)	Other current assets (Note 1)	17,474	15,364
Total current assets	Total current assets	63,895	99,946
PROPERTY AND EQUIPMENT, NET (Note 6)		715,765	771,192
OPERATING LEASE RIGHT-OF-USE ASSETS (Note 8)		194,965	217,072
PROPERTY AND EQUIPMENT, NET (Note 5)			
OPERATING LEASE RIGHT-OF-USE ASSETS (Note 7)			
OTHER ASSETS:	OTHER ASSETS:		
Investments in joint ventures (Note 13)		2,067	2,335
Investments in joint ventures (Note 12)			
Investments in joint ventures (Note 12)			
Investments in joint ventures (Note 12)			
Goodwill (Note 1)	Goodwill (Note 1)	75,015	75,095
Deferred income taxes (Note 11)		—	10,032
Other (Note 6)		12,891	12,689
Other (Note 5)			
Other (Note 5)			
Other (Note 5)			
Total other assets	Total other assets	89,973	100,151
Total assets	Total assets	\$1,064,598	\$1,188,361
LIABILITIES AND SHAREHOLDERS' EQUITY	LIABILITIES AND SHAREHOLDERS' EQUITY		
LIABILITIES AND SHAREHOLDERS' EQUITY			
LIABILITIES AND SHAREHOLDERS' EQUITY			
CURRENT LIABILITIES:	CURRENT LIABILITIES:		
CURRENT LIABILITIES:			
CURRENT LIABILITIES:			
Accounts payable			
Accounts payable			
Accounts payable	Accounts payable	\$ 32,187	\$ 35,781
Taxes other than income taxes	Taxes other than income taxes	17,948	19,566
Taxes other than income taxes			
Taxes other than income taxes			
Accrued compensation	Accrued compensation	22,512	20,474
Other accrued liabilities (Note 1)	Other accrued liabilities (Note 1)	56,275	59,678
Short-term borrowings (Note 7)		—	47,346
Current portion of finance lease obligations (Note 8)		2,488	2,561
Current portion of operating lease obligations (Note 8)		14,553	16,795
Current maturities of long-term debt (Note 7)		10,432	10,967
Current portion of finance lease obligations (Note 7)			

Current portion of operating lease obligations (Note 7)

Current maturities of long-term debt (Note 6)

Total current liabilities	Total current liabilities	156,395	213,168
FINANCE LEASE OBLIGATIONS (Note 8)		15,014	17,192
OPERATING LEASE OBLIGATIONS (Note 8)		195,281	216,064
LONG-TERM DEBT (Note 7)		170,005	204,177
DEFERRED INCOME TAXES (Note 11)		26,567	26,183
OTHER LONG- TERM OBLIGATIONS (Note 10)		44,415	57,963
COMMITMENTS AND LICENSE RIGHTS (Note 12)			
EQUITY (NOTE 9):			

FINANCE LEASE OBLIGATIONS (Note 7)

FINANCE LEASE OBLIGATIONS (Note 7)

FINANCE LEASE OBLIGATIONS (Note 7)

OPERATING LEASE OBLIGATIONS (Note 7)

LONG-TERM DEBT (Note 6)

DEFERRED INCOME TAXES (Note 10)

OTHER LONG- TERM OBLIGATIONS (Note 9)

COMMITMENTS AND LICENSE RIGHTS (Note 11)

COMMITMENTS AND LICENSE RIGHTS (Note 11)

EQUITY (NOTE 8):

Shareholders' equity attributable to The Marcus Corporation

Shareholders' equity attributable to The Marcus Corporation

Shareholders' equity attributable to The Marcus Corporation

Preferred Stock, \$1 par; authorized 1,000,000 shares; none issued

— —

Preferred Stock, \$1 par; authorized 1,000,000 shares; none issued

Preferred Stock, \$1 par; authorized 1,000,000 shares; none issued

Common Stock:

Common Stock:

Common Stock, \$1 par; authorized 50,000,000 shares; issued 24,498,243 at December 29, 2022 and 24,345,356 shares at December 30, 2021

24,498 24,345

Class B Common Stock, \$1 par; authorized 33,000,000 shares; issued and outstanding 7,110,875 at December 29, 2022 and 7,130,125 at December 30, 2021

7,111 7,130

Common Stock, \$1 par; authorized 50,000,000 shares; issued 24,691,548 at December 28, 2023 and 24,498,243 shares at December 29, 2022

Common Stock, \$1 par; authorized 50,000,000 shares; issued 24,691,548 at December 28, 2023 and 24,498,243 shares at December 29, 2022

Common Stock, \$1 par; authorized 50,000,000 shares; issued 24,691,548 at December 28, 2023 and 24,498,243 shares at December 29, 2022			
Class B Common Stock, \$1 par; authorized 33,000,000 shares; issued and outstanding 7,078,410 at December 28, 2023 and 7,110,875 at December 29, 2022			
Capital in excess of par	Capital in excess of par	153,794	145,656
Retained earnings	Retained earnings	274,254	289,306
Accumulated other comprehensive loss	Accumulated other comprehensive loss	(1,694)	(11,444)
		457,963	454,993
Less cost of Common Stock in treasury (78,882 shares at December 29, 2022 and 48,111 shares at December 30, 2021)		(1,866)	(1,379)
	472,675		
Less cost of Common Stock in treasury (47,916 shares at December 28, 2023 and 78,882 shares at December 29, 2022)			
Total shareholders' equity attributable to The Marcus Corporation	Total shareholders' equity attributable to The Marcus Corporation	456,097	453,614
Noncontrolling interests	Noncontrolling interests	824	—
Total equity	Total equity	456,921	453,614
Total liabilities and shareholders' equity	Total liabilities and shareholders' equity	\$1,064,598	\$1,188,361

See accompanying notes.

THE MARCUS CORPORATION
CONSOLIDATED STATEMENTS OF EARNINGS (LOSS)
(in thousands, except per share data)

	Year Ended		
	December	December	December
	29, 2022	30, 2021	31, 2020
	December 28, 2023	December 28, 2023	December 29, 2022
	December 28, 2023	December 29, 2022	December 30, 2021
REVENUES:	REVENUES:		
Theatre admissions			
Theatre admissions			
Theatre admissions	Theatre admissions	\$ 198,485	\$ 130,740
		\$ 64,825	

Rooms	Rooms	107,699	77,650	35,386
Theatre concessions	Theatre concessions	180,180	118,666	56,711
Food and beverage	Food and beverage	74,836	47,086	24,822
Other revenues	Other revenues	82,560	65,331	38,742
		643,760	439,473	220,486
		692,155		
Cost reimbursements	Cost reimbursements	33,634	18,771	17,202
Total revenues	Total revenues	677,394	458,244	237,688
COSTS AND EXPENSES:	COSTS AND EXPENSES:			
COSTS AND EXPENSES:				
COSTS AND EXPENSES:				
Theatre operations				
Theatre operations				
Theatre operations	Theatre operations	212,410	140,821	92,232
Rooms	Rooms	41,561	30,394	21,243
Theatre concessions	Theatre concessions	73,124	47,681	29,747
Food and beverage	Food and beverage	59,272	36,833	26,124
Advertising and marketing	Advertising and marketing	23,877	16,069	11,074
Administrative	Administrative	74,755	63,350	51,046
Depreciation and amortization	Depreciation and amortization	67,073	72,127	75,052
Rent (Note 8)		26,037	25,594	26,866
Rent (Note 7)				
Property taxes	Property taxes	17,955	18,473	23,560
Other operating expenses (Note 2)	Other operating expenses (Note 2)	37,865	23,817	17,288
Impairment charges (Note 4)		1,525	5,766	24,676
Impairment charges (Note 3)				
Reimbursed costs	Reimbursed costs	33,634	18,771	17,202
Total costs and expenses	Total costs and expenses	669,088	499,696	416,110
OPERATING INCOME (LOSS)	OPERATING INCOME (LOSS)	8,306	(41,452)	(178,422)
OTHER INCOME (EXPENSE):	OTHER INCOME (EXPENSE):			
OTHER INCOME (EXPENSE):				
Investment income (loss)				
Investment income (loss)				
Investment income (loss)	Investment income (loss)	(45)	599	564
Interest expense	Interest expense	(15,299)	(18,702)	(16,275)

Other income	Other income			
(expense), net	(expense), net	(2,131)	(2,510)	(986)

Gain on disposition of property, equipment and other assets	1,071	3,163	856
--	-------	-------	-----

Gain on sale of	Gain on sale of			
hotel	hotel	6,274	—	—

Equity losses from unconsolidated joint			
ventures, net (Note 13)	(143)	(92)	(1,539)

Equity losses from	
unconsolidated	
joint ventures,	
net (Note 12)	<u>(12,276)</u>

	(10,273)	(17,542)	(17,380)
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EARNINGS (LOSS) BEFORE INCOME

TAXES

EARNINGS (LOSS) BEFORE INCOME

TAXES

EARNINGS (LOSS) BEFORE INCOME

TAXES

INCOME TAX

EXPENSE

(BENEFIT) (Note 10)

NET EARNINGS

(LOSS)

NET EARNINGS

ATTRIBUTABLE TO

NONCONTROLLING

INTERESTS

NET EARNINGS

(LOSS)

ATTRIBUTABLE TO

THE MARCUS

CORPORATION

LOSS BEFORE INCOME TAXES	(1,967)	(58,994)	(195,802)
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INCOME TAX EXPENSE (BENEFIT) (Note 11)	7,137	(15,701)	(70,936)
--	-------	----------	----------

NET LOSS	(9,104)	(43,293)	(124,866)
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NET EARNINGS (LOSS) ATTRIBUTABLE TO

NONCONTROLLING INTERESTS	2,868	—	(23)
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NET LOSS ATTRIBUTABLE TO THE

MARCUS CORPORATION	\$ (11,972)	\$ (43,293)	\$(124,843)
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NET LOSS PER SHARE – BASIC:

NET EARNINGS (LOSS) PER SHARE –

BASIC:

NET EARNINGS (LOSS) PER SHARE –

BASIC:

NET EARNINGS (LOSS) PER SHARE –

BASIC:

Common Stock

Common Stock

Common Stock	Common Stock	\$	(0.39)	\$	(1.42)	\$	(4.13)
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Class B Common	Class B Common			
Stock	Stock	(0.35)	(1.25)	(3.74)

NET LOSS PER SHARE – DILUTED:

NET EARNINGS (LOSS) PER SHARE –				
DILUTED:				
NET EARNINGS (LOSS) PER SHARE –				
DILUTED:				
NET EARNINGS (LOSS) PER SHARE –				
DILUTED:				
Common Stock				
Common Stock				
Common Stock	Common Stock	\$ (0.39)	\$ (1.42)	\$ (4.13)
Class B Common	Class B Common			
Stock	Stock	(0.35)	(1.25)	(3.74)

See accompanying notes.

THE MARCUS CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(in thousands)

	Year Ended		
	December 29, 2022	December 30, 2021	December 31, 2020
NET LOSS	\$ (9,104)	\$ (43,293)	\$ (124,866)
OTHER COMPREHENSIVE INCOME (LOSS):			
Pension gain (loss) arising during the period, net of tax effect (benefit) of \$2,967, \$687 and \$(993), respectively (Note 10)	8,401	1,943	(2,813)
Amortization of the net actuarial loss and prior service credit related to the pension, net of tax effect of \$269, \$342 and \$259, respectively (Note 10)	760	969	732
Fair market value adjustment of interest rate swaps, net of tax effect (benefit) of \$144, \$9 and \$(335), respectively (Note 7)	407	25	(949)
Reclassification adjustment on interest rate swaps included in interest expense, net of tax effect of \$64, \$195 and \$263 respectively (Note 7)	182	552	745
Other comprehensive income (loss)	9,750	3,489	(2,285)
COMPREHENSIVE INCOME (LOSS)	646	(39,804)	(127,151)
COMPREHENSIVE INCOME (LOSS) ATTRIBUTABLE TO NONCONTROLLING INTERESTS	2,868	—	(23)
COMPREHENSIVE LOSS ATTRIBUTABLE TO THE MARCUS CORPORATION	\$ (2,222)	\$ (39,804)	\$ (127,128)

	Year Ended		
	December 28, 2023	December 29, 2022	December 30, 2021
NET EARNINGS (LOSS)	\$ 14,794	\$ (9,104)	\$ (43,293)
OTHER COMPREHENSIVE INCOME (LOSS):			
Pension gain arising during the period, net of tax effect of \$171, \$2,967 and \$687, respectively (Note 9)	485	8,401	1,943
Amortization of the net actuarial loss and prior service credit related to the pension, net of tax effect (benefit) of \$(17), \$269 and \$342, respectively (Note 9)	(47)	760	969
Fair market value adjustment of interest rate swaps, net of tax effect (benefit) of \$(8), \$144 and \$9, respectively (Note 6)	(22)	407	25

Reclassification adjustment on interest rate swaps included in interest expense, net of tax effect (benefit) of \$(20), \$64 and \$195 respectively (Note 6)	(58)	182	552
Other comprehensive income	358	9,750	3,489
COMPREHENSIVE INCOME (LOSS)	15,152	646	(39,804)
COMPREHENSIVE INCOME ATTRIBUTABLE TO NONCONTROLLING INTERESTS	—	2,868	—
COMPREHENSIVE INCOME (LOSS) ATTRIBUTABLE TO THE MARCUS CORPORATION	\$ 15,152	\$ (2,222)	\$ (39,804)

See accompanying notes.

THE MARCUS CORPORATION
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(in thousands, except per share data)

	Shareholders' Equity								
	Class B Capital			Accumulated Other		Treasury		Attributable to The Marcus Corporation	
	Common Stock	Common Stock	in Excess of Par	Retained Earnings	Comprehensive Income (Loss)	Stock		Non-Controlling Interests	Total Equity
BALANCES AT DECEMBER 26, 2019	\$ 23,254	\$ 7,936	\$ 145,549	\$ 461,884	\$ (12,648)	\$ (4,540)	\$ 621,435	\$ 23	\$ 621,458
Cash dividends:									
\$0.15 per share Class B Common Stock	—	—	—	(1,224)	—	—	(1,224)	—	(1,224)
\$0.17 per share Common Stock	—	—	—	(3,921)	—	—	(3,921)	—	(3,921)
Exercise of stock options	—	—	(67)	—	—	446	379	—	379
Purchase of treasury stock	—	—	—	—	—	(696)	(696)	—	(696)
Savings and profit-sharing contribution	—	—	299	—	—	1,016	1,315	—	1,315
Reissuance of treasury stock	—	—	(21)	—	—	183	162	—	162
Issuance of non-vested stock	—	—	(631)	—	—	631	—	—	—
Share-based compensation	—	—	4,385	—	—	—	4,385	—	4,385
Equity component of issuance of convertible notes, net of tax and issuance costs	—	—	16,511	—	—	—	16,511	—	16,511
Capped call transactions, net of tax	—	—	(12,495)	—	—	—	(12,495)	—	(12,495)
Other	—	—	(1)	1	—	—	—	—	—
Conversions of Class B Common Stock	10	(10)	—	—	—	—	—	—	—
Comprehensive loss	—	—	—	(124,843)	(2,285)	—	(127,128)	(23)	(127,151)

	Shareholders' Equity								
	Class B Capital			Accumulated Other		Treasury		Attributable to The Marcus Corporation	
	Common Stock	Common Stock	in Excess of Par	Retained Earnings	Comprehensive Income (Loss)	Stock		Non-Controlling Interests	Total Equity
BALANCES AT DECEMBER 31, 2020	23,264	7,926	153,529	331,897	(14,933)	(2,960)	498,723	—	498,723
Cash dividends:									
Adoption of ASU No. 2020-06 (Note 1)	—	—	(16,511)	702	—	—	(15,809)	—	(15,809)
Adoption of ASU No. 2020-06									
Exercise of stock options	—	—	(749)	—	—	2,279	1,530	—	1,530
Purchase of treasury stock	—	—	—	—	—	(1,391)	(1,391)	—	(1,391)

Savings and profit-sharing contribution	Savings and profit-sharing contribution	43	—	968	—	—	—	1,011	—	1,011
Reissuance of treasury stock	Reissuance of treasury stock	—	—	6	—	—	32	38	—	38
Issuance of non-vested stock	Issuance of non-vested stock	242	—	(903)	—	—	661	—	—	—
Share-based compensation	Share-based compensation	—	—	9,316	—	—	—	9,316	—	9,316
Conversions of Class B Common Stock	Conversions of Class B Common Stock	796	(796)	—	—	—	—	—	—	—
Comprehensive income (loss)	Comprehensive income (loss)	—	—	—	(43,293)	3,489	—	(39,804)	—	(39,804)
BALANCES AT DECEMBER 30, 2021	BALANCES AT DECEMBER 30, 2021	24,345	7,130	145,656	289,306	(11,444)	(1,379)	453,614	—	453,614
Cash dividends:		Cash dividends:								
\$0.09 per share Class B Common Stock										
\$0.09 per share Class B Common Stock										
\$0.09 per share Class B Common Stock	\$0.09 per share Class B Common Stock	—	—	—	(640)	—	—	(640)	—	(640)
\$0.10 per share Common Stock	\$0.10 per share Common Stock	—	—	—	(2,440)	—	—	(2,440)	—	(2,440)
Exercise of stock options	Exercise of stock options	—	—	(196)	—	—	1,089	893	—	893
Purchase of treasury stock	Purchase of treasury stock	—	—	—	—	—	(2,286)	(2,286)	—	(2,286)
Savings and profit-sharing contribution	Savings and profit-sharing contribution	56	—	900	—	—	—	956	—	956
Reissuance of treasury stock	Reissuance of treasury stock	—	—	(5)	—	—	57	52	—	52
Issuance of non-vested stock	Issuance of non-vested stock	78	—	(731)	—	—	653	—	—	—
Share-based compensation	Share-based compensation	—	—	8,170	—	—	—	8,170	—	8,170
Conversions of Class B Common Stock	Conversions of Class B Common Stock	19	(19)	—	—	—	—	—	—	—
Distribution to noncontrolling interest	Distribution to noncontrolling interest	—	—	—	—	—	—	—	(2,044)	(2,044)
Comprehensive income (loss)	Comprehensive income (loss)	—	—	—	(11,972)	9,750	—	(2,222)	2,868	646
BALANCES AT DECEMBER 29, 2022	BALANCES AT DECEMBER 29, 2022	\$ 24,498	\$ 7,111	\$ 153,794	\$ 274,254	\$ (1,694)	\$ (1,866)	\$ 456,097	\$ 824	\$ 456,921
Cash dividends:										
\$0.22 per share Class B Common Stock										
\$0.22 per share Class B Common Stock										
\$0.22 per share Class B Common Stock										
\$0.24 per share Common Stock										
Exercise of stock options										
Purchase of treasury stock										

Savings and profit-sharing contribution

Reissuance of treasury stock

Issuance of non-vested stock

Share-based compensation

Conversions of Class B Common Stock

Distribution to noncontrolling interest

Comprehensive income

BALANCES AT DECEMBER 28, 2023

See accompanying notes.

THE MARCUS CORPORATION

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

		Year Ended			
		December	December	December	
		29,	30,	31,	
		2022	2021	2020	
		Year Ended			
		December 28,			
		2023	December 28,	December 29,	December 30,
			2023	2022	2021
OPERATING	OPERATING				
ACTIVITIES	ACTIVITIES				
Net loss		\$ (9,104)	\$ (43,293)	\$ (124,866)	
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:					
Net Earnings (loss)					
Net Earnings (loss)					
Net Earnings (loss)					
Adjustments to reconcile net loss to net cash provided by operating activities:					
Losses on investments in joint ventures					
Losses on investments in joint ventures					
Losses on investments in joint ventures	Losses on investments in joint ventures	143	92	1,539	
Distributions from joint ventures	Distributions from joint ventures	125	—	—	

Gain on disposition of property, equipment				
and other assets		(1,071)	(3,163)	(856)
(Gain) loss on disposition of property, equipment and other assets				
Gain on sale of hotel	Gain on sale of hotel	(6,274)	—	—
Impairment charges	Impairment charges	1,525	5,766	24,676
Depreciation and amortization	Depreciation and amortization	67,073	72,127	75,052
Amortization of debt issuance costs and debt discount				
		1,614	2,198	2,235
Amortization of debt issuance costs				
Share-based compensation	Share-based compensation	8,170	9,316	4,385
Deferred income taxes	Deferred income taxes	7,033	(15,843)	(38,836)
Other long-term obligations	Other long-term obligations	(209)	1,689	2,969
Contribution of the Company's stock to savings and profit-sharing plan	Contribution of the Company's stock to savings and profit-sharing plan	956	1,011	1,315
Changes in operating assets and liabilities:	Changes in operating assets and liabilities:			
Accounts receivable				
Accounts receivable				
Accounts receivable	Accounts receivable	6,838	(22,055)	23,106
Government grants receivable	Government grants receivable	4,335	578	(4,913)
Other assets	Other assets	(1,874)	(2,255)	3,476
Operating leases	Operating leases	(1,768)	(5,325)	9,185
Accounts payable	Accounts payable	(3,262)	21,501	(32,131)
Income taxes	Income taxes	22,722	8,508	1,467
Taxes other than income taxes	Taxes other than income taxes	(1,621)	1,258	(2,305)
Accrued compensation	Accrued compensation	2,038	12,841	(10,422)
Other accrued liabilities	Other accrued liabilities	(4,180)	1,300	(3,630)
Total adjustments	Total adjustments	102,313	89,544	56,312
Net cash provided by (used in) operating activities				
		93,209	46,251	(68,554)
Net cash provided by operating activities				

INVESTING	INVESTING			
ACTIVITIES	ACTIVITIES			
Capital expenditures				
Capital expenditures				
Capital expenditures	Capital expenditures	(36,843)	(17,082)	(21,363)
Proceeds from disposals of property, equipment and other assets	Proceeds from disposals of property, equipment and other assets	4,850	22,145	4,485
Net proceeds from sale of hotel	Net proceeds from sale of hotel	31,101	—	—
Capital contribution in joint venture	Capital contribution in joint venture	—	(2,427)	(28)
Proceeds from sale of trading securities	Proceeds from sale of trading securities	141	377	5,184
Purchase of trading securities	Purchase of trading securities	(263)	(3,080)	(801)
Property insurance recoveries	Property insurance recoveries	1,215	—	—
Life insurance premium reimbursement	Life insurance premium reimbursement	—	11,411	—
Other investing activities	Other investing activities	(547)	(461)	450
Net cash provided by (used in) investing activities	Net cash provided by (used in) investing activities	(346)	10,883	(12,073)
FINANCING	FINANCING			
ACTIVITIES	ACTIVITIES			
Debt transactions:	Debt transactions:			
Debt transactions:				
Debt transactions:				
Proceeds from borrowings on revolving credit facility				
Proceeds from borrowings on revolving credit facility				
Proceeds from borrowings on revolving credit facility	Proceeds from borrowings on revolving credit facility	100,000	178,500	221,500
Repayment of borrowings on revolving credit facility	Repayment of borrowings on revolving credit facility	(100,000)	(178,500)	(302,500)
Proceeds from short-term borrowings				
Repayment on short-term borrowings	Repayment on short-term borrowings	(47,499)	(40,346)	(2,955)
Proceeds from convertible senior notes				
Repayment on short-term borrowings				
Repayment on short-term borrowings				
Principal payments on long-term debt	Principal payments on long-term debt	(35,740)	(10,717)	(9,447)

Proceeds received from PPP loans				
expected to be repaid		—	—	3,424
Principal payments on long-term debt				
Principal payments on long-term debt				
Repayment of borrowing on insurance policy				
Proceeds received from borrowing on insurance policy	Proceeds received from borrowing on insurance policy	—	6,700	—
Principal payments on finance lease obligations				
Principal payments on finance lease obligations	Principal payments on finance lease obligations	(2,670)	(2,774)	(2,007)
Debt issuance costs	Debt issuance costs	(37)	(208)	(7,560)
Equity transactions:				
Treasury stock transactions, except for stock options	Treasury stock transactions, except for stock options	(1,467)	(417)	(534)
Treasury stock transactions, except for stock options				
Treasury stock transactions, except for stock options				
Exercise of stock options	Exercise of stock options	126	594	379
Capped call transactions		—	—	(16,908)
Dividends paid				
Dividends paid				
Dividends paid	Dividends paid	(3,080)	—	(5,145)
Distributions to noncontrolling interest	Distributions to noncontrolling interest	(2,044)	—	—
Net cash provided by (used in) financing activities				
		(92,411)	(47,168)	69,097
Net increase (decrease) in cash, cash equivalents and restricted cash				
		452	9,966	(11,530)
Net cash used in financing activities				
Net increase in cash, cash equivalents and restricted cash				
Cash, cash equivalents and restricted cash at beginning of year	Cash, cash equivalents and restricted cash at beginning of year	24,054	14,088	25,618
Cash, cash equivalents and restricted cash at end of year	Cash, cash equivalents and restricted cash at end of year	\$ 24,506	\$ 24,054	\$ 14,088
Supplemental Information:				
Interest paid, net of amounts capitalized				
Interest paid, net of amounts capitalized				
Interest paid, net of amounts capitalized				

Income taxes refunded (paid), including interest earned		
Change in accounts payable for additions to property and equipment	Change in accounts payable for additions to property and equipment	\$ (348) \$ 1,122 \$ (4,081)

See accompanying notes.

THE MARCUS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except share and per share data)

1. Description of Business and Summary of Significant Accounting Policies

Description of Business - The Marcus Corporation and its subsidiaries (the "Company") operate principally in two business segments:

Theatres: Operates multiscreen motion picture theatres in Wisconsin, Illinois, Iowa, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Arkansas, Colorado, Georgia, Kentucky, Louisiana, New York, Pennsylvania, Texas and Virginia and a family entertainment center in Wisconsin.

Hotels and Resorts: Owns and operates full service hotels and resorts in Wisconsin, Illinois and Nebraska and manages full service hotels, resorts and other properties in Wisconsin, Illinois, Minnesota, Iowa, Nevada, Pennsylvania, California and Nebraska.

Principles of Consolidation - The consolidated financial statements include the accounts of The Marcus Corporation and all of its subsidiaries. The Company **has had** ownership interests greater than 50% in one joint venture that is considered a Variable Interest Entity (VIE) that is also included in the accounts of the Company. The Company **is was** the primary beneficiary of the VIE and the Company's interest **is was** considered a majority voting interest. The primary asset of this VIE, The Skirvin Hilton, was sold on December 16, 2022 as discussed in Note **5 4** - Asset Sale. The equity interest of outside owners in consolidated entities **is was** recorded as noncontrolling interests in the consolidated balance sheets, and their share of earnings **is was** recorded as net earnings attributable to noncontrolling interests in the consolidated statements of earnings (loss) in accordance with the partnership agreements.

Investments in affiliates which are 50% or less owned by the Company for which the Company exercises significant influence but does not have control are accounted for on the equity method.

All intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates - The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Cash Equivalents - The Company considers all highly liquid investments with maturities of three months or less when purchased to be cash equivalents. Cash equivalents are carried at cost, which approximates fair value.

Restricted Cash - Restricted cash consists of bank accounts related to capital expenditure reserve funds, sinking funds, operating reserves and replacement reserves and may include amounts held by a qualified intermediary agent to be used for tax-deferred, like-kind exchange transactions. Restricted cash also includes funds held within the Company's captive insurance entity that are designated to pay expenses related specifically to the captive.

Fair Value Measurements - Certain financial assets and liabilities are recorded at fair value in the financial statements. Some are measured on a recurring basis while others are measured on a non-recurring basis. Financial assets and liabilities measured on a recurring basis are those that are adjusted to fair value each time a financial statement is prepared. Financial assets and liabilities measured on a non-recurring basis are those that are adjusted to fair value when a significant event occurs. A fair value measurement assumes that a transaction to sell an asset or transfer a liability occurs in the principal market for the asset or liability or, in the absence of a principal market, the most advantageous market for the asset or liability.

THE MARCUS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except share and per share data)

1. Description of Business and Summary of Significant Accounting Policies (continued)

The Company's assets and liabilities measured at fair value are classified in one of the following categories:

Level 1 - Assets or liabilities for which fair value is based on quoted prices in active markets for identical instruments as of the reporting date. At **December 29, 2022**, **December 28, 2023** and **December 30, 2021**, **December 29, 2022**, respectively, the Company's **\$3,932**, **\$5,364** and **\$4,617**, **\$3,932** of debt and equity securities classified as trading were valued using Level 1 pricing inputs and were included in other current assets. At **December 29, 2022**, **December 28, 2023** and **December 30, 2021**, **December 29, 2022**, the Company had investments in money market funds of **\$6,000**, **\$37,018** and **\$5,000**, **\$6,000**, respectively, that were valued using Level 1 pricing inputs and were included in cash and cash equivalents.

Level 2 - Assets or liabilities for which fair value is based on valuation models for which pricing inputs were either directly or indirectly observable as of the reporting date. At **December 29, 2022** and **December 30, 2021**, the Company's **\$108** asset and **\$689** liability, respectively, related to the Company's interest rate **hedge swap** contract was valued using Level 2 pricing inputs.

Level 3 - Assets or liabilities for which fair value is based on valuation models with significant unobservable pricing inputs and which result in the use of management estimates. At **December 29, 2022**, **December 28, 2023** and **December 30, 2021**, **December 29, 2022**, none of the Company's recorded assets or liabilities that are measured on a recurring basis at fair market value were valued using Level 3 pricing inputs. Assets and liabilities that are measured on a non-recurring basis are discussed in Note **4** **3** and Note **7**, **6**.

The carrying value of the Company's financial instruments (including cash and cash equivalents, restricted cash, accounts receivable and accounts payable) approximates fair value. The fair value of the Company's **\$80,000**, **\$70,000** of senior notes, valued using Level 2 pricing inputs, is approximately **\$71,328**, **\$64,660** at **December 29, 2022**, **December 28, 2023**, determined based upon discounted cash flows using current market interest rates for financial instruments with a similar average remaining life. The fair value of the Company's **\$100,050** of convertible senior notes, valued using Level 2 pricing inputs, is approximately **\$145,389**, **\$148,757** at **December 29, 2022**, **December 28, 2023**, determined based on market rates and the closing trading price of the convertible senior notes as of **December 29, 2022**, **December 28, 2023** (see Note **7**, **6** for further discussion on the Company's senior notes and convertible senior notes). The carrying amounts of the Company's remaining long-term debt approximate their fair values, determined using current rates for similar instruments, or Level 2 pricing inputs.

Accounts Receivable - The Company evaluates the **collectibility**, **collectability** of its accounts receivable based on a number of factors. For larger accounts, an allowance for doubtful accounts is recorded based on the applicable parties' ability and likelihood to pay based on management's review of the facts. For all other accounts, the Company recognizes an allowance based on length of time the receivable is past due based on historical experience and industry practice.

Inventory - Inventories, consisting of food and beverage and concession items, are stated at the lower of cost or market. Cost has been determined using the first-in, first-out method. Inventories of **\$5,662**, **\$5,914** and **\$4,913**, **\$5,662** as of **December 29, 2022**, **December 28, 2023** and **December 30, 2021**, **December 29, 2022**, respectively, were included in other current assets.

Assets Held for Sale - Long-lived assets that are expected to be sold within the next 12 months and meet the other relevant held-for-sale criteria are classified as assets held for sale and included within current assets on the consolidated balance sheet. Assets held for sale are measured at the lower of their carrying value or their fair value less costs to sell the asset. As of **December 29, 2022**, assets held for sale **consists**, **consisted** primarily of land.

Property and Equipment - The Company records property and equipment at cost. Major renewals and improvements are capitalized, while maintenance and repairs that do not improve or extend the lives of the respective assets are expensed currently. Included in property and equipment are assets related to finance leases. These assets are depreciated over the shorter of the estimated useful lives or related lease terms.

THE MARCUS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except share and per share data)

1. Description of Business and Summary of Significant Accounting Policies (continued)

Depreciation and amortization of property and equipment are provided using the straight-line method over the shorter of the following estimated useful lives or any related lease terms:

	Years
Land improvements	10 - 20
Buildings and improvements	12 - 39
Leasehold improvements	3 - 40
Furniture, fixtures and equipment	2 - 20
Finance lease right-of-use assets	4 - 15

Depreciation expense totaled **\$67,269**, **\$67,041**, **\$72,044** and **\$75,067**, **\$72,044** for fiscal **2023**, **fiscal 2022** and **fiscal 2021**, **and fiscal 2020**, respectively.

Long-Lived Assets - The Company periodically considers whether indicators of impairment of long-lived assets held for use are present. This includes quantitative and qualitative factors, including evaluating the historical actual operating performance of the long-lived assets and assessing the potential impact of recent events and transactions impacting the long-lived assets. If such indicators are present, the Company determines if the long-lived assets are recoverable by assessing whether the sum of the estimated undiscounted

future cash flows attributable to such assets is less than their carrying amounts. If the long-lived assets are not recoverable, the Company recognizes any impairment losses based on the excess of the carrying amount of the assets over their fair value. During fiscal 2022 2023 and fiscal 2021, 2022, the Company determined that indicators of impairment were present. As such, the Company evaluated the value of its property and equipment and the value of its operating lease right-of-use assets and recorded impairment charges in as discussed in Note 4, 3.

Acquisition - The Company recognizes identifiable assets acquired, liabilities assumed and noncontrolling interests assumed in an acquisition at their fair values at the acquisition date based upon all information available to it, including third-party appraisals. Acquisition-related costs, such as due diligence and legal fees, are expensed as incurred. The excess of the acquisition cost over the fair value of the identifiable net assets is reported as goodwill.

Goodwill - The Company reviews goodwill for impairment annually or more frequently if certain indicators arise. The Company performs its annual impairment test on the first day of the fiscal fourth quarter. Goodwill is tested for impairment at a reporting unit level, determined to be at an operating segment level. When reviewing goodwill for impairment, the Company considers the amount of excess fair value over the carrying value of the reporting unit, the period of time since its last quantitative test, and other factors to determine whether or not to first perform a qualitative test. When performing a qualitative test, the Company assesses numerous factors to determine whether it is more likely than not that the fair value of its reporting unit is less than its carrying value. Examples of qualitative factors that the Company assesses include its share price, its financial performance, market and competitive factors in its industry, and other events specific to the reporting unit. If the Company concludes that it is more likely than not that the fair value of its reporting unit is less than its carrying value, the Company performs a quantitative impairment test by comparing the carrying value of the reporting unit to the estimated fair value.

During fiscal 2022 2023 and fiscal 2021, 2022, the Company performed a quantitative analysis for its annual goodwill impairment test as of September 30, 2022 September 29, 2023 and October 1, 2021 September 30, 2022, respectively. In order to determine fair value, the Company used assumptions based on information available to it as the date of the quantitative test, including both market data and forecasted cash flows (Level 3 pricing inputs). The Company determined that the fair value of its goodwill was greater than its carrying value and deemed that no impairment was indicated in either fiscal 2022 2023 or fiscal 2021, 2022.

At December 29, 2022 December 28, 2023 and December 30, 2021 December 29, 2022, the Company's goodwill balance was \$75,015 \$74,996 and \$75,095, \$75,015, respectively. The change in goodwill is due to a deferred tax adjustment related to the prior acquisition of a business. Substantially all of the Company's goodwill relates to the theatre reporting unit.

Trade Name Intangible Asset – The Company recorded a trade name intangible asset in conjunction with the Movie Tavern acquisition that was determined to have an indefinite life. The Company reviews its trade name intangible asset for

THE MARCUS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except share and per share data)

1. Description of Business and Summary of Significant Accounting Policies (continued)

impairment at least annually or whenever events or changes in circumstances indicate the carrying value may not be fully recoverable. During fiscal 2020, the Company determined that indicators of impairment were present. As such, the Company evaluated the value of its trade name intangible asset and recorded an impairment charge during fiscal 2020 as discussed in Note 4.

Capitalization of Interest - The Company capitalizes interest during construction periods by adding such interest to the cost of constructed assets. Interest of approximately \$43, \$18 \$23 and \$48 \$23 was capitalized in fiscal 2023, fiscal 2022 and fiscal 2021, and fiscal 2020, respectively.

Debt Issuance Costs - The Company records debt issuance costs on short-term borrowings and long-term debt as a direct deduction from the related debt liability. Debt issuance costs related to the Company's revolving credit facility are included in other long-term assets. Debt issuance costs are deferred and amortized over the term of the related debt agreements. Amortization of debt issuance costs totaled \$1,467, \$1,614 and amortization of debt discount totaled \$1,614, \$2,198 and \$2,235 for fiscal 2023, fiscal 2022 and fiscal 2021, and fiscal 2020, respectively, and were included in interest expense on the consolidated statements of earnings (loss).

Leases - The Company follows Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) No. 2016-02, *Leases*, (Accounting Standards Codification (ASC) 842), when accounting for leases. See Note 8 7 - Leases.

Investments – The Company has investments in debt and equity securities. These securities are stated at fair value based on listed market prices, where available, with the change in fair value recorded as investment income or loss within the consolidated statements of earnings (loss). The cost of securities sold is based upon the specific identification method.

Revenue Recognition - The Company recognizes revenue in accordance with ASC 606, *Revenue from Contracts with Customers*. See Note 3 2 - Revenue Recognition.

Advertising and Marketing Costs - The Company expenses all advertising and marketing costs as incurred.

Insurance Reserves - The Company uses a combination of insurance and self insurance mechanisms, including participation in captive insurance entities, to provide for the potential liabilities for certain risks, including workers' compensation, healthcare benefits, general liability, property insurance, director and officers' liability insurance, cyber liability, employment practices liability and business interruption. Liabilities associated with the risks that are retained by the company are not discounted and are estimated, in part, by considering historical claims experience, demographic factors and severity factors.

Income Taxes - The Company recognizes deferred tax assets and liabilities based on the differences between the financial statement carrying amounts and the tax basis of assets and liabilities. Deferred tax assets represent items to be used as a tax deduction or credit in the future tax returns for which the Company has already properly recorded the tax

benefit in the income statement. The Company regularly assesses the probability that the deferred tax asset balance will be recovered against future taxable income, taking into account such factors as earnings history, carryback and carryforward periods, and tax strategies. When the indications are that recovery is not probable, a valuation allowance is established against the deferred tax asset, increasing income tax expense in the year that conclusion is made.

The Company assesses income tax positions and records tax benefits for all years subject to examination based upon management's evaluation of the facts, circumstances and information available at the reporting dates. For those tax positions where it is more-likely-than-not that a tax benefit will be sustained, the Company records the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more-likely-than-not that a tax benefit will be sustained, no tax benefit is recognized in the financial statements. See Note 1110 - Income Taxes.

Earnings (Loss) Per Share - Net earnings (loss) per share (EPS) of Common Stock and Class B Common Stock is computed using the two class method. Basic net earnings (loss) per share is computed by dividing net earnings (loss) by the weighted-average number of common shares outstanding. Diluted net earnings (loss) per share is computed by dividing net earnings (loss) by the weighted-average number of common shares outstanding, adjusted for the effect of dilutive stock

THE MARCUS CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(in thousands, except share and per share data)

1. Description of Business and Summary of Significant Accounting Policies (continued)

options and convertible debt instruments using the if-converted method. Convertible Class B Common Stock and convertible debt instruments are reflected on an if-converted basis when dilutive to Common Stock. The computation of the diluted net earnings (loss) per share of Common Stock assumes the conversion of Class B Common Stock in periods that

THE MARCUS CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(in thousands, except share and per share data)

1. Description of Business and Summary of Significant Accounting Policies (continued)

have net earnings since it would be dilutive to Common Stock earnings per share, while the diluted net earnings (loss) per share of Class B Common Stock does not assume the conversion of those shares.

Holders of Common Stock are entitled to cash dividends per share equal to 110% of all dividends declared and paid on each share of Class B Common Stock. As such, the undistributed earnings (losses) for each period are allocated based on the proportionate share of entitled cash dividends.

The following table illustrates the computation of Common Stock and Class B Common Stock basic and diluted net earnings (loss) per share and provides a reconciliation of the number of weighted-average basic and diluted shares outstanding:

		Year Ended		
		December	December	December
		29,	30,	31,
		2022	2021	2020
		Year Ended		
		December 28,	December 28,	December 29,
		2023	2023	2022
		Year Ended		
		December 28,	December 29,	December 30,
		2023	2022	2021
Numerator:	Numerator:			
	Net loss attributable to The			
	Marcus Corporation	\$(11,972)	\$(43,293)	\$(124,843)
Numerator:				
Numerator:				
	Net earnings (loss)			
	attributable to The Marcus			
	Corporation			
	Net earnings (loss)			
	attributable to The Marcus			
	Corporation			
	Net earnings (loss)			
	attributable to The Marcus			
	Corporation			
Denominator	Denominator			
(in thousands):	(in thousands):			

Denominator (in thousands):				
Denominator (in thousands):				
Denominator for basic EPS				
Denominator for basic EPS				
Denominator for basic EPS	Denominator for basic EPS	31,488	31,360	31,042
Effect of dilutive employee stock options	Effect of dilutive employee stock options	—	—	—
Effect of convertible notes	Effect of convertible notes	—	—	—
Denominator for diluted EPS	Denominator for diluted EPS	31,488	31,360	31,042
Net loss per share – Basic:				
Net earnings (loss) per share				
– Basic:				
Net earnings (loss) per share				
– Basic:				
Net earnings (loss) per share				
– Basic:				
Common Stock				
Common Stock				
Common Stock	Common Stock	\$ (0.39)	\$ (1.42)	\$ (4.13)
Class B Common Stock	Class B Common Stock	\$ (0.35)	\$ (1.25)	\$ (3.74)
Net loss per share- Diluted:				
Net earnings (loss) per share- Diluted:				
Common Stock				
Common Stock				
Common Stock	Common Stock	\$ (0.39)	\$ (1.42)	\$ (4.13)
Class B Common Stock	Class B Common Stock	\$ (0.35)	\$ (1.25)	\$ (3.74)

For the periods when the Company reports a net loss, common stock equivalents are excluded from the computation of diluted loss per share as their inclusion would have an antidilutive effect.

At December 29, 2022, and December 30, 2021 and December 31, 2020, respectively, approximately 75,000 104,000 and 76,000 104,000 common stock equivalents were excluded from the computation of diluted net loss per share because of the Company's net loss. At December 29, 2022, and December 30, 2021 and December 31, 2020, approximately 9,141,140 9,084,924 and 9,084,924 common stock equivalents underlying the conversion of the convertible senior notes were excluded from the computation of diluted net loss per share because of the Company's net loss. Additionally, options to purchase 2,933,000 shares, 2,547,000 shares 1,999,000 shares and 1,706,000 1,999,000 shares of common stock at prices ranging from \$15.99 to \$41.90, \$16.32 to \$41.90 \$18.68 to \$41.90 and \$16.32 \$18.68 to \$41.90 per share were outstanding at December 29, 2022 December 28, 2023, December 30, 2021 December 29, 2022 and December 31, 2020 December 30, 2021, respectively, but were not included in the computation of diluted EPS because the options' exercise price was greater than the average market price of the common shares, and therefore, the effect would be antidilutive.

THE MARCUS CORPORATION
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(in thousands, except share and per share data)

Accumulated Other Comprehensive Loss – Accumulated other comprehensive loss presented in the accompanying consolidated balance sheets consists of the following, all presented net of tax:

New Accounting Pronouncements - During the first quarter of fiscal 2022, the Company adopted ASU Accounting Standards Update (ASU) No. 2021-10, *Government Assistance (Topic 832): Disclosures by Business Entities about Government Assistance*. The amendments in this update provide increased transparency of government assistance including the requirement of certain disclosures in a company's notes to the consolidated financial statements about transactions with a government. The adoption of the new standard did not have a material effect on the Company's consolidated financial statements.

In March 2020, the **FASB Financial Accounting Standards Board (FASB)** issued ASU No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. The amendments in this update provide optional expedients and exceptions to the existing guidance on contract modifications and hedge accounting to ease the financial reporting burdens of the expected market transition from the London Interbank Offered Rate (LIBOR), or other interbank offered rates, to alternative reference rates such as the Secured Overnight Financing Rate (SOFR). ASU No. 2020-14 is optional, effective immediately, and may be elected over time as reference rate reform activities occur, generally through December 31, 2024. During the first quarter of fiscal 2023, in conjunction with the execution of the fifth amendment to the Company's credit agreement (see Note 7)6), the Company elected SOFR as its ongoing reference rate. The Company believes that adoption of the new standard will did not have a material effect on its the Company's consolidated financial statements.

On January 1, 2021 In November 2023, the FASB issued ASU No. 2023-07, *Segment Reporting (Topic 280: Improvements to Reportable Segment Disclosures)* (ASU No. 2023-07), which requires disclosure of incremental segment information on an annual and interim basis. ASU No 2023-07 will be effective for the Company's fiscal year ending December 26, 2024, and the Company's interim periods beginning in fiscal 2025. The Company is evaluating the effect that the guidance will have on its consolidated financial statement disclosures.

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures* (ASU No. 2023-09), which requires improvements to income tax disclosures primarily related to rate reconciliation and income taxes paid information. ASU No. 2023-09 will be effective for the Company **adopted** in fiscal 2025 and must be applied prospectively with retrospective application permitted. The Company is evaluating the impact that ASU No. 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): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. ASU No. 2020-06 is designed to simplify the accounting for certain **2023-09 will have on its consolidated** financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. The amendments remove the separation models in ASC 470-20 for certain contracts. As a result, embedded conversion features are not presented separately in equity, rather, the contract is accounted for as a single liability measured at its amortized cost. **statement disclosures**

The Company adopted ASU No. 2020-06 using a modified retrospective method of transition. As such, the Company recorded a one-time cumulative effect adjustment to the balance sheet and the reported financial information for the historical comparable periods will not be revised and will continue to be reported under the accounting standard in effect during the historical periods. The Company recorded a one-time cumulative effect adjustment to the balance sheet on January 1, 2021 as follows:

	Balance at December 31, 2020	Cumulative adjustment	Balance at January 1, 2021
Long-term debt	\$ 193,036	\$ 21,393	\$ 214,429
Deferred income taxes	33,429	(5,584)	27,845
Capital in excess of par	153,529	(16,511)	137,018
Retained earnings	331,897	702	332,599

THE MARCUS CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

2. Impact of COVID-19 Pandemic

The COVID-19 pandemic had an unprecedented impact on the world and both of the Company's business segments. As an operator of movie theatres, hotels and resorts, restaurants and bars, each of which consists of spaces where customers and guests gather in close proximity, the Company's businesses were significantly impacted by protective actions that federal, state and local governments took to control the spread of the pandemic, and customers' reactions or responses to such actions. The extent of these protective actions and their impact on the Company's businesses dissipated throughout fiscal 2022.

The Company began fiscal 2022 with all of its theatres open with normal operating days and hours. While still below pre-COVID-19 levels, attendance has continued to gradually improve as the number of vaccinated individuals increased, more films are released, and customers indicate increasing willingness to return to movie theatres.

The Company began fiscal 2022 with all eight of its company-owned and managed hotels open. All of the Company's restaurants and bars in its hotels and resorts were open during the majority of fiscal 2022, operating in some cases with reduced operating hours. The majority of the Company's hotels and restaurants are now generating revenues at or above pre-pandemic levels, while at certain hotels that primarily serve group business, revenues remain below pre-pandemic levels with improving occupancy and business travel activity increasing.

During fiscal 2022 and fiscal 2021, the Company received \$22,959 and \$1,800, respectively, of federal income tax refunds (including \$636 of interest) related to its fiscal 2020 tax return, with the primary benefit derived from net operating loss carrybacks to prior years. During fiscal 2020 and fiscal 2021, the Company received \$31,500 and \$5,900, respectively, of tax refunds from its fiscal 2019 tax return. The Company also generated additional income tax loss carryforwards during fiscal 2021 that will benefit future years.

During the fourth quarter of fiscal 2020 and continuing into fiscal 2021, a number of states elected to provide grants to certain businesses most impacted by the COVID-19 pandemic. The Company received \$8,100 of these grants in fiscal 2021 and \$4,335 in state grants during fiscal 2022 that were awarded and accrued during the fourth quarter of fiscal 2021.

As of December 29, 2022, the Company had cash and cash equivalents of \$21,704 and \$221,809 of availability under its \$225,000 revolving credit facility. With this strong liquidity position, combined with cash generated from operations and proceeds from the sale of surplus real estate, the Company believes that it is positioned to meet its obligations as they come due and continue to sustain its operations throughout fiscal 2023 and beyond, even if its properties continue to generate reduced revenues during these periods.

3. Revenue Recognition

Revenue from contracts with customers is recognized when, or as, the Company satisfies its performance of obligations by transferring the promised services to the customer. A service is transferred to a customer when, or as, the customer obtains control of that service. A performance obligation may be satisfied over time or at a point in time. Revenue from a performance obligation satisfied over time is recognized by measuring the Company's progress in satisfying the performance obligation in a manner that depicts the transfer of the services to the customer. Revenue from a performance obligation satisfied at a point in time is recognized at the point in time that the Company determines the customer obtains

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3.2. Revenue Recognition (continued)

control over the promised service. The amount of revenue recognized reflects the consideration entitled to in exchange for those services.

The disaggregation of revenues by business segment for fiscal 2023, fiscal 2022 and fiscal 2021 and fiscal 2020 is as follows:

	Fiscal 2023			
	Reportable Segment			
	Theatres	Hotels/Resorts	Corporate	Total
Theatre admissions	\$ 229,186	\$ —	\$ —	\$ 229,186

Rooms	—	106,618	—	106,618
Theatre concessions	197,653	—	—	197,653
Food and beverage	—	73,278	—	73,278
Other revenues ⁽¹⁾	31,555	53,519	346	85,420
Cost reimbursements	—	37,420	—	37,420
Total revenues	\$ 458,394	\$ 270,835	\$ 346	\$ 729,575

Fiscal 2022

	Reportable Segment			
	Theatres	Hotels/Resorts	Corporate	Total
Theatre admissions	\$ 198,485	\$ —	\$ —	\$ 198,485
Rooms	—	107,699	—	107,699
Theatre concessions	180,180	—	—	180,180
Food and beverage	—	74,836	—	74,836
Other revenues ⁽¹⁾	29,076	53,117	367	82,560
Cost reimbursements	—	33,634	—	33,634
Total revenues	\$ 407,741	\$ 269,286	\$ 367	\$ 677,394

Fiscal 2021

	Reportable Segment			
	Theatres	Hotels/Resorts	Corporate	Total
Theatre admissions	\$ 130,740	\$ —	\$ —	\$ 130,740
Rooms	—	77,650	—	77,650
Theatre concessions	118,666	—	—	118,666
Food and beverage	—	47,086	—	47,086
Other revenues ⁽¹⁾	21,754	43,219	358	65,331
Cost reimbursements	88	18,683	—	18,771
Total revenues	\$ 271,248	\$ 186,638	\$ 358	\$ 458,244

	Fiscal 2020			
	Reportable Segment			
	Theatres	Hotels/Resorts	Corporate	Total
Theatre admissions	\$ 64,825	\$ —	\$ —	\$ 64,825
Rooms	—	35,386	—	35,386
Theatre concessions	56,711	—	—	56,711
Food and beverage	—	24,822	—	24,822
Other revenues ⁽¹⁾	10,764	27,552	426	38,742
Cost reimbursements	324	16,878	—	17,202
Total revenues	\$ 132,624	\$ 104,638	\$ 426	\$ 237,688

(1) Included in other revenues is an immaterial amount related to rental income that is not considered contract revenue from contracts with customers under ASC 606.

The Company recognizes revenue from its rooms as earned on the close of business each day. Revenue from theatre admissions, theatre concessions and food and beverage sales are recognized at the time of sale.

Revenues from advanced ticket and gift card sales are recorded as deferred revenue and are recognized when tickets or gift cards are redeemed. Gift card breakage income is recognized based upon historical redemption patterns and represents the balance of gift cards for which the Company believes the likelihood of redemption by the customer is remote. Gift card breakage income is recorded in other revenues in the consolidated statements of earnings (loss).

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3.2. Revenue Recognition (continued)

Other revenues include management fees for theatres and hotels under management agreements. The management fees are recognized as earned based on the terms of the agreements. The management fees include variable consideration that is recognized based on the Company's right to invoice as the amount invoiced corresponds directly to the value transferred to the customer. Other revenues also include family entertainment center revenues and revenues from Hotels/Resorts outlets such as spa, ski, golf and parking, each of which are recognized at the time of sale. In addition, other revenues include pre-show advertising income in the Company's theatres. Pre-show advertising revenue includes variable consideration, primarily based on attendance levels, that is allocated to distinct time periods that make up the overall performance obligation.

Cost reimbursements primarily consist of payroll and related expenses at managed properties where the Company is the employer and may include certain operational and administrative costs as provided for in the Company's contracts with owners. These costs are reimbursed back to the Company. As these costs have no added markup, the revenue and related expense have no impact on operating income (loss) or net earnings (loss).

The timing of the Company's revenue recognition may differ from the timing of payment by customers. However, the Company typically receives payment within a very short period of time of when the revenue is recognized. The Company records a receivable when revenue is recognized prior to payment and it has an unconditional right to payment. Alternatively, when payment precedes the provision for the related services, deferred revenue is recorded until the performance obligation is satisfied.

Revenues do not include sales tax as the Company considers itself a pass-through conduit for collecting and remitting sales tax.

The Company had deferred revenue from contracts with customers of \$38,034, \$37,046, \$39,144 and \$37,307 \$39,144 as of December 29, 2022 December 28, 2023, December 30, 2021 December 29, 2022 and December 31, 2020 December 30, 2021, respectively. The Company had no contract assets as of December 29, 2022 December 28, 2023 and December 30, 2021 December 29, 2022. During fiscal 2023, the Company recognized revenue of \$18,587 that was included in deferred revenues as of December 29, 2022. During fiscal 2022, the Company recognized revenue of \$15,863 that was included in deferred revenues as of December 30, 2021. During fiscal 2021, the Company recognized revenue of \$13,968 that was included in deferred revenues as of December 31, 2020. The majority of the Company's deferred revenue relates to non-redeemed gift cards, advanced ticket sales and the Company's loyalty program.

As of December 29, 2022 December 28, 2023, the amount of transaction price allocated to the remaining performance obligations under the Company's advanced ticket sales was \$2,347 \$2,052 and is reflected in the Company's consolidated balance sheet as part of deferred revenues, which is included in other accrued liabilities. As of December 29, 2022 December 28, 2023, the amount of transaction price allocated to the remaining performance obligations related to the amount of Theatres non-redeemed gift cards was \$19,492 \$17,828 and is reflected in the Company's consolidated balance sheet as part of deferred revenues. The Company recognizes revenue as the tickets and gift cards are redeemed, which is expected to occur within the next two years.

As of December 29, 2022 December 28, 2023, the amount of transaction price allocated to the remaining performance obligations related to the amount of Hotels and Resorts non-redeemed gift cards was \$3,851 \$4,601 and is reflected in the Company's consolidated balance sheet as part of deferred revenues, which is included in other accrued liabilities. The Company recognizes revenue as the gift cards are redeemed, which is expected to occur within the next two years.

The majority of the Company's revenue is recognized in less than one year from the original contract.

4.3. Impairment Charges

During fiscal 2023, fiscal 2022 the Company determined that indicators of impairment were present at certain theatre asset groups. For certain of the theatre asset groups evaluated for impairment, the sum of the estimated undiscounted future cash flows attributable to certain theatre assets was less than their carrying amounts. The Company evaluated the fair value of these assets, consisting primarily of land, building, leasehold improvements, furniture, fixtures and equipment, and operating lease right-of-use assets less lease obligations, and determined that the fair value, measured using Level 3 pricing inputs (using estimated discounted cash flows over the life of the primary assets) was less than their carrying value and recorded impairment losses of \$1,525, reducing certain property and equipment and certain operating lease right-of-use assets. The

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4. Impairment Charges (continued)

remaining net book value of the impaired assets was \$5,229 as of December 29, 2022, excluding any applicable remaining lease obligations.

During fiscal 2021, the Company determined that indicators of impairment were present at certain theatre asset groups. For certain of the theatre asset groups evaluated for impairment, the sum of the estimated undiscounted future cash flows attributable to certain theatre assets was less than their carrying amounts. The Company evaluated the fair value of these assets, consisting primarily of land, building, leasehold improvements, furniture, fixtures and equipment, and operating lease right-of-use assets less lease obligations, and determined that the fair value, measured using Level 3 pricing inputs (using estimated discounted cash flows over the life of the primary assets, including estimated sale proceeds) was less than their carrying value and recorded impairment losses of \$5,766, reducing certain property and equipment and certain operating lease right-of-use assets. The remaining net book value of the impaired assets was \$11,689 as of December 30, 2021, excluding any applicable remaining lease obligations.

In fiscal 2020, the Company determined that indicators of impairment were evident at all asset groups. For certain theatre asset groups evaluated for impairment, the sum of the estimated undiscounted future cash flows attributable to these assets was less than their carrying amounts. The Company evaluated the fair value of these assets, consisting primarily of land, building, leasehold improvements, furniture, fixtures and equipment, and operating lease right-of-use assets less lease obligations, and determined that the fair value, measured using Level 3 pricing inputs (using estimated discounted cash flows over the life of the primary assets, including estimated sale proceeds) was less than their carrying value and recorded a \$22,076 impairment loss, losses of \$1,061, \$1,525 and \$5,766 in fiscal 2023, fiscal 2022 and fiscal 2021, respectively, reducing certain property and equipment and certain operating lease right-of-use assets. The

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3. Impairment Charges (continued)

remaining net book value of the impaired assets was \$33,313 \$6,429 as of December 31, 2020 December 28, 2023, \$5,229 as of December 29, 2022, and \$11,689 as of December 30, 2021, excluding any applicable remaining lease obligations.

In fiscal 2020, the Company determined that indicators of impairment were evident related to its trade name intangible asset. The Company estimated the fair value of its trade name intangible asset using an income approach, specifically the relief from royalty method, which uses certain assumptions that are Level 3 pricing inputs, including future revenues attributable to the trade name, a royalty rate (1.0% as of December 31, 2020) and a discount rate (17.0% as of December 31, 2020). During fiscal 2020, the Company determined that the fair value of the asset was less than the carrying value and recorded a \$2,600 impairment loss. The fair value of the trade name intangible asset was \$6,900 as of December 31, 2020.

5. 4. Asset Sale

On December 16, 2022, the Company, together with its noncontrolling interest joint venture partner, Skirvin Partners in Development, sold The Skirvin Hilton hotel in Oklahoma City, Oklahoma for a total sale price of \$36,750. The assets sold consisted primarily of land, building, equipment and other assets. Net proceeds from the sale were approximately \$31,101, net of transaction costs of \$609 and retirement of a ground lease obligation of \$5,040. The retirement of the ground lease obligation resulted in the Company owning the land, which was then conveyed to the buyer. Additionally, \$24,111 in mortgage debt was retired. The transaction resulted in a gain on sale of \$6,274. The Skirvin Hilton revenues for fiscal 2022 through the date of sale and fiscal 2021 and fiscal 2020 were \$15,979, \$12,121 and \$7,521, \$12,121, respectively. The Skirvin Hilton operating loss was \$387 \$104 and \$1,800 \$104 for fiscal 2022 fiscal 2021 and fiscal 2020 2021, respectively. Pursuant to the terms of the partnership agreement, \$824 and \$2,044 was distributed to noncontrolling interests during fiscal 2023 and fiscal 2022, respectively, representing the partner's share of net sales proceeds and partnership liquidation proceeds. The remaining amount to be distributed to noncontrolling interests is \$824 as of December 29, 2022 and is included in noncontrolling interests in the consolidated balance sheet.

6. 5. Additional Balance Sheet Information

The composition of accounts receivable is as follows:

	December 29, 2022	December 30, 2021
Trade receivables, net of allowances of \$172 and \$1,001, respectively	\$ 6,707	\$ 8,981

	December 28, 2023	December 28, 2023	December 29, 2022
Trade receivables, net of allowances of \$115 and \$172, respectively			
Other receivables	Other receivables	14,748	19,921
		\$21,455	\$28,902
	\$		

The composition of property and equipment, which is stated at cost, is as follows:

	December 28, 2023	December 29, 2022
Land and improvements	\$ 131,833	\$ 132,285
Buildings and improvements	719,521	729,177
Leasehold improvements	166,245	167,516
Furniture, fixtures and equipment	397,150	386,197
Finance lease right-of-use assets	30,106	29,885
Construction in progress	11,432	10,305
	1,456,287	1,455,365
Less accumulated depreciation and amortization	774,025	739,600
	\$ 682,262	\$ 715,765

The composition of other assets is as follows:

	December 28, 2023	December 29, 2022
Intangible assets	\$ 6,904	\$ 6,945
Cash surrender value of insurance policy	8,276	1,033
Other assets	9,443	4,913
	<u>\$ 24,623</u>	<u>\$ 12,891</u>

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6.5. Additional Balance Sheet Information (continued)

The composition of property and equipment, which is stated at cost, is as follows:

	December 29, 2022	December 30, 2021
Land and improvements	\$ 132,285	\$ 129,642
Buildings and improvements	729,177	756,974
Leasehold improvements	167,516	166,060
Furniture, fixtures and equipment	386,197	375,650
Finance lease right-of-use assets	29,885	75,124
Construction in progress	10,305	6,000
	<u>1,455,365</u>	<u>1,509,450</u>
Less accumulated depreciation and amortization	<u>739,600</u>	<u>738,258</u>
	<u>\$ 715,765</u>	<u>\$ 771,192</u>

The composition of other assets is as follows:

	December 29, 2022	December 30, 2021
Intangible assets	6,945	6,987
Other assets	5,946	5,702
	<u>\$ 12,891</u>	<u>\$ 12,689</u>

Included in intangible assets is a trade name valued at \$6,900 as of **December 29, 2022** December 28, 2023 and **December 30, 2021** December 29, 2022 that has an indefinite life. The balance in cash surrender value of insurance policy as of December 29, 2022 included a \$6,700 loan that net against the value of the policy. The loan was repaid during fiscal 2023.

7.6. Long-Term Debt and Short-Term Borrowings

Long-term debt is summarized as follows:

	December 29, 2022	December 30, 2021
Mortgage notes	\$ —	\$ 24,388

	December 28, 2023	December 28, 2023	December 29, 2022
Senior notes	Senior notes	80,000	90,000
Unsecured term note due February 2025, with monthly principal and interest payments of \$39, bearing interest at 5.75%	Unsecured term note due February 2025, with monthly principal and interest payments of \$39, bearing interest at 5.75%	954	1,356
Convertible senior notes	Convertible senior notes	100,050	100,050

Payroll Protection Program loans	Payroll Protection Program loans	2,240	3,181
Revolving credit agreement	Revolving credit agreement	—	—
Debt issuance costs	Debt issuance costs	(2,807)	(3,831)
Total debt, net of debt issuance costs	Total debt, net of debt issuance costs	180,437	215,144
Less current maturities, net of issuance costs	Less current maturities, net of issuance costs	10,432	10,967
Long-term debt	Long-term debt	170,005	204,177
Short-term borrowings		—	47,346
Total debt and short-term borrowings, net of issuance costs		\$180,437	\$262,490

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7. Long-Term Debt and Short-Term Borrowings (continued)

On December 16, 2022, in conjunction with the sale of a hotel, the mortgage notes were retired. The mortgage notes bore fixed rate interest from 3.00% to 5.03% and had a weighted-average rate of 4.27% at December 30, 2021. The mortgage notes were secured by the related land, buildings and equipment.

Credit Agreement and Short-Term Borrowings

On January 9, 2020, the Company replaced its then-existing credit agreement with several banks. On April 29, 2020, the Company entered into the First Amendment, on September 15, 2020, the Company entered into the Second Amendment, on July 13, 2021, the Company entered into the Third Amendment, on July 29, 2022, the Company entered into the Fourth Amendment, and on February 10, 2023, the Company entered into the Fifth Amendment and on October 16, 2023, the Company entered into the Sixth Amendment (the Credit Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, hereinafter referred to as the "Credit Agreement").

The Credit Agreement provides for a new five-year revolving credit facility that matures on January 9, 2025. On October 16, 2028, with an initial maximum aggregate amount of availability of \$225,000. At December 29, 2022, December 28, 2023, there were no borrowings outstanding on the revolving credit facility, which when borrowed, bear interest at LIBOR SOFR plus a margin (as discussed further below), effectively 6.75% 7.28% at December 29, 2022, December 28, 2023. Availability under the \$225,000 revolving credit facility was \$221,809 \$220,623 as of December 29, 2022, December 28, 2023 after taking into consideration outstanding letters of credit that reduce revolver availability.

In conjunction with the First Amendment, the Company added an initial \$90,800 term loan facility that was scheduled to mature on September 22, 2021. In conjunction with the Third Amendment, the term loan facility was reduced to \$50,000 and the maturity date was extended to September 22, 2022. On July 29, 2022, in conjunction with the Fourth Amendment, the Company repaid \$46,679 of short-term borrowings, repaying in full and retiring the term loan facility maturing on September 22, 2022. Additionally, the Fourth Amendment modified the consolidated fixed charge coverage covenant, reducing the requirement to maintain a consolidated fixed charge coverage ratio of at least 3.0 to 1.0 to at least 2.5 to 1.0 starting as of the end of the fiscal quarter ending March 20, 2023, and continuing for each fiscal quarter thereafter.

During fiscal 2022 and prior to the Fifth Amendment, borrowings under the Credit Agreement generally bear interest at a variable rate equal to (i) LIBOR, subject to a 1% floor, plus a specified margin based upon the Company's consolidated debt to capitalization ratio as of the most recent determination date; or (ii) the base rate (which is the highest of (a) the prime rate, (b) the greater of the federal funds rate and the overnight bank funding rate plus 0.50% or (c) the sum of 1% plus one-month LIBOR), subject to a 1% floor, plus a specified margin based upon the Company's consolidated debt to capitalization ratio as of the most recent determination date. In addition, the Credit Agreement generally requires the Company to pay a facility fee equal to 0.125% to 0.25% of the total revolving commitment, depending on its consolidated debt to capitalization ratio, as defined in the Credit Agreement. However, pursuant to the First Amendment and the Second Amendment: (A) in respect of revolving loans, (1) the Company is charged a facility fee equal to 0.40% of the total revolving credit facility commitment and (2) the specified margin is 2.35% for LIBOR borrowings and 1.35% for ABR borrowings, which facility fee rate and specified margins will remain in effect until the end of the first fiscal quarter ending after the end of any period in which any portion of the term loan facility remains outstanding or the testing of any financial covenant in the Credit Agreement is suspended (the "specified period"); and (B) in respect of term loans, the specified margin is 2.75% for LIBOR borrowings and 1.75% for ABR borrowings, in each case, at all times.

Effective with the Fifth Amendment on February 10, 2023, the variable rate LIBOR benchmark in the Credit Agreement was replaced with the secured overnight financing rate ("SOFR"). Borrowings under the Credit Agreement now generally bear interest at a variable rate equal to: (i) SOFR, plus a credit spread adjustment of 0.10%, subject to a 0% floor, plus a specified margin based upon our consolidated debt to capitalization net leverage ratio as of the most recent determination date; date, or (ii) the alternate base rate ("ABR") (which is the highest of (a) the prime rate, (b) the greater of the federal funds rate and the overnight bank funding rate plus 0.50% or (c) the sum of 1% plus one-month SOFR plus a credit spread adjustment of 0.10%), subject to a 1% floor, plus a specified margin based upon our consolidated debt to capitalization net leverage ratio as of the most recent determination date. In addition, the Credit Agreement generally requires the Company to pay a facility fee equal to 0.125% to 0.25% date; provided, however, as of the total revolving commitment, depending on our consolidated debt to capitalization ratio, as defined in effective date of the Credit Agreement. However, pursuant to the First Sixth Amendment, the Second Amendment and the Fifth Amendment: (A) in respect of revolving loans, (1) the Company applicable margin is charged a 1.75% for SOFR borrowings and 0.75% for ABR borrowings, and will be adjusted for the first time thereafter based upon our net leverage ratio as determined for the fiscal year ending December 28, 2023. The revolving credit facility also requires an annual facility fee equal to 0.40% 0.175% to 0.275% of the total revolving credit facility commitment commitments depending on our consolidated net leverage ratio; provided, however that such fee will be 0.25% and (2) will be adjusted for the specified margin is 2.35% first time thereafter based upon our consolidated net leverage ratio as determined for SOFR borrowings and 1.35% for ABR borrowings, which facility the fiscal year ending December 28, 2023.

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7.6. Long-Term Debt and Short-Term Borrowings (continued)

fee rate and specified margins will remain in effect until the end of the first fiscal quarter ending after the end of any period in which the testing of any financial covenant in the Credit Agreement is suspended (the "specified period"); and (B) in respect of term loans, the specified margin is 2.75% for SOFR borrowings and 1.75% for ABR borrowings, in each case, at all times.

The Credit Agreement contains various includes, among other restrictions and covenants applicable to the Company. Among other requirements, Company, a requirement that our consolidated net leverage ratio not exceed 3.50:1.00, provided that, with some limitations, such ratio may be increased to 4.00:1.00 for the Credit Agreement (a) limits full fiscal quarter in which a material acquisition (in which aggregate consideration equals or exceeds \$30,000) is consummated and the amount of priority debt (as defined in the Credit Agreement) held by the Company's restricted subsidiaries to no more than 20% of the Company's consolidated total capitalization (as defined in the Credit Agreement), (b) limits the Company's permissible consolidated debt to capitalization ratio to three fiscal quarters immediately thereafter, and a maximum of 0.55 to 1.0, (c) requires the Company to maintain a consolidated fixed charge requirement that our interest coverage ratio of at least 2.5 to 1.0 as of the end of the any fiscal quarter ending March 30, 2023 and each fiscal quarter thereafter, (d) restricts the Company's ability to incur additional indebtedness, pay dividends and other distributions (the restriction on dividends and other distributions does not apply to subsidiaries), and make voluntary prepayments on or defeasance of the Company's 4.02% Senior Notes due August 2025, 4.32% Senior Notes due February 2027, the notes or certain other convertible securities, (e) requires the Company's consolidated EBITDA not to be less than or equal to \$70,000 as of December 29, 2022 for the four consecutive fiscal quarters then ending, (f) requires the Company's consolidated liquidity not to be less than or equal to \$50,000 as of the end of the fiscal quarter ending December 29, 2022, and (g) prohibits the Company from incurring or making capital expenditures, (i) during fiscal 2021 in excess of the sum of \$40,000 plus certain adjustments, or (ii) during fiscal 2022 in excess of \$50,000 plus certain adjustments.

Pursuant to the Credit Agreement, if, at any time during the specified period, the Company's unrestricted cash on hand exceeds \$75,000, the Credit Agreement requires the Company to prepay revolving loans under the Credit Agreement by the amount of such excess, without a corresponding reduction in the revolving commitments under the Credit Agreement. 3.00:1.00.

In connection with the Credit Agreement: (i) the Company has pledged, subject to certain exceptions, security interests and liens in and on (a) substantially all of its respective personal property assets and (b) certain of its respective real property assets, in each case, to secure the Credit Agreement and related obligations; and (ii) certain of the Company's subsidiaries have guaranteed the Company's obligations under the Credit Agreement. The foregoing security interests, liens and guaranties will remain in effect until the Collateral Release Date (as defined in the Credit Agreement).

The Credit Agreement contains customary events of default. If an event of default under the Credit Agreement occurs and is continuing, then, among other things, the lenders may declare any outstanding obligations under the Credit Agreement to be immediately due and payable and exercise rights and remedies against the pledged collateral.

Note Purchase Agreements

The Company's \$80,000 \$70,000 of senior notes consist of two Note Purchase Agreements maturing in 2025 through 2027, require annual principal payments in varying installments and bear interest payable semi-annually at fixed rates ranging from 4.02% to 4.32%, with a weighted-average fixed rate of 4.23% at December 28, 2023 and 4.21% at December 29, 2022 and 4.17% at December 30, 2021.

On July 13, 2021 October 16, 2023, the Company and certain purchasers entered into amendments (the "Note Amendments") to the Note Purchase Agreement, dated June 27, 2013, and the Note Purchase Agreement, dated December 21, 2016 (collectively, the "Note Purchase Agreements"). The Note Amendments amend certain covenants and other terms of the Note Purchase Agreements and are identical to consistent with the amended covenants and collateral provisions that are referenced in the Credit Agreement section above. Additionally, from April 29, 2020 until the last day of the first fiscal quarter ending after the Collateral Release Date (as defined in the Note Amendments), the Company is required to pay a fee to each Note holder equal to 0.975% of the aggregate principal amount of Notes held by such holder and is payable quarterly (0.24375% of the aggregate principal amount of the Notes per quarter).

In connection with the Note Amendments: (i) the Company has pledged, subject to certain exceptions, security interests and liens in and on (a) substantially all of their respective personal property assets and (b) certain of their respective real property assets, in each case, to secure the Notes and related obligations; and (ii) certain subsidiaries of the Company have guaranteed the Company's obligations under the Note Purchase Agreements and the Notes. The foregoing security interests, liens and guaranties will remain in effect until the Collateral Release Date.

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7. Long-Term Debt and Short-Term Borrowings (continued)

The Note Purchase Agreements contain customary events of default. If an event of default under the Note Purchase Agreements occurs and is continuing, then, among other things, all Notes then outstanding become immediately due and payable and the Note holders may exercise their rights and remedies against the pledged collateral.

Convertible Senior Notes

On September 17, 2020, the Company entered into a purchase agreement to issue and sell \$100,050 aggregate principal amount of its 5.00% Convertible Senior Notes due 2025 (the "Convertible Notes.") The Convertible Notes were issued pursuant to an indenture (the "Indenture"), dated September 22, 2020, between the Company and U.S. Bank National Association, as trustee. The net proceeds from the sale of the Convertible Notes were approximately \$95,421 after deducting the Initial Purchasers' fees and additional fees and expenses related to the offering. The Company used \$16,908 of net proceeds from the offering to pay the cost of the Capped Call Transactions (as described below). The remainder of the net proceeds were used to repay borrowings under the Company's revolving credit facility and for general corporate purposes. The Convertible Notes are senior unsecured obligations and rank (i) senior in right of payment to any of the Company's indebtedness that is expressly subordinated in right of payment to the Convertible Notes; (ii) equal in right of payment to any of the Company's unsecured indebtedness that is not so subordinated; (iii) effectively junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness; and (iv) structurally junior to all indebtedness and other liabilities (including trade payables) of the Company's subsidiaries.

The Convertible Notes bear interest from September 22, 2020 at a rate of 5.00% per year. Interest will be payable semiannually in arrears on March 15 and September 15 of each year, beginning on March 15, 2021. The Convertible Notes

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6. Long-Term Debt (continued)

may bear additional interest under specified circumstances relating to the Company's failure to comply with its reporting obligations under the Indenture or if the Convertible Notes are not freely tradable as required by the Indenture. The Convertible Notes will mature on September 15, 2025, unless earlier repurchased or converted. Prior to March 15, 2025, the Convertible Notes will be convertible at the option of the holders only under the following circumstances: (i) during any fiscal quarter commencing after the fiscal quarter ending on December 30, 2020 (and only during such fiscal quarter), if the last reported sale price of the Common Stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (ii) during the five business day period immediately after any five consecutive trading day period, or the measurement period, in which the trading price per \$1,000 principal amount of the Convertible Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Common Stock and the conversion rate on each such trading day; or (iii) upon the occurrence of specified corporate events. On or after March 15, 2025, the Convertible Notes will be convertible at the option of the holders at any time until the close of business on the second scheduled trading day immediately preceding the maturity date.

Upon conversion, the Convertible Notes may be settled, at the company's election, in cash, shares of Common Stock or a combination thereof. The initial conversion rate ~~is~~ **was** 90.8038 shares of Common Stock per \$1,000 principal amount of the Convertible Notes (equivalent to an initial conversion price of approximately \$11.01 per share of Common Stock), representing an initial conversion premium of approximately 22.5% to the \$8.99 last reported sale price of the Common Stock on The New York Stock Exchange on September 17, 2020. The conversion rate is subject to adjustment for certain events, including distributions and dividends paid to holders of Common Stock. At **December 29, 2022** **December 28, 2023**, the adjusted conversion rate is **91.3657** **92.82** shares of Common Stock per \$1,000 principal amount of the Convertible Notes (equivalent to an adjusted conversion price of approximately **\$10.95** **\$10.77** per share of Common Stock). If the Company undergoes certain fundamental changes, holders of Convertible Notes may require the Company to repurchase for cash all or part of their Convertible Notes for a purchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. In addition, if a make-whole fundamental change occurs prior to the maturity date, the Company will, under certain circumstances, increase the conversion rate for holders who convert Convertible Notes in connection with such make-whole fundamental change. The Company may not redeem the Convertible Notes before maturity and no "sinking fund" is provided for the Convertible Notes. The Indenture includes covenants customary for securities similar to the Convertible Notes, sets forth certain events of default after which the Convertible Notes may be declared immediately due and payable and sets forth certain types of

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(in thousands, except share and per share data)

7. Long-Term Debt and Short-Term Borrowings (continued)

bankruptcy or insolvency events of default involving the Company and certain of its subsidiaries after which the Convertible Notes become automatically due and payable.

Since the Company's fiscal 2021 second quarter, the Company's Convertible Notes have been eligible for conversion at the option of the holders as the last reported sale price of the Common Stock was greater than or equal to 130% of the applicable conversion price for at least 20 trading days during the last 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter. The Company has the ability to settle the conversion in Company stock. As such, the Convertible Notes will continue to be classified as

long-term. Future convertibility and resulting balance sheet classification of this liability will be monitored at each quarterly reporting date and will be analyzed dependent upon market prices of the Company's Common Stock during the prescribed measurement period. No Convertible Notes have been converted to date and the Company does not expect any to be converted within the next 12 months.

Capped Call Transactions

In connection with the pricing of the Convertible Notes on September 17, 2020, and in connection with the exercise by the Initial Purchasers of their option to purchase additional Convertible Notes on September 18, 2020, the Company entered into privately negotiated Capped Call Transactions (the "Capped Call Transactions") with certain of the Initial Purchasers and/or their respective affiliates and/or other financial institutions (the "Capped Call Counterparties"). The Capped Call Transactions are expected generally to reduce potential dilution of the Company's common stock upon any conversion of the Convertible Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of such converted Convertible Notes, as the case may be, in the event that the market price per share of the Company's common stock, as measured under the terms of the Capped Call Transactions, is greater than the strike price of the Capped Call Transactions, which initially corresponds to the conversion price of the Convertible Notes and is subject to anti-dilution anti-

THE MARCUS CORPORATION
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6. Long-Term Debt (continued)

dilution adjustments substantially similar to those applicable to the conversion rate of the Convertible Notes. If, however, the market price per share of the Company's common stock, as measured under the terms of the Capped Call Transactions, exceeds the cap price of the Capped Call Transactions, there would nevertheless be dilution to the extent that such market price exceeds the cap price of the Capped Call Transactions. The cap price of the Capped Call Transactions was initially \$17.98 per share (in no event shall the cap price be less than the strike price of \$11.0128), which represents a premium of 100% over the last reported sale price of the Common Stock of \$8.99 per share on The New York Stock Exchange on September 17, 2020. Under the terms of the Capped Call Transactions, the cap price is subject to adjustment for certain events, including distributions and dividends paid to holders of Common Stock. At December 29, 2022 December 28, 2023, the adjusted cap price is approximately \$17.87 \$17.59 per share. The Capped Call Transactions are separate transactions entered into by the Company with the Capped Call Counterparties, are not part of the terms of the Convertible Notes and will not change the rights of holders of the Convertible Notes under the Convertible Notes and the Indenture.

Paycheck Protection Program Loans

During fiscal 2020, 11 of the Company's subsidiaries received proceeds totaling \$13,459 under the CARES Act's Paycheck Protection Program (PPP). The PPP loans bear interest at a fixed interest rate of 1.0%, require principal and interest payments that began in April 2021, and mature in fiscal 2026. The PPP loans allow for a substantial amount of the principal to be forgiven. Under Section 1106 of the CARES Act, borrowers are eligible for forgiveness of principal and accrued interest on the loans to the extent that the proceeds are used to cover eligible payroll costs, mortgage interest costs, rent and utility costs (qualified expenses). The Company's subsidiaries used a cumulative total of approximately \$10,012 of the PPP loan proceeds to pay for qualified expenses. Of the cumulative proceeds used, approximately \$9,094 of the expenditures paid were used to cover eligible employee payroll costs expenses, which offset the payroll costs of employees rehired due to the CARES Act. The remaining approximately \$918 of expenditures paid were used to offset rent expense, utility costs and mortgage interest expense. The portion of the PPP loan proceeds used for qualified expenses were forgiven under the terms of the CARES Act program during fiscal 2021 and the Company reduced its cumulative subsidiary loan balances by this amount.

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7. Long-Term Debt and Short-Term Borrowings (continued)
2021.

Scheduled annual principal payments on long-term debt, net of amortization of debt issuance costs, for the years subsequent to December 29, 2022 December 28, 2023, are as follows:

Fiscal Year	
2023	\$ 10,432
2024	10,365
2025	109,684
2026	—
2027	49,956
Thereafter	—
	<u>\$ 180,437</u>

Interest paid on short-term borrowings and long-term debt, net of amounts capitalized, for fiscal 2022, fiscal 2021 and fiscal 2020 totaled \$13,442, \$14,119 and \$10,885, respectively.

Fiscal Year

2024	\$	10,303
2025		109,631
2026		—
2027		49,917
2028		—
Thereafter		—
	\$	169,851

Derivatives

The Company utilizes derivatives principally to manage market risks and reduce its exposure resulting from fluctuations in interest rates. The Company formally documents all relationships between hedging instruments and hedged items, as well as its risk-management objectives and strategies for undertaking various hedge transactions.

The Company entered into two interest rate swap agreements on March 1, 2018 covering \$50,000 of floating rate debt. The first agreement had a notional amount of \$25,000, expired March 1, 2021, and required the Company to pay interest at a defined rate of 2.559% while receiving interest at a defined variable rate of one-month LIBOR. The second agreement had a notional amount of \$25,000, expired March 1, 2023, and required the Company to pay interest at a defined rate of 2.687% while receiving interest at a defined variable rate of one-month LIBOR (4.125% at December 29, 2022). The Company recognizes derivatives as either assets or liabilities on the consolidated balance sheets at fair value. The accounting for changes in the fair value (i.e., gains or losses) of a derivative instrument depends on whether it has been designated and qualifies as part of a hedging relationship and on the type of hedging relationship. Derivatives that do not qualify for hedge accounting must be adjusted to fair value through earnings. For derivatives that are designated and qualify as a cash flow hedge, the effective portion of the gain or loss on the derivative is reported as a component of accumulated other comprehensive income (loss) and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. The Company's interest rate swap agreements ~~are~~ **were** considered effective and **qualify** ~~qualified~~ as cash flow hedges. The Company assesses, both at the inception of each hedge and on an on-going basis, whether the derivatives that are used in its hedging transactions are highly effective in offsetting changes in cash flows of the hedged items.

The Company entered into two interest rate swap agreements on March 1, 2018 covering \$50,000 of LIBOR floating rate debt. The first agreement had a notional amount of \$25,000, expired March 1, 2021, and required the Company to pay interest at a defined rate of 2.559% while receiving interest at a defined variable rate of one-month LIBOR. The second agreement had a notional amount of \$25,000, expired March 1, 2023, and required the Company to pay interest at a defined rate of 2.687% while receiving interest at a defined variable rate of one-month LIBOR. The fair value of the interest rate

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(in thousands, except share and per share data)

6. Long-Term Debt (continued)

swap on December 29, 2022, was an asset of \$108, which ~~is~~ **was** included in other current assets in the consolidated balance sheet. ~~The fair value of the~~ **There were no** interest rate swap on December 30, 2021, was a liability of \$689, which was included in other long-term obligations in the consolidated balance sheet. The Company does not expect the interest rate swap to have a material effect on earnings over its remaining term. swaps outstanding at December 28, 2023.

7. Leases

The Company determines if an arrangement is a lease at inception. The Company evaluates each lease for classification as either a finance lease or an operating lease according to accounting guidance ASC 842. The Company performs this evaluation at the inception of the lease and when a modification is made to a lease. The Company leases real estate and equipment with lease terms of one year to 45 years, some of which include options to extend and/or terminate the lease. The exercise of lease renewal options is done at the Company's sole discretion. When deemed reasonably certain of exercise, the renewal options are included in the determination of the lease term and related right-of-use asset and lease liability. The depreciable life of the asset is limited to the expected term. The Company's lease agreements do not contain any residual value guarantees or any restrictions or covenants.

THE MARCUS CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(in thousands, except share and per share data)

8. Leases (continued)

Right-of-use assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. Operating lease right-of-use assets and liabilities are recognized at commencement date of the lease based on the present value of lease payments over the lease term. When readily determinable, the Company uses the implicit rate in the lease in determining the present value of lease payments. When the lease does not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at the lease commencement date, including the fixed rate the Company could borrow for a similar amount, over a similar lease term with similar collateral. The Company recognizes right-of-use assets for all assets subject to operating leases in an amount equal to the operating lease liabilities, adjusted for the balances of long-term prepaid rent, favorable lease intangible assets, deferred lease expense, unfavorable lease liabilities and deferred lease incentive liabilities. Lease expense for operating lease payments is recognized on a straight-line basis over the lease term.

The majority of the Company's lease agreements include fixed rental payments. For those leases with variable payments based on increases in an index subsequent to lease commencement, such payments are recognized as variable lease expense as they occur. Variable lease payments that do not depend on an index or rate, including those that depend on the Company's performance or use of the underlying asset, are also expensed as incurred. Lease expense for operating lease payments is recognized on a straight-line basis over the lease term.

Total lease cost consists of the following:

Lease Cost	Classification	Fiscal 2022	Fiscal 2021
Finance lease costs:			
Amortization of finance lease assets	Depreciation and amortization	\$ 2,789	\$ 2,732
Interest on lease liabilities	Interest expense	850	951
		<u>\$ 3,639</u>	<u>\$ 3,683</u>
Operating lease costs:			
Operating lease costs	Rent expense	\$ 25,381	\$ 25,489
Variable lease cost	Rent expense	514	(30)
Short-term lease cost	Rent expense	142	135
		<u>\$ 26,037</u>	<u>\$ 25,594</u>

Additional information related to leases is as follows:

Other Information	Fiscal 2022	Fiscal 2021
Cash paid for amounts included in the measurement of lease liabilities:		
Financing cash flows from finance leases	\$ 2,670	\$ 2,774
Operating cash flows from finance leases	850	951
Operating cash flows from operating leases	29,025	31,136
Right of use assets obtained in exchange for new lease obligations:		
Finance lease liabilities	419	—
Operating lease liabilities, including from acquisitions	275	2,663

Lease Cost	Classification	Fiscal 2023	Fiscal 2022
Finance lease costs:			
Amortization of finance lease assets	Depreciation and amortization	\$ 2,760	\$ 2,789
Interest on lease liabilities	Interest expense	759	850
		<u>\$ 3,519</u>	<u>\$ 3,639</u>
Operating lease costs:			
Operating lease costs	Rent expense	\$ 24,126	\$ 25,381
Variable lease cost	Rent expense	1,892	514
Short-term lease cost	Rent expense	136	142
		<u>\$ 26,154</u>	<u>\$ 26,037</u>

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8.7. Leases (continued)

	December 29, 2022	December 30, 2021
Finance leases:		
Property and equipment – gross	\$ 29,885	\$ 75,124
Accumulated depreciation and amortization	(15,332)	(58,197)
Property and equipment - net	<u>\$ 14,553</u>	<u>\$ 16,927</u>

Additional information related to leases is as follows:

Other Information	Fiscal 2023	Fiscal 2022
Cash paid for amounts included in the measurement of lease liabilities:		
Financing cash flows from finance leases	\$ 2,527	\$ 2,670
Operating cash flows from finance leases	759	850
Operating cash flows from operating leases	25,391	29,025
Right of use assets obtained in exchange for new lease obligations:		
Finance lease liabilities	357	419
Operating lease liabilities, including from acquisitions	276	275

	December 28, 2023	December 29, 2022
Finance leases:		
Property and equipment – gross	\$ 30,106	\$ 29,885
Accumulated depreciation and amortization	(17,956)	(15,332)
Property and equipment - net	\$ 12,150	\$ 14,553

Remaining lease terms and discount rates are as follows:

Lease Term and Discount Rate	Lease Term and Discount Rate	December 29, 2022	December 30, 2021	Lease Term and Discount Rate	December 28, 2023	December 29, 2022
Weighted-average remaining lease terms:	Weighted-average remaining lease terms:					
Finance leases	Finance leases	7 years	8 years			
Finance leases	Finance leases					
Finance leases	Finance leases					
Operating leases	Operating leases	12 years	13 years	Operating leases		
Weighted-average discount rates:	Weighted-average discount rates:					
Weighted-average discount rates:	Weighted-average discount rates:					
Finance leases	Finance leases					
Finance leases	Finance leases					
Finance leases	Finance leases	4.59%	4.58%		4.62%	4.59%
Operating leases	Operating leases	4.51%	4.48%	Operating leases	4.52%	4.51%

Maturities of lease liabilities as of December 29, 2022 December 28, 2023 are as follows:

Fiscal Year	Fiscal Year	Operating Leases	Finance Leases	Fiscal Year	Operating Leases	Finance Leases
2023		\$ 23,610	\$ 3,243			
2024	2024	25,072	3,139	2024	\$ 23,649	\$ 3,236
2025	2025	25,225	2,980	2025	25,232	3,080
2026	2026	24,795	2,863	2026	24,798	2,965
2027	2027	23,181	1,935	2027	23,181	1,991

2028			2028		22,295	1,892
Thereafter	Thereafter	154,681	6,626	Thereafter	132,386	4,734
Total lease payments	Total lease payments	276,564	20,786	Total lease payments	251,541	17,898
Less: amount representing interest	Less: amount representing interest	(66,730)	(3,284)			
Total lease liabilities	Total lease liabilities	\$ 209,834	\$ 17,502	Total lease liabilities	\$ 193,872	\$ 15,332

Deferred rent payments of approximately \$827 \$859 for the Company's operating leases have been included in the total operating lease obligations as of December 29, 2022 December 28, 2023, of which approximately \$624 \$476 is included in long-term operating lease obligations.

9.

THE MARCUS CORPORATION
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8. Shareholders' Equity and Share-Based Compensation

Shareholders may convert their shares of Class B Common Stock into shares of Common Stock at any time. Class B Common Stock shareholders are substantially restricted in their ability to transfer their Class B Common Stock. Holders of Common Stock are entitled to cash dividends per share equal to 110% of all dividends declared and paid on each share of the Class B Common Stock. Holders of Class B Common Stock are entitled to ten votes per share while holders of Common Stock are entitled to one vote per share on any matters brought before the shareholders of the Company. Liquidation rights are the same for both classes of stock.

Through December 29, 2022 December 28, 2023, the Company's Board of Directors has approved the repurchase of up to 11,687,500 shares of Common Stock to be held in treasury. The Company intends to reissue these shares upon the exercise of stock options and for savings and profit-sharing plan contributions. The Company repurchased 94,508, 134,694 61,654 and 37,567 61,654 shares pursuant

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9. Shareholders' Equity and Share-Based Compensation (continued)

to these authorizations during fiscal 2023, fiscal 2022 and fiscal 2021, and fiscal 2020, respectively. At December 29, 2022 December 28, 2023, there were 2,522,646 2,428,138 shares available for repurchase under these authorizations.

The Company's Board of Directors has authorized the issuance of up to 750,000 shares of Common Stock for The Marcus Corporation Dividend Reinvestment and Associate Stock Purchase Plan. At December 29, 2022 December 28, 2023, there were 418,565 412,815 shares available under this authorization.

Shareholders have approved the issuance of up to 7,437,500 shares of Common Stock under various equity incentive plans. Stock options granted under the plans to employees generally become exercisable either 40% after two years, 60% after three years, 80% after four years and 100% after five years of the date of grant, or 50% after two years, 75% after three years and 100% after four years of the date of grant, depending on the date of grant. The options generally expire ten years from the date of grant as long as the optionee is still employed with the Company.

Awarded shares of non-vested stock cumulatively vest either 25% after three years of the grant date, 50% after five years of the grant date, 75% after ten years of the grant date and 100% upon retirement, or 50% after three years of the grant date and 100% after five years of the grant date, or 50% after two years of the grant date and 100% after four years of the grant date, depending on the date of grant, or in the case of a special grant awarded in fiscal 2021, one year after the date of grant. The non-vested stock may not be sold, transferred, pledged or assigned, except as provided by the vesting schedule included in the Company's equity incentive plan. During the period of restriction, the holder of the non-vested stock has voting rights and is entitled to receive all dividends and other distributions paid with respect to the stock. Non-vested stock awards and shares issued upon option exercises may be issued from previously acquired treasury shares. At December 29, 2022 December 28, 2023, there were 1,486,777 1,085,339 shares available for grants of additional stock options, non-vested stock and other types of equity awards under the current plan.

Share-based compensation, including stock options and non-vested stock awards, is expensed over the vesting period of the awards based on the grant date fair value.

The Company estimated the fair value of stock options using the Black-Scholes option pricing model with the following assumptions used for awards granted during fiscal 2022, 2023, fiscal 2021 2022 and fiscal 2020: 2021:

Year Ended

	December 29, 2022	December 30, 2021	December 31, 2020
Risk-free interest rate	1.73 – 3.90%	0.97 – 1.26%	0.40 – 1.26%
Dividend yield	1.50%	1.50%	1.70 – 1.90%
Volatility	48 - 53%	28 – 53%	27 – 41%
Expected life	6 – 8 years	6 – 8 years	6 – 8 years

Total pre-tax share-based compensation expense was \$8,170, \$9,316 and \$4,385 in fiscal 2022, fiscal 2021 and fiscal 2020, respectively. The recognized tax benefit on share-based compensation was \$1,338, \$1,997 and \$771 in fiscal 2022, fiscal 2021 and fiscal 2020, respectively.

	Year Ended		
	December 28, 2023	December 29, 2022	December 30, 2021
Risk-free interest rate	3.83 – 4.24%	1.73 – 3.90%	0.97 – 1.26%
Dividend yield	1.50 - 1.80%	1.50%	1.50%
Volatility	49 - 54%	48 – 53%	28 – 53%
Expected life	6 – 8 years	6 – 8 years	6 – 8 years

THE MARCUS CORPORATION

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9.8. Shareholders' Equity and Share-Based Compensation (continued)

Total pre-tax share-based compensation expense was \$6,394, \$8,170 and \$9,316 in fiscal 2023, fiscal 2022 and fiscal 2021, respectively. The recognized tax benefit on share-based compensation was \$1,000, \$1,338 and \$1,997 in fiscal 2023, fiscal 2022 and fiscal 2021, respectively.

A summary of the Company's stock option activity and related information follows (shares in thousands):

		Year Ended					
		December 29, 2022		December 30, 2021		December 31, 2020	
		Weighted-Average Exercise Price		Weighted-Average Exercise Price		Weighted-Average Exercise Price	
		Options	Price	Options	Price	Options	Price
		Year Ended					
		December 28, 2023		December 29, 2022		December 30, 2021	
		Weighted-Average Exercise Price		Weighted-Average Exercise Price		Weighted-Average Exercise Price	
		Options	Price	Options	Price	Options	Price
Outstanding at beginning of period	Outstanding at beginning of period	2,533	\$ 24.84	2,234	\$ 24.87	1,641	\$ 25.46
Granted	Granted	501	16.99	531	21.74	728	23.47
Exercised	Exercised	(68)	13.15	(134)	11.42	(31)	12.21
Forfeited	Forfeited	(100)	24.89	(98)	26.60	(104)	28.06
Outstanding at end of period	Outstanding at end of period	2,866	23.76	2,533	24.84	2,234	24.87
Exercisable at end of period	Exercisable at end of period	1,613	\$ 25.70	1,119	\$ 24.76	1,001	\$ 20.38

Weighted-average fair value of options granted during the period	Weighted-average fair value of options granted during the period	\$ 7.71	\$ 9.47	\$ 5.96
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Exercise prices for options outstanding as of **December 29, 2022** **December 28, 2023** ranged from \$12.71 to \$41.90. The weighted-average remaining contractual life of those options is **6.3** **6.1** years. The weighted-average remaining contractual life of options currently exercisable is 4.8 years. There were **2,821,000** **3,135,000** options outstanding, vested and expected to vest as of **December 29, 2022** **December 28, 2023**, with a weighted-average exercise price of **\$23.83** **\$22.76** and an intrinsic value of **\$443** **\$435**. Additional information as of **December 29, 2022** **December 28, 2023** related to options outstanding segregated by exercise price range is as follows (shares in thousands):

		Exercise Price Range						
		\$12.71 to \$20.25	\$20.26 to \$27.00	\$27.01 to \$41.90				
		Exercise Price Range			Exercise Price Range			
		\$12.71 to \$17.05			\$12.71 to \$17.05	\$17.06 to \$21.84	\$21.85 to \$41.90	
Options outstanding	Options outstanding	1,067	895	904				
Weighted-average exercise price of options outstanding	Weighted-average exercise price of options outstanding	\$16.15	\$23.06	\$33.41				
Weighted-average remaining contractual life of options outstanding	Weighted-average remaining contractual life of options outstanding	6.5	6.3	6.2	Weighted-average remaining contractual life of options outstanding			
Options exercisable	Options exercisable	480	473	660	8.3	4.6	5.0	
Weighted-average exercise price of options exercisable	Weighted-average exercise price of options exercisable	\$15.93	\$24.15	\$33.90				

The intrinsic value of options outstanding at **December 29, 2022** **December 28, 2023** was **\$446** **\$435** and the intrinsic value of options exercisable at **December 29, 2022** **December 28, 2023** was **\$291** **\$350**. The intrinsic value of options exercised was **\$171**, **\$164** **\$1,164** and **\$107** **\$1,164** during fiscal 2023, fiscal 2022 and fiscal 2021, and fiscal 2020, respectively. As of **December 29, 2022** **December 28, 2023**, total remaining unearned compensation cost related to stock options was **\$4,897** **\$4,334**, which will be amortized to expense over the remaining weighted-average life of 2.4 years.

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9.8. Shareholders' Equity and Share-Based Compensation (continued)

A summary of the Company's non-vested stock activity and related information follows (shares in thousands):

		Year Ended		
		December 29, 2022	December 30, 2021	December 31, 2020

Interest cost	Interest cost	1,341	1,201
Actuarial gain	Actuarial gain	(11,368)	(2,630)
Benefits paid	Benefits paid	(1,531)	(1,470)
Benefit obligation at end of year	Benefit obligation at end of year	\$ 36,324	\$ 46,827
Amounts recognized in the statement of financial position consist of:	Amounts recognized in the statement of financial position consist of:		
Amounts recognized in the statement of financial position consist of:			
Amounts recognized in the statement of financial position consist of:			
Current accrued benefit liability (included in Other accrued liabilities)			
Current accrued benefit liability (included in Other accrued liabilities)			
Current accrued benefit liability (included in Other accrued liabilities)	Current accrued benefit liability (included in Other accrued liabilities)	\$ (1,890)	\$ (1,674)
Noncurrent accrued benefit liability (included in Other long-term obligations)	Noncurrent accrued benefit liability (included in Other long-term obligations)	(34,434)	(45,153)
Total	Total	\$(36,324)	\$(46,827)
Amounts recognized in accumulated other comprehensive loss consist of:	Amounts recognized in accumulated other comprehensive loss consist of:		
Amounts recognized in accumulated other comprehensive loss consist of:			
Amounts recognized in accumulated other comprehensive loss consist of:			
Net actuarial loss			
Net actuarial loss			
Net actuarial loss	Net actuarial loss	\$ 2,660	\$ 15,120

Prior service credit	Prior service credit	(260)	(323)
Total	Total	\$ 2,400	\$ 14,797

Year Ended			
December 29, 2022 December 30, 2021 December 31, 2020			

Year Ended		Year Ended		
December 28, 2023		December 28, 2023 December 29, 2022 December 30, 2021		

Net periodic pension cost:	Net periodic pension cost:			
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Net periodic pension cost:

Service cost	Service cost	\$ 1,055	\$ 1,122	\$ 1,095
Interest cost	Interest cost	1,341	1,201	1,371
Net amortization of prior service cost and actuarial loss	Net amortization of prior service cost and actuarial loss	1,028	1,311	990
		\$ 3,424	\$ 3,634	\$ 3,456

\$				
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The \$1,336 loss, net of tax, included in accumulated other comprehensive loss at December 28, 2023, consists of the \$1,481 net actuarial loss, net of tax, and the \$145 unrecognized prior service credit, net of tax, which have not yet been recognized in the net periodic benefit cost. The \$1,774 loss, net of tax, included in accumulated other comprehensive loss at December 29, 2022, consists of the \$1,966 net actuarial loss, net of tax, and the \$192 unrecognized prior service credit, net of tax, which have not yet been recognized in the net periodic benefit cost. The \$10,935 loss, net of tax, included in accumulated other comprehensive loss at December 30, 2021, consists of the \$11,174 net actuarial loss, net of tax, and the \$239 unrecognized prior service credit, net of tax, which have not yet been recognized in the net periodic benefit cost.

THE MARCUS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except share and per share data)

10. 9. Employee Benefit Plans (continued)

The accumulated benefit obligation was \$33,719 \$34,788 and \$42,835 \$33,719 as of December 29, 2022 December 28, 2023 and December 30, 2021 December 29, 2022, respectively.

The pre-tax change in the benefit obligation recognized in other comprehensive loss was as follows:

Year Ended		Year Ended	
December 28, 2023		December 28, 2023 December 29, 2022	

Year Ended		
December 29, 2022 December 30, 2021		

(in thousands)

Net actuarial (gain) loss	\$ (11,368)	(2,630)
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Net actuarial gain		
--------------------	--	--

Net actuarial gain		
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Net actuarial gain	\$ (656)	(11,368)
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Amortization of the net actuarial loss	(1,092)	(1,375)
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Amortization of the prior year service credit	Amortization of the prior year service credit	63	64	Amortization of the prior year service credit	64	63
Total	Total	\$ (12,397)	(3,941)	Total	\$ (592)	(12,397)

The weighted-average assumptions used to determine the benefit obligations as of the measurement dates were as follows:

		December 29, 2022	December 30, 2021			
	December 28, 2023				December 28, 2023	December 29, 2022
Discount rate	Discount rate	5.05%	2.85%	Discount rate	5.00%	5.05%
Rate of compensation increase	Rate of compensation increase	4.00%	4.00%	Rate of compensation increase	4.00%	4.00%

The weighted-average assumptions used to determine net periodic benefit cost were as follows:

		Year Ended					
		December 29, 2022	December 30, 2021	December 31, 2020			
	Year Ended					Year Ended	
	December 28, 2023				December 28, 2023	December 29, 2022	December 30, 2021
Discount rate	Discount rate	2.85%	2.45%	3.10%	Discount rate	5.05%	2.85%
Rate of compensation increase	Rate of compensation increase	4.00%	4.00%	4.00%	Rate of compensation increase	4.00%	4.00%

Benefit payments expected to be paid subsequent to **December 29, 2022** December 28, 2023, are as follows:

Fiscal Year	Fiscal Year	
2023		\$ 1,938
2024		
2024		
2024	2024	2,002
2025	2025	2,219
2026	2026	2,358
2027	2027	2,348
Years 2028 – 2032		15,409
2028		
Years 2029 – 2033		

THE MARCUS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except share and per share data)

11.10. Income Taxes

The components of the net deferred tax liability are as follows:

		December 29, 2022	December 30, 2021			
	December 28, 2023				December 28, 2023	December 29, 2022
Deferred tax assets	Deferred tax assets					
Accrued employee benefits						
Accrued employee benefits						

Accrued employee benefits	Accrued employee benefits	\$ 14,133	\$ 17,669
Operating lease liabilities	Operating lease liabilities	54,767	59,622
Gift card liabilities	Gift card liabilities	6,575	7,318
Net operating loss, disallowed interest & tax credit carryforwards	Net operating loss, disallowed interest & tax credit carryforwards	28,273	24,166
Other	Other	3,791	6,876
Total	Total	107,539	115,651
Less valuation allowance	Less valuation allowance	(12,371)	(2,415)
Deferred tax assets	Deferred tax assets	95,168	113,236
Deferred tax liabilities	Deferred tax liabilities		
Deferred tax liabilities			
Deferred tax liabilities			
Depreciation and amortization			
Depreciation and amortization			
Depreciation and amortization	Depreciation and amortization	(70,849)	(73,898)
Operating lease assets	Operating lease assets	(50,886)	(55,489)
Deferred tax liabilities	Deferred tax liabilities	(121,735)	(129,387)
Net deferred tax liability	Net deferred tax liability	\$(26,567)	\$(16,151)
Net deferred tax liability			
Net deferred tax liability			
Amounts recognized in the consolidated balance sheets consist of:	Amounts recognized in the consolidated balance sheets consist of:		
Amounts recognized in the consolidated balance sheets consist of:			
Amounts recognized in the consolidated balance sheets consist of:			
Deferred income taxes - other assets			
Deferred income taxes - other assets			

Deferred income taxes	Deferred income taxes		
- other assets	- other assets \$	—	\$ 10,032
Deferred income taxes	Deferred income taxes		
- liabilities	- liabilities	(26,567)	(26,183)
Net amount recognized	Net amount recognized	<u>\$(26,567)</u>	<u>\$(16,151)</u>

As of December 29, 2022, the Company has a federal net operating loss carryforward of \$19,656 and federal tax credit carryforwards of \$4,538. As of December 30, 2021, the Company had a federal net operating loss carryforward of \$26,003 \$19,656, which was fully utilized during fiscal 2023. As of December 28, 2023 and December 29, 2022 the Company had federal tax credit carryforwards of \$3,463, \$4,150 and \$4,538, respectively.

As of December 28, 2023 and December 29, 2022, the Company has state net operating loss carryforwards of \$209,866 and \$238,682, respectively, which will expire primarily in the next 12 to 20 years. As of December 30, 2021 December 29, 2022, the Company had state net operating loss carryforwards of \$237,019. In fiscal 2021, the Company established a valuation allowance of \$2,415 for a portion of its the Company's state net operating loss carryforwards that are not more likely than not to be realized. realized was \$12,371. In fiscal 2022, 2023, the Company increased decreased the valuation allowance by \$9,956 \$1,033 to \$12,371. \$11,338. The amount of the state net operating loss carryforwards considered realizable could be adjusted if, among other factors, estimates of future taxable income during the carryforward periods are reduced or increased.

THE MARCUS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except share and per share data)

11. 10. Income Taxes (continued)

Income tax expense (benefit) consists of the following:

		Year Ended						
		December	December	December				
		29, 2022	30, 2021	31, 2020				
		Year Ended			Year Ended			
		December						
		28, 2023				December 28, 2023	December 29, 2022	December 30, 2021
Current:	Current:				Current:			
Federal	Federal	\$ (452)	\$ 13	\$(32,626)				
State	State	556	129	526				
Deferred:	Deferred:							
Federal	Federal	(3,222)	(12,629)	(24,751)				
Federal								
Federal								
State	State	10,255	(3,214)	(14,085)				
		\$ 7,137	\$(15,701)	\$(70,936)				
	\$							

The Company's effective income tax rate, adjusted for earnings (losses) from noncontrolling interests, was 31.7%, (147.6)% and 26.6% and 36.2% for fiscal 2023, fiscal 2022 and fiscal 2021, and fiscal 2020, respectively. The Company's effective income tax rate during fiscal 2022 was negatively impacted by a \$9,956 increase in the valuation allowance for state net operating loss carryforwards, partially offset by a corresponding increase in the federal benefit on the valuation allowance of \$2,598. Excluding the negative impact of the valuation allowance adjustment, the Company's effective income tax rate during fiscal 2022 was 4.6%. The Company's effective income tax rate during fiscal 2020 benefited from several accounting method changes and the March 27, 2020 signing of the CARES Act, one of the provisions of which allows the Company's 2019 and 2020 taxable losses to be carried back to prior fiscal years during which the federal income tax rate was 35.0%, compared to the current statutory federal income tax rate of 21.0%. During fiscal 2020, the Company recorded current tax benefits of \$11,976 and deferred tax benefits of \$8,095 related to the CARES Act and tax accounting changes. Excluding these favorable impacts, the company's effective income tax rate for fiscal 2020 was 26.0%. The Company has not included the income tax expense or benefit related to the net earnings or loss attributable to noncontrolling interests in its income tax expense as the entity is considered a pass-through entity and, as such, the income tax expense or benefit is attributable to its owners.

The Company evaluated the provisions of the CARES Act. Among other things, the CARES Act included provisions relating to refundable payroll tax credits, deferment of employer-side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to tax depreciation methods for qualified improvement property. After reviewing these provisions, the Company filed income tax refund claims of approximately \$37,400 in fiscal 2020 and \$24,200 in fiscal 2021, with the primary benefit derived from several accounting method changes and new rules for qualified improvement property expenditures and net operating loss carrybacks. The Company received \$31,500 of the tax refunds in fiscal 2020, \$7,800 in fiscal 2021 and \$22,300 in fiscal 2022.

THE MARCUS CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(in thousands, except share and per share data)

11. Income Taxes (continued)

A reconciliation of the statutory federal tax rate to the effective tax rate on earnings attributable to The Marcus Corporation follows:

		Year Ended						
		December 29, 2022	December 30, 2021	December 31, 2020				
		Year Ended			Year Ended			
		December 28, 2023			December 28, 2023	December 29, 2022	December 30, 2021	
Statutory federal tax rate	Statutory federal tax rate	21.0 %	21.0 %	21.0 %	Statutory federal tax rate	21.0 %	21.0 %	21.0 %
Tax benefit from CARES Act and accounting method changes		—	—	10.3				
State income taxes, net of federal income tax benefit	State income taxes, net of federal income tax benefit	4.3	6.7	5.0				
Tax credits, net of federal income tax benefit	Tax credits, net of federal income tax benefit	22.9	1.6	0.2				
Valuation allowance	Valuation allowance	(205.9)	(4.1)	—				
Federal income tax benefit on state valuation allowance	Federal income tax benefit on state valuation allowance	53.7	—	—				
Excess tax benefits on share-based compensation	Excess tax benefits on share-based compensation	(22.1)	(0.6)	(0.2)				
Other compensation and benefits	Other compensation and benefits	(15.6)	(0.7)	—				
Meals and entertainment	Meals and entertainment	(4.1)	(0.4)	—				
Other	Other	(1.8)	3.1	(0.1)				
		(147.6)%	26.6 %	36.2 %				
		31.7			31.7 %	(147.6) %		26.6 %

Net income taxes paid in fiscal 2023 were \$1,776. Net income taxes refunded in fiscal 2022 and fiscal 2021 and fiscal 2020 were \$21,935, \$8,316 and \$33,275, \$8,316, respectively. Net income taxes refunded in fiscal 2022 and fiscal 2021 and fiscal 2020 included \$22,300, \$7,800 and \$31,500, \$7,800, respectively, related to federal net operating loss carrybacks to prior years, as allowed under the provisions of the CARES Act.

THE MARCUS CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(in thousands, except share and per share data)

10. Income Taxes (continued)

The Company had no unrecognized tax benefits as of **December 29, 2022** **December 28, 2023**, **December 30, 2021** **December 29, 2022** and **December 31, 2020** **December 30, 2021**. The Company had no accrued interest or penalties at **December 29, 2022** **December 28, 2023** or **December 30, 2021** **December 29, 2022**. The Company classifies interest and penalties relating to income taxes as income tax expense. For the year ended **December 29, 2022** **December 28, 2023**, **\$683** **\$1** of interest **income expense** was recognized in the consolidated statement of earnings (loss), compared to **\$683** of interest income for the year ended **December 29, 2022** and **\$60** of interest income for the year ended **December 30, 2021** and **\$296** of interest income for the year ended **December 31, 2020**.

In the fourth quarter of 2021, the Company settled, with no significant change, an examination by the Internal Revenue Service of its fiscal 2019 and 2020 income tax returns. The examination included the previous five fiscal years, to the extent that net operating losses were carried back to those fiscal years under the CARES Act. With certain exceptions, the Company's state income tax returns are no longer subject to examination prior to fiscal **2018** **2019**. At this time, the Company does not expect the results from any income tax audit or appeal to have a significant impact on the Company's financial statements.

12.11. Commitments and License Rights

Commitments - The Company has commitments for the completion of construction at various properties totaling approximately **\$5,387** **\$23,233** at **December 29, 2022** **December 28, 2023**.

License Rights - As of **December 29, 2022** **December 28, 2023**, the Company had license rights to operate **three** **two** hotels using the Hilton trademark and two hotels using the Marriott trademark. Under the terms of the licenses, the Company is obligated to pay fees based on defined gross sales.

13.12. Joint Venture Transactions

At **December 29, 2022** **December 28, 2023** and **December 30, 2021** **December 29, 2022**, the Company held investments with aggregate carrying values of **\$2,067** **\$1,718** and **\$2,335** **\$2,067**, respectively. Investments at **December 28, 2023** and **December 29, 2022** included one joint venture accounted for under the equity method. **Investments at December 30, 2021** included two joint ventures accounted for under the equity method.

THE MARCUS CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(in thousands, except share and per share data)

13. Joint Venture Transactions (continued)

In December 2021, the Company formed a joint venture with Searchlight Capital Partners ("Searchlight") to acquire the Kimpton Hotel Monaco Pittsburgh ("Monaco"), a 248-room upper upscale hotel in downtown Pittsburgh, Pennsylvania. The Company invested \$2,427 for a 10% equity interest in the Monaco joint venture and entered into a management agreement for the hotel. The Monaco joint venture entity, as the borrower, financed the acquisition of Monaco with a non-recourse mortgage loan. In connection with this mortgage loan, the Company provided an environmental indemnity and a "bad boy" guaranty that provides that the lender can recover losses from the Company for certain bad acts of the Monaco joint venture, such as but not limited to fraud, intentional misrepresentation, voluntary incurrence of prohibited debt, prohibited transfers of the collateral, and voluntary bankruptcy of the Monaco joint venture. Under the terms of the Monaco joint venture operating agreement, Searchlight has fully indemnified the Company under the "bad boy" guarantees for any losses other than those attributable to the Company's own bad acts and has indemnified the Company to its proportionate liability under the environmental liability.

During fiscal 2020, the Company recorded an other-than-temporary impairment loss of approximately \$811 in which it was determined that the fair value of its equity method investment in a joint venture was less than its carrying value. The \$811 impairment loss is included within equity losses from unconsolidated joint ventures in the consolidated statement of earnings (loss) as of December 31, 2020. Early in fiscal 2021, pursuant to a recapitalization of this joint venture, the Company surrendered its ownership interest in this entity.

The Company also sold its interest in an equity investment without a readily determinable fair value in fiscal 2021 for \$4,150 and recorded a gain of \$2,079, which is included in gain on disposition of property, equipment and other assets in the consolidated statement of earnings (loss).

THE MARCUS CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

14.13. Business Segment Information

The Company evaluates performance and allocates resources based on the operating income (loss) of each segment. The accounting policies of the reportable segments are the same as those described in the summary of significant accounting policies.

Following is a summary of business segment information for fiscal **2022** **2023**, fiscal **2021** **2022** and fiscal **2020** **2021**:

	Theatres	Theatres	Hotels/ Resorts	Corporate Items	Total
Fiscal 2023					
Revenues					

Revenues					
Revenues					
Operating income (loss)					
Depreciation and amortization					
Assets					
Capital expenditures and acquisitions					
		Theatres	Hotels/ Resorts	Corporate Items	Total
Fiscal 2022	Fiscal 2022				
Fiscal 2022					
Fiscal 2022					
Revenues					
Revenues					
Revenues	Revenues	\$407,741	\$269,286	\$ 367	\$ 677,394
Operating income (loss)	Operating income (loss)	8,108	18,699	(18,501)	8,306
Depreciation and amortization	Depreciation and amortization	47,560	19,160	353	67,073
Assets	Assets	750,941	277,990	35,667	1,064,598
Capital expenditures and acquisitions	Capital expenditures and acquisitions	12,087	24,515	241	36,843
Fiscal 2021	Fiscal 2021				
Fiscal 2021					
Fiscal 2021					
Revenues	Revenues	\$271,248	\$186,638	\$ 358	\$ 458,244
Operating income (loss)	Operating income (loss)	(27,559)	5,865	(19,758)	(41,452)
Depreciation and amortization	Depreciation and amortization	51,654	20,192	281	72,127
Assets	Assets	820,547	305,928	61,886	1,188,361
Capital expenditures and acquisitions	Capital expenditures and acquisitions	10,299	6,783	—	17,082
Fiscal 2020					
Revenues					
Revenues	Revenues	\$132,624	\$104,638	\$ 426	\$ 237,688
Operating loss	Operating loss	(121,429)	(43,885)	(13,108)	(178,422)
Depreciation and amortization	Depreciation and amortization	53,460	21,096	496	75,052
Assets	Assets	871,655	309,320	73,203	1,254,178
Capital expenditures and acquisitions	Capital expenditures and acquisitions	15,828	4,669	866	21,363

Corporate items include amounts not allocable to the business segments. Corporate revenues consist principally of rent and the corporate operating loss includes general corporate expenses. Corporate information technology costs and accounting shared services costs are allocated to the business segments based upon several factors, including actual usage and segment revenues. Corporate assets primarily include cash and cash equivalents, furniture, fixtures and equipment, investments and land held for development.

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

None.

Item 9A. Controls and Procedures.

(a) Evaluation of disclosure controls and procedures.

Based on their evaluations, as of the end of the period covered by this Annual Report on Form 10-K, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act")) are effective to ensure that information required to be disclosed by us in reports that we file or furnish under the Exchange Act is accumulated and communicated to our management and recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms.

(b) Management's report on internal control over financial reporting.

The report of management required under this Item 9A is contained in the section titled "Item 8 – Financial Statements and Supplementary Data" under the heading "Management's Report on Internal Control over Financial Reporting."

(c) Attestation Report of Independent Registered Public Accounting Firm.

The attestation report required under this Item 9A is contained in the section titled "Item 8 – Financial Statements and Supplementary Data" under the heading "Report of Independent Registered Public Accounting Firm on Internal Control over Financial Reporting."

(d) Changes in internal control over financial reporting.

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(b) of the Exchange Act during the fourth quarter of our fiscal 2022 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other information.

During the thirteen weeks ended December 28, 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.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The information required by Item 10 is incorporated herein by reference to the relevant information set forth under the captions "Election of Directors" and "Board of Directors and Corporate Governance" in the definitive Proxy Statement for our 2023 2024 Annual Meeting of Shareholders scheduled to be held on May 11, 2023 May 23, 2024 (our "Proxy Statement"). Information regarding our executive officers may be found in Part I of this Form 10-K under the caption "Executive Officers of the Company." Except as otherwise specifically incorporated by reference, our Proxy Statement is not deemed to be filed as part of this Form 10-K.

Item 11. Executive Compensation.

The information required by Item 11 is incorporated herein by reference to the relevant information set forth under the caption "Compensation Discussion and Analysis" in our Proxy Statement.

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

The following table lists certain information about our two stock option plans, our 1995 Equity Incentive Plan and our 2004 Equity and Incentive Awards Plan, all of which were approved by our shareholders. We do not have any equity-based compensation plans that have not been approved by our shareholders.

Number of securities to be issued upon the exercise of outstanding options, warrants and rights	Number of securities to be issued upon the exercise of outstanding options, warrants and rights	Weighted-average price of exercise of outstanding options, warrants and rights	Number of securities remaining available for future issuance under current equity compensation plan (excluding securities reflected in the first column)	Number of securities to be issued upon the exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under current equity compensation plan (excluding securities reflected in the first column)
2,866,000	\$23.76	1,486,777				
3,173,000			3,173,000	\$22.69		1,085,339

The other information required by Item 12 is incorporated herein by reference to the relevant information set forth under the caption "Stock Ownership of Management and Others" in our Proxy Statement.

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

The information required by Item 13, to the extent applicable, is incorporated herein by reference to the relevant information set forth under the caption "Policies and Procedures Governing Related Person Transactions" in our Proxy Statement.

Item 14. Principal Accounting Fees and Services.

The information required by Item 14 is incorporated by reference herein to the relevant information set forth under the caption "Other Matters" in our Proxy Statement.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) Financial Statements.

Unless otherwise indicated, references to "fiscal 2023" refer to the fiscal year ended December 28, 2023; references to "fiscal 2022" refer to the fiscal year ended December 29, 2022; and references to "fiscal 2021" refer to the fiscal year ended December 30, 2021; and references to "fiscal 2020" refer to the fiscal year ended December 31, 2020. References to fiscal 2022 2023 and fiscal 2021 2022 year end refer to December 29, 2022 December 28, 2023 and December 30, 2021 December 29, 2022, respectively.

The following consolidated financial statements of The Marcus Corporation and the Report of Independent Registered Public Accounting Firm thereon, are filed as part of this report:

- Report of Independent Registered Public Accounting Firm (PCAOB ID No. 34)
- Consolidated Balance Sheets as of fiscal 2022 2023 and 2021 2022 year end
- Consolidated Statements of Earnings (Loss) for the 2023, 2022, 2021, and 2020 2021 fiscal years
- Consolidated Statements of Comprehensive Income (Loss) for the 2023, 2022, 2021, and 2020 2021 fiscal years
- Consolidated Statements of Shareholders' Equity for the 2023, 2022, 2021, and 2020 2021 fiscal years
- Consolidated Statements of Cash Flows for the 2023, 2022, 2021, and 2020 2021 fiscal years
- Notes to Consolidated Financial Statements

(a)(2) Financial Statement Schedules.

All schedules are omitted because they are inapplicable, not required under the instructions or the financial information is included in the consolidated financial statements or notes thereto.

(a)(3) Exhibits.

The exhibits filed herewith or incorporated by reference herein are set forth on the attached Exhibit Index. Exhibits to this Form 10-K will be furnished to shareholders upon advance payment of a fee of \$0.25 per page, plus mailing expenses. Requests for copies should be addressed to Thomas F. Kissinger, Senior Executive Vice President, General

EXHIBIT INDEX

- 2.1 [Asset Purchase Agreement, dated as of November 1, 2018, by and among MMT Texnv, LLC, MMT Lapagava, LLC, The Marcus Corporation, Movie Tavern, Inc., Movie Tavern Theaters, LLC, TGS Beverage Company, LLC, and VSS-Southern Theatres LLC. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 2.1 to our Quarterly Report on Form 10-Q for the quarterly period ended September 27, 2018\].](#)
- 3.1 [Restated Articles of Incorporation. \[Incorporated by reference to Exhibit 3.2 to our Quarterly Report on Form 10-Q for the quarterly period ended November 13, 1997.\]](#)
- 3.2 [By-Laws of The Marcus Corporation, as amended. \[Incorporated by reference to Exhibit 3.1 3 to our Quarterly Current Report on Form 10-Q for the quarterly period ended September 24, 2020 8-K dated February 21, 2024.\]](#)
- 4.1 [Credit Agreement, dated January 9, 2020, by and among The Marcus Corporation and the several banks party thereto, including JPMorgan Chase Bank, N.A., as Administrative Agent, and U.S. Bank National Association, as Syndication Agent. \[Incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K dated January 9, 2020.\]](#)
- 4.2 [First Amendment to Credit Agreement, dated April 29, 2020, among The Marcus Corporation, the lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K dated April 30, 2020.\]](#)
- 4.3 [Second Amendment to Credit Agreement, dated September 15, 2020, among The Marcus Corporation, the lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.3 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.\]](#)
- 4.4 [Third Amendment to Credit Agreement, dated July 13, 2021, among The Marcus Corporation, the lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.1 to our Quarterly Report on Form 10-Q for the quarter ended July 1, 2021.\]](#)
- 4.5 [Fourth Amendment to Credit Agreement, dated July 27, 2022 July 27, 2022, among The Marcus Corporation, the lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.1 to our Quarterly Report on Form 10-Q for the quarter ended September 29, 2022.\] September 29, 2022.\]](#)
- 4.6 [Fifth Amendment to Credit Agreement, dated February 10, 2023, among The Marcus Corporation, the lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.6 to our Annual Report on Form 10-K for the fiscal year ended December 29, 2022.\]](#)
- 4.7 [Sixth Amendment to Credit Agreement, dated October 16, 2023, among The Marcus Corporation, the lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.1 to our Quarterly Report on Form 10-Q for the quarter ended September 28, 2023.\]](#)

- 4.7 [The Marcus Corporation Note Purchase Agreement, dated June 27, 2013. \[Incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K dated June 27, 2013.\]](#)
- 4.8 [The First Amendment to Note Purchase Agreement, dated June 27, 2013, dated April 29, 2020. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.2 to our Current Report on Form 8-K dated April 30, 2020.\]](#)
- 4.9 [The Second Amendment to Note Purchase Agreement, dated June 27, 2013, dated June 26, 2020. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.6 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.\]](#)
- 4.10 [The Third Amendment to Note Purchase Agreement, dated June 27, 2013, dated September 15, 2020. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.7 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.\]](#)
- 4.11 [The Fourth Amendment to Note Purchase Agreement, dated June 27, 2013, dated July 13, 2021. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.2 to our Quarterly Report on Form 10-Q for the quarter ended July 1, 2021.\]](#)
- 4.12 [The Fifth Amendment to Note Purchase Agreement, dated June 27, 2013, dated February 10, 2023. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.12 to our Annual Report on Form 10-K for the fiscal year ended December 29, 2022.\]](#)
- 4.13 [The Sixth Amendment to Note Purchase Agreement, dated June 27, 2013, dated October 16, 2023. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.2 to our Quarterly Report on Form 10-Q for the quarter ended September 28, 2023.\]](#)
- 4.14 [The Marcus Corporation Note Purchase Agreement, dated December 21, 2016. \[Incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K dated February 22, 2017.\]](#)
- 4.14 4.15 [The First Amendment to Note Purchase Agreement, dated December 21, 2016, dated April 29, 2020. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.3 to our Current Report on Form 8-K dated April 30, 2020.\]](#)
- 4.15 4.16 [The Second Amendment to Note Purchase Agreement, dated December 21, 2016, dated June 26, 2020. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.10 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.\]](#)
- 4.16 4.17 [The Third Amendment to Note Purchase Agreement, dated December 21, 2016, dated September 15, 2020. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.11 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.\]](#)
- 4.17 4.18 [The Fourth Amendment to Note Purchase Agreement, dated December 21, 2016, dated July 13, 2021. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.3 to our Quarterly Report on Form 10-Q for the quarter ended July 1, 2021.\]](#)

- [4.18](#) [4.19](#) [The Fifth Amendment to Note Purchase Agreement, dated December 21, 2016, dated February 10, 2023February 10, 2023. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.18 to our Annual Report on Form 10-K for the fiscal year ended December 29, 2022.\]](#)
- [4.20](#) [The Sixth Amendment to Note Purchase Agreement, dated December 21, 2016, dated October 16, 2023. \[Schedules and exhibits have been omitted and The Marcus Corporation agrees to furnish supplementally to the Securities and Exchange Commission a Copy of any omitted schedules and exhibits upon request.\] \[Incorporated by reference to Exhibit 4.3 to our Quarterly Report on Form 10-Q for the quarter ended September 28, 2023.\]](#)
- [4.19](#) [4.21](#) [Indenture, dated September 22, 2020, between The Marcus Corporation and U.S. Bank, N.A., as trustee. \[Incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K dated September 22, 2020.\]](#)
- Other than as set forth in Exhibits 4.1 through [4.20](#), [4.21](#), we have numerous instruments which define the rights of holders of long-term debt. These instruments, primarily promissory notes, have arisen from the purchase of operating properties in the ordinary course of business. These instruments are not being filed with this Annual Report on Form 10-K in reliance upon Item 601(b)(4)(iii) of Regulation S-K. Copies of these instruments will be furnished to the Securities and Exchange Commission upon request.
- [4.20](#) [4.22](#) [Description of the Registrant's Securities. \[Incorporated by reference to Exhibit 4.5 to our Annual Report on Form 10-K for the fiscal year ended December 26, 2019.\]](#)
- 10.1* [The Marcus Corporation Non-Employee Director Compensation Plan. \[Incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K 8-K datedMay 10, 2022.\] May 10, 2022.\]](#)
- 10.2* [The Marcus Corporation Variable Incentive Plan, as amended. \[Incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K dated July 7, 2009.\]](#)
- 10.3* [The Marcus Corporation Deferred Compensation Plan. \[Incorporated by reference to Exhibit 10.8 to our Annual Report on Form 10-K for the fiscal year ended May 25, 2006.\]](#)
- 10.4* [The Marcus Corporation Retirement Income and Supplemental Retirement Plan, as amended and restated. \[Incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q for the quarterly period ended August 29, 2013.\]](#)
- 10.5 [Administrative Services Agreement between Marcus Investments, LLC and The Marcus Corporation, as amended. \[Incorporated by reference to Exhibit 99.1 to our Annual Report on Form 10-K for the fiscal year ended May 31, 2007.\]](#)
- 10.6* [The Marcus Corporation 1995 Equity Incentive Plan, as amended and restated. \[Incorporated by reference to Exhibit 10.3 to our Current Report on Form 8-K dated October 4, 2006.\]](#)
- 10.7* [Form of The Marcus Corporation 1995 Equity Incentive Plan Restricted Stock Agreement. \[Incorporated by reference to Exhibit 10.6 to our Annual Report on Form 10-K for the fiscal year ended May 26, 2005.\]](#)
- 10.8* [The Marcus Corporation 2004 Equity and Incentive Awards Plan. \[Incorporated by reference to Attachment A to the Company's definitive proxy statement filed with the Securities and Exchange Commission on Schedule 14A on September 2, 2011.\]](#)
- 10.9* [Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Agreement. \[Incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K dated August 15, 2006.\]](#)
- 10.10* [Form of Cover Letter to The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Agreement. \[Incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K dated August 15, 2006.\]](#)

10.11*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Stock Option Award Agreement for awards granted after October 11, 2011 (Employees). [Incorporated by reference to Exhibit 4.2 to our Registration Statement on Form S-8 dated October 28, 2011.]
10.12*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Agreement for awards granted after October 11, 2011 (Employees). [Incorporated by reference to Exhibit 10.15 to our Annual Report on Form 10-K for the fiscal year ended May 31, 2012.]
10.13*	Form of Cover Letter to The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Agreement for awards granted after October 11, 2011 (Employees). [Incorporated by reference to Exhibit 10.16 to our Annual Report on Form 10-K for the fiscal year ended May 31, 2012.]
10.14*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Stock Option Award Agreement for awards granted after January 8, 2013 (Employees). [Incorporated by reference to Exhibit 10 to our Quarterly Report on Form 10-Q for the quarterly period ended November 28, 2013.]
10.15*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Stock Option Award for awards granted after October 11, 2011 (Non-Employee Directors). [Incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q for the quarterly period ended February 23, 2012.]
10.16*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Agreement for awards granted after October 11, 2011 (Non-Employee Directors). [Incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q for the quarterly period ended February 23, 2012.]
10.17*	The Marcus Corporation Long-Term Incentive Plan Terms, Terms, as Amended. [Incorporated by reference to Exhibit 10.1010.1 to our Annual Current Report on Form 10-K for the fiscal year ended May 28, 2009.] 8-K dated February 21, 2024.
10.18*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Agreement (Non-Employee Directors) for awards granted after February 22, 2018. [Incorporated by reference to Exhibit 10.20 to our Annual Report on Form 10-K for the fiscal year ended December 28, 2017.]
10.19*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Agreement for awards granted after February 22, 2018 (Employees). [Incorporated by reference to Exhibit 10.21 to our Annual Report on Form 10-K for the fiscal year ended December 28, 2017.]
10.20*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Agreement for awards granted after August 1, 2018 (Employees). [Incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q for the quarter ended June 28, 2018.]
10.21*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Agreement for awards granted after February 21, 2024 (Employees). [Incorporated by reference to Exhibit 10.3 to our Current Report on Form 8-K dated February 21, 2024.]
10.22*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Agreement (Special Grant). [Incorporated by reference to Exhibit 10.6 to our Current Report on Form 8-K dated February 21, 2024.]
10.23*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Stock Option Award Agreement for awards granted after May 6, 2020 (Employees). [Incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q for the quarterly period ended September 24, 2020.]
10.22* 10.24*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Stock Option Award Agreement for awards granted after February 23, 2022 (Employees). [Incorporated by reference to Exhibit 10.22 to our Annual Report on Form 10-K for the fiscal year ended December 30, 2021.]
10.25*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Performance Share Award Agreement [Incorporated (Executives). [Incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K dated February 21, 2024.]
10.26*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Performance Share Award Agreement (Leadership). [Incorporated by reference to Exhibit 10.232 to our Annual Current Report on Form 10-K for the fiscal year ended December 30, 2021.] 8-K dated February 21, 2024.
10.27*	Form of The Marcus Corporation 2004 Equity and Incentive Awards Plan Restricted Stock Unit Agreement for awards granted after February 21, 2024 (Employees). [Incorporated by reference to Exhibit 10.5 to our Current Report on Form 8-K dated February 21, 2024.]
10.23 20.25	Purchase Agreement, dated September 17, 2020, between The Marcus Corporation and J.P. Morgan Securities LLC, as representative of the Initial Purchasers. [Incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K dated September 22, 2020.]

10.24 10.26	Form of Capped Call Transaction Confirmation. [Incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K dated September 22, 2020.]
10.27	Employee Advisory Services Agreement, dated May 23, 2023, between the Company and Stephen H. Marcus. [Incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K dated May 23, 2023.]
14.1	The Marcus Corporation Code Of Conduct, as amended February 18, 2020. [Incorporated by reference to Exhibit 14.1 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.]
21	Our subsidiaries as of December 29, 2022December 28, 2023.
22	List of guarantor subsidiaries. [Incorporated by reference to Exhibit 22 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2020].
23	Consent of Deloitte & Touche LLP.
31.1	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32	Written Statement of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. §1350.
97	The Marcus Corporation Incentive Compensation Clawback Policy.
99	Proxy Statement for the 2023 2024 Annual Meeting of Shareholders. (The Proxy Statement for the 2023 2024 Annual Meeting of Shareholders will be filed with the Securities and Exchange Commission under Regulation 14A within 120 days after the end of our fiscal year.)
101	The following materials from The Marcus Corporation's Annual Report on Form 10-K for the fiscal year ended December 29, 2022 December 28, 2023 are filed herewith, formatted in XBRL (Extensible Business Reporting Language): (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Earnings, (iii) the Consolidated Statements of Comprehensive Income, (iv) the Consolidated Statements of Cash Flows, and (v) Notes to Consolidated Financial Statements.
104	Cover Page Interactive Data File. (Formatted as Inline XBRL and contained in Exhibit 101).

* This exhibit is a management contract or compensatory plan, contract or arrangement in which a director or named executive officer of the Company participated.

Item 16. Form 10-K Summary.

None.

SIGNATURES

Pursuant to the requirements of Section 13 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.

THE MARCUS CORPORATION

Date: March 2, 2023 February 29, 2024

By: /s/ Gregory S. Marcus

Gregory S. Marcus,

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 us and in the capacities as of the date indicated above.

By: <u>/s/ Gregory S. Marcus</u> Gregory S. Marcus, President and Chief Executive Officer (Principal Executive Officer) and Director Chairman	By: <u>/s/ Diane Marcus Gershowitz</u> Diane Marcus Gershowitz, Director
By: <u>/s/ Chad M. Paris</u> Chad M Paris, Chief Financial Officer and Treasurer (Principal Financial Officer and Accounting Officer)	By: <u>/s/ Timothy E. Hoeksema</u> Timothy E. Hoeksema, Director
By: <u>/s/ Stephen H. Marcus</u> Stephen H. Marcus, Chairman and Director	By: <u>/s/ Allan H. Selig</u> Allan H. Selig, Director
By: <u>/s/ Philip L. Milstein</u> Philip L. Milstein, Director	By: <u>/s/ Brian J. Stark</u> Brian J. Stark, Director
By: <u>/s/ Bruce J. Olson</u> Bruce J. Olson, Director	By: <u>/s/ Austin M. Ramirez</u> Austin M. Ramirez, Director
By: <u>/s/ Katherine M. Gehl</u> Katherine M. Gehl, Director	By: <u>/s/ Thomas F. Kissinger</u> Thomas F. Kissinger, Director

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Exhibit 4.6

FIFTH AMENDMENT TO CREDIT AGREEMENT

THIS FIFTH AMENDMENT TO CREDIT AGREEMENT, dated as of February 10, 2023 (this "Amendment"), is among THE MARCUS CORPORATION (the "Borrower"), the LENDERS party hereto (the "Lenders"), JPMORGAN CHASE BANK, N.A., as Administrative Agent (the "Administrative Agent"), U.S. BANK NATIONAL ASSOCIATION, as Syndication Agent, and WELLS FARGO BANK, NATIONAL ASSOCIATION and BANK OF AMERICA, N.A., as Co-Documentation Agents.

RECITALS

A. The Borrower, the Lenders and the Administrative Agent are parties to a Credit Agreement dated as of January 9, 2020 (as amended by that certain First Amendment to Credit Agreement dated as of April 29, 2020, as amended by that certain Second Amendment to Credit Agreement dated as of September 15, 2020, as amended by that certain Third Amendment to Credit Agreement dated as of July 13, 2021, and as amended by that certain Fourth Amendment to Credit Agreement dated as of July 27, 2022, the "Credit Agreement" and the Credit Agreement, as amended by this Amendment, the "Amended Credit Agreement"). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

B. The Borrower desires to amend the Credit Agreement, and the Administrative Agent and the Lenders are willing to do so in accordance with the terms hereof.

TERMS

In consideration of the premises and of the mutual agreements herein contained, the parties agree as follows:

ARTICLE I. AMENDMENTS.

1.1 Upon the Fifth Amendment Effective Date, the parties hereto agree that the Credit Agreement (including the Exhibits and Schedules thereto) is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth as reflected by the Amended Credit Agreement attached hereto as Exhibit A hereto.

1.2 Notwithstanding the foregoing, all "Eurodollar Loans" (as defined in the Credit Agreement) outstanding as of the date hereof shall remain Eurodollar Loans outstanding under the Amended Credit Agreement until the end of the current Interest Period applicable thereto and, upon the expiration of such current Interest Period, shall be converted to Term Benchmark Loans with an Interest Period of one (1) month (the "SOFR Conversion"). Subject to the SOFR Conversion, all other terms and conditions set forth in the Amended Credit Agreement with respect to Term Benchmark Loans shall apply to such "Eurodollar Loans" (as defined in the Existing Credit Agreement), *mutatis mutandis*.

ARTICLE II. REPRESENTATIONS. The Borrower represents and warrants to the Administrative Agent and the Lenders, on the date hereof, that:

2.1 The execution, delivery and performance of this Amendment are (a) within the Borrower's corporate powers and have been duly authorized by all necessary corporate action and, if required, actions by equity holders; (b) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (c) will not violate any Requirement of Law applicable to the Borrower or any Subsidiary, (d) will not violate or result in a default under any indenture, material agreement or other material instrument binding upon the Borrower or any Subsidiary or the assets of the Borrower or any Subsidiary, or give rise to a right thereunder to require any payment to be made by the Borrower or any Subsidiary, and (e) will not result in the creation or imposition of any Lien on any asset of the Borrower or any Subsidiary, except Liens created pursuant to the Loan Documents.

2.2 This Amendment has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

2.3 Upon giving effect to this Amendment, the representations and warranties contained in Article III of the Amended Credit Agreement and in the other Loan Documents are true in all material respects on and as of the date hereof with the same force and effect as if made on and as of the date hereof (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects).

2.4 As of the date hereof, no Default exists or has occurred and is continuing, and no Default will be caused upon giving effect to this Amendment.

ARTICLE III. CONDITIONS OF EFFECTIVENESS. This Amendment shall become effective as the date hereof (the "Fifth Amendment Effective Date") when all of the following conditions have been satisfied:

3.1 The Borrower and the Lenders shall have signed this Amendment.

3.2 The Administrative Agent shall have received and be reasonably satisfied with such other documents, and the Borrowers shall have satisfied such other conditions, as the Administrative Agent may have reasonably requested, including without limitation all documents and conditions described in the closing list delivered in connection herewith, and the payment of all fees as separately agreed upon that are due and payable on or prior to the Fifth Amendment Effective Date to the extent invoiced (in reasonable detail) at least one Business Day prior to the Fifth Amendment Effective Date.

The Administrative Agent shall notify the Borrower and the Lenders of the Fifth Amendment Effective Date, and such notice shall be conclusive and binding.

ARTICLE IV. MISCELLANEOUS.

4.1 References in the Credit Agreement or in any other Loan Document to the Credit Agreement shall be deemed to be references to the Amended Credit Agreement and as further amended from time to time.

4.2 This Amendment shall be construed in accordance with and governed by the law of the State of Wisconsin.

4.3 Except as expressly amended hereby, the Borrower agrees that (a) the Amended Credit Agreement and all other Loan Documents are ratified and confirmed, as amended hereby, and shall remain in full force and effect in accordance with their terms, (b) the terms of this Amendment do not constitute a novation and (c) it has no set off, counterclaim, defense or other claim or dispute with respect to any of the foregoing. The amendment contained herein shall not be construed as a waiver or amendment of any other provision of the Credit Agreement or the other Loan Documents or for any purpose except as expressly set forth herein. The Borrower hereby reaffirms, as of the date hereof, its guarantee of the Secured Obligations under the Loan Documents and its grant of Liens on the Collateral to secure the Secured Obligations pursuant to the Loan Documents to which it is a party with the same priority as originally granted.

4.4 The Borrower acknowledges and agrees that the Administrative Agent and the Lenders have fully performed all of their obligations under all Loan Documents or otherwise with respect to the Borrower and its Subsidiaries, all actions taken by the Administrative Agent and the Lenders are reasonable and appropriate under the circumstances and within their rights under the Loan Documents and they are not aware of any existing claims or causes of action against the Administrative Agent or any Lender, any Subsidiary or Affiliate thereof or any of their successors or assigns, in each case in respect of the Loan Documents and any transactions in connection therewith, and waives any such claims or causes of action existing as of the date hereof.

4.5 Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose. This Amendment is a Loan Document.

4.6 This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

4.7 Each party hereto hereby acknowledges and agrees that, among other provisions, the terms set forth in Sections 9.06(b), 9.09 and 9.10 of the Credit Agreement, as amended hereby, apply to this Amendment as if such sections were set forth in full herein.

IN WITNESS WHEREOF, the parties signing this Amendment have caused this Amendment to be executed and delivered as of the day and year first above written.

THE MARCUS CORPORATION

By: /s/Chad M. Paris

Name: Chad M. Paris

Title: Chief Financial Officer

Signature page to Fifth Amendment to Credit Agreement – The Marcus Corporation

JPMORGAN CHASE BANK, individually and as Administrative Agent

By: /s/Sally Weiland

Name: Sally Weiland

Title: Authorized Officer

Signature page to Fifth Amendment to Credit Agreement – The Marcus Corporation

U.S. BANK NATIONAL ASSOCIATION, individually and as syndication agent

By: /s/ Mary Ann Hawley

Name: Mary Ann Hawley

Title: Vice President

Signature page to Fifth Amendment to Credit Agreement – The Marcus Corporation

WELLS FARGO BANK, NATIONAL ASSOCIATION, individually and as a
Co-Documentation Agent

By: /s/ Jeffrey R. Cressman

Name: Jeffrey R. Cressman

Title: Director

BANK OF AMERICA, N.A., individually and as a Co Documentation Agent

By: /s/ Steven K. Kessler

Title: Senior Vice President

FIFTH THIRD BANK, NATIONAL ASSOCIATION

By: /s/ Patrick Flaherty

Name: Patrick Flaherty

Title: Executive Director

BMO HARRIS BANK, N.A.

By: /s/ Nick Irving

Name: Nick Irving

Title: Vice President

ASSOCIATED BANK, N.A.

By: /s/ Dan Holzhauer

Name: Dan Holzhauer

Title: Senior Vice President

~~Marcus Composite Credit Agreement – Amendments 1–4~~

[Exhibit A – Fifth Amendment](#)

CREDIT AGREEMENT

dated as of

January 9, 2020

among

THE MARCUS CORPORATION,

The Lenders Party Hereto,

JPMORGAN CHASE BANK, N.A.

as Administrative Agent

U.S. BANK NATIONAL ASSOCIATION

as Syndication Agent

WELLS FARGO BANK, NATIONAL ASSOCIATION

and

BANK OF AMERICA, N.A.,

as Co-Documentation Agents

JPMORGAN CHASE BANK, N.A.,

as Lead Left Bookrunner

JPMORGAN CHASE BANK, N.A.
and
U.S. BANK NATIONAL ASSOCIATION

 as Joint Lead Arrangers/Bookrunners

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CREDIT AGREEMENT dated as of January 9, 2020, among THE MARCUS CORPORATION, the LENDERS party hereto, JPMORGAN CHASE BANK, N.A., as Administrative Agent, U.S. BANK NATIONAL ASSOCIATION, as Syndication Agent, and WELLS FARGO BANK, NATIONAL ASSOCIATION and BANK OF AMERICA, N.A., as Co-Documentation Agents.

The parties hereto agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Acquisition" means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which the Borrower or any of its Subsidiaries (i) acquires any going business, any business unit or all or substantially all of the assets of any firm, corporation or limited liability company, or division thereof, whether through purchase of assets, merger or otherwise or (ii) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person.

"Adjusted Daily Simple SOFR" means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

"Adjusted LIBO Term SOFR Rate" means, with respect to any Term Benchmark Borrowing, means for any Interest Period or for any ABR Borrowing, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Term SOFR Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate, plus (b) 0.10%; provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

"Administrative Agent" means JPMCB in its capacity as administrative agent for the Lenders hereunder.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agency Site" means the Electronic System established by the Administrative Agent to administer this Agreement.

"Agent Party" has the meaning assigned to it in Section 9.01(d).

"Alternate Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1%, and (c) the Adjusted LIBO Term SOFR Rate for a one-month Interest Period ~~as published two (2) U.S. Government Securities Business Days prior to~~ such day (or if such day is not a U.S. Government Securities Business Day, the immediately preceding U.S. Government Securities Business Day) plus 1%, provided that, for the purpose of this definition, the Adjusted LIBO Term SOFR Rate for any day shall be based on the LIBO Screen Rate ~~(or if the LIBO Screen Rate is not~~

~~available for such one-month Interest Period, the Interpolated Rate)~~ Term SOFR Reference Rate at approximately 11:55:00a.m. ~~London~~ Chicago time on such day ~~(or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology)~~. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until ~~any amendment has become effective~~ the Benchmark Replacement has been determined pursuant to Section 2.14(eb)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

"Ancillary Document" has the meaning assigned to it in Section 9.06(b).

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery, corruption or money laundering.

"Applicable Percentage" means, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure or Swingline Loans, the percentage equal to a fraction the numerator of which is such Lender's Revolving Commitment and the denominator of which is the aggregate Revolving Commitments of all Revolving Lenders (if the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments); provided that in the case of Section 2.20 when a Defaulting Lender shall exist, any such Defaulting Lender's Revolving Commitment shall be disregarded in the calculation, and (b) with respect to the Term Loans, if any, a percentage equal to a fraction the numerator of which is such Lender's outstanding principal amount of the Term Loans and the denominator of which is the aggregate outstanding principal amount of the Term Loans of all Term Lenders; provided that in the case of Section 2.20 when a Defaulting Lender shall exist, any such Defaulting Lender's Term Loan Commitment shall be disregarded in the calculation.

"Applicable Rate" means, for any day, with respect to any Term Benchmark Loan or ABR Loan or with respect to the facility fees under Section 2.12(a) or the fees on Letters of Credit payable under Section 2.12(b)(i), as the case may be, the applicable rate per annum set forth below under the caption "Term Benchmark [and RFR Spread](#)", "ABR Spread", "Facility Fee Rate" or "Letter of Credit Fee", as the case may be, based upon the Consolidated Debt to Capitalization Ratio as of the most recent determination date:

Level	Consolidated Debt to Capitalization Ratio	Facility Fee Rate	Term Benchmark and RFR Spread for Revolving Loans and Letter of Credit Fee	ABR Spread for Revolving Loans
I	CDCR < 0.25:1.0	0.125%	0.875%	0.0%
II	CDCR ≥ 0.25:1.0 and < 0.35:1.0	0.150%	0.975%	0.0%
III	CDCR ≥ 0.35:1.0 and < 0.40:1.0	0.175%	1.075%	0.075%
IV	CDCR ≥ 0.40:1.0 and < 0.45:1.0	0.200%	1.175%	0.175%
V	CDCR ≥ 0.45:1.0 and < 0.50:1.0	0.225%	1.275%	0.275%
VI	CDCR ≥ 0.50:1.0	0.250%	1.375%	0.375%

The Applicable Rate shall be determined in accordance with the foregoing table based on the Consolidated Debt to Capitalization Ratio as determined in the then most recent quarterly financial statements for the first three Fiscal Quarters of each Fiscal Year and the audited year-end financial statements for the last Fiscal Quarter of each Fiscal Year. Adjustments, if any, to the Applicable Rate shall be effective the fifth Business Day after the date that the applicable financials under Section 5.01(a) or (b) and certificate under Section 5.01(c) are due. If the Borrower fails to deliver the financials to the Administrative Agent at the time required hereunder or any other Event of Default exists, then the Applicable Rate shall be set at Level VI until such financials are so delivered.

Notwithstanding anything to the contrary in this Agreement, the Applicable Rate for (i) the Facility Fee Rate shall be 0.400%, (ii) the Term Benchmark [and RFR Spread](#) for Revolving Loans and Letter of Credit Fees shall be 2.10% as of the First Amendment Effective Date until the Second Amendment Effective Date, and 2.35% on and after the Second Amendment Effective Date, and (iii) the ABR Spread for Revolving Loan will set at 1.10% as of the First Amendment Effective Date until the Second Amendment Effective Date, and 1.35% on and after the Second Amendment Effective Date, and will not be adjusted until the end of the first fiscal quarter ending after the end of the Specified Period (and then based on Consolidated Debt to Capitalization Ratio as determined for the end of such first Fiscal Quarter ending after the end of the Specified Period).

Notwithstanding anything to the contrary in this Agreement, the Applicable Rate for (i) the Term Benchmark [and RFR Spread](#) for Term A Loans shall be 2.50% until the Second Amendment Effective Date, and 2.75% on and after the Second Amendment Effective Date, and (ii) the ABR Spread for Term A Loans shall be

1.50% until the Second Amendment Effective Date, and 1.75% on and after the Second Amendment Effective Date.

Notwithstanding the foregoing, in the event that any financial statement or compliance certificate delivered pursuant to Sections 5.01(a), (b) and (c) is shown to be inaccurate, and such inaccuracy, if corrected, would have led to the application of (i) a higher Applicable Rate for any period (an "Applicable Period") than the Applicable Rate applied for such Applicable Period, then (a) the Borrower shall immediately deliver to the Administrative Agent a corrected compliance certificate for such Applicable Period, (y) the Applicable Rate for such Applicable Period shall be determined as if the Consolidated Debt to Capitalization Ratio in the corrected compliance certificate were applicable for such Applicable Period, and (z) the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent the accrued additional interest and fees owing as a result of such increased Applicable Rate for such Applicable Period, or (ii) a lower Applicable Rate for the Applicable Period than the Applicable Rate applied for such Applicable Period, then (x) the Borrower shall immediately deliver to the Administrative Agent a corrected compliance certificate for such Applicable Period and (y) the Applicable Rate shall be adjusted in accordance with such corrected compliance certificate on the date that the Administrative Agent receives such corrected compliance certificate notwithstanding that such date is not otherwise a date on which the Applicable Rate is to be calculated, and such adjusted Applicable Rate shall remain in effect until otherwise required to be modified hereunder. Nothing in this paragraph shall limit the rights of the Administrative Agent and Lenders with respect to their rights under this Agreement. The Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all Obligations.

"Approved Electronic Platform" has the meaning assigned to it in Section 8.03(a).

"Approved Fund" has the meaning assigned to such term in Section 9.04(b).

"Arranger" shall mean each of JPMorgan Chase Bank, N.A., in its capacity as lead left bookrunner and as a joint bookrunner and joint lead arranger hereunder and U.S. Bank National Association in its capacity as a joint bookrunner and joint lead arranger hereunder.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

"Augmenting Lender" has the meaning assigned to such term in Section 2.04(a).

"Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Revolving Credit Maturity Date and the date of termination of the Commitments.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement 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 clause ~~(f) of Section 2.14~~ (e) of Section 2.14.

"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 which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United

Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Banking Services" means each and any of the following bank services provided to any Loan Party or any of their Subsidiaries by any Lender or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, "commercial credit cards" and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts and interstate depository network services and cash pooling services).

"Banking Services Obligations" means any and all obligations of the Loan Parties or any of their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Bankruptcy Event" means, with respect to any Person, such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Benchmark" means, initially, ~~LIBOR~~ with respect to any (i) RFR Loan, the Daily Simple SOFR or (ii) Term Benchmark Loan, the Term SOFR Rate; provided that if a Benchmark Transition Event, ~~a Term SOFR Transition Event or an Early Opt-in Election, an Other Benchmark Election, as applicable, and its~~ and the related Benchmark Replacement Date have occurred with respect to ~~LIBOR~~ the Daily Simple SOFR or Term SOFR Rate, ~~as applicable~~, 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 clause (c) ~~or clause (d)~~ of Section 2.14.

"Benchmark Replacement" means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date: ~~provided that, in the case of an Other Benchmark Rate Election, "Benchmark Replacement" shall mean the alternative set forth in (3) below:~~

~~(1) the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;~~

~~(2) (1) the sum of (a) Adjusted Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment; or~~

~~(3) (2) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (b) the related Benchmark Replacement Adjustment;~~

~~provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; provided further that, in the case of clause (3), when such clause is used to determine the Benchmark Replacement in connection with the occurrence of an Other Benchmark Rate Election, the alternate benchmark rate selected by the Administrative Agent and the Borrower shall be the term benchmark rate that is used in lieu of a LIBOR-based rate in the relevant other Dollar-denominated syndicated credit facilities; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the "Benchmark Replacement" shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above);~~

If the Benchmark Replacement as determined pursuant to clause (1) ~~or (2) or (3)~~ 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 for any applicable Interest Period and Available Tenor for any setting of such 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 (1) for purposes of clauses (1) and (2) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Administrative Agent;~~

~~(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;~~

~~(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and~~

~~(2) for purposes of clause (3) of the definition of "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 the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) 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 on the applicable Benchmark Replacement Date and/or (ii) 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; at such time.

~~provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.~~

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides ~~in its reasonable discretion~~ may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Replacement Date" means, with respect to any Benchmark, the earliest to occur of the following events with respect to ~~the~~such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) 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

(2) in the case of clause (3) 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 the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause ~~(e3)~~ and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date; .

~~(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Borrower pursuant to Section 2.14(e); or~~

~~(4) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Required Lenders;~~

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) 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, with respect to any Benchmark, the occurrence of one or more of the following events with respect to ~~the~~such then-current Benchmark:

(1) 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);

(2) 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 NYFRB, the CME Term SOFR Administrator, 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), in each case, 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

(3) 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) 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, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced ~~the~~such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced ~~the~~such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

"Beneficial Owner" means, with respect to any U.S. Federal withholding Tax, the beneficial owner, for U.S. Federal income tax purposes, to whom such Tax relates.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"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.

"Board of Directors" means, with respect to any Person, (i) in the case of any corporation, the board of directors of such Person, (ii) in the case of any limited liability company, the board of managers of such Person, (iii) in the case of any partnership, the Board of Directors of the general partner of such Person and (iv) in any other case, the functional equivalent of the foregoing.

"Borrower" means The Marcus Corporation, a Wisconsin corporation.

"Borrowing" means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect, (b) a Term Loan made on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect or (c) a Swingline Loan.

"Borrowing Request" means a request by the Borrower for a Borrowing in accordance with Section 2.03.

"Business Day" means, any day ~~that is not (other than a Saturday or a Sunday or other day)~~ on which ~~commercial~~ banks are open for business in New York City, ~~Chicago or Milwaukee are authorized or required by law to remain closed; provided that, when used in connection with a Term Benchmark Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market; provided that, in addition to the foregoing, a Business Day shall be (a) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings of such RFR Loan and (b) in relation to Loans referencing the Adjusted Term SOFR Rate and any interest rate settings, fundings, disbursements, settlements or payments of any such Loans referencing the Adjusted Term SOFR Rate or any other dealings of such Loans referencing the Adjusted Term SOFR Rate, any such day that is only a U.S. Government Securities Business Day.~~

"Capital Expenditures" means, without duplication, any cash expenditure for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries prepared in accordance with GAAP.

"CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act, and applicable rules and regulations.

"CARES Payroll Costs" means "payroll costs" as defined in 15 U.S.C. 636(a)(36)(A)(viii) (as added to the Small Business Act by Section 1102 of the CARES Act).

"CARES Allowable Uses" means "allowable uses" of proceeds of an SBA PPP Loan as described in Section 1102 of the CARES Act.

"Change of Control" means any event, or combination of events, the result of which is that Stephen H. Marcus, Diane Marcus Gershowitz and their respective heirs, together with trusts controlled by any such Persons, collectively, no longer beneficially own (within the meaning of Rule 13d-3 of the SEC under the Exchange Act) 51% or more of the voting rights with respect to outstanding Equity Interests of the Borrower.

"Change in Law" means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) compliance by any Lender or Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or Issuing Bank's holding

company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted, issued or implemented.

"Charges" has the meaning assigned to such term in Section 9.13.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, a Term A Loan, or Swingline Loans.

"CME Term SOFR Administrator" means CME Group Benchmark Administration Limited as administrator of the forward-looking term SOFR (or a successor administrator).

"Co-Documentation Agents" means Wells Fargo Bank, National Association and Bank of America, N.A., as co-documentation agents for the credit facilities evidenced by this Agreement.

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

"Collateral" means any and all property owned, leased or operated by a Person covered by the Collateral Documents and any and all other property of the Loan Parties, now existing or hereafter acquired, that may at any time be, become or be intended to be, subject to a security interest or Lien in favor of the Administrative Agent, on behalf of itself and the Lenders and other Secured Parties, to secure the Obligations.

"Collateral Agent" has the meaning set forth in the Intercreditor Agreement. As of the First Amendment Effective Date, the Collateral Agent is JPMCB.

"Collateral Documents" means, collectively, the Security Agreement, the Mortgages and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements and all other written matter whether theretofore, now or hereafter executed by any Loan Party and delivered to the Administrative Agent or the Collateral Agent.

"Collateral Release Date" means the first date on which each of the following events has occurred for such date: (a) the Term A Loans have been paid in full, (b) such date is at least three full Fiscal Quarters after the date on which the Borrower has (i) irrevocably elected to have the financial covenants in this Agreement as in effect prior to the First Amendment Effective Date (provided that the financial covenant in Section 6.09(b) hereof, as amended pursuant to the Fourth Amendment, shall be deemed in effect prior to the First Amendment Effective Date) become effective in accordance with Section 6.09(f) and (ii) been in compliance with the financial covenants in this Agreement as in effect prior to the First Amendment Effective Date (provided that the financial covenant in Section 6.09(b) hereof, as amended pursuant to the Fourth Amendment, shall be deemed in effect prior to the First Amendment Effective Date); (c) the Consolidated Leverage Ratio is less than 3.5:1.0, as calculated for the most recently ended Fiscal Quarter prior to such date; (d) all holders of the Senior Notes shall simultaneously release the Collateral and all subsidiary guaranties; and (e) no Default or Event of Default shall exist on such date.

"Commitment" means, with respect to each Lender, the sum of such Lender's Revolving Commitment and Term Loan Commitment. The initial amount of each Lender's Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption or other documentation contemplated hereby pursuant to which such Lender shall have assumed its Commitment, as applicable.

"Communications" has the meaning assigned to it in Section 9.01(d).

"Compounded SOFR" means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which may include compounding in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Interest Period) being established by the Administrative Agent in accordance with:

- (1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; provided that:
- (2) if, and to the extent that, the Administrative Agent determines that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that the Administrative Agent determines in its reasonable discretion are substantially consistent with any evolving or then-prevailing market convention for determining compounded SOFR for U.S. dollar-denominated syndicated credit facilities at such time;

provided, further, that if the Administrative Agent decides that any such rate, methodology or convention determined in accordance with clause (1) or clause (2) is not administratively feasible for the Administrative Agent, then Compounded SOFR will be deemed unable to be determined for purposes of the definition of "Benchmark Replacement."

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated Adjusted Cash Flow" means, for any period, the Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income, (a) depreciation and amortization for such period, (b) all current and deferred taxes on income, provision for taxes on income, provision for taxes on unremitted foreign earnings which are included in consolidated gross revenues and current additions to reserves for taxes, ~~and~~ (c) any non-cash share based compensation for such period, and (d) Consolidated Interest and Rental Expense, together with those items excluded from the definition of Consolidated Interest and Rental Expense pursuant to the proviso in such definition.

"Consolidated Adjusted Net Worth" means, as of any date of determination thereof, the Consolidated Net Worth less the total amount of all Restricted Investments in excess of 20% of Consolidated Net Worth, each as of such date of determination.

"Consolidated Debt" means, as of any date of determination thereof, the Indebtedness of the Borrower and its Restricted Subsidiaries determined on a consolidated basis as of such date of determination; provided that the amount included in Consolidated Debt that pertains to all obligations under the Master Licensing Agreement, to the extent considered a Finance Lease under GAAP, shall be equal to (a) one twelfth of any shortfall amount required to be paid under the Master Licensing Agreement for the most recently ended four consecutive Fiscal Quarters times (b) the number of months remaining in the term of the Master Licensing Agreement as of the most recently ended Fiscal Quarter.

"Consolidated Debt to Capitalization Ratio" or **"CDCR"** means, as of any date of determination, the ratio of (a) Consolidated Debt to (b) Consolidated Total Capitalization, in each case as of such date.

"Consolidated EBITDA" means, for any period, consolidated operating income for the Borrower and its Restricted Subsidiaries for such period plus (a) without duplication and to the extent deducted in determining such consolidated operating income for such period, the sum of (i) all amounts attributable to depreciation and amortization expense for such period, (ii) any non-cash share based compensation for such period, (iii) any unusual and/or infrequently occurring non-cash fees, costs, expenses, charges, losses or similar items for such period, (iv) any other non-cash fees, costs, expenses, charges, losses or similar items for such period (but excluding any non-cash charge in respect of an item that was included in consolidated operating income for the Borrower and its Restricted Subsidiaries in a prior period and any non-cash charge that relates to the write-down or write-off of inventory, and any charge that is an amortization of a cash item that was paid in a prior period shall not be considered a non-cash charge), (v) fees, costs, expenses, charges and losses incurred during such period in connection with any issuance, incurrence, conversion, exchange, redemption, repurchase, repayment, refinancing, settlement or satisfaction of any Indebtedness, equity or Permitted Convertible Indebtedness Call Transaction (whether or not successful), (vi) any proceeds from business interruption insurance received during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were taken into account in computing consolidated operating income for the Borrower and its Restricted Subsidiaries, and (vii) any other unusual and/or infrequently occurring fees, cash charges and other cash expenses for such period in an amount not to exceed \$10,000,000 during any four consecutive Fiscal Quarter period, minus (b) without duplication and to the extent included in consolidated operating income for the Borrower and its Restricted Subsidiaries, (i) any cash payments made during such period in respect of non-cash charges described in clauses (a)(ii)-(iv) above and taken in a prior period and (ii) any extraordinary gains and any non-cash items of income for such period (provided that any income recognized in any period for cash received in a prior period (and not recognized in such prior period) shall not be considered non-cash under this clause (ii)), all calculated for the Borrower and its Restricted Subsidiaries in accordance with GAAP on a consolidated basis consistently applied and determined in a manner consistent with the Borrower's most recently publicly filed financial statements.

"Consolidated Fixed Charge Coverage Ratio" means, as of the date of any determination thereof, the ratio of (a) Consolidated Adjusted Cash Flow to (b) Consolidated Interest and Rental Expense to the extent paid or payable in cash.

"Consolidated Interest and Rental Expense" means, for any period, all amounts recorded and deducted in computing Consolidated Net Income for such period in respect of interest charges and expense and rental charges for such period (whether paid or accrued, or a cash or non-cash expense, and in the case of rental payments, including the full amount of those payments made under operating leases or synthetic leases, but only the imputed interest under Finance Leases) in accordance with GAAP; provided, Consolidated Interest and Rental Expense shall exclude all imputed interest discounts, yield, fees, charges and expense related to any Convertible Securities and/or any Permitted Convertible Indebtedness Call Transaction.

"Consolidated Leverage Ratio" or **"CLR"** means, as of the date of any determination thereof, the ratio of (a) Consolidated Debt on such date to (b) Consolidated EBITDA for the period of four consecutive Fiscal Quarters ending on or most recently prior to such date.

"Consolidated Liquidity" means, as of the end of any Fiscal Quarter, the sum of (x) Unrestricted Cash On Hand as of the last day of such Fiscal Quarter plus (y) the difference between the Revolving Commitment and the average daily Revolving Credit Exposure for such Fiscal Quarter, provided that the amount calculated under this clause (y) for the second Fiscal Quarter of 2020 shall be determined on a pro forma basis assuming the Term A Loans funded on the First Amendment Effective Date were funded on the first day of such Fiscal Quarter.

"Consolidated Net Income" means, for any period, the consolidated gross revenues of the Borrower and its Restricted Subsidiaries, less all operating and non-operating expenses of the Borrower and its Restricted Subsidiaries, including all charges of a proper character (including current and deferred taxes on income, provision for taxes on income, provisions for taxes on unremitted foreign earnings which are included in consolidated gross revenues, and current additions to reserves), all determined in accordance with GAAP consistently applied, but not including in the computation thereof the amounts (including related expenses and any tax effect related thereto) resulting from (i) any gains or losses resulting from the sale, conversion or other disposition of capital assets (i.e., assets other than current assets), (ii) any gains or losses resulting from the reevaluation of assets, (iii) any gains or losses resulting from an acquisition by the Borrower or any of its Restricted Subsidiaries at a discount of any debt of the Borrower or any of its Restricted Subsidiaries, (iv) any equity of the Borrower or any of its Restricted Subsidiaries in the unremitted earnings of any Person which is not a Restricted Subsidiary, (v) any earnings of any Person acquired by the Borrower or any of its Restricted Subsidiaries through purchase, merger or consolidation or otherwise for any time prior to the date of acquisition, (vi) any deferred credit representing the excess of equity in any Restricted Subsidiary of the Borrower at the date of acquisition over the cost of the investment in such Restricted Subsidiary, (vii) any restoration to income of any reserve, except to the extent that provision for such reserve was made out of income accrued during such period, (viii) any net gain from the collection of life insurance policies, or (ix) any gain resulting from investments or any other nonrecurring item.

"Consolidated Net Worth" means, as of any date of determination thereof, the shareholders' equity of the Borrower and its Restricted Subsidiaries, calculated in accordance with GAAP on a consolidated basis consistently applied.

"Consolidated Total Capitalization" means, as of the date of any determination thereof, the sum of (i) Consolidated Debt, plus (ii) Consolidated Adjusted Net Worth.

"Contingent Obligation" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in (including, without limitation, Deferred Equity Contribution Obligations), a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other Person or guarantees the payment of dividends or other distributions upon the shares of any other Person; excluding (i) endorsements of instruments in the course of collection, (ii) so long as no claim or payment has been made thereon, guarantees that are effective solely upon the occurrence of specified "bad boy" events that have not yet occurred in circumstances in which the occurrence of such events is within the control of such Person or a Person controlled by such Person (e.g., provisions commonly known as "bad boy" acts of such Person or a Person controlled by such Person, including fraud, gross negligence, willful misconduct, and unlawful acts and such other customary "bad boy" acts as are reasonably acceptable to the Administrative Agent), and (iii) so long as no claim or payment has been made thereon, guarantees by the Borrower of the payment of franchise fees (but not of any Indebtedness) by its Subsidiaries consistent with past practices and in the ordinary course of business. The amount of any Person's obligation under any Contingent Obligation shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of the debt, obligation or other liability guaranteed thereby.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **"Controlling"** and **"Controlled"** have meanings correlative thereto.

"Corresponding Tenor" with respect to ~~a Benchmark Replacement means~~ any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as ~~the applicable tenor for the applicable Interest Period with respect to the LIBO Rate~~ such Available Tenor.

"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).

"Covered Party" has the meaning assigned to it in Section 9.16.

"Convertible Securities" means (a) the Specified Convertible Senior Notes and (b) any other unsecured Indebtedness of the Borrower that is or will become, upon the occurrence of certain specified events or after the passage of a specified amount of time, (i) convertible into, or exchangeable for, Qualified Equity Interests of the Borrower (and cash in lieu of fractional shares), call options, warrants, rights or obligations to purchase (or substantially equivalent derivative transactions) that are exercisable for Qualified Equity Interests of the Borrower and/or cash (in an amount determined by reference to the price of such Equity

Interests) and/or (ii) sold as units with call options, warrants, rights or obligations to purchase (or substantially equivalent derivative transactions) that are exercisable for Qualified Equity Interests of the Borrower and/or cash (in an amount determined by reference to the price of such Equity Interests).

"Credit Exposure" means, as to any Lender at any time, the sum of (a) such Lender's Revolving Credit Exposure at such time, plus (b) an amount equal to the aggregate principal amount of its Term Loans outstanding at such time.

"Credit Party" means the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender.

"Daily Simple SOFR" means, for any day, ~~(a "SOFR, with the conventions for this rate (which will include a lookback) being Rate Day"), a rate per annum equal to SOFR for the day (such day "SOFR Determination Date") that is five (5) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is estapublished by the SOFR Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "on the SOFR Administrator's Website. Any change in Daily Simple SOFR" for business loans;~~

~~provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion. due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.~~

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (A) a Bankruptcy Event or (B) a Bail-In Action.

"Deferred Equity Contribution Obligations" means obligations of the Borrower or its Restricted Subsidiaries to make equity contributions to Subsidiaries engaged in businesses of the type conducted by the Borrower and its Restricted Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto, provided that no Default exists at the time such obligation is incurred and the incurrence of any such obligation does not cause a Default.

"Designated Sale Real Property" means the real property described on Schedule 1.01(c).

"Designated Sale Real Property Conditions" means the conditions described on Schedule 1.01(c), and all parties hereto acknowledge and agree to such conditions.

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding, for the avoidance of doubt, any issuance or conversion of Convertible Securities and the consummation of any Permitted Convertible Indebtedness Call Transaction.

"Disqualified Equity Interests" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable (other than solely for Qualified Equity Interests, cash in lieu of fractional shares of such Qualified Equity Interests, and call options, warrants, rights or obligations to purchase (or substantially equivalent derivative transactions) that are exercisable for Qualified Equity Interests and/or cash), pursuant to a sinking fund obligation or otherwise (except as a result of a change in control or asset sale so long as any rights of the holders thereof upon the occurrence of a change in control or asset sale event shall be subject to the prior occurrence of the Revolving Credit Maturity Date and the Term A Maturity Date), or redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests, cash in lieu of fractional shares of such Qualified Equity Interests, and call options, warrants, rights or obligations to purchase (or substantially equivalent derivative transactions) that are exercisable for Qualified Equity Interests and/or cash), in whole or in part. Notwithstanding the foregoing, (i) any Equity Interests issued to any employee or to any plan for the benefit of employees of the Borrower and/or its Subsidiaries or by any such plan to such employees shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability and (ii) any class of Equity Interests of such person that by its terms authorizes such person to satisfy its obligations thereunder by delivery of Equity Interests that are not Disqualified Equity Interests shall not be deemed to be Disqualified Equity Interests.

"dollars" or **"\$"** refers to lawful money of the United States of America.

"Early Opt in Election" means the occurrence of:

(1)(i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.14 are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate, and

(2)(i) the election by the Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

"Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

"Electronic System" means any electronic system, including e-mail, e-fax, Intralinks®, ClearPar®, Debt Domain, Syndtrak and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent or any Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(14) of ERISA or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer

under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) the failure to satisfy the "minimum funding standard" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of the Borrower or any of its ERISA Affiliates from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition upon the Borrower or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"Event of Default" has the meaning assigned to such term in Article VII.

"Exchange Act" means the Securities and Exchange Act of 1934, and regulations promulgated thereunder.

"Excluded Real Property" means (a) the real property described on Schedule 1.01(b) and (b) any other owned real property of the Borrower and its Restricted Subsidiaries that is not a hotel or theater and if the fair market value thereof (as reasonably determined by the Borrower and approved by the Administrative Agent) does not exceed \$5,000,000 or as otherwise agreed to by the Administrative Agent.

"Excluded Subsidiaries" means (a) Pfister LLC and (b) with the consent of the Administrative Agent, Subsidiaries that are not Wholly Owned Subsidiaries of the Borrower.

"Excluded Swap Obligation" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security

interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or 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 ECP at the time the guarantee of such Guarantor or the grant of such security interest becomes or would become 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 guarantee or security interest is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.17(f), and (d) any U.S. Federal withholding Taxes imposed under FATCA.

"Existing Credit Agreement" means the credit agreement dated as of June 16, 2016, as modified, among the Borrower, the lenders party thereto, and JPMCB, as administrative agent.

"Existing Letters of Credit" means the currently outstanding letters of credit issued for the account of the Borrower and listed on Schedule 2.06 hereto.

"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 and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"Federal Reserve Bank of New York's Website" means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Fifth Amendment" means the Fifth Amendment to Credit Agreement dated as of February 10, 2023 by and among the Borrower, the Lenders party thereto, the Administrative Agent, the Syndication Agent, and the Co-Documentation Agents.

"Fifth Amendment Effective Date" has the meaning given to that term in the Fifth Amendment.

"Finance Lease" means, as to any Person, any lease (or other arrangement conveying the right to use) which, in accordance with GAAP consistently applied, is or should be classified and accounted for as a finance lease or otherwise capitalized on the balance sheet of such Person, subject to Section 1.04(b).

"Finance Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any Finance Lease of real or personal property, or a combination thereof, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

"First Amendment" means the First Amendment to Credit Agreement dated as of April 29, 2020 by and among the Borrower, the Lenders, the Administrative Agent, the Syndication Agent, and the Co-Documentation Agents.

"First Amendment Effective Date" has the meaning given to that term in the First Amendment.

"Fiscal Quarter" means each fiscal quarter of the Borrower based on three 13-week quarters and a final quarter consisting of 13 or 14 weeks consistent with the Borrower's current practice.

"Fiscal Year" means each fiscal year of the Borrower based on a 52 or 53-week fiscal year and ending on the last Thursday in December consistent with the Borrower's current practice. Reference to any Fiscal Year with a reference to any year shall be deemed the Fiscal Year ending on the last Thursday in December of that year (i.e., the 2020 Fiscal Year shall be the Fiscal Year ending December 31, 2020).

"Floor" means the benchmark rate floor, if any, provided in this Agreement ~~initially~~ (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to ~~LIBO Rate~~ the Adjusted Term SOFR Rate or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt, the initial Floor for each of the Adjusted Term SOFR Rate and the Adjusted Daily Simple SOFR shall be zero.

"Foreign Lender" means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the 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 the Borrower is resident for tax purposes.

"Fourth Amendment" means the Fourth Amendment to Credit Agreement dated as of July 27, 2022 by and among the Borrower, the Lenders party thereto, the Administrative Agent, the Syndication Agent, and the Co-Documentation Agents.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Governmental Forgivable Debt" means SBA PPP Loans and Governmental Stimulus Debt satisfying the following conditions: (i) such Indebtedness is forgivable, (ii) the Borrower or its Restricted Subsidiary liable on such Indebtedness qualifies for the forgiveness of such Indebtedness, and (iii) the Borrower or its Restricted Subsidiary liable on such Indebtedness complies with all terms for the forgiveness thereof.

"Governmental Stimulus Debt" means any unsecured Indebtedness (other than SBA PPP Loans) incurred by the Borrower or any of its Restricted Subsidiaries after the First Amendment Effective Date pursuant to any Governmental Authority economic stimulus program offering such Indebtedness on favorable terms to the Borrower or any of its Restricted Subsidiaries.

"Guarantor" means any Loan Party who has delivered a Loan Guaranty.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

~~**"Impacted Interest Period"** has the meaning assigned to it in the definition of "LIBO Rate."~~

"Increasing Lender" has the meaning assigned to such term in Section 2.04(a).

"Incremental Credits" has the meaning assigned to such term in Section 9.02(c).

"Incremental Term Loan Amendment" has the meaning assigned to such term in Section 2.04(c).

"Incremental Term Loan" has the meaning assigned to such term in Section 2.04(a).

"Indebtedness" of any Person means, without duplication, (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business on ordinary terms, accrued expenses in the ordinary course of business and employee compensation and benefit obligations incurred in the ordinary course of business); (c) all non-contingent reimbursement or payment obligations with respect to Surety Instruments; (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by the Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property); (f) all obligations with respect to Finance Leases; (g) all net obligations with respect to Swap Agreements; (h) all indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness; (i) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (h) above; and (j) all Contingent Obligations with respect to Surety Instruments.

"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 the Borrower under any Loan Document and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

"Indemninee" has the meaning assigned to such term in Section 9.03(b).

"Ineligible Institution" has the meaning assigned to it in Section 9.04(b).

"Information" has the meaning assigned to such term in Section 9.12.

"Information Memorandum" means the loan syndication organizational materials relating to the Borrower and the Transactions.

"Intercreditor Agreement" means the Intercreditor and Collateral Agency Agreement dated on or about the First Amendment Effective Date by and among the Administrative Agent, the Collateral Agent, the holders of the Senior Notes and the other parties thereto, as amended, restated or otherwise modified from time to time.

"Interest Election Request" means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.08.

"Interest Payment Date" means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December and the Revolving Credit Maturity Date, (b) with respect to any RFR Loan, each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and the Revolving Credit Maturity Date, (c) with respect to any Term Benchmark Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months¹, duration, each day prior to the last day of such Interest Period that occurs at intervals of three months², duration after the first day of such Interest Period and the Revolving Credit Maturity Date, and (ed) with respect to any Swingline Loan, the day that such Loan is required to be repaid ~~or as otherwise required by the Swingline Lender~~ and the Revolving Credit Maturity Date.

"Interest Period" means with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as the Borrower may elect; ~~provided that~~ (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, ~~in the case of a Term Benchmark Borrowing only~~, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day ~~and~~, (ii) ~~if the Interest Period elected by the Borrower is for a term other than one week~~, any Interest Period ~~pertaining to a Term Benchmark Borrowing~~ that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, and (iii) no tenor that has been removed from this definition pursuant to Section 2.14(e) shall be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter, in the case of ~~a Revolving~~ any Borrowing, ~~thereafter~~ other than a Swingline Loan, shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Interpolated Rate" means, at any time, for any Interest Period, the rate *per annum* (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

"Investment" means any advance, loan, extension of credit or capital contribution to, or any investment in the Equity Interests, or debt securities or other obligations of, another Person or any Contingent Obligation incurred for the benefit of another Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IRS" means the United States Internal Revenue Service.

~~**"ISDA Definitions"** means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.~~

"Issuing Bank" means, individually and collectively, each of JPMCB, U.S. Bank and any other Revolving Lender from time to time designated by the Borrower as an Issuing Bank, with the consent of such Revolving Lender and the Administrative Agent, in each case in its capacity as an issuer of Letters of Credit hereunder and their respective successors in such capacity as provided herein. Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank means any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

"Issuing Bank Sublimits" means, as of the Effective Date, (i) in the case of JPMCB, \$15,000,000, (ii) in the case of U.S. Bank, \$15,000,000, and (iii) as to any other Issuing Bank, such amount as shall be agreed to in writing among the Administrative Agent, the Borrower and such other Issuing Bank. Each Issuing Bank Sublimit may be (x) decreased at any time by agreement between the Borrower and the Administrative Agent (and without the consent or approval of any other parties) and (y) increased at any time by agreement between the Borrower, the Administrative Agent and the applicable Issuing Bank increasing its Issuing Bank Sublimit (and without the consent or approval of any other parties).

"Joint Venture" means a single-purpose corporation, partnership, joint venture or other similar legal arrangement (whether created by contract or conducted through a separate legal entity) now or hereafter formed

by the Borrower or any of its Subsidiaries with another Person in order to conduct a common venture or enterprise with such Person.

"JPMCB" means JPMorgan Chase Bank, N.A., a national banking association.

"LC Disbursement" means a payment made by the Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

"Lender Addition and Acknowledgement Agreement" means an agreement in form and substance satisfactory to the Administrative Agent and the Borrower.

"Lender Parent" means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Lenders" means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or Lender Addition and Acknowledgement Agreement, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender.

"Letter of Credit" means any letter of credit issued pursuant to this Agreement.

~~**"LIBO Rate"** means, with respect to any Term Benchmark Borrowing for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars) for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; in each case the **"LIBO Screen Rate"**) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall be less than 1.0%, such rate shall be deemed to be 1.0% for the purposes of this Agreement; provided further that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an **"Impacted Interest Period"**) then the LIBO Rate shall be the Interpolated Rate; provided that if any Interpolated Rate shall be less than 1.0%, such rate shall be deemed to be 1.0% for purposes of this Agreement.~~

~~**"LIBO Screen Rate"** has the meaning assigned to it in the definition of **"LIBO Rate."**~~

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Documents" means this Agreement, any promissory notes issued pursuant hereto, any Letter of Credit applications, the Intercreditor Agreement, each Collateral Document, the Loan Guaranty, and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, the Administrative Agent or any Lenders in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Guaranty" means, collectively, that certain Loan Guaranty given in connection with the First Amendment and made by the Loan Parties in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, which shall become effective on the First Amendment

Effective Date, and any other guaranty agreement entered into or made, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Loan Parties" means the Borrower and all Restricted Subsidiaries (other than Excluded Subsidiaries).

"Loans" means the loans made by the Lenders to the Borrower pursuant to this Agreement.

"Margin Stock" means margin stock within the meaning of Regulations T, U and X, as applicable.

"Master Licensing Agreement" means the master licensing agreement entered into during the second Fiscal Quarter of the 2012 Fiscal Year by the Borrower and/or its Restricted Subsidiaries with CDF2 Holdings, LLC, a subsidiary of Cinedigm Digital Cinema Corp. (CDF2), with respect to their digital cinema projection systems, and any amendments or modifications thereof and similar agreements (i.e., agreements under which all payments are expected to be covered through the payment of virtual print fees from film distributors to CDF2 or other independent third parties that are not affiliated with the Borrower or any of its Subsidiaries) with respect to their digital cinema projection systems.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower and the Restricted Subsidiaries taken as a whole, (b) the ability of any Loan Party to perform any of its obligations under any Loan Document, (c) prior to the Collateral Release Date, the Collateral, or the Administrative Agent's or Collateral Agent's Liens (on behalf of itself and the other Secured Parties) on the Collateral or the priority of such Liens, or (d) the rights of or benefits available to the Lenders under any Loan Document.

"Material Credit Facility" means, as to the Borrower and its Subsidiaries,

(a) any of the Senior Notes; and

(b) any other agreement(s) creating or evidencing indebtedness for borrowed money entered into by the Borrower or any Restricted Subsidiary, or in respect of which the Borrower or any Subsidiary is an obligor or otherwise provides a guarantee or other credit support ("Credit Facility"), in a principal amount outstanding or available for borrowing equal to or greater than \$20,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency); and if no Credit Facility or Credit Facilities equal or exceed such amounts, then the largest Credit Facility shall be deemed to be a Material Credit Facility.

"Material Indebtedness" means Indebtedness (other than the Loans and Letters of Credit), Contingent Obligations or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and its Restricted Subsidiaries in an aggregate principal amount exceeding \$5,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Restricted Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Maximum Rate" has the meaning assigned to such term in Section 9.13.

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means the Specified Mortgages and any other mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent or the Collateral Agent, for the benefit of the Administrative Agent and the other Secured Parties (or the Collateral Agent, and subject to the Intercreditor Agreement), on real property of a Loan Party, including any amendment, restatement, modification or supplement thereto.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Proceeds" means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) in the case of a casualty or similar event, insurance proceeds and (ii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a

result of such event, (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer), and (iv) in the case of the Specified Convertible Senior Notes or any other Convertible Securities, all costs, fees and expenses in connection therewith and all costs, fees and expenses of any related Permitted Convertible Indebtedness Call Transaction.

"NYFRB" means the Federal Reserve Bank of New York.

"NYFRB Rate" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received to the Administrative Agent from a Federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Obligations" means all unpaid principal of, accrued and unpaid interest and fees and reimbursement obligations on the Loans and Letters of Credit and all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations (monetary (including without limitation post-petition interest, allowed or not) or otherwise) of the Borrower to the Lenders, the Administrative Agent, their respective Affiliates and the indemnified parties or any of them arising under the Loan Documents, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, together with all (i) Banking Services Obligations and (ii) Swap Agreement Obligations owing to one or more Lenders or their respective Affiliates; provided, however, that the definition of "Obligations" shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

~~**"Other Benchmark Rate Election"** means, if the then-current Benchmark is the LIBO Rate, the occurrence of:~~

~~(a) a request by the Borrower to the Administrative Agent to notify each of the other parties hereto that, at the determination of the Borrower, Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a LIBOR-based rate, a term benchmark rate as a benchmark rate, and~~

~~(b) the Administrative Agent, in its sole discretion, and the Borrower jointly elect to trigger a fallback from the LIBO Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders;~~

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than

connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

"Overnight Bank Funding Rate" means, for any day, the rate comprised of both overnight federal funds and overnight ~~Term-Benchmark borrowings~~ eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on ~~its public~~ the NYFRB's Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate ~~(from and after such date as the NYFRB shall commence to publish such composite rate).~~

"Participant" has the meaning assigned to such term in Section 9.04.

"Participant Register" has the meaning assigned to such term in Section 9.04(c).

"Patriot Act" means USA Patriot Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001).

"Payment" has the meaning assigned to it in Section 8.06(c).

"Payment Notice" has the meaning assigned to it in Section 8.06(c).

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Bond Hedge Transaction" means any call option or capped call option (or substantively equivalent derivative transaction) relating to the common stock of the Borrower (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower), whether settled in such common stock (or such other securities or property), cash or a combination thereof, purchased by the Borrower or any of its Subsidiaries in connection with an issuance of Convertible Securities; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Borrower from the sale of such Convertible Securities issued in connection with such Permitted Bond Hedge Transaction.

"Permitted Convertible Indebtedness Call Transaction" means any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

"Permitted Encumbrances" means:

- (a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;
- (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;
- (c) pledges and deposits made in the ordinary course of business of the Borrower and its Restricted Subsidiaries in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII; and
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Restricted Subsidiary;

provided that the term **"Permitted Encumbrances"** shall not include any Lien securing Indebtedness.

"Permitted Investments – Cash Equivalents" means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;
- (c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;
- (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and
- (e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000.

"Permitted Refinancing Indebtedness" means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to **"Refinance"**), other Indebtedness (including previous re-financings that constituted Permitted Refinancing Indebtedness), to the extent that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so refinanced (plus unpaid accrued interest and premium (including tender premium and any make-whole amount) thereon, any committed or undrawn amounts associated with, original issue discount on, and underwriting discounts, defeasance costs, fees, commissions and expenses incurred in connection with, such Permitted Refinancing Indebtedness), (b) the final maturity date of such Permitted Refinancing Indebtedness is no earlier than the earlier of the final maturity date of the Indebtedness being refinanced and does not result in a shortening of the average weighted maturity of the Indebtedness being refinanced, (c) if the Indebtedness (including any guarantee thereof) being Refinanced is by its terms subordinated in right of payment to the Obligations, such Permitted Refinancing Indebtedness (including any guarantee thereof) shall be subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced, taken as a whole,

(d) no Permitted Refinancing Indebtedness shall have direct obligors or contingent obligors that were not the direct obligors or contingent obligors (or that would not have been required to become direct obligors or contingent obligors) in respect of the Indebtedness being Refinanced, except that Loan Parties may be added as additional obligors, and (e) if the Indebtedness being Refinanced is secured, such Permitted Refinancing Indebtedness may only be secured on terms no less favorable, taken as a whole, to the

Lenders than those contained in the documentation (including any intercreditor agreement) governing the Indebtedness being Refinanced.

"Permitted Warrant Transaction" means any call options, warrants or rights to purchase (or substantively equivalent derivative transactions) on common stock of the Borrower (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower) whether settled in such common stock (or such other securities or property), cash or a combination thereof, purchased or sold by the Borrower or any of its Subsidiaries concurrently with a Permitted Bond Hedge Transaction.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Asset Regulations" means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

"Platform" means Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"Prepayment Event" means:

(a) any sale, transfer or other Disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Loan Party, other than (i) Dispositions described in Section 6.03(c)(i) or (ii), (ii) the payment or delivery by the Borrower of cash, Qualified Equity Interests or a combination of cash and Qualified Equity Interests, at the Borrower's election, upon conversion of the Specified Convertible Senior Notes, subject to Section 6.12(b) hereof, and (iii) Dispositions of Designated Sale Real Property, subject to the satisfaction of the Designated Sale Real Property Conditions, to the extent the aggregate Net Proceeds of all such Dispositions on or after the Third Amendment Effective Date does not exceed \$29,000,000; or

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party; or

(c) the issuance by the Borrower of any Equity Interests, or the receipt by the Borrower of any capital contribution, other than pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrower and its Subsidiaries in existence on the First Amendment Effective Date without any modification thereof, provided that (i) Restricted Payments paid by the Borrower solely in shares of the Borrower's common stock, (ii) the issuance of the Specified Convertible Senior Notes and (iii) the payment or delivery by the Borrower of Qualified Equity Interests upon conversion of the Specified Convertible Senior Notes, in each case, shall not constitute a Prepayment Event; or

(d) the incurrence by any Loan Party of any Indebtedness, other than Indebtedness permitted under Section 6.01 (excluding Section 6.01(b)(vi)) or permitted by the Required Lenders pursuant to Section 9.02.

"Primary Financial Officer" means the chief executive officer or the chief financial officer of the Borrower.

"Priority Debt" means (without duplication), as of the date of any determination thereof, the sum of (a) all Indebtedness of Restricted Subsidiaries other than (i) Indebtedness owed to the Borrower or any other Restricted Subsidiary, and (ii) Indebtedness outstanding at the time any Person becomes a Restricted Subsidiary (other than an Unrestricted Subsidiary which is designated as a Restricted Subsidiary pursuant to Section 5.11 hereof) provided that such Indebtedness shall not have been incurred in contemplation of such Person becoming a Restricted Subsidiary, and (b) Indebtedness of the Borrower secured by Liens.

"Prime Rate" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning assigned to it in Section 9.16.

"Qualified Equity Interests" means any Equity Interests other than Disqualified Equity Interests.

"Recipient" means, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

"Reference Time" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is ~~LIBO~~the Term SOFR Rate, ~~11:00~~5:00 a.m. (London/Chicago time) on the day that is two ~~London banking~~U.S. Government Securities Business Days preceding the date of such setting, ~~and~~ (2) if the RFR for such Benchmark is Daily Simple SOFR, then four Business Days prior to such setting or (3) if such Benchmark is ~~not LIBO~~none of the Term SOFR Rate or Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

"Refinanced Term Loans" has the meaning assigned to such term in Section 9.02(c).

"Register" has the meaning assigned to such term in Section 9.04.

"Regulation D" means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation T" means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation U" means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Regulation X" means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Relevant Governmental Body" means the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

"Relevant Rate" means (i) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate, and (ii) with respect to any RFR Borrowing, Adjusted Daily Simple SOFR, as applicable

"Replacement Term Loans" has the meaning assigned to such term in Section 9.02(c).

"Required Lenders" means, at any time, Lenders having Credit Exposures and unused Commitments representing more than 50% of the sum of the total Credit Exposures and unused Commitments at such time. The Credit Exposure and unused Commitments of any Defaulting Lender shall be disregarded in determining

Required Lenders at any time except in respect of any matters which would treat the Defaulting Lender differently from the other Lenders having Credit Exposure.

"Required Revolving Lenders" means, at any time, Lenders having Revolving Credit Exposure and unused Revolving Commitments representing more than 50% of the sum of the total Revolving Credit Exposure and unused Revolving Commitments at such time. The Revolving Credit Exposure and unused Revolving Commitments of any Defaulting Lender shall be disregarded in determining Required Revolving Lenders at any time except in respect of any matters which would treat the Defaulting Lender differently from the other Lenders having Revolving Credit Exposure.

"Required Term Lenders" means, at any time, Term Lenders, if any, having Term Loans and unused Term Loan Commitments representing more than 50% of the sum of the total Term Loans and unused Term Loan Commitments at such time. The Term Loans and unused Term Loan Commitments of any Defaulting Lender shall be disregarded in determining Required Term Lenders at any time except in respect of any matters which would treat the Defaulting Lender differently from the other Term Lenders.

"Requirement of Law" means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Restricted Investments" means all Investments of the Borrower and its Restricted Subsidiaries other than the following:

(a) Investments by the Borrower and its Restricted Subsidiaries in and to Restricted Subsidiaries, including any Investment in a corporation which, after giving effect to such Investment, will become a Restricted Subsidiary;

(b) Permitted Investments – Cash Equivalents;

(c) Investments resulting from receivables arising from the sale of goods and services in the ordinary course of business of the Borrower and its Restricted Subsidiaries;

(d) Investments by the Borrower and its Restricted Subsidiaries in property, plant and equipment of the Borrower and its Restricted Subsidiaries to be used in the ordinary course of business; and

(e) Investments of the Borrower and its Restricted Subsidiaries existing as of the Effective Date and described on Schedule 6.04.

In valuing any Investments for the purpose of applying the limitations set forth in this Agreement, such Investments shall be taken at the original cost thereof, without allowance for any subsequent write-offs or appreciation or depreciation therein, but less any amount repaid or recovered on account of capital or principal.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Borrower or any option, warrant or other right to acquire any such Equity Interests in the Borrower; provided that, for avoidance of doubt, the payment or delivery by the Borrower of cash, Qualified Equity Interests or a combination of cash and Qualified Equity Interests, at the Borrower's election, upon conversion of the Specified Convertible Senior Notes, subject to Section 6.12(b) hereof, shall not be a "Restricted Payment".

"Restricted Subsidiary" means any Subsidiary other than an Unrestricted Subsidiary.

"Reuters" means, as applicable, Thomson Reuters Corp, Refinitiv, or any successor thereto.

"Revolving Commitment" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Revolving Credit Exposure hereunder, as such commitment may be reduced or increased from time to time pursuant to Section 2.04, 2.09 or 9.04. The initial amount of each Lender's Revolving Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption or Lender Addition and Acknowledgement Agreement pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable. The initial aggregate amount of the Lenders' Revolving Commitments is \$225,000,000, subject to reduction or increase from time to time pursuant to Section 2.04, 2.09 and 9.04.

"Revolving Credit Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and its LC Exposure and Swingline Exposure at such time.

"Revolving Credit Maturity Date" means the earlier of the date five years after the date of this Agreement or the date the Revolving Commitments are reduced to zero or otherwise terminated.

"Revolving Lender" means, as of any date of determination, each Lender that has a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Credit Exposure.

"Revolving Loan" means a Loan made pursuant to Section 2.01(a).

"RFR" when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate based on the Adjusted Daily Simple SOFR.

"RFR Borrowing" means, as to any Borrowing, the RFR Loans comprising such Borrowing.

"RFR Loan" means a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.

"S&P" means Standard & Poor's.

"Sanctioned Country" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement as of the Fifth Amendment Effective Date, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea, Zaporizhzhia and Kherson Regions of Ukraine, Cuba, Iran, North Korea, ~~Sudan and~~ Syria ~~and~~ Crimea).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, 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 the foregoing clauses (a) or (b).

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, or other relevant sanctions authority.

"SBA" means the U.S. Small Business Administration.

"SBA PPP Loan" means a loan incurred by the Borrower under 15 U.S.C. 636(a)(36) (as added to the Small Business Act by Section 1102 of the CARES Act).

"SBA PPP Loan Date" means the date on which the Borrower receives the proceeds of the SBA PPP Loan.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Second Amendment" means the Second Amendment to Credit Agreement dated as of September 15, 2020 by and among the Borrower, the Lenders party thereto, the Administrative Agent, the Syndication Agent, and the Co-Documentation Agents.

"Second Amendment Effective Date" has the meaning given to that term in the Second Amendment.

"Secured Parties" means (a) the Lenders, (b) the Administrative Agent, (c) each Issuing Bank, (d) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Obligations, (e) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (g) the successors and assigns of each of the foregoing.

"Security Agreement" means that certain Pledge and Security Agreement (including any and all supplements thereto) given in connection with the First Amendment and by and among the Loan Parties and the Collateral Agent, and subject to the Intercreditor Agreement, which shall become effective on the First Amendment Effective Date, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties (or the Collateral Agent, and subject to the Intercreditor Agreement), as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Senior Indebtedness" means all Indebtedness of the Borrower for money borrowed which is not by its terms subordinated in right of payment to the payment of any other Indebtedness of the Borrower.

"Senior Notes" means the senior notes of the Borrower described on Schedule 1.01(a).

"Small Business Act" means the Small Business Act (15 U.S. Code Chapter 14A – Aid to Small Business).

"Social Distancing Capital Expenditures" means, for any period, the aggregate Capital Expenditures of the Borrower and its Restricted Subsidiaries during such period required or advisable due to the adoption of or taking effect after the First Amendment Effective Date of any industry standards related to social distancing norms or any law, rule or regulation of any Governmental Authority after the First Amendment Effective Date relating thereto, provided that such aggregate amount for any applicable period relevant period shall not exceed \$5,000,000.

"SOFR" means, ~~with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published as administered by the SOFR Administrator on the SOFR Administrator's Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.~~

"SOFR Administrator" means the NYFRB (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the NYFRB's website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SOFR Determination Date" ~~has the meaning specified in the definition of "Daily Simple SOFR".~~

"SOFR Rate Day" ~~has the meaning specified in the definition of "Daily Simple SOFR".~~

"Specified Convertible Senior Notes" means the Borrower's Convertible Senior Notes in the principal amount not to exceed \$125,000,000 (or \$145,000,000 if the underwriters' option to purchase additional Convertible Senior Notes on the same terms is exercised in full) issued and closed on or before the date 60 days after the date the Second Amendment is signed and dated.

"Specified Mortgages" means the Mortgages encumbering the Specified Real Property given in connection with the First Amendment and made by one or more of the Loan Parties in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, which shall become effective on the First Amendment Effective Date.

"Specified Period" means any period in which (i) any portion of the Term A Loans remain unpaid or outstanding or (ii) the testing of any financial covenant in this Agreement as in effect prior to the First Amendment Effective Date (provided that the financial covenant in Section 6.09(b) hereof, as amended pursuant to

the Fourth Amendment, shall be deemed in effect prior to the First Amendment Effective Date) is suspended.

"Specified Real Property" means all real property owned by any of the Loan Parties as of the First Amendment Effective Date and all real property owned by any of the Loan Parties after the First Amendment Effective Date, excluding the Excluded Real Property.

~~**"Statutory Reserve Rate"** means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Federal Reserve Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Term Benchmark Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.~~

"Subordinated Indebtedness" of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Obligations to the written satisfaction of the Administrative Agent, and which is on such other terms satisfactory to the Administrative Agent.

"subsidiary" means, with respect to any Person (the "**parent**") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" means any subsidiary of the Borrower.

"Surety Instruments" means all letters of credit (including standby and commercial), banker's acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments.

"Supported QFC" has the meaning assigned to it in Section 9.16

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies,

commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Restricted Subsidiaries shall be a Swap Agreement.

"Swap Agreement Obligations" means any and all obligations of the Loan Parties and any of their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any Swap Agreement permitted hereunder with a Lender or an Affiliate of a Lender, (b) any cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction permitted hereunder with a Lender or an Affiliate of a Lender, and (c) any Permitted Convertible Indebtedness Call Transaction.

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

"Swingline Lender" means JPMorgan Chase Bank, in its capacity as lender of Swingline Loans hereunder.

"Swingline Loan" means a Loan made pursuant to Section 2.05.

"Syndication Agent" means U.S. Bank, as syndication agent for the credit facilities evidenced by this Agreement.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term A Commitment" means, with respect to each Lender, the commitment of such Lender to make Term A Loans hereunder, expressed as an amount representing the maximum principal amount of the Term A Loans to be made by such Lender hereunder, as such commitment may be reduced from time to time pursuant to Sections 2.09 or 9.04. The initial amount of each Lender's Term A Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption or Lender Addition and Acknowledgement Agreement pursuant to which such Lender shall have assumed its Term A Commitment, as applicable. The initial aggregate

amount of the Lenders' Term A Commitments is \$90,800,000 as of the First Amendment Effective Date, and the aggregate Term A Commitments are subject to increases under Section 2.01(b).

"Term A Lender" means, as of any date of determination, each Lender that has a Term A Commitment or an outstanding Term A Loan.

"Term A Loan" means a Loan made pursuant to Section 2.01(b).

"Term A Maturity Date" means, with respect to any Term A Loans, the earlier of (a) September 15, 2022 or (b) the acceleration of the Term A Loans in accordance with the terms hereof.

"Term Benchmark"—when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted ~~LIBO~~ Term SOFR Rate.

"Term Lender" means, as of any date of determination, each Lender, if any, having a Term Loan Commitment or that holds Term Loans.

"Term Loan Commitment" means any commitment, if any, of any Lender, to make any Term Loan.

"Term Loan Maturity Date" means the final maturity date of any Term Loan, if any.

"Term Loans" means the Term A Loans and any Incremental Term Loans and Replacement Term Loans.

"Term SOFR Determination Day" has the meaning assigned to it under the definition of Term SOFR Reference Rate.

"Term SOFR Rate" means, ~~for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.~~

"Term SOFR Reference Rate" means, ~~for any day and time (such day, the "Term SOFR Determination Day"), with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the rate per annum published by the CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the "Term SOFR Reference Rate" for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government Securities Business Day is not more than five (5) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.~~

"Term SOFR Notice" means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

"Term SOFR Transition Event" means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, (and, for the avoidance of doubt, not in the case of an Other Benchmark Rate Election), has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.14 that is not Term SOFR.

"Third Amendment" means the Third Amendment to Credit Agreement dated as of July 13, 2021 by and among the Borrower, the Lenders party thereto, the Administrative Agent, the Syndication Agent, and the Co-Documentation Agents.

"Third Amendment Effective Date" has the meaning given to that term in the Third Amendment.

"Transactions" means the execution, delivery and performance by the Borrower of this Agreement, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted ~~LIBO~~ Term SOFR Rate, the Adjusted Daily Simple SOFR or the Alternate Base Rate.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state, the laws of which are required to be applied in connection with the issue of perfection of security interests.

"U.S. Bank" means U.S. Bank National Association, a national banking association.

"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 a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regime" has the meaning assigned to it in Section 9.16.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 2.17(e)(ii)(B)(3).

"UK Financial Institutions" 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 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; provided that, if the Unadjusted Benchmark Replacement as so determined would be less than 1.0%, the Unadjusted Benchmark Replacement will be deemed to be 1.0% for the purposes of this Agreement.

"Unrestricted Cash On Hand" means unrestricted cash of the Borrower and its Restricted Subsidiaries that (i) can be freely used by the Borrower or any of its Restricted Subsidiaries for immediate or general business use and (ii) is not classified as restricted cash on the financial statements of the Borrower or any of its Restricted Subsidiaries. For the avoidance of doubt, Unrestricted Cash On Hand does not include any cash with respect to checks that have been written and have not cleared, credit card receipts not converted to cash and petty cash on hand at hotel and theater location in the ordinary course of business (provided that such petty cash shall not exceed \$1,300,000 in the aggregate for purposes of this definition) and minimum cash required to be held at local banks.

"Unrestricted Subsidiary" means any Subsidiary of the Borrower designated by a Primary Financial Officer of the Borrower as an Unrestricted Subsidiary pursuant to Section 5.11.

"Wholly Owned Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which all of the Equity Interests (other than, in the case of a corporation, directors' qualifying shares or nominee shares required under applicable law) are directly or indirectly owned or controlled by such Person and/or one or more Wholly Owned Subsidiaries of such Person. Unless the context clearly requires otherwise, all references to any Wholly Owned Subsidiary shall mean a Wholly Owned Subsidiary of the Borrower.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, (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 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a **"Revolving Loan"**) or by Type (e.g., a **"Term Benchmark Loan"**) or by Class and Type (e.g., a **"Term Benchmark Revolving Loan"**). Borrowings also may be classified and referred to by Class (e.g., a **"Revolving Borrowing"**) or by Type (e.g., a **"Term Benchmark Borrowing"**) or by Class and Type (e.g., a **"Term Benchmark Revolving Borrowing"**).

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. The parties hereto agree that if gross negligence is not a recognized standard under applicable law, then gross negligence as used herein and in the other Loan Documents shall be interpreted to be intentional recklessness.

SECTION 1.04. Accounting Terms; GAAP; ProForma Calculations. (a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, consistently applied, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Financial Accounting Standards Board Staff Position APB 14-1 to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. For the avoidance of doubt, and without limitation of the foregoing, Convertible Securities shall at all times be valued at the full stated principal amount thereof and shall not include any reduction or appreciation in value of the shares deliverable upon conversion thereof.

(b) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of "Finance Lease Obligations," any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) ("FAS 842"), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a Finance Lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a Finance Lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

(c) Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Adjusted Cash Flow, Consolidated Debt and Consolidated EBITDA, any expenses and charges paid with the proceeds of Governmental Forgivable Debt, any income from the forgiveness of Governmental Forgivable Debt and the outstanding principal amount of Governmental Forgivable Debt shall be disregarded in a manner reasonably acceptable to the Administrative Agent.

SECTION 1.05. Status of Obligations. In the event that the Borrower or any of its Restricted Subsidiaries shall at any time issue or have outstanding any Subordinated Indebtedness at any time, the Borrower shall take all such actions as shall be necessary to cause the Obligations to constitute senior indebtedness or senior debt (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Obligations are hereby designated as "senior indebtedness," "senior debt" and "designated senior indebtedness" and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

SECTION 1.06. Interest Rates; LIBOR Benchmark Notifications. The interest rate on ~~Term Benchmark Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Term Benchmark Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate~~ a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, ~~a Term SOFR Transition Event, an Early Opt in Election or an Other Benchmark Rate Election, Section 2.14(eb) and (d) provides the~~ a mechanism for determining an alternative rate of interest. ~~The Administrative Agent will promptly notify the Borrower, pursuant to Section 2.14(f), of any change to the reference rate upon which the interest rate on Term Benchmark Loans is based. However,~~ The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to ~~the London interbank offered rate or other rates in the definition of "LIBO Rate"~~ any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof ~~(including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.14(e), whether upon the occurrence of a Benchmark Transition Event, an Early Opt in Election or an Other Benchmark Rate Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.14(d)),~~ including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the ~~LIBO existing interest rate being replaced~~ or have the same volume or liquidity as did ~~the London interbank offered~~ any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any ~~Term Benchmark interest rate used in this Agreement~~, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender 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.

SECTION 1.07. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

SECTION 1.08. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II

THE CREDITS

SECTION 1.01. Commitments.

(a) Subject to the terms and conditions set forth herein, each Revolving Lender agrees to make Revolving Loans to the Borrower in Dollars from time to time during the Availability Period in an aggregate principal amount that will not result in (a) the amount of such Lender's Revolving Credit Exposure exceeding such Lender's Revolving Commitment or (b) the sum of the total Revolving Credit Exposures exceeding the aggregate Revolving Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

(b) Subject to the terms and conditions set forth herein, each Term A Lender severally (and not jointly) agrees to make a Term A Loan in dollars to the Borrower, on the First Amendment Effective Date, in a principal amount not to exceed such Lender's Term A Commitment as of the First Amendment Effective Date. The Borrower may from time to time prior to the date 180 days after the First Amendment Effective Date elect to increase the Term A Commitments with the consent of the Administrative Agent so long as, after giving effect thereto, the aggregate amount of such increases, collectively with all Term A Commitments as of the First Amendment Effective Date, does not exceed \$100,000,000. The Term Loans (if and when funded) made after the First Amendment Effective Date shall have the same terms and conditions as the Term Loans funded on the First Amendment Effective Date for all purposes. The Borrower and the Administrative Agent may arrange for any such increase to be provided by one or more existing Lenders or by one or more new banks, financial institutions or other entities (each such new bank, financial institution or other entity, an "Additional Term A Lender"); provided that (i) each Additional Term A Lender shall be subject to the approval of the Borrower and the Administrative Agent, (ii) the Borrower, the Administrative Agent and each such existing Lender and Additional Term A Lender shall execute a Lender Addition and Acknowledgement Agreement and (iii) the Borrower shall have satisfied such other conditions as required by the Administrative Agent. No consent of any Lender (other than the Lenders participating in the increase) shall be required for any such increase, and the Administrative Agent is authorized to amend Schedule 2.01 to reflect any increases to the Term A Commitments hereunder. Amounts prepaid or repaid in respect of Term A Loans may not be reborrowed. Each Lender's Term A Commitment shall be reduced immediately and without further action on the First Amendment Effective Date (or, in respect of any Term A Loans made after the First Amendment Effective Date in accordance with this Section 2.01(b), on the date such Term A Loans were made), in an amount equal to and after giving effect to the funding by such Lender of the applicable Term A Loans to be made by it on such date.

SECTION 1.02. Loans and Borrowings. (a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of

the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Swingline Loan shall be made in accordance with the procedures set forth in Section 2.05.

(a) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Term Benchmark Loans as the Borrower may request in accordance herewith; provided that, notwithstanding anything herein to the contrary, all Revolving Borrowings made on the Effective Date shall be Term Benchmark Loans in the amount of the "Revolving Loans" under Existing Credit Agreement as of the Effective Date that are not being paid off on the Effective Date and with an Interest Period equal to the applicable remaining the Interest Period with respect thereto. Each Swingline Loan shall be an ABR Loan or shall bear interest as otherwise allowed under Section 2.13(c). Each Lender at its option may make any Term Benchmark Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(b) At the commencement of each Interest Period for any Term Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$2,500,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$1,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Revolving Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Each Swingline Loan shall be in an amount that is an integral multiple of \$50,000 and not less than \$100,000 or such other amounts agreed to between the Swingline Lender and the Borrower. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of ten (10) Term Benchmark or RFR Borrowings outstanding.

(c) Notwithstanding any other provision of this Agreement, (i) the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after, in the case of Revolving Loans, the Revolving Credit Maturity Date, and, in the case of the Term A Loan, the Term A Maturity Date and (ii) RFR Loans shall be available only by operation of Section 2.14.

SECTION 1.03. Requests for Borrowings. To request a Borrowing (other than a Swingline Borrowing), the Borrower shall notify the Administrative Agent of such request by submitting a written Borrowing Request (a) in the case of a Term Benchmark Borrowing, not later than 11:00 a.m., Milwaukee time, three U.S. Government Securities Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 11:00 a.m., Milwaukee time, on the date of the proposed Borrowing. Each such Borrowing Request shall be irrevocable and shall be in a written form approved by the Administrative Agent and signed by the Borrower. Each such Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a Term Benchmark Borrowing;
- (iv) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 1.04. Expansion Option. (a) The Borrower may from time to time elect to increase the Revolving Commitments or enter into one or more tranches of term loans (each an "Incremental Term Loan"), in each case in minimum increments of \$10,000,000 so long as, after giving effect thereto, the aggregate amount of such increases and all such Incremental Term Loans does not exceed \$125,000,000. The Borrower may arrange for any such increase or tranche to be provided by one or more Lenders (each Lender so agreeing to an increase in its Revolving Commitment, or to participate in such Incremental Term Loans, an "Increasing Lender"), or by one or more new banks, financial institutions or other entities (each such new bank, financial institution or other entity, an "Augmenting Lender"), to increase their existing Revolving Commitments, or to participate in such Incremental Term Loans, or extend Revolving Commitments, as the case may be; provided that (i) each Augmenting Lender, shall be subject to the approval of the Borrower and the Administrative Agent and (ii) (x) in the case of an Increasing Lender and an Augmenting Lender, the Borrower, the Administrative Agent and each such Augmenting Lender and Increasing Lender execute a Lender Addition and Acknowledgement Agreement. No consent of any Lender (other than the Lenders participating in the increase or any Incremental Term Loan) shall be required for any increase in Revolving Commitments or Incremental Term Loans pursuant to this Section 2.04.

(b) Increases and new Revolving Commitments and Incremental Term Loans created pursuant to this Section 2.04 shall become effective on the date agreed by the Borrower, the Administrative Agent and the relevant Increasing Lenders or Augmenting Lenders, and the Administrative Agent shall notify each Lender thereof. Notwithstanding the foregoing, no increase in the Revolving Commitments (or in the Revolving Commitment of any Lender) or tranche of Incremental Term Loans shall become effective under this paragraph unless, (i) on the proposed date of the effectiveness of such increase or Incremental Term Loans, (A) the conditions set forth in paragraphs (a) and (b) of Section 4.03 shall be satisfied or waived by the Required Lenders and the Administrative Agent shall have received a certificate to that effect dated as of such date and executed by a Financial Officer of the Borrower and (B) the Borrower shall be in compliance (on a pro forma basis) with the covenants contained in Section 6.09 and (ii) the Administrative Agent shall have approved such increase or Incremental Term Loans and shall have received documents consistent with those delivered on the Effective Date as to the corporate power and authority of the Borrower to borrow hereunder after giving effect to such increase.

(c) On the effective date of any increase in the Revolving Commitments or any Incremental Term Loans being made, (i) each relevant Increasing Lender and Augmenting Lender shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its Applicable Percentage (as modified by such increase) of such outstanding Revolving Loans, and (ii) except in the case of any Incremental Term Loans, the Borrower shall be deemed to have repaid and reborrowed all

outstanding Revolving Loans as of the date of any increase in the Revolving Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Term Benchmark Loan, shall be subject to indemnification by the Borrower pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. The Incremental Term Loans (a) shall rank *pari passu* in right of payment with the Revolving Loans, (b) shall not mature earlier than the Revolving Credit Maturity Date (but may have amortization prior to such date) and (c) shall be treated substantially the same as (and in any event no more favorably than) the Revolving Loans; provided that (i) the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the Revolving Credit Maturity Date may provide for material additional or different financial or other covenants or prepayment requirements applicable only during periods after the Revolving Credit Maturity Date and (ii) the Incremental Term Loans may be priced differently than the Revolving Loans. Incremental Term Loans may be made hereunder pursuant to an amendment or restatement (an "Incremental Term Loan Amendment") of this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Increasing Lender participating in such tranche, each Augmenting Lender participating in such tranche, if any, and the Administrative Agent. The Incremental Term Loan Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents only as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.04 and otherwise include the Incremental Term Loans in the terms of the Loan Documents. Nothing contained in this Section 2.04 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Revolving Commitment hereunder, or provide Incremental Term Loans, at any time.

SECTION 1.05. Swingline Loans. (a) Subject to the terms and conditions set forth herein, the Swingline Lender may agree, but shall have no obligation, to make Swingline Loans to the Borrower from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$22,500,000 or (ii) the total Revolving Credit Exposures exceeding the total Commitments; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(a) To request a Swingline Loan, the Borrower shall submit a written notice to the Administrative Agent of such request not later than 12:00 noon, Milwaukee time, on the day of a proposed Swingline Loan. Each such notice shall be in a form approved by the Administrative Agent, shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. If the Swingline Lender determines in its discretion to make a Swingline Loan, the Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to the general deposit account of the Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e), by remittance to the Issuing Bank) by 3:00 p.m., Milwaukee time, on the requested date of such Swingline Loan.

(b) The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., Milwaukee time, on any Business Day require the Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

SECTION 1.06. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of its or its Restricted Subsidiaries' obligations, in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall

control. Notwithstanding anything herein to the contrary, no Issuing Bank shall have any obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement.

(a) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than three Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the applicable Issuing Bank, the Borrower also shall submit a letter of credit application on the applicable Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed \$30,000,000 and (ii) the sum of the total Revolving Credit Exposures shall not exceed the total Commitments. Upon the effectiveness of this Agreement, each Existing Letter of Credit shall, without any further action by any party, be deemed to have been issued as a Letter of Credit hereunder on the Effective Date and shall for all purposes hereof be treated as a Letter of Credit under this Agreement. Notwithstanding the foregoing or anything to the contrary contained herein, no Issuing Bank shall be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Issuing Bank's Issuing Bank Sublimit. Without limiting the foregoing and without affecting the limitations contained herein, it is understood and agreed that the Borrower may from time to time request that an Issuing Bank issue Letters of Credit in excess of its individual Issuing Bank Sublimit in effect at the time of such request, and each Issuing Bank may, in its sole discretion, issue Letters of Credit in excess of its individual Issuing Bank Sublimit. Any Letter of Credit so issued by an Issuing Bank in excess of its individual Issuing Bank Sublimit then in effect shall nonetheless constitute a Letter of Credit for all purposes of the Credit Agreement, and shall not affect the Issuing Bank Sublimit of any other Issuing Bank, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.06(b).

An Issuing Bank shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank shall prohibit, or require that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense that was not applicable on the Effective Date and that such Issuing Bank in good faith deems material to it; or

(ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally.

(b) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the applicable Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Revolving Credit Maturity Date.

(c) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(d) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 noon, Milwaukee time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., Milwaukee time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 12:00 noon, Milwaukee time, on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 10:00 a.m., Milwaukee time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.05 that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent

of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(e) **Obligations Absolute.** The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the

extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) **Disbursement Procedures.** The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Lenders with respect to any such LC Disbursement.

(g) **Interim Interest.** If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(h) **Replacement of the Issuing Bank.** The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(i) **Cash Collateralization.** If any Event of Default shall occur and be continuing or if any Letters of Credit are outstanding on the Revolving Credit Maturity Date, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate

in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

SECTION 1.07. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Milwaukee time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; provided that the Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained with the Administrative Agent in New York City and designated by the Borrower in the applicable Borrowing Request; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(a) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 1.08. Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(a) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable, pursuant to a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(b) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Term Benchmark Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(c) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a

Term Benchmark Borrowing and (ii) unless repaid, each Term Benchmark Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 1.09. Termination and Reduction of Commitments. (a) Unless previously terminated, the Revolving Commitments shall terminate on the Revolving Credit Maturity Date.

(a) Subject to paragraph (a) above, the Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments; provided that (i) each reduction of the Revolving Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 and (ii) the Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the total Revolving Credit Exposures would exceed the total Revolving Commitments.

(b) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Revolving Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Revolving Commitments shall be permanent. Each reduction of the Revolving Commitments shall be made ratably among the Lenders in accordance with their respective Revolving Commitments.

(c) The Revolving Commitments shall automatically reduce on the Second Amendment Effective Date by an amount equal to the lesser of (i) 50% of the Net Proceeds of the Specified Convertible Senior Notes in excess of \$83,000,000 as of the Second Amendment Effective Date or (ii) \$25,000,000. Such reduction of the Revolving Commitments shall be permanent and shall be made ratably among the Lenders in accordance with their respective Revolving Commitments.

SECTION 1.10. Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay:

(i) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Revolving Credit Maturity Date,

(ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Revolving Credit Maturity Date or such other dates required by the Swingline Lender, and

(d) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Term A Lender on the Term A Maturity Date the aggregate principal amount of all Term A Loans.

(e) Prior to any repayment of any Term Loan Borrowings of any Class under this Section, the Borrower shall select the Borrowing or Borrowings of the applicable Class to be repaid and shall notify the Administrative Agent by telephone (confirmed by fax or through Electronic System), of such selection not later than 11:00 a.m., Milwaukee time, three (3) Business Days before the scheduled date of such repayment. Each repayment of a Term Loan Borrowing shall be applied ratably to the Loans included in the repaid Term Loan Borrowing. Repayments of Term Loan Borrowings shall be accompanied by accrued interest on the amounts repaid.

(f) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(g) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(h) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(i) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 1.11. Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section. All mandatory and voluntary prepayments of the Term Loans shall be applied to principal installments due thereon in the inverse order of maturity.

(j) In the event Unrestricted Cash On Hand exceeds \$75,000,000 at any time on or after the Second Amendment Effective Date and during the Specified Period, the Borrower shall immediately and without demand by the Administrative Agent or any Lender prepay the Revolving Loans (including Swingline Loans) without a corresponding reduction in the Revolving Commitments by the amount of such excess.

(k) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party or any Subsidiary in respect of any Prepayment Event during any Specified Period, the Borrower shall, immediately after such Net Proceeds are received by any Loan Party or Subsidiary, prepay the Term A Loans as set forth in subclause (d) of this Section in an aggregate amount equal to 100% of such Net Proceeds, provided that, in the case of any event described in clause (b) of the definition of the term "Prepayment Event" with respect to a casualty or other insured damage event, if (i) the aggregate insurance proceeds with respect thereto is less

than \$10,000,000, (ii) the Borrower shall deliver to the Administrative Agent a certificate of a Financial Officer to the effect that the Loan Parties intend to apply the Net Proceeds from such event to replace or rebuild real property, equipment or other tangible assets (excluding inventory) to be used in the business of the Loan Parties, and (iii) certifying that no Default has occurred and is continuing, then no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate, provided that to the extent of any such Net Proceeds that have not been so applied replace or rebuild real property, equipment or other tangible assets (excluding inventory) to be used in the business of the Loan Parties within 360-days after the receipt of such Net Proceeds, a prepayment shall be required at such time in an amount equal to such Net Proceeds that have not been so applied.

(l) The Borrower shall prepay the Term A Loans on the Third Amendment Effective Date in an amount such that after such prepayment is made on the Third Amendment Effective Date the aggregate outstanding principal amount of the Term A Loans shall not exceed \$50,000,000.

(m) All prepayments required to be made pursuant to subclause (c) or (d) of this Section shall be applied to prepay the Term A Loans as so allocated, and shall be applied to reduce the subsequent scheduled repayments of Term A Loans to be made pursuant to Section 2.10 in inverse order of maturity.

(n) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) (A) in the case of prepayment of a Term Benchmark ~~Revolving~~ Borrowing, not later than 11:00 a.m., Milwaukee time, three (3) U.S. Government Securities Business Days before the date of prepayment, and (B) in the case of an RFR Borrowing, not later than 11:00 a.m., Milwaukee time, five (5) U.S. Government Securities Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Revolving Borrowing, not later than 11:00 a.m., Milwaukee time, one Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, Milwaukee time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13.

SECTION 1.12. Fees.

(a) (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a facility fee, which shall accrue at the Applicable Rate on the daily amount of the Revolving Commitment, whether used or unused, of such Lender until the Revolving Credit Maturity Date, and after the Revolving Credit Maturity Date such facility fee shall be payable on the outstanding principal amount of the Revolving Credit Exposure (with the amount of any LC Exposure deemed an outstanding principal amount) until the Revolving Credit Exposure is paid in full. ~~Such accrued Facility fees shall be payable in arrears on accrued through and including~~ the last day of ~~each~~ March, June, September and December of each year, ~~shall be payable in arrears on the fifteenth day following such last day and on the date on which the Revolving Commitments terminate and on the date all Revolving Credit Exposure has been paid in full,~~ commencing on the first such date to occur after the date hereof, ~~provided that any facility fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand.~~ All facility fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Term Benchmark Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure,

and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of ~~each~~ March, June, September and December of each year shall be payable on the ~~third Business~~ fifteenth day following such last day,

commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of facility fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 1.13. Interest.

(a) The Loans comprising each ABR Borrowing (including each Swingline Loan that is an ABR Borrowing) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Term Benchmark Borrowing shall bear interest at the Adjusted ~~LIBO~~ Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate. Each RFR Loan shall bear interest at a rate per annum equal to the Adjusted Daily Simple SOFR plus the Applicable Rate.

(c) Each Swingline Loan shall bear interest as separately agreed to between the Borrower and the Swingline Lender, or if no such other agreement is made, then at the Alternate Base Rate plus the Applicable Rate, or as otherwise required hereunder.

(d) Notwithstanding the foregoing, (x) for purposes of the interest rate on all Loans outstanding and the fees under Section 2.12(b)(i) on all Letters of Credit outstanding, the Applicable Rate under the headings "Term Benchmark Spread and Letter of Credit Fee" and "ABR Spread" in the grid contained in the definition of Applicable Rate shall be increased by 2% and (y) interest shall accrue on all other amounts outstanding hereunder that are due hereunder at 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section, in each case:

(i) automatically upon the occurrence of any Event of Default under clauses (a), (b), (h) or (i) of Article VII until such Event of Default is no longer continuing;

(ii) in the event any other Event of Default is continuing and Required Lenders declare (at their option) by written notice to the Borrower that they elect to have such interest accrue, upon the delivery of such notice until such Event of Default is no longer continuing or such notice is revoked by Required Lenders (which revocation shall be at the option of Required Lenders notwithstanding any provision of Section 9.02).

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Term Benchmark Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) ~~All~~ Interest computed by reference to the Term SOFR Rate or Daily Simple SOFR hereunder shall be computed on the basis of a year of 360 days; ~~except that~~, Interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year); ~~and~~, In each case, interest shall be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. Any determination of the applicable Alternate Base Rate, Adjusted ~~LIBO~~ Term SOFR Rate or LIBO Rate, Term SOFR Rate, Adjusted Daily Simple SOFR or Daily Simple SOFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 1.14. Alternate Rate of Interest.

~~(a)-(a).~~ Subject to clauses ~~(b).~~ (c), (d), (e); ~~and~~ ~~(f)-(g) and (h).~~ of this Section 2.14, if ~~prior to the commencement of any Interest Period for a Term Benchmark Borrowing;~~

~~(i)-(i).~~ the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) ~~(A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing,~~ that adequate and reasonable means do not exist for ascertaining the Adjusted ~~LIBO~~ Term SOFR Rate ~~or the LIBO Rate, as applicable~~ (including, without limitation, ~~by means of an Interpolated Rate or because the LIBO Screen~~ Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period; ~~provided that no Benchmark Transition Event shall have occurred at such time or~~ ~~(B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Adjusted Daily Simple SOFR; or~~

~~(ii)-(ii).~~ the Administrative Agent is advised by the Required Lenders that ~~(A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing,~~ the Adjusted ~~LIBO~~ Term SOFR Rate ~~or for the LIBO Rate, as applicable, for such~~ Interest Period will not adequately and fairly reflect the cost to such

Lenders (or Lender) of making or maintaining their Loans (or Loan) included in such Borrowing for such Interest Period, or (B) at any time, the applicable Adjusted Daily Simple SOFR will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders through any Electronic System as provided in Section 9.01 as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, ~~(A) with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03,~~ any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing ~~shall be ineffective and any such and any Borrowing Request that requests a Term Benchmark Borrowing shall be repaid or converted into an ABR Borrowing~~ instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for (1) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (2) an ABR Borrowing if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower's receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until (x) the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (y) the Borrower delivers a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Term Benchmark Loan shall on the last day of the ~~then-current~~ Interest Period applicable thereto, and (B) if any Borrowing Request requests a Term Benchmark Borrowing, such Borrowing shall be made ~~as to such Loan, be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or (ii) above or (y) an ABR Loan if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or (ii) above, on such day, and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute,~~ an ABR ~~Borrowing~~ Loan.

~~(b) If any Lender determines that any Requirement of Law has made it unlawful, or if any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain, fund or continue any Term Benchmark Borrowing, 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 the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to make, maintain, fund or continue Term Benchmark Loans or to convert ABR Borrowings to Term Benchmark Borrowings will be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower will upon demand from such Lender (with a copy to the Administrative Agent), either prepay or convert all Term Benchmark Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Benchmark Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.~~

~~(e) (b)~~ Notwithstanding anything to the contrary herein or in any other Loan Document, ~~(and any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 2.14), if a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) 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 (y) if a Benchmark Replacement is determined in accordance with clause (32) 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. (New York City time) 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 the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.~~

~~(d) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or 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; provided that, this clause (d) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.~~

~~(e) In connection with the implementation of a Benchmark Replacement~~ (c) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

~~(f) (d)~~ The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, ~~a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its related Benchmark Replacement Date,~~ (ii) the

implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to ~~clause Section 2.14(de) below~~ and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, 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 2.14.

~~(g)-(e)~~ 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 ~~or LIBO~~ Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) 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 or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative 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 is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

~~(h)-(f)~~ Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to any Relevant Rate, the Borrower may revoke any request for a Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ~~ABR Loans~~ (A) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) an ABR Borrowing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, (1) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (y) an ABR Loan if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute, an ABR Loan.

SECTION 1.15. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender ~~(except any such reserve requirement reflected in the Adjusted LIBO Rate)~~ or the Issuing Bank;

(ii) impose on any Lender or the Issuing Bank or the ~~Lender~~ applicable offshore interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (a) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest

error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 1.16. Break Funding Payments.

~~SECTION 2.16. Break Funding Payments-~~ (a) With respect to Loans that are not RFR Loans, in the event of (a) the payment of any principal of any Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11 and is revoked in accordance therewith), or (d) the assignment of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 or 9.02(d), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. ~~In the case of a Term Benchmark Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market, including any loss, cost and expense attributable to the liquidation or redeployment of funds arising from such event.~~ A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11 and is revoked in accordance therewith) or (iii) the assignment of any RFR Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrower pursuant to Section 2.18, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 1.17. Taxes. Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(a) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(b) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.17, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(c) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c)

relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) **Status of Lenders.** (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of

withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an executed IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an executed IRS Form W-8BEN-E or IRS Form W-8BEN 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-E or IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, an executed IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit C-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign

corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) executed IRS Form W-8BEN-E or IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-2 or Exhibit C-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) **Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) **Survival.** Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(h) **Defined Terms.** For purposes of this Section 2.17, the term "**Lender**" includes any Issuing Bank and the term "**applicable law**" includes FATCA.

SECTION 1.18. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 12:00 noon, Milwaukee time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices designated from time to time by the Administrative Agent, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) All payments and any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower), or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent, the Swingline Lender and the Issuing Bank from the Borrower (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees, indemnities, or expense reimbursements then due to the Lenders from the Borrower (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest then due and payable on the Loans ratably, fourth, to prepay principal on the Loans and unreimbursed LC

Disbursements, to pay an amount to the Administrative Agent equal to one hundred five percent (105%) of the aggregate LC Exposure (to be held as cash collateral for such Obligations) and to pay any amounts owing in respect of Swap Agreement Obligations and Banking Services Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.21, ratably (with amounts allocated to the

Term Loans of any Class applied to reduce the subsequent scheduled repayments of the Term Loans of such Class to be made pursuant to Section 2.10 in inverse order of maturity), and fifth, to the payment of any other Obligations due to the Administrative Agent or any other Secured Party from the Borrower, any other Loan Party or any of their Subsidiaries. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations. Notwithstanding the foregoing, Obligations arising under Banking Services Obligations or Swap Agreement Obligations shall be excluded from the application described above and paid in clause sixth if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may have reasonably requested from the applicable provider of such Banking Services or Swap Agreements.

(c) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(d) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Restricted Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), then the Administrative Agent may, in its discretion and notwithstanding any contrary provision hereof, (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid, and/or (ii) hold such amounts in a segregated account over which the Administrative Agent shall have exclusive control as cash collateral for, and application to, any future funding

obligations of such Lender under any such Section, in the case of each of clause (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

SECTION 1.19. Mitigation Obligations; Replacement of Lenders

(a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender) pursuant to Section 2.17, or if any Lender becomes a Defaulting Lender, or if any Lender shall

refuse to consent to any waiver, amendment or other modification or approval that would otherwise require such Lender's consent but to which the Required Lenders have consented, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Sections 2.15 or 2.17) and obligations under this Agreement and other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under Section 9.04, the Issuing Bank and the Swingline Lender), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that (i) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

SECTION 1.20. Defaulting Lenders.

Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(b) any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of

any amounts owing by such Defaulting Lender to any Issuing Bank or Swingline Lender hereunder; third, to cash collateralize LC Exposure with respect to such Defaulting Lender in accordance with this Section; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or Swingline Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Banks or Swingline Lenders against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.03 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (d) below. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) the Commitment and Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders or Required Revolving Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02); provided, that this clause (c) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender affected thereby;

(d) if any Swingline Exposure or LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) if no Default has occurred and is continuing at such time, all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that the sum of all

non-Defaulting Lenders' Revolving Credit Exposures plus such Defaulting Lender's Swingline Exposure and LC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize for the benefit of the Issuing Bank only the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b)(i) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Section 2.12(a) and Section 2.12(b)(i) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(b)(i) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(e) so long as such Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.20(d), and participating interests in any newly made Swingline Loan or any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(d)(i) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent of any Lender shall occur following the date hereof and for so long as such event shall continue or (ii) the Swingline Lender or the Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Swingline Lender or the Issuing Bank, as the case may be, shall have entered into arrangements with the Borrower or such Lender, satisfactory to the Swingline Lender or the Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that the Administrative Agent, the Borrower, the Swingline Lender and the Issuing Bank each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

SECTION 1.21. Banking Services and Swap Agreements. Notwithstanding anything herein to the contrary, Banking Services Obligations and Swap Agreement Obligations owing to any Secured Party shall be excluded from the application described in Section 2.18(b) and otherwise from Obligations if the Administrative Agent has not received written notice setting forth the aggregate amount of all Banking Services Obligations and Swap Agreement Obligations of such Loan Party or Subsidiary thereof to such Secured Party (whether matured or unmatured, absolute or contingent), together with such supporting documentation as the Administrative Agent may request from time to time. In furtherance of that requirement, each such Secured Party shall furnish the Administrative Agent, from time to time, a summary of the amounts due or to become due in respect of such Banking Services Obligations and Swap Agreement Obligations as requested by the Administrative Agent. The most recent information provided to the Administrative Agent shall be used in determining which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations and/or Swap Agreement Obligations will be placed. JPMCB and its Affiliates shall be not be required to provide separate notices hereunder this Section 2.21, and the Administrative Agent shall deemed automatically to have notice required under this Section 2.21 with respect to current and future Banking Services Obligations and Swap Agreement Obligations owing to JPMCB or its Affiliates.

SECTION 2.22. Returned Payments. If, after receipt of any payment which is applied to the payment of all or any part of the Obligations under the Loan Documents (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent

or such Lender in its discretion), then the Obligations under the Loan Documents or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.22 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.22 shall survive the termination of this Agreement.

ARTICLE III REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

SECTION 1.01. Organization; Powers. Each of the Borrower and its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 1.02. Authorization; Enforceability. The Transactions are within the Borrower's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action. This Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 1.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of its Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries.

SECTION 1.04. Financial Condition; No Material Adverse Change.

(a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of the end of and for the 2018 Fiscal Year, reported on by Deloitte & Touche LLP, independent public accountants, and (ii) as of and for the third Fiscal Quarter of 2019, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since December 31, 2020, there has been no material adverse change in the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower and its Subsidiaries, taken as a whole, excluding, solely for purposes of making this representation at any time on or before December 31, 2021, changes or effects directly arising out of the impact of the COVID-19 pandemic on the Borrower's operations, as described in any Form 10-K, Form 10-Q or Form 8-K filed by the Borrower with the SEC prior to the Third Amendment Effective Date.

(c) The outstanding principal balance of each of the Senior Notes as of the Effective Date and the scheduled payments and maturities thereof are described on Schedule 1.01(a) hereof.

SECTION 1.05. Properties.

(a) Each of the Borrower and its Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not materially interfere

with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each of the Borrower and its Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) As of the Effective Date, each Subsidiary of the Borrower, including its ownership, is described on Schedule 3.05 hereto, and each Subsidiary that is an Unrestricted Subsidiary as of the Effective Date is designated as such on Schedule 3.05 hereto. Each Subsidiary of the Borrower has and will have all requisite power to own or lease the properties material to its business and to carry on its business as now being conducted and as proposed to be conducted. All outstanding shares of Equity Interests of each class of each Subsidiary of the Borrower have been and will be validly issued and are and will be fully paid and nonassessable and, except as otherwise indicated in Schedule 3.05 hereto or disclosed in writing to the Administrative Agent and the Lenders from time to time, are and will be owned, beneficially and of record, by the Borrower or another Subsidiary of the Borrower, free and clear of any Liens other than Liens permitted under this Agreement.

(d) As of the Effective Date, there are no restrictions on the Borrower or any of its Subsidiaries which prohibit or otherwise restrict the transfer of cash or other assets from any Subsidiary of the Borrower to the Borrower, other than (i) prohibitions or restrictions existing under or by reason of this Agreement or the other Loan Documents, (ii) prohibitions or restrictions existing under or by reason of applicable requirements of law and (iii) other prohibitions or restrictions which, either individually or in the aggregate, have not had, or could not reasonably be expected to have, Material Adverse Effect.

SECTION 1.06. Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

SECTION 1.07. Compliance with Laws and Agreements. Each of the Borrower and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 1.08. Investment Company Status. Neither the Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 1.09. Taxes. Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 1.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.

SECTION 1.11. Disclosure.

(a) The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither the Information Memorandum nor any of the other reports, financial statements, certificates or other information furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(b) As of the Effective Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 1.12. Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and directors and to the knowledge of the Borrower its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

SECTION 1.13. Affected Financial Institutions. No Loan Party is an Affected Financial Institution.

SECTION 1.14. Employment Matters. As of the Effective Date, there are no strikes, lockouts or slowdowns against the Borrower or any Subsidiary pending or, to the knowledge of the Borrower, threatened. There are no labor controversies pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. The hours worked by and payments made to employees of the Borrower and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 1.15. Margin Regulations. No Loan Party is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing or Letter of Credit hereunder will be used to buy or carry any Margin Stock. Following the application of the proceeds of each Borrowing or drawing under each Letter

of Credit, not more than 25% of the value of the assets (either of any Loan Party only or of the Loan Parties and their Subsidiaries on a consolidated basis) will be Margin Stock.

SECTION 1.16. Plan Assets; Prohibited Transactions. None of the Loan Parties or any of their Subsidiaries is an entity deemed to hold “plan assets” (within the meaning of the Plan Asset Regulations), and neither the execution, delivery nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

SECTION 1.17. Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral in favor of the Administrative Agent, for the benefit

of the Secured Parties, and such Liens constitute perfected and continuing Liens on the Collateral, securing the Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law and (b) Liens perfected only by possession (including possession of any certificate of title), to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral.

ARTICLE IV CONDITIONS

SECTION 1.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either a counterpart of this Agreement signed on behalf of such party or (written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of counsel for the Borrower, in a form satisfactory to the Administrative Agent. The Borrower hereby requests such counsel to deliver such opinion.

(c) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Borrower, the authorization of the Transactions and any other legal matters relating to the Borrower and its Subsidiaries, this Agreement or the Transactions, all in form and substance satisfactory to the Administrative Agent and its counsel.

(d) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by a Financial Officer of the Borrower, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.03 and calculating the compliance with all financial covenants hereunder, all in form and substance satisfactory to the Administrative Agent.

(e) The Administrative Agent shall have received satisfactory evidence that Existing Credit Agreement shall be terminated simultaneously with the effectiveness of this Agreement and all obligations under such credit agreement shall be paid in full.

(f) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder.

(g) (i) The Administrative Agent shall have received, (x) at least five (5) days prior to the Effective Date, all documentation and other information regarding the Borrower requested in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Borrower at least ten (10) days prior to the Effective Date, and (y) a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party, and (ii) to the extent the Borrower qualify as a “legal entity customer” under the Beneficial Ownership Regulation, at least five (5) days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrower at least the (10) days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(h) The Administrative Agent shall have received such other agreements and documents as may be required by the Administrative Agent.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

SECTION 1.02. First Amendment Effective Date. The obligations of the Lenders to make Term A Loans shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of the First Amendment signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include fax or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of the First Amendment and (ii) duly executed copies of the Loan Guaranty, the Security

Agreement and such other Loan Documents required by the Administrative Agent and such other certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the transactions contemplated by the First Amendment and the other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.10 of this Agreement payable to the order of each such requesting Lender and a written opinion of the Loan Parties' counsel, addressed to the Administrative Agent, the Issuing Bank and the Lenders.

(b) The Administrative Agent shall have received (i) a certificate of the Borrower, dated the First Amendment Effective Date and executed by its Secretary or Assistant Secretary, which shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the signatures of the officers of the Borrower authorized to sign the Loan Documents to which it is a party and, in the case of the Borrower, its Financial Officers, and (C) contain appropriate attachments, including the charter, articles or certificate of organization or incorporation of each Loan Party certified by the relevant authority of the jurisdiction of organization of the Borrower and a true and correct copy of its bylaws or operating, management or partnership agreement, or other organizational or governing documents, and (ii) a long form good standing certificate for the Borrower from its jurisdiction of organization.

(c) The Administrative Agent shall have received a certificate, signed by a Financial Officer of the Borrower, dated as of the First Amendment Effective Date (i) stating that no Default has occurred and is continuing, (ii) stating that the representations and warranties contained in the Loan Documents are true and correct as of such date, and (iii) certifying as to any other factual matters as may be reasonably requested by the Administrative Agent.

(d) The Lenders and the Administrative Agent shall have received all fees required to be paid, and all expenses required to be reimbursed for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the First Amendment Effective Date. All such amounts will be paid with proceeds of Loans made on the First Amendment Effective Date and will be reflected in the funding instructions given by the Borrower to the Administrative Agent on or before the First Amendment Effective Date.

(e) The Administrative Agent shall have received the results of a recent lien search in the jurisdiction of organization of Borrower and each jurisdiction where assets of the Borrower are located, and such search shall reveal no Liens on any of the assets of the Borrower except for liens permitted by Section 6.02 or discharged on or prior to the First Amendment Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

(f) The Administrative Agent shall have received a solvency certificate signed by a Financial Officer dated the First Amendment Effective Date in form and substance reasonably satisfactory to the Administrative Agent.

(g) The Administrative Agent, the Collateral Agent, the representative of the holders of the Senior Notes and the other parties thereto shall have entered into the Intercreditor Agreement.

(h) The Administrative Agent shall have received duly executed amendments to the Senior Notes, containing terms and conditions satisfactory in all respects to the Administrative Agent.

(i) The Administrative Agent and its counsel shall have completed all legal due diligence, the results of which shall be satisfactory to Administrative Agent in its sole discretion.

(j) (i) The Administrative Agent and each requesting Lender shall have received, (x) at least five (5) days prior to the First Amendment Effective Date, all documentation and other information regarding the Borrower requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Borrower at least ten (10) days prior to the Effective Date, and (y) a properly completed and signed IRS Form W-8 or W-9, as applicable, for Borrower, and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five (5) days prior to the First Amendment Effective Date, any Lender that has requested, in a written notice to the Borrower at least the (10) days prior to the First Amendment Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to the First Amendment, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(k) The Administrative Agent shall have received such other documents as the Administrative Agent, the Issuing Bank, any Lender or their respective counsel may have reasonably requested.

SECTION 1.03. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement or any other Loan Document shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Material Adverse Effect shall have occurred and be continuing.

(c) After giving effect to any Borrowing of Revolving Loans under this Agreement, Unrestricted Cash on Hand shall not exceed \$75,000,000.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE V AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 1.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) as soon as available and in any event within 90 days (or, so long as Borrower shall be subject to periodic reporting obligations under the Exchange Act, by the date that the Borrower's Form 10-K (or any successor form) for such Fiscal Year would be required to be filed under the rules and regulations of the SEC, giving effect to any extension available thereunder for the filing of such form), after the end of each Fiscal Year of the Borrower, a copy of the Borrower's Form 10-K (or any successor form) filed with the SEC for such Fiscal Year, including therein its audited consolidated balance sheet and related statements of income, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by independent public accountants of recognized national standing (without a "going concern" or like qualification, commentary or exception arising out of the scope of the audit, or without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) as soon as available and in any event within 45 days (or, so long as Borrower shall be subject to periodic reporting obligations under the Exchange Act, by the date that the Borrower's Form 10-Q (or any successor form) for such Fiscal Quarter would be required to be filed under the rules and regulations of the SEC, giving effect to any extension available thereunder for the filing of such form), after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Borrower, a copy of the Borrower's Form 10-Q (or any successor form) filed with the SEC for such Fiscal Quarter, including therein its consolidated balance sheet and related statements of income, stockholders' equity and cash flows as of the end of and for such Fiscal Quarter and the then elapsed portion of the Fiscal Year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of Form 10-K or 10-Q, as applicable, under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.01 and 6.09, including any reconciliation to reflect the exclusion of Unrestricted Subsidiaries, and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the SEC, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be;

(e) promptly following any request therefor, (x) such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request and (y) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation; and

(f) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request.

Documents required to be delivered pursuant to Sections 5.01(a) and 5.01(b) shall be delivered electronically to the Administrative Agent to be distributed to the Lenders. Notwithstanding the above, documents required to be delivered pursuant to Section 5.01(d) may be delivered electronically and shall be deemed to have been delivered in compliance with Section 5.01(d) on the date on which the Borrower files such documents on the SEC's EDGAR system (or any successor thereto) or any other publicly available database maintained by the SEC or provides a link thereto on the Borrower's website at <http://www.marcuscorp.com> to which each Lender and the Administrative Agent have access, provided the Borrower provides notice of such filing directly to each Lender or provides a procedure for the Lenders to receive electronic notification of such filing. The Administrative Agent shall have no obligation or responsibility to request the delivery or to maintain copies of the documents required to be delivered pursuant to Section 5.01(d), to distribute any such documents to the Lenders, or otherwise to monitor compliance by the Borrower with Section 5.01(d), and each Lender shall be solely responsible for obtaining copies of such documents.

SECTION 1.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Affiliate thereof that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$2,500,000;

(d) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification; and

(e) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 1.03. Existence; Conduct of Business. The Borrower will, and will cause each of its Restricted Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 1.04. Payment of Obligations; SBA PPP Loans.

(a) The Borrower will, and will cause each of its Restricted Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, but subject to any subordination provisions contained in any instrument or agreement evidencing such obligations, except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) the Borrower or such Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (iii) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

(b) The Borrower will, and will cause each of its Restricted Subsidiaries to, (i) comply with all of the SBA's terms and conditions applicable to SBA PPP Loans, (ii) use the proceeds of the SBA PPP Loan only for CARES Allowable Uses, (iii) keep necessary and appropriate records relating to the use of the SBA PPP Loans, (iv) promptly take all applicable actions, not later than 45 days (or such earlier date as required) after the eight week period immediately following the SBA PPP Loan Date, to apply for forgiveness of the SBA PPP Loans in accordance with the regulations implementing Section 1106 of the CARES Act, (v) comply with all other terms and conditions applicable to SBA PPP Loans, and (vi) provide such documentation, records and other information as requested by the Administrative Agent with respect to any of the above, including without limitation with respect to the status of the forgiveness of SBA PPP Loans.

SECTION 1.05. Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Restricted Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations, and (c) keep and maintain all other insurance required by the Collateral Documents.

SECTION 1.06. Books and Records; Inspection Rights. The Borrower will, and will cause each of its Restricted Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each of its Restricted Subsidiaries to, at its expense permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

SECTION 1.07. Compliance with Laws. The Borrower will, and will cause each of its Restricted Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be

expected to result in a Material Adverse Effect. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 1.08. Use of Proceeds and Letters of Credit. The proceeds of the Revolving Loans and Letter of Credit will be used only for general corporate purposes and the proceeds of the Term A Loans will be used only to pay down Revolving Loans (to the extent required under Section 2.11(b)), to pay costs and expenses related to the First Amendment and for other general corporate purposes. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Federal Reserve Board, including Regulations T, U and X. The Borrower will not request any Borrowing or Letter of Credit, and the 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 Borrowing or Letter of Credit (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or in a European Union member state, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 1.09. Accuracy Of Information. The Borrower will ensure that any written information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any amendment or modification hereof or waiver hereunder, when taken as a whole, contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in the light of the circumstances under which they were made (giving effect to all supplements and updates provided thereto), not misleading, as of the date such information was so furnished or as of the date otherwise stated therein (it being understood that any projections and other forward looking information prepared by or on behalf of the Borrower and made available to any Lenders or the Administrative Agent in connection with this Agreement or the transactions contemplated hereby have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable as of the date thereof (it being understood that such projections and other forward looking information are as to future events and are not to be viewed as facts, such projections and other forward looking information are subject to significant uncertainties and contingencies, actual results during the period or periods covered by any such projections or other forward looking information may differ significantly from the projected results and no assurance can be given that the projected results will be realized)), and the furnishing of such information shall be deemed to be representation and warranty by the Borrower on the date thereof as to the matters specified in this Section 5.09.

SECTION 1.10. Guarantees. If any Restricted Subsidiary shall have any Contingent Obligation with respect to any Indebtedness of the Borrower, the Borrower shall cause such Restricted Subsidiary to take such actions as are reasonably necessary, or as the Administrative Agent or any Lender may reasonably request from time to time, to guarantee the payment of the Obligations.

SECTION 1.11. Designation of Subsidiaries.

(a) A Primary Financial Officer may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary at any time after the end of the Specified Period; provided that (i) immediately before and after such designation, no Default shall have occurred and be continuing, (ii) no Subsidiary may be designated as an Unrestricted Subsidiary if the Borrower or any Restricted Subsidiary has any Contingent Obligation (other than Deferred Equity Contribution Obligations) with respect to any Indebtedness or other obligations of such Subsidiary (and the Borrower and its Restricted Subsidiaries will not have any Contingent Obligation (other than Deferred Equity Contribution Obligations) with respect to any Indebtedness or other obligations of any Unrestricted Subsidiary at any time), (iii) the designation of any Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary may not be changed on more than two occasions, (iv) no Subsidiary may be designated as an Unrestricted Subsidiary if it is party to any agreement or contract with the Borrower or any Restricted Subsidiary, unless the terms of such agreement are no less favorable to the Borrower or Restricted Subsidiary, as applicable, than those that might be obtained from an unaffiliated third-party, (v) other than Deferred Equity Contribution Obligations, no Subsidiary may be designated as an Unrestricted Subsidiary if such Subsidiary is a Person with respect to which the Borrower or any Restricted Subsidiary has any direct or indirect obligation to make capital contributions or to maintain such Subsidiary's financial condition or otherwise has any Contingent Obligation with respect to such Subsidiary or any of its Indebtedness or other obligations, and neither the Borrower nor any Restricted Subsidiary will have any direct or indirect obligation to make capital contributions or to maintain such Subsidiary's financial condition or otherwise have any Contingent Obligation with respect to such Subsidiary or any of its Indebtedness or other obligations at any time after such designation, (vi) for so long as any Senior Note is outstanding, no Subsidiary may be (x) designated an Unrestricted Subsidiary hereunder unless it simultaneously becomes an "Unrestricted Subsidiary" under all Senior Notes and (y) designated a Restricted Subsidiary hereunder unless it simultaneously becomes a "Restricted Subsidiary" under the Senior Notes, (vii) at such time and immediately after giving effect thereto the Borrower would be permitted to incur at least \$1.00 of additional Priority Debt, (viii) immediately after giving effect to such designation and at all times thereafter, the ratio of the consolidated total assets of the Borrower and its Restricted Subsidiaries to the consolidated total assets of the Borrower and its Subsidiaries and the ratio of the consolidated net income of the Borrower and its Restricted Subsidiaries to the consolidated net income of the Borrower and its Subsidiaries (in each case based on the most recent four consecutive Fiscal Quarters, and calculated on a pro forma basis as if all payments and other contributions to be made under all Deferred Equity Contribution Obligations were fully funded and contributed) shall be not less than 0.8:1.0, and (ix) no Subsidiary may be designated as an Unrestricted Subsidiary unless (1) the Term A Loans have been paid in full and (2) Borrower is in compliance with the financial covenants in this Agreement as in effect prior to the First Amendment Effective Date (provided that the financial covenant in Section 6.09(b) hereof, as amended pursuant to the Fourth Amendment, shall be deemed in effect prior to the First Amendment Effective Date) (and has irrevocably elected to have the financial covenants in this Agreement as in effect prior to the First Amendment Effective Date (provided that the financial covenant in Section 6.09(b) hereof, as amended pursuant to the Fourth Amendment, shall be deemed in effect prior to the First Amendment Effective Date) become effective in accordance with Section 6.09(f)). The Borrower shall, within 10 days after the designation of any Subsidiary as a Restricted Subsidiary or Unrestricted Subsidiary, give written notice of such action to the Administrative Agent.

(b) The Borrower acknowledges and agrees that if, after the date hereof, any Person becomes a Restricted Subsidiary, all Indebtedness, leases and other obligations and all Liens and Investments of such Person existing as of the date such Person becomes a Restricted Subsidiary shall be deemed, for all purposes of this Agreement, to have been incurred, entered into, made or created at the same time such Person so becomes a Restricted Subsidiary.

SECTION 1.12. Additional Covenants. If at any time the Borrower shall enter into or be a party to any instrument or agreement, including all such instruments or agreements in existence as of the date hereof and all such instruments or agreements entered into after the date hereof, relating to or amending any provisions applicable to any of its Indebtedness which in the aggregate, together with any related Indebtedness, exceeds \$5,000,000, which includes covenants, defaults or the equivalent thereof not substantially provided for in this Agreement or more favorable to the lender or lenders thereunder than those provided for in this Agreement (excluding covenants, defaults and the equivalent thereof relating to the delivery of Equity Interests upon the conversion of Convertible Securities), then the Borrower shall promptly so advise the Administrative Agent and the Lenders. If the Administrative Agent or the Required Lenders shall request, upon notice to the Borrower, the Administrative Agent and the Lenders shall enter into an amendment to this Agreement or an additional agreement (as the Administrative Agent may request), providing for substantially the same financial covenants or the equivalent thereof as those provided for in such instrument or agreement to the extent required and as may be selected by the Administrative Agent.

SECTION 1.13. Collateral Release Date. On the Collateral Release Date, the Collateral Documents and the Loan Guaranty shall immediately and automatically be released without any further action by any Loan Party, the Administrative Agent, any Lender, or any other Person, the liens or mortgages granted to the Administrative Agent pursuant to the Collateral Documents shall be released, and the guaranties in favor of the Administrative Agent pursuant to the Loan Guaranty shall be released. The Administrative Agent shall, within a reasonable period of time after Borrower's written request, provide Borrower with any reasonably requested releases, terminations, or instruments necessary to give effect to the foregoing release, which shall be at the Borrower's sole cost and expense.

SECTION 1.14. Additional Collateral; Further Assurances.

(a) Subject to applicable Requirements of Law, each Loan Party existing as of the First Amendment Effective Date will become a Loan Party by executing a Loan Guaranty, which Loan Guaranty shall become effective on the First Amendment Effective Date, and each such Loan Party will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party which constitutes Collateral, which grant shall become effective on the First Amendment Effective Date. Each Loan Party will cause each of its Subsidiaries formed or acquired after the First Amendment Effective Date to become a Loan Party by executing a Loan Guaranty and granting Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party which constitutes Collateral, in each case reasonably promptly after such Subsidiary is formed or acquired.

(b) Each Loan Party will cause all of the issued and outstanding Equity Interests of each of its Subsidiaries to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent for the benefit of the Administrative Agent and the other Secured Parties, pursuant to the terms and conditions of the Loan Documents or other security documents as the Administrative Agent shall reasonably request.

(c) Without limiting the foregoing, each Loan Party will, and will cause each Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Section 4.03, as applicable), which may be required by any Requirement of Law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and substance reasonably satisfactory to the Administrative Agent and all at the expense of the Loan Parties.

(d) If any material assets (including any Specified Real Property or improvements thereto or any interest therein) are acquired by any Loan Party after the First Amendment Effective Date (other than assets constituting Collateral under the Collateral Documents that become subject to the Lien under the Collateral Documents upon acquisition thereof), the Borrower will (i) notify the Administrative Agent and the Lenders thereof, and, if requested by the Administrative Agent or the Required Lenders, cause such assets to be subjected to a Lien securing the Obligations and (ii) take, and cause each applicable Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (c) of this Section, all at the expense of the Loan Parties, and each Lender shall have completed and received all flood insurance due diligence and flood insurance compliance requirements with respect to such Specified Real Property.

(e) Notwithstanding anything herein to the contrary, any grant of Liens by any of the Loan Parties required under this Agreement or any of the other Loan Documents, so long as the Senior Notes are outstanding and the Intercreditor Agreement is in effect, shall be granted to the Collateral Agent for the benefit of the Secured Parties and the holders of the Senior Notes and subject to the Intercreditor Agreement, and any reference herein to the grant of a Lien under the Collateral Documents for the benefit of the Administrative Agent and the other Secured Parties shall be deemed to refer to the Collateral Agent for the benefit of the Secured Parties and the holders of the Senior Notes and subject to the Intercreditor Agreement.

SECTION 1.15. Casualty and Condemnation. The Borrower (a) will furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) will ensure that the net proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

SECTION 1.16. Depository Bank. Each Loan Party will maintain the Administrative Agent or one or more of the Lenders as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business.

SECTION 1.17. Post-Closing Obligations. By no later than 60 days after the First Amendment Effective Date (the "Post-Closing Date"), Borrower shall deliver the following to Administrative Agent (each in form and substance satisfactory to the Administrative Agent):

- (a) the Specified Mortgages;
- (b) an opinion of counsel in the state in which any parcel of Specified Real Property is located from counsel, and in a form, reasonably satisfactory to the Administrative Agent;
- (c) if any such parcel of Specified Real Property is determined by the Administrative Agent to be in a "Special Flood Hazard Area" as designated on maps prepared by the Federal Emergency Management Agency, a flood notification form signed by the Borrower or such Loan Party and evidence that flood insurance is in place for the building and contents, all in form, substance and amount satisfactory to the Administrative Agent;

(d) the results of a recent lien search in the jurisdiction of organization of each Loan Party and each jurisdiction where assets of such Loan Parties are located, and the results of a recent title search on each parcel of Specified Real Property, and such search shall reveal no Liens on any of the assets or properties of such Loan Parties except for liens permitted by Section 6.02 or discharged on or prior to the Post-Closing Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent;

(e) evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of this Agreement and the Collateral Documents;

(f) (x) at least five (5) days prior to the Post-Closing Date, all documentation and other information regarding the Loan Parties identified in the Collateral Documents or Loan Guaranty requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of such Loan Parties at least ten (10) days prior to the Post-Closing Date, and (y) a properly completed and signed IRS Form W-8 or W-9, as applicable, for each such Loan Party, and to the extent any such Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five (5) days prior to the Post-Closing Date, any Lender that has requested, in a written notice to any such Loan Party at least the (10) days prior to the Post-Closing Date, a Beneficial Ownership Certification in relation to such Loan Party shall have received such Beneficial Ownership Certification;

(g) resolutions and officers certificates of each Restricted Subsidiary that is a Loan Party, each reasonably satisfactory to the Administrative Agent;

(h) deposit account control agreements and additional legal opinions with respect to the Security Agreement and Loan Guaranty to the extent requested by the Administrative Agent, each reasonably satisfactory to the Administrative Agent; and

(i) such other documents as the Administrative Agent, the Issuing Bank, any Lender or their respective counsel may have reasonably requested in connection with the Collateral Documents or the Loan Guaranty.

Additionally, on or promptly after the Second Amendment Effective Date (with promptness to be determined in a commercially reasonable manner), the Administrative Agent shall have received any appraisals of such Specified Real Property subject to the Specified Mortgages to comply with the requirements of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 or other applicable Requirement of Law.

ARTICLE VINEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 1.01. Priority Debt; Indebtedness. (a) On and after the Collateral Release Date, the Borrower will not, and will not permit any Restricted Subsidiary to, create, assume or incur or in any manner be or become liable in respect of any Priority Debt, unless at the time of issuance thereof and after giving effect thereto and to the application of the proceeds thereof, Priority Debt shall not exceed 20% of Consolidated Total Capitalization.

Any Person which becomes a Restricted Subsidiary after the date of this Agreement shall, for all purposes of this Section 6.01(a), be deemed to have created, assumed or incurred, at the time it becomes a Restricted Subsidiary, all Priority Debt of such Person existing immediately after it becomes a Restricted Subsidiary.

(b) Notwithstanding compliance with Section 6.01(a) or any other term of this Agreement, the Borrower will not, and will not permit any Restricted Subsidiary to, create, assume or incur or in any manner be or become liable in respect of any Indebtedness incurred or otherwise created after the First Amendment Effective Date and prior to the Collateral Release Date, other than: (i) Obligations, (ii) SBA PPP Loans, (iii) Governmental Stimulus Debt in an aggregate outstanding principal amount not in excess of \$50,000,000, (iv) Indebtedness secured by any Excluded Real Property in an aggregate outstanding principal amount not in excess of \$5,000,000, (v) Indebtedness under the Specified Convertible Senior Notes and any Permitted Refinancing Indebtedness in respect thereof, (vi) subject to Section 2.11(c), Indebtedness under other Convertible Securities (other than the Specified Convertible Senior Notes) in an aggregate outstanding principal amount not in excess of \$50,000,000 issued after the Specified Convertible Senior Notes, (vii) Indebtedness constituting Contingent Obligations permitted by Section 6.04, (viii) Indebtedness in an aggregate outstanding principal amount not in excess of \$6,700,000 constituting loans taken against the cash value of a key-man life insurance policy on an officer of the Borrower and (ix) other Indebtedness that is unsecured and in an aggregate outstanding principal amount not in excess of \$15,000,000.

SECTION 1.02. Liens. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Restricted Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or any Restricted Subsidiary and (ii) such Lien shall secure only those obligations

which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(d) Liens existing on any property or asset prior to the acquisition thereof by the Borrower or any Restricted Subsidiary or existing on any property or asset of any Person that becomes a Restricted Subsidiary after the date hereof prior to the time such Person becomes a Restricted Subsidiary; provided that (i) such Liens secure Indebtedness permitted hereunder, (ii) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Restricted Subsidiary, as the case may be, (iii) such Lien shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary and (iv) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Restricted Subsidiary, as the case may be and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(e) purchase money Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Restricted Subsidiary after the Effective Date; provided that (i) such Liens and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (ii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iii) such Liens shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary;

(f) Liens in favor of the noteholders of the Senior Notes as long as such Liens are subject to the Intercreditor Agreement; and

(g) other Liens provided that the aggregate outstanding amount of Indebtedness secured by all such other Liens shall not exceed \$50,000,000 at any time after the Effective Date and shall not result in a breach of Section 6.01, provided that the Indebtedness permitted to be secured under this clause (g) shall not include any Material Credit Facility or similar Indebtedness or any refinancing or replacement thereof; provided further that

the aggregate outstanding amount of any incremental Indebtedness incurred during the Specified Period secured by all such other Liens shall not exceed \$5,000,000 and shall not result in a breach of Section 6.01(b).

SECTION 1.03. Fundamental Changes; Sale of Assets. (a) The Borrower shall not, and shall not suffer or permit any Restricted Subsidiary to purchase or otherwise acquire, whether in one or a series of transactions, all or a substantial portion of the business, assets, rights, revenues or property, real, personal or mixed, tangible or intangible, of any Person, or all or a substantial portion of the capital stock of or other ownership interest in any other Person; nor merge or consolidate or amalgamate with any other Person or take any other action having a similar effect, nor enter into any Joint Venture or similar arrangement with any other Person; provided, however, that this Section 6.03 shall not prohibit any Acquisition by the Borrower or any of its Restricted Subsidiaries of any Person engaged in substantially the same business as the Borrower or such Restricted Subsidiary if (a) in the case of an Acquisition of stock or a merger, the acquired Person shall be immediately merged with and into the Borrower or such Restricted Subsidiary which shall be the surviving corporation, (b) the Term A Loans are paid in full, and (c) immediately after such Acquisition, no Default or Event of Default shall exist or shall have occurred and be continuing and, prior to the consummation of such Acquisition, the Borrower shall have provided to the Administrative Agent (x) a certificate of a Financial Officer (attaching computations to demonstrate compliance with all financial covenants hereunder) stating that such Acquisition complies with this Section 6.03 and will not cause a Default or Event of Default to occur or continue and that any other conditions under this Agreement and the other Loan Documents relating to such transaction have been satisfied and (y) an irrevocable written notice that it is reinstating the financial covenants suspended prior to the First Amendment Effective Date in accordance with Section 6.09(f); and provided, further, that this Section 6.03 shall not prohibit any merger, consolidation or asset or equity transfer solely between or among the Borrower and its Restricted Subsidiaries, so long as the Borrower (if a party thereto) or any Restricted Subsidiary is the surviving person of such merger or consolidation or recipient of such asset or equity transfer. Notwithstanding any of the foregoing, the Borrower shall not, and shall not suffer or permit any Restricted Subsidiary to, (a) make any Acquisition of any Person that has not been approved (prior to such Acquisition) by the board of directors or similar governing body of such Person and as to which such approval has not been withdrawn; or (b) commit, or otherwise take steps, to make any Acquisition of any Person if the board of directors or similar governing body of such Person has announced that it will, or has commenced litigation to, oppose such Acquisition.

(b) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Restricted Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto.

(c) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, make any Disposition or enter into any agreement to make any Disposition, except (i) inventory sold in the ordinary course of business upon customary credit terms and sales of obsolete or damaged material or equipment, (ii) any Disposition in respect of any Permitted Convertible Indebtedness Call Transaction due to the unwinding thereof in accordance with its terms, (iii) sales of assets in connection with sale-leaseback transactions in an aggregate amount not to exceed \$25,000,000 and (iv) other sales of assets not to exceed 10% of the consolidated total assets of the Borrower and its Restricted Subsidiaries in any Fiscal Year of the Borrower ending after the Effective Date; except that (x) any Restricted Subsidiary may sell, lease, transfer or otherwise dispose of its assets to the Borrower or any other Restricted Subsidiary; and (y) the Borrower may sell, lease, transfer or otherwise dispose of assets in excess of the limitations set forth above if the proceeds thereof (A) are used to purchase or are committed to purchase other property of a similar nature, or other real estate or other property reasonably acceptable to the Administrative Agent, of at least equivalent value within one year of such sale, lease, transfer or other disposition or (B) are used to prepay Senior Indebtedness (including the Loans) on a pro-rata basis; provided that all Dispositions permitted under this subclause (c) shall be made for fair value and on an arms' length basis during the Specified Period.

SECTION 1.04. Investments, Loans, Advances. The Borrower shall not and shall not suffer or permit any Restricted Subsidiary to make or commit to make any Investment, other than:

(a) Permitted Investments – Cash Equivalents;

(b) Investments in its existing Restricted Subsidiaries (other than Excluded Subsidiaries during the Specified Period);

(c) Investments in new Restricted Subsidiaries (other than Excluded Subsidiaries during the Specified Period) engaged in businesses of the type conducted by the Borrower and its Restricted Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto;

(d) loans or advances to franchisees not to exceed \$10,000,000, on a consolidated basis, in the aggregate at any time after the Effective Date other than during a Specified Period;

(e) existing Investments listed in the attached Schedule 6.04;

(f) Investments required under Deferred Equity Contribution Obligations;

(g) Investments (excluding Contingent Obligations) in owners of properties or businesses managed by the Borrower or a Restricted Subsidiary, consistent with the Borrower's existing business practices or policies;

(h) subject to Section 2.09(c), Investments permitted under clause (iii)(y)(A) of Section 6.03(c);

(i) Investments, consisting of Contingent Obligations, in owners of properties or businesses managed by the Borrower or a Restricted Subsidiary not to exceed \$25,000,000, on a consolidated basis, in the aggregate at any time after the Effective Date;

(j) investments by the Borrower's captive insurance Subsidiary consistent with its investment policy and current practices approved by the Administrative Agent from time to time;

(k) investments by the Borrower consisting of Convertible Securities acquired in connection with the conversion or exchange of the Convertible Securities; provided that (x) to the extent such Convertible Securities are converted or exchanged into Equity Interests, such Equity Interests shall be Qualified Equity Interests of the Borrower, and (y) to the extent such conversion or exchange involves any cash payment or any other payment not consisting of Qualified Equity Interests of the Borrower (excluding cash in lieu of fractional shares), both before and immediately after giving effect to any such prepayment or defeasance, (A) the Borrower is in compliance with the financial covenants in this Agreement as in effect prior to the First Amendment Effective Date (provided that the financial covenant in Section 6.09(b) hereof, as amended pursuant to the Fourth Amendment, shall be deemed in effect prior to the First Amendment Effective Date) (and has irrevocably elected to have the financial covenants in this Agreement as in effect prior to the First Amendment Effective Date (provided that the financial covenant in Section 6.09(b) hereof, as amended pursuant to the Fourth Amendment, shall be deemed in effect prior to the First Amendment Effective Date) become effective in accordance with Section 6.09(f)) and (B) no Default or Event of Defaults exists;

(l) investments represented by Permitted Convertible Indebtedness Call Transactions; and

(m) other Investments (including Contingent Obligations) not to exceed \$25,000,000 on a consolidated basis, in the aggregate at any time after the Effective Date; provided, however, that (i) the Borrower and its Restricted Subsidiaries shall only be permitted to make or commit to make any other Investments (including Contingent Obligations) during the Specified Period if on a consolidated basis and in the aggregate such other Investments do not exceed \$10,000,000, provided that such amount shall be increased by \$5,000,000 to an aggregate amount of \$15,000,000 on June 30, 2022 if the Borrower is in compliance with all covenants in Section 6.01 and 6.09 as of June 30, 2022 and no Event of Default exists as of June 30, 2022 and the Borrower provides a certificate of a Financial Officer of the Borrower setting forth reasonably detailed calculations demonstrating compliance with Section 6.01 and 6.09 as of June 30, 2022, including any reconciliation to reflect the exclusion of Unrestricted Subsidiaries, and certifying that no Event of Default exists as of June 30, 2022, and (ii) notwithstanding anything herein to the contrary, Investments made in or to Pfister LLC during the Specified Period shall not exceed \$7,500,000 in the aggregate (for the avoidance of doubt, such \$7,500,000 limit is on Investments made the Borrower and its Subsidiaries in or to Pfister LLC and not expenditures made by Pfister LLC from its own funds, and all expenditures by Pfister LLC shall count as Capital Expenditures for purposes of Section 6.09(e) and all other terms and provisions of this Agreement).

SECTION 1.05. Swap Agreements. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Restricted Subsidiary has actual exposure (including any Permitted

Convertible Indebtedness Call Transaction, but otherwise excluding Swap Agreements in respect of Equity Interests of the Borrower or any of its Restricted Subsidiaries), and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Restricted Subsidiary.

SECTION 1.06. Restricted Payments. The Borrower shall not declare or make any Restricted Payment if a Default has occurred and is continuing or would result therefrom; provided, notwithstanding the foregoing, during any Specified Period, the Borrower shall not declare or make any Restricted Payment other than (a) Restricted Payments payable solely in shares of the Borrower's common stock, (b) Restricted Payments required pursuant to and in accordance with stock option plans or other benefit plans for management or employees of the Borrower and its Subsidiaries in existence on the Third Amendment Effective Date without any modification thereof, in each case so long as no Default has occurred and is continuing or would result therefrom, (c) Restricted Payments in the first fiscal quarter of 2022 and in any fiscal quarter thereafter not to exceed \$1,550,000 in the aggregate for any such fiscal quarter, in each case so long as no Default has occurred and is continuing or would result therefrom, and (d) Restricted Payments in connection with the Borrower's entry into, and performance of its obligations under, any Permitted Convertible Indebtedness Call Transaction.

Notwithstanding the foregoing or anything to the contrary in this Agreement, the Borrower may repurchase, exchange or induce the conversion of Convertible Securities by delivery of shares of Borrower's common stock and/or a different series of Convertible Securities (which series (x) matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the analogous date under the indenture governing the Convertible Securities that are so repurchased, exchanged or converted and (y) has terms, conditions and covenants that are no less favorable to the Borrower than the Convertible Securities that are so repurchased, exchanged or converted (as determined by the Borrower in good faith)) (any such series of Convertible Securities, "Refinancing Convertible Securities") and/or by payment of cash (in an amount that does not exceed the proceeds received by the Borrower from the substantially concurrent issuance of shares of the Borrower's common stock and/or Refinancing Convertible Securities plus the net cash proceeds, if any, received by the Borrower pursuant to the related exercise or early unwind or termination of the related Permitted Convertible Indebtedness Call Transactions, if any, pursuant to the immediately following proviso); provided that, substantially concurrently with, or a commercially reasonable period of time before or after, the related settlement date for the Convertible Securities that are so repurchased, exchanged or converted, the Borrower shall (and, for the avoidance of doubt, shall be permitted under this Section 6.06 to) exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of any Permitted Convertible Indebtedness Call Transactions, if any, corresponding to such Convertible Securities that are so repurchased, exchanged or converted.

SECTION 1.07. Transactions with Affiliates. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Restricted Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrower and its wholly owned Restricted Subsidiaries not involving any other Affiliate and (c) any Restricted Payment permitted by Section 6.06.

SECTION 1.08. Restrictive Agreements. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Restricted Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Restricted Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Restricted Subsidiary or to guarantee, or incur any other Contingent Obligation with respect to, Indebtedness of the Borrower or any other Restricted Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.08 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Restricted Subsidiary pending such sale, provided such restrictions and conditions apply only to the Restricted Subsidiary that is to be sold and such sale is permitted hereunder,

(iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof, and (vi) the foregoing shall not apply to the restrictions or conditions imposed by or in connection with any of the Senior Notes, any Convertible Securities or any Permitted Refinancing Indebtedness in respect thereof or any Permitted Convertible Indebtedness Call Transactions or by any customary restrictions or conditions imposed by or in connection with any similar Indebtedness permitted under this Agreement.

SECTION 1.09. Financial Covenants.

(a) **Consolidated Debt to Capitalization Ratio.** The Borrower shall not permit or suffer the Consolidated Debt to Capitalization Ratio to exceed at any time 0.55 to 1.0.

(b) **Consolidated Fixed Charge Coverage Ratio.** Subject to Section 6.09(f) below, the Borrower shall not permit or suffer the Consolidated Fixed Charge Coverage Ratio at the end of any Fiscal Quarter, as calculated for the four Fiscal Quarters then ending, to be less than 2.5 to 1.0.

(c) **Minimum Consolidated EBITDA.** The Borrower shall not permit or suffer Consolidated EBITDA to be less than or equal to: (i) \$10,000,000 as of December 30, 2021 for the two consecutive Fiscal Quarters then ending, (ii) \$25,000,000 as of March 31, 2022 for the three consecutive Fiscal Quarters then ending, (iii) \$50,000,000 as of June 30, 2022 for the four consecutive Fiscal Quarters then ending. (iv) \$65,000,000 as of September 29, 2022 for the four consecutive Fiscal Quarters then ending. or (v) \$70,000,000 as of December 29, 2022 for the four consecutive Fiscal Quarters then ending.

(d) **Minimum Liquidity.** The Borrower shall not permit or suffer Consolidated Liquidity to be less than or equal to: (i) \$125,000,000 as of September 24, 2020, (ii) \$125,000,000 as of December 31, 2020, (iii) \$100,000,000 as of the end of any Fiscal Quarter ending on or after April 1, 2021 until and including the Fiscal Quarter ending June 30, 2022, or (iv) \$50,000,000 as of the end of any Fiscal Quarter thereafter until and including the Fiscal Quarter ending December 29, 2022; provided, however, that each such required minimum Consolidated Liquidity amount shall be reduced to \$50,000,000 for each such testing date if the Term A Loans are paid in full as of such date.

(e) **Capital Expenditures.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, incur or make any Capital Expenditures in the aggregate for the Borrower and its Restricted Subsidiaries during (i) the period beginning on April 1, 2020 through and including December 31, 2020 in excess of the sum of \$22,500,000 plus Social Distancing Capital Expenditures for such period, (ii) Fiscal Year 2021 in excess of \$40,000,000 plus Social Distancing Capital Expenditures for such Fiscal Year, or (iii) Fiscal Year 2022 in excess of \$50,000,000 plus Social Distancing Capital Expenditures for such Fiscal Year; provided that this Section 6.09(e) shall not be operative after the end of the Specified Period.

(f) **Suspension of Certain Financial Covenants.** The testing of the Consolidated Fixed Charge Coverage Ratio under subclause (b) of this Section 6.09 shall be suspended beginning on the First Amendment Effective Date through and until the earlier of (x) March 30, 2023 and (y) the date on which the Borrower sends the Administrative Agent an irrevocable written notice that it is reinstating the testing of the Consolidated Fixed Charge Coverage Ratio so suspended on the First Amendment Effective Date. The Consolidated Fixed Charge Coverage Ratio will then resume testing beginning on the last day of the Fiscal Quarter ending March 30, 2023 if such covenant is reinstated in accordance with clause (x) or on the last day of such Fiscal Quarter ending after the date the Borrower sends the Administrative Agent an irrevocable written notice in accordance with clause (y).

SECTION 1.10. Amendments of Organization Documents. The Borrower will not, and will not permit any Restricted Subsidiary to, amend any of its Organization Documents in any respect that could reasonably be expected to have a Material Adverse Effect.

SECTION 1.11. Accounting Changes. The Borrower will not, and will not permit any Restricted Subsidiary to, make any change in (a) its accounting policies or reporting practices, except as required by GAAP, or (b) its Fiscal Year or Fiscal Quarters.

SECTION 1.12. Prepayments, Etc. of Subordinated Indebtedness and Senior Notes.

(a) The Borrower will not, and will not permit any Restricted Subsidiary to, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Subordinated Indebtedness.

(b) The Borrower will not make any voluntary cash prepayments on or defeasance of the Senior Notes, the Specified Convertible Senior Notes or any other Convertible Securities (excluding upon the conversion of any Specified Convertible Senior Notes or any other Convertible Securities into Qualified Equity Interests or cash in lieu of fractional shares) unless (i) the Term A Loans have been paid in full and (ii) both before and immediately after giving effect to any such prepayment or defeasance, (A) Borrower is in compliance with the financial covenants in this Agreement as in effect prior to the First Amendment Effective Date (provided that the financial covenant in Section 6.09(b) hereof, as amended pursuant to the Fourth Amendment, shall be deemed in effect prior to the First Amendment Effective Date) (and has irrevocably elected to have the financial covenants in this Agreement as in effect prior to the First Amendment Effective Date (provided that the financial covenant in Section 6.09(b) hereof, as amended pursuant to the Fourth Amendment, shall be deemed in effect prior to the First Amendment Effective Date) become effective in accordance with Section 6.09(f)) and (B) no Default or Event of Defaults exists; provided, that notwithstanding the foregoing, upon the conversion of any Specified Convertible Senior Notes or any other Convertible Securities, the Borrower shall be permitted to pay or deliver cash, Qualified Equity Interests or a combination of cash and Qualified Equity Interests, at the Borrower's election, to the extent that, both before and immediately after giving effect to any such payment or delivery, (A) Borrower is in compliance with the financial covenants in this Agreement as in effect on the date of such transaction and (B) no Default or Event of Defaults exists.

ARTICLE VII EVENTS OF DEFAULT

If any of the following events ("**Events of Default**") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Restricted Subsidiary in or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been incorrect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.03 (with respect to the Borrower's existence), 5.08, 5.10, 5.11, 5.12, or 5.17 or in Article VI;

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article), or any other Loan Document and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

(f) the Borrower or any Restricted Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to

its scheduled maturity; provided that this clause (g) shall not apply to (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, or (ii) any conversion or settlement with respect to the Specified Convertible Senior Notes in accordance with their terms;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Restricted Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Restricted Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Restricted Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Restricted Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Restricted Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$5,000,000 shall be rendered against the Borrower, any Restricted Subsidiary or any combination thereof and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Restricted Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the reasonable opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Restricted Subsidiaries in an aggregate amount exceeding \$5,000,000 for all periods;

(m) a Change of Control shall occur;

(n) any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the satisfaction in full of all the Obligations, shall cease to be in full force and effect; or any Loan Party (or any Person by, through or on behalf of any Loan Party), shall contest in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party shall deny that it has any or further liability or obligation under any provision of any Loan Document, or purport to revoke, terminate or rescind any provision of any Loan Document;

(o) except as provided in Section 5.13(b), until after the Collateral Release Date, the Loan Guaranty shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty, or any Guarantor shall fail to comply with any of the terms or provisions of the Loan Guaranty which it is a party, or any Guarantor shall deny that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect, including, but not limited to any notice of termination delivered pursuant to the terms of any Loan Guaranty;

(p) prior to the Collateral Release Date, except as permitted by the terms of any Collateral Document or the Intercreditor Agreement and except as provided in Section 5.13(b), (i) any Collateral Document shall for any reason fail to create a valid security interest in any Collateral purported to be covered thereby, or (ii) any Lien securing any Obligation shall cease to be a perfected, first priority Lien; or

(q) except as provided in Section 5.13(b), any Collateral Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Collateral Document.

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, increase the rate of interest applicable to the Loans and other Obligations under the Loan Documents as permitted hereunder and exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE VIII THE ADMINISTRATIVE AGENT

SECTION 8.01. Authorization and Action. (a) Each Lender and each Issuing Bank hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent under the Loan Documents and each Lender and each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the United States, each Lender and each Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender's or such Issuing Bank's behalf. Without limiting the foregoing, each Lender and each Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents (including the Intercreditor Agreement) to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents, and each Lender shall be bound by the terms and provisions thereof, as amended, restated or otherwise modified from time to time with the consent of the Required Lenders.

(b) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Bank; provided, however, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and the Issuing Banks with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any Subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, Issuing Bank or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby;

(ii) where the Administrative Agent is required or deemed to act as a trustee in respect of any collateral, if any, over which a security interest has been created pursuant to a Loan Document expressed to be governed by the laws of country, or is required or deemed to hold any collateral "on trust" pursuant to the foregoing, the obligations and liabilities of the Administrative Agent to the secured parties in its capacity as trustee shall be excluded to the fullest extent permitted by applicable law; and

(iii) nothing in this Agreement or any Loan Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account;

(d) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities pursuant to this Agreement. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(e) None of any Syndication Agent, any Co-Documentation Agent or any Arranger shall have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Loan Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any other Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Disbursements and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim under Sections 2.12, 2.13, 2.15, 2.17 and 9.03) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders or the Issuing Banks, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03). Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(g) The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and, except solely to the extent of the Borrower's rights to consent pursuant to and subject to the conditions set forth in this Article, none of the Borrower or any Subsidiary, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions. Each Lender, each Issuing Bank and their respective Affiliates, whether or not a party hereto, will be deemed, by its acceptance of the benefits of any collateral and of the guarantees of the Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

SECTION 8.02. Administrative Agent's Reliance, Indemnification, Etc. (a) Neither the Administrative Agent nor any of its Related Parties shall be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(b) The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof (stating that it is a "notice of default") is given to the Administrative Agent by the Borrower, a Lender or an Issuing Bank, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (vi) the creation, perfection or priority of Liens on any collateral.

(c) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.04, (ii) may rely on the Register to the extent set forth in Section 9.04(b), (iii) may consult with legal counsel (including counsel to the Borrower), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and shall not be responsible to any Lender or Issuing Bank for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

SECTION 8.03. Posting of Communications. (a) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Banks by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic platform chosen by the Administrative Agent to be its electronic transmission system (the "Approved Electronic Platform").

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, each of the Issuing Banks and the Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, each of the Issuing Banks and the Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, ANY ARRANGER, ANY CO-DOCUMENTATION AGENT, ANY SYNDICATION AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, "APPLICABLE PARTIES") HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

"Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(d) Each Lender and each Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or Issuing Bank's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, each of the Issuing Banks and the Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or any Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

SECTION 8.04. The Administrative Agent Individually. With respect to its Commitment, Loans (including Swingline Loans), Letter of Credit Commitments and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms "Issuing Banks", "Lenders", "Required Lenders" and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Bank or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with, the Borrower, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Banks.

SECTION 8.05. Successor Administrative Agent. (a) The Administrative Agent may resign at any time by giving 30 days' prior written notice thereof to the Lenders, the Issuing Banks and the Borrower, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, such appointment shall be subject to the prior written approval of the Borrower (which approval may not be unreasonably withheld and shall not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the

effectiveness of its resignation to the Lenders, the Issuing Banks and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties, and continue to be entitled to the rights set forth in such Collateral Document and Loan Document, and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Security Document, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent shall directly be given or made to each Lender and each Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

SECTION 8.06. Acknowledgements of Lenders and Issuing Banks. (a) Each Lender represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and that it has, independently and without reliance upon the Administrative Agent, any Arranger, any Syndication Agent, any Co-Documentation Agent or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger any Syndication Agent, any Co-Documentation Agent or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date.

(c) (i) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.06(c) shall be conclusive, absent manifest error.

(ii) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such

case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(iii) The Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) are not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party.

(iv) Each party's obligations under this Section 8.06(c) shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan

Document.

SECTION 8.07. Certain ERISA Matters. (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or any Arranger, any Syndication Agent, any Co-Documentation Agent or any of their respective Affiliates is a fiduciary with respect to any collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent, and each Arranger, Syndication Agent and Co-Documentation Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker’s acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 8.08. Collateral Matters.

(a) Except with respect to the exercise of setoff rights in accordance with Section 9.08 or with respect to a Secured Party’s right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof; provided that, for so long as the Intercreditor Agreement is in effect, any recourse to the Collateral as defined in the Intercreditor Agreement shall be through the Collateral Agent in accordance with the terms of the Intercreditor Agreement. In its capacity, the Administrative Agent is a “representative” of the Secured Parties within the meaning of the term “secured party” as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(b) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services the obligations under which constitute Obligations and no Swap Agreement the obligations under which constitute Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Banking Services or Swap Agreement, as applicable, shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

(c) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(b). The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's or the Collateral Agent's Lien thereon or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

SECTION 8.09. Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles (ii) each of the Secured Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 9.02 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

SECTION 8.10. Flood Laws. JPMCB has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). JPMCB, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, JPMCB reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE IX MISCELLANEOUS

SECTION 1.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for

herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at 100 East Wisconsin Ave. Suite 1900, Milwaukee, WI 53202, Attention: Chief Financial Officer (e-mail: dougneis@marcuscorp.com) and General Counsel (email: tomkissinger@marcuscorp.com).

(ii) if to the Administrative Agent or the Swingline Lender, to JPMorgan Chase Bank, N.A., Loan and Agency Services Group, 10-

JPMorgan Chase Bank, N.A.

(iii) 131 S. Dearborn St., Floor LS2, Chicago, Illinois, 60603-2003, Attention of Omolola Ench (Facsimile No. 312-385-7103; Telephone 312-954-1007, email: jpm.agency.servicing4@jpmchase.com and omolola.ench@chase.com) 04
Chicago, IL, 60603-5506

[Attention: Loan and Agency Servicing](#)
[Email: jpm.agency.cri@jpmorgan.com](mailto:jpm.agency.cri@jpmorgan.com)

[Agency Withholding Tax Inquiries:](#)
[Email: agency.tax.reporting@jpmorgan.com](mailto:agency.tax.reporting@jpmorgan.com)

[Agency Compliance/Financials/Intralinks:](#)
[Email: covenant.compliance@jpmchase.com](mailto:covenant.compliance@jpmchase.com)

(iii) if to the Issuing Bank, to JPMorgan Chase Bank, N.A., Loan and Agency Services Group, 10 S. Dearborn St., Floor 7, Chicago, Illinois, 60603-2003, Attention of Chicago LC Team (e-mail: Chicago.LC.agency.closing.team@jpmchase.com).

(iv) if to any other Lender, to it at its address (or teletype number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through Electronic Systems or Approved Electronic Platforms, as applicable, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by using Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by using Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Any party hereto may change its address or teletype number for notices and other communications hereunder by notice to the other parties hereto.

(d) Electronic Systems.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Banks and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(ii) Any Electronic System used by the Administrative Agent is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or any Electronic System. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to the Borrower, any Lender, the Issuing Bank or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of communications through an Electronic System. "**Communications**" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of the Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to this Section, including through an Electronic System.

SECTION 1.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as set forth in this Section 9.02, subject to Section 2.14(c) and (d) or as provided in Section 2.01(b) with respect to increases in the Term A Commitments and Section 2.04 with respect to an Incremental Term Loan Amendment, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the applicable Loan Parties and other parties to such Loan Document, with the consent of the Required Lenders; provided that no such agreement shall (i) increase any Commitment of any Lender without the written consent of such Lender, (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest (other than a waiver of default interest) thereon, or reduce or forgive any interest (other than a waiver of default interest) or fees or other amounts payable hereunder, without the written consent of each Lender directly affected thereby, (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement (excluding any reduction of the amount of, or any extension of the payment date for, the mandatory prepayments required under Section 2.10), or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby, (iv) change Section 2.18(b) or (c) in a manner that would alter the manner in which payments are shared, without the written

consent of each Lender directly affected thereby (it being understood and agreed that (x) any increase in the total Commitments and related modifications approved by each Lender increasing any of its Commitments and by the Required Lenders shall not be deemed to alter the manner in which payments are shared or alter any other pro rata sharing of payments and (y) any "amend-and-extend" transaction that extends the Revolving Credit Maturity Date and/or any Term Loan Maturity Date only for those Lenders that agree to such an extension (which extension may include increased pricing and fees for such extending Lenders, and which extension shall not apply to those Lenders that do not approve such extension) shall not be deemed to alter the manner in which payments are shared or alter any other pro rata sharing of payments), (v) except as otherwise provided in this Section 9.02, change any of the provisions of this Section or the definition of "Required Lenders", "Required Revolving Lenders", "Required Term Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (it being understood that, solely with the consent of the parties prescribed by Section 2.04 to be parties to an Incremental Term Loan Amendment, Incremental Term Loans may be included in the determination of Required Lenders and related terms on substantially the same basis as the Commitments and the Loans are included on the Effective Date), without the written consent of each Lender directly affected thereby, (vi) release any Guarantor from its obligation under its Loan Guaranty (except as provided in Section 5.13 of this Agreement or as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender), or (vii) except as provided in clause (d) of this Section or in any Collateral Document, release all or substantially all of the Collateral without the written consent of each Lender (other than any Defaulting Lender); provided further that (x) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be, and (y) the foregoing shall not prevent any amendment contemplated by the terms of Section 2.04 and in connection with any Incremental Term Loans the Borrower and the Administrative Agent may agree to any required changes in the Credit Agreement not inconsistent with the terms of Section 2.04. The Administrative Agent may also amend the Commitment Schedule to reflect assignments and other agreements entered into pursuant to Section 9.04 or transactions under Section 2.04. Without limiting the foregoing, Section 2.20 may not be amended or otherwise modified without the prior written consent of the Administrative Agent, the Issuing Bank and the Swingline Lender.

(c) Notwithstanding Section 9.02(b), (i) this Agreement and any other Loan Document may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the relevant Replacement Term Loans (as defined below) to permit the refinancing of all outstanding Term Loans or any replacement therefor ("Refinanced Term Loans") with a replacement term loan tranche hereunder ("Replacement Term Loans"), and all holders of the Refinanced Term Loans shall no longer be Lenders of the Refinanced Term Loans hereunder upon the payment in full of the Refinanced Term Loans and the Obligations relating thereto, (ii) this Agreement and any other Loan Document may be amended with the written consent of the Required Lenders, Lenders providing one or more additional credit facilities, the Administrative Agent and the Borrower (x) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof (collectively, the "Incremental Credits") to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolving Loans and Term Loans and other extensions of credit hereunder and the accrued interest and fees in respect thereof, (y) to include reasonably appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and (z) to make such other technical amendments as are reasonably deemed appropriate by the Administrative Agent and the Borrower in connection with the foregoing, (iii) no condition precedent to obtaining any Revolving Borrowing (including without limitation by amending or waiving any provision of Article III, V, VI or VII if the effect of such amendment or waiver would be to waive any such condition or otherwise allow the making of a Revolving Borrowing when it would not otherwise be permitted) or any other term directly relating to any Revolving Borrowing may be waived, amended or modified except with the written consent of the Required Revolving Lenders, (iv) no condition precedent to obtaining any Term Loan Borrowing (including without limitation by amending or waiving any provision of Article III, V, VI or VII if the effect of such amendment or waiver would be to waive any such condition or otherwise allow the making of a Term Loan Borrowing when it would not otherwise be permitted) or any other term directly relating to any Term Loan Borrowing may be waived, amended or modified except with the written consent of the Required Term Lenders, (v) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of one Class of Lenders (but not of any other Class of Lenders) may be effected by an agreement or agreements in writing entered into by the Administrative Agent, the Borrower and the requisite

percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time and (vi) any waiver, amendment or modification of any commitment letter or fee letter may be effected by an agreement or agreements in writing entered into only by the parties thereto.

(d) The Lenders and the Issuing Bank hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent or the Collateral Agent by the Loan Parties on any Collateral (i) upon the payment in full of all Obligations, and the cash collateralization of all unliquidated obligations in a manner satisfactory to each affected Lender, (ii) constituting property being sold or disposed of if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being sold or disposed of constitutes 100% of the Equity Interests of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, (iv) in accordance with Section 5.13 of this Agreement, or (v) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII. Except as provided in the preceding sentence, the Administrative Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders; provided that the Administrative Agent may, in its discretion, release its Liens on Collateral valued in the aggregate not in excess of \$1,000,000 during any calendar year without the prior written authorization of the Required Lenders (it being agreed that the Administrative Agent may rely conclusively on one or more certificates of the Borrower as to the value of any Collateral to be so released, without further inquiry). Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(e) Notwithstanding anything herein to the contrary, Defaulting Lenders shall not be entitled to vote (whether to consent or to withhold its consent) with respect to any amendment, modification, termination or waiver and, for purposes of determining the Required Lenders, the Commitments and the Loans of such Defaulting Lender shall be disregarded except as provided in Section 2.20(c).

(f) Notwithstanding anything herein to the contrary, Lenders that are Ineligible Institutions shall not be entitled to vote (whether to consent or to withhold its consent) with respect to any amendment, modification, termination or waiver and, for purposes of determining the Required Lenders hereunder or all Lenders or any Lender directly affected under this Section 9.02, the Commitments and the Loans of any Lender that is an Ineligible Institution shall be disregarded.

(g) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents as may be reasonably necessary or advisable to cure any error, ambiguity, omission, defect or inconsistency in order to more accurately reflect the intent of the parties, provided that (x) prior written notice of such proposed cure shall be given to the Lenders and (y) the Required Lenders do not object to such cure in writing to the Administrative Agent within ten Business Days of such notice.

(h) Notwithstanding anything to the contrary herein or in any other Loan Document, (i) no Real Property will be taken as Collateral unless prior thereto each Lender shall have completed its flood insurance due diligence and flood insurance compliance requirements, (ii) any Mortgage shall have covenants and representations reasonably satisfactory to all Lenders with respect to flood insurance and related requirements, and (iii) any increase, extension or renewal of the credit facilities under this Agreement shall be subject to flood insurance due diligence and flood insurance compliance reasonably satisfactory to all Lenders.

SECTION 1.03. Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of this Agreement or any amendments,

modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(a) The Borrower shall indemnify the Administrative Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses resulted from the gross negligence or willful misconduct of such Indemnitee as determined by a court of competent jurisdiction by final and nonappealable judgment. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(b) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, the Issuing Bank or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Issuing Bank or the Swingline Lender in its capacity as such.

(c) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(d) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 1.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower, provided that, the Borrower shall be deemed to have consented to an assignment unless it shall have objected thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of (x) any Revolving Commitment to an assignee that is a Lender (other than a Defaulting Lender) with a Revolving Commitment immediately prior to giving effect to such assignment and (y) all or any portion of any Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the Issuing Banks, provided that no consent of any Issuing Bank shall be required for an assignment of all or any portion of any Term Loan; and

(D) each Swingline Lender, provided that no consent of any Swingline Lender shall be required for an assignment of all or any portion of any Term Loan.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 or, in the case of any Term Loan, \$1,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants), together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its related parties or its securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the term “**Approved Fund**” and “**Ineligible Institution**” have the following meanings:

“**Approved Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Ineligible Institution**” means (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof or (d) the Borrower or any of its Affiliates; provided that, such company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than \$25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders 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, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants), the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of the Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a “**Participant**”), other than an Ineligible Institution, in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (C) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Sections 2.17(f) and (g) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender and the information and documentation required under 2.17(g) will be delivered to the Borrower and the Administrative Agent)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated

interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 1.05. Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 1.06. Counterparts; Integration; Effectiveness. (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) the reductions of the Letter of Credit Commitment of any Issuing Bank constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Loan Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrower and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

SECTION 1.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 1.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender (in any capacity hereunder) and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, but excluding deposits held in a trustee, fiduciary, agency or similar capacity or otherwise for the benefit of a third party) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmaturing. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 1.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement and the other Loan Documents shall be construed in accordance with and governed by the law of the State of Wisconsin.

(a) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any State court of Wisconsin and of the United States District Court for the Eastern District of Wisconsin, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Wisconsin State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its properties in the courts of any jurisdiction.

(b) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 1.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, 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 PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 1.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 1.12. Confidentiality. (a) Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent

requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement or by the Administrative Agent or Collateral Agent to any other party to the Intercreditor Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement (including any other Loan Document) or the enforcement of rights under the Loan Documents, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (x) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (y) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (vii) on a confidential basis to (1) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided for herein or (2) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of identification numbers with respect to the credit facilities provided for herein, (viii) with the consent of the Borrower or (ix) to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section, "**Information**" means all information received from the Borrower relating to the Borrower or its business, other than any such

information that is available to the Administrative Agent, the Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Borrower and other than information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(d) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(e) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

SECTION 1.13. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 1.14. USA PATRIOT Act. Each Lender that is subject to the requirements of the Patriot Act hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and

record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

SECTION 1.15. 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 may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any 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 entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

SECTION 1.16. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party 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. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

SECTION 1.17. No Fiduciary Duty, etc.

(a) The Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to the Borrower with respect to the Loan Documents and the transactions contemplated herein and therein and not as a financial advisor or a fiduciary to, or an agent of, the Borrower or any other person. The Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, the Borrower acknowledges and agrees that no Credit Party is advising the Borrower as to any legal, tax, investment, accounting, regulatory or any other matters in any jurisdiction. The Borrower shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated herein or in the other Loan Documents, and the Credit Parties shall have no responsibility or liability to the Borrower with respect thereto.

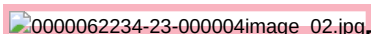
(b) The Borrower further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, the Borrower and other companies with which the Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion.

(c) In addition, the Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which the Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from the Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with the Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. The Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to the Borrower, confidential information obtained from other companies.

SECTION 1.18. Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the Secured Parties, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions

SECTION 1.19. Intercreditor Agreement. Each of the Secured Parties, whether by executing this Agreement or accepting the benefits hereof and of the other Loan Documents, hereby (a) agrees to be bound by the terms of the Intercreditor Agreement and to comply with the terms thereof applicable to it, (b) irrevocably authorizes and directs the Administrative Agent to execute and deliver the Intercreditor Agreement and to carry out the terms of the Intercreditor Agreement, (c) agrees to provide the Administrative Agent with any information or directions in connection with the Intercreditor Agreement requested by the Administrative Agent or Collateral Agent. Each of the Secured Parties agrees that no Secured Party shall have any right of action whatsoever against the Administrative Agent as a result of any action taken by the Administrative Agent pursuant to this Agreement or in accordance with the terms of the Intercreditor Agreement. Without limiting any of the terms of this Agreement, the Administrative Agent shall have the benefit of the provisions of this Agreement applicable to the Administrative Agent with respect to all actions taken by it pursuant to this Agreement or in accordance with the terms of the Intercreditor Agreement to the full extent thereof, and JPMCB in its capacity as Collateral Agent shall have the benefit of all indemnification, reimbursement, liability waivers, waivers of fiduciary duties and similar terms as are applicable to JPMCB in its capacity as Administrative Agent to the full extent thereof.

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Fifth Amendment To Note Purchase Agreement

This Fifth Amendment dated as of February 10, 2023 (the or this “*Fifth Amendment*”) to the Note Purchase Agreement (as defined below) is among The Marcus Corporation, a Wisconsin corporation (the “*Company*”), and each of the institutions set forth on the signature pages to this Fifth Amendment (collectively, the “*Noteholders*”).

Recitals

A. The Company and each of the Noteholders have heretofore entered into the Note Purchase Agreement dated as of June 27, 2013 (the “*Original Note Purchase Agreement*”). The Company has heretofore issued \$50,000,000 4.02% Senior Notes, due August 14, 2025 (the “*Notes*”) pursuant to the Note Purchase Agreement. As of the date hereof, \$50,000,000 of the Notes are outstanding.

B. The Company and the Noteholders have heretofore entered into that certain First Amendment to the Note Purchase Agreement dated as of April 29, 2020 (the “*First Amendment*”), that certain Second Amendment to Note Purchase Agreement dated as of June 26, 2020 (the “*Second Amendment*”), that certain Third Amendment to Note Purchase Agreement dated as of September 15, 2020 (the “*Third Amendment*”) and that certain Fourth Amendment to Note Purchase Agreement dated as of July 13, 2021 (the “*Fourth Amendment*”). The Original Note Purchase Agreement, as amended by that certain First Amendment, as further amended by that certain Second Amendment, as further amended by that certain Third Amendment and as further amended by that certain Fourth Amendment is hereinafter referred to as the “*Note Purchase Agreement*”. As of the date hereof, \$50,000,000 of the Notes are outstanding. The Noteholders are the holders of 100% of the outstanding principal balance of the Notes.

C. The Company and the Noteholders now desire to amend the Note Purchase Agreement in the respects, but only in the respects, hereinafter set forth.

D. Capitalized terms used herein shall have the respective meanings ascribed thereto in the Note Purchase Agreement, as amended by this Fifth Amendment, unless herein defined or the context shall otherwise require.

E. All requirements of law have been fully complied with and all other acts and things necessary to make this Fifth Amendment a valid, legal and binding instrument according to its terms for the purposes herein expressed have been done or performed.

Statement of Agreement

Now, Therefore, the Company and the Noteholders, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby agree as follows:

Article I

Amendments to Note Purchase Agreement

Section 1.1. The following definition contained in Schedule B of the Note Purchase Agreement is hereby deleted and replaced in its entirety as follows:

“*Consolidated Adjusted Cash Flow*” means, for any period, the Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income, (a) depreciation and amortization for such period, (b) all current and deferred taxes on income, provision

for taxes on income, provision for taxes on unremitted foreign earnings which are included in consolidated gross revenues and current additions to reserves for taxes, (c) any non-cash share based compensation for such period and (d) Consolidated Interest and Rental Expense, together with those items excluded from the definition of Consolidated Interest and Rental Expense pursuant to the proviso in such definition.

Article II

Conditions to Effectiveness

Section 2.1. This Fifth Amendment shall become effective as the date hereof when executed counterparts of this Fifth Amendment, duly executed by the Company and the holders of 51% of the outstanding Notes shall have been delivered to the Noteholders. The changes to the Note Purchase Agreement effectuated by Article I of this Fifth Amendment shall become effective on the date (such date, the “Fifth Amendment Effective Date”) when all of the following conditions have been satisfied:

(a) the Noteholders shall have received evidence reasonably satisfactory to them that the Bank Credit Agreement have been amended substantially as proposed in the from annexed hereto annexed hereto as **Exhibit A**;

(b) the holders of Notes shall have received evidence reasonably satisfactory to them that the 2016 NPA has been amended substantially as proposed in the form annexed hereto as **Exhibit B**;

(c) the representations and warranties of the Company set forth Section 5 of the Note Purchase Agreement, as amended by this Fifth Amendment, are true and correct on and with respect to the date hereof;

(d) the fees and expenses of Chapman and Cutler, LLP, counsel to the Noteholders, shall have been paid by the Company, in connection with the negotiation, preparation, approval, execution and delivery of this Fifth Amendment; and;

(e) The Company has not paid any consideration in connection with this Fifth Amendment or any similar amendment, waiver or modification in respect of other Debt of the Company other than legal fees and expenses in connection with the execution and

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delivery of this Fifth Amendment and that certain Fifth Amendment to the Bank Credit Agreement dated as of February 10th, 2023.

Article III

Representations and Warranties of the Company

Section 3.1. To induce the Noteholders to execute and deliver this Fifth Amendment, the Company represents and warrants (which representations and warranties shall survive the execution and delivery of this Fifth Amendment) to the Noteholders, on the date hereof, that:

(a) this Fifth Amendment has been duly authorized, executed and delivered by the Company and this Fifth Amendment constitutes the legal, valid and binding obligation, contract and agreement of the Company enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally or general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(b) as of the date of the Fifth Amendment Effective Date, the Note Purchase Agreement, as amended by this Fifth Amendment, will constitute the legal, valid and binding obligation, contract and agreement of the Company enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally;

(c) the execution, delivery and performance by the Company of this Fifth Amendment (i) has been duly authorized by all requisite corporate action and, if required, shareholder action, (ii) does not require the consent or approval of any governmental or regulatory body or agency, and (iii) will not (A) violate (1) any provision of law, statute, rule or regulation or its certificate of incorporation or bylaws, (2) any order of any court or any rule, regulation or order of any other agency or government binding upon it, or (3) any provision of any indenture, agreement or other instrument to which it is a party or by which its properties or assets are or may be bound, including, without limitation, the Bank Credit Agreement, or (B) result in a breach or constitute (alone or with due notice or lapse of time or both) a default under any indenture, agreement or other instrument referred to in clause (iii)(A)(3) of this **Section 3.1(c)**;

(d) upon giving effect to this Fifth Amendment, the representations and warranties of the Company set forth Section 5 of the Note Purchase Agreement are true in all material respects on and as of the date hereof with the same force and effect as if made on and as of the date hereof (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation

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or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects); and

(e) as of the date hereof, no Default or Event of Default has occurred and is continuing, and no Default or Event of Default will be caused upon giving effect to this Fifth Amendment.

Article IV

Miscellaneous

Section 4.1. This Fifth Amendment shall be construed in connection with and as part of the Note Purchase Agreement, and except as modified and expressly amended by this Fifth Amendment, all terms, conditions and covenants contained in the Note Purchase Agreement and the Notes are hereby ratified and shall be and remain in full force and effect.

Section 4.2. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Fifth Amendment may refer to the Note Purchase Agreement without making specific reference to this Fifth Amendment but nevertheless all such references shall include this Fifth Amendment unless the context otherwise requires.

Section 4.3. The descriptive headings of the various Sections or parts of this Fifth Amendment are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

Section 4.4. This Fifth Amendment shall be governed by and construed in accordance with New York law.

Section 4.5. Each Subsidiary Guarantor acknowledges that its consent to this Fifth Amendment is not required, but each Subsidiary Guarantor nevertheless hereby agrees and consents to this Fifth Amendment and to the documents and agreements referred to herein. Each Subsidiary Guarantor agrees and acknowledges that (i) notwithstanding the effectiveness of this Fifth Amendment, each Subsidiary Guaranty (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time) shall remain in full force and effect without modification thereto, and (ii) nothing herein shall in any way limit any of the terms or provisions of each Subsidiary Guaranty executed by any Subsidiary Guarantor, all of which are hereby ratified, confirmed and affirmed in all respects. Each Subsidiary Guarantor hereby agrees and acknowledges that no other agreement, instrument, consent or document shall be required to give effect to this section. Each Subsidiary Guarantor hereby further acknowledges that the Company may from time to time enter into any further amendments, modifications, terminations and/or waivers of any provisions of the Note Purchase Agreement without notice to or consent from any Subsidiary Guarantor and without affecting the validity or enforceability of any Subsidiary Guaranty giving rise to any reduction, limitation, impairment, discharge or termination of any Subsidiary Guaranty.

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Section 4.6. This Fifth Amendment 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. The execution hereof by the Company shall constitute a contract between the Company and the Noteholders for the uses and purposes hereinabove set forth, and this Fifth Amendment may be executed in any number of counterparts, each executed counterpart constituting an original, but all together only one agreement. Delivery of this Fifth Amendment by facsimile, electronic mail or other electronic transmission shall be effective as delivery of a manually executed counterpart hereof. The parties agree to electronic contracting and signatures with respect to this Fifth Amendment. Delivery of an electronic signature to, or a signed copy of, this Fifth Amendment by facsimile, email or other electronic transmission shall be fully binding on the parties to the same extent as the delivery of the signed originals and shall be admissible into evidence for all purposes. The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Fifth Amendment shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Company, 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.

[Remainder of page intentionally left blank]

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The execution hereof by you shall constitute a contract between us for the uses and purposes hereinabove set forth, and this Fifth Amendment may be executed in any number of counterparts, each executed counterpart constituting an original, but all together only one agreement.

Very truly yours,

The Marcus Corporation

By: /s/Chad M. Paris

Name: Chad M. Paris

Its: Chief Financial Officer

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Acknowledged:

B & G SUN PRAIRIE, LLC

B&G REALTY, LLC

BROOKFIELD CORNERS DEVELOPMENT, LLC

CAFE REFRESHMENTS, INC.
CAPTAINS-KENOSHA, INC.
CENTURY LAKES WP CINEMA, LLC
COLONY INNS RESTAURANT CORPORATION
CORNERS OF BROOKFIELD, LLC
EFAH, LLC
FAMILY ENTERTAINMENT, LLC
FIRST AMERICAN FINANCE CORPORATION
GRAND GENEVA, LLC
GRAYDIENT CREATIVE, LLC
GS HOLDINGS, INC.
HOSPITALITAS INDEMNITY, INC.
INTERNATIONAL EXPORTS CHICAGO, LLC
INTERNATIONAL EXPORTS, LLC
MARCUS BIS PARTNERS, LLC
MARCUS BIS, LLC
MARCUS BLOOMINGTON, LLC
MARCUS CINEMAS OF MINNESOTA AND ILLINOIS, INC.
MARCUS CINEMAS OF OHIO, LLC
MARCUS CINEMAS OF WISCONSIN, LLC
MARCUS CONSID, LLC
MARCUS DEVELOPMENT, LLC
MARCUS EL PASO, LLC
MARCUS FRANKLIN, LLC
MARCUS HOTELS ASSOCIATES, INC.
MARCUS HOTELS HOSPITALITY, LLC
MARCUS HOTELS, INC.
MARCUS HOUSTON, LLC
MARCUS LINCOLN HOTEL, LLC
MARCUS LINCOLN, LLC
MARCUS MANAGEMENT LAS VEGAS, LLC
MARCUS MARYLAND, LLC
MARCUS MIDWEST, LLC
MARCUS MURIETA, LLC

By: /s/Chad M. Paris
Name: Chad M. Paris
Title: Chief Financial Officer

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Acknowledged:
MARCUS NORTH HOLLYWOOD, LLC
MARCUS NORTHSTAR, INC.
MARCUS OMAHA, LLC
MARCUS RESTAURANTS, INC.
MARCUS RS, LLC
MARCUS SCHIL, LLC
MARCUS SKIRVIN, INC.
MARCUS SOUTHPORT, LLC
MARCUS SOUTHRIDGE DEVELOPMENT, LLC
MARCUS SPB, LLC
MARCUS THEATRES MANAGEMENT, LLC
MARCUS THEATRES CORPORATION
MARCUS W, LLC
MCS CAPITAL, LLC
MH EXCHANGE HOLDINGS, LLC

MH EXCHANGE III, LLC
MH EXCHANGE IV, LLC
MH EXCHANGE V, LLC
MH EXCHANGE VI, LLC
MH EXCHANGE, LLC
MILWAUKEE CITY CENTER, LLC
MMT LAPAGAVA, LLC
MMT TEXNY, LLC
MOORHEAD GREEN, LLC
NEBRASKA ENTERTAINMENT, INC.
PARKWOOD WESTPOINT PLAZA, LLC
P-CORN ACQUISITIONS OF MINNESOTA AND ILLINOIS, LLC
P-CORN ACQUISITIONS MISSOURI CORPORATION
P-CORN ACQUISITIONS, LLC
PLATINUM CONDOMINIUM DEVELOPMENT, LLC
PLATINUM HOLDINGS LAS VEGAS, LLC
RESORT MISSOURI, LLC
RUSH ONTARIO, LLC
SAFARI MADISON, LLC
SAUK RAPIDS CINEMA, LLC
SHIP, LLC
SPRINGDALE 2006, LLC

By: /s/Chad M. Paris
Name: Chad M. Paris
Title: Chief Financial Officer

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Accepted as of the date first written above.

The Northwestern Mutual Life Insurance Company

By: Northwestern Mutual Investment Management Company, LLC, Its Investment Adviser

By /s/Michael H. Leske
Name: Michael H. Leske
Managing Director

We acknowledge that we hold \$23,300,000 4.02% Senior Notes, due August 14, 2025

Northwestern Long Term Care Insurance Company

By /s/Michael H. Leske
Name: Michael H. Leske
Title: Its Authorized Representative

We acknowledge that we hold \$700,000 4.02% Senior Notes, due August 14, 2025

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Accepted as of the date first written above.

The Guardian Life Insurance Company of America

By /s/Brian Keating
Name: Brian Keating
Title: Authorized Signatory

We acknowledge that we hold \$11,000,0004.02% Senior Notes, due August 14, 2025

The Guardian Insurance & Annuity Company, Inc.

By /s/Brian Keating
Name: Brian Keating
Title: Authorized Signatory

We acknowledge that we hold \$2,000,0004.02% Senior Notes, due August 14, 2025

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Accepted as of the date first written above.

State of Wisconsin Investment Board

By /s/
Name:
Title:

We acknowledge that we hold \$13,000,0004.02% Senior Notes, due August 14, 2025

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Exhibit A

Composite Copy of Bank Credit Agreement

Reflecting Fifth Amendment to the Bank Credit Agreement

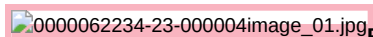
[see attached]

Exhibit B

Fifth Amendment of the Note Purchase Agreement dated as December 12, 2016

[see attached]

Exhibit 4.18



Fifth Amendment To Note Purchase Agreement

This Fifth Amendment dated as of February 10, 2023 (the or this “Fifth Amendment”) to the Note Purchase Agreement (as defined below) is among The Marcus Corporation, a Wisconsin corporation (the “Company”), and each of the institutions set forth on the signature pages to this Fifth Amendment (collectively, the “Noteholders”).

Recitals

A. The Company and each of the Noteholders have heretofore entered into the Note Purchase Agreement dated as of December 21, 2016 (the “Original Note Purchase Agreement”). The Company has heretofore issued \$50,000,000 4.32% Senior Notes due February 22, 2027 (the “Notes”) pursuant to the Note Purchase Agreement. As of the date hereof, \$50,000,000 of the Notes are outstanding.

B. The Company and the Noteholders have heretofore entered into that certain First Amendment to the Note Purchase Agreement dated as of April 29, 2020 (the “First Amendment”), that certain Second Amendment to Note Purchase Agreement dated as of June 26, 2020 (the “Second Amendment”), that certain Third Amendment to Note Purchase Agreement dated as of September 15, 2020 (the “Third Amendment”) and that certain Fourth Amendment to Note Purchase Agreement dated as of July 13, 2021 (the “Fourth Amendment”). The Original Note Purchase Agreement, as amended by that certain First Amendment, as further amended by that certain Second Amendment, as further amended by that certain Third Amendment and as further amended by that certain Fourth Amendment is hereinafter referred to as the “Note Purchase Agreement”. As of the date hereof, \$50,000,000 of the Notes are outstanding. The Noteholders are the holders of 100% of the outstanding principal balance of the Notes.

C. The Company and the Noteholders now desire to amend the Note Purchase Agreement in the respects, but only in the respects, hereinafter set forth.

D. Capitalized terms used herein shall have the respective meanings ascribed thereto in the Note Purchase Agreement, as amended by this Fifth Amendment, unless herein defined or the context shall otherwise require.

E. All requirements of law have been fully complied with and all other acts and things necessary to make this Fifth Amendment a valid, legal and binding instrument according to its terms for the purposes herein expressed have been done or performed.

Statement of Agreement

Now, Therefore, the Company and the Noteholders, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby agree as follows:

Article I

Amendments to Note Purchase Agreement

Section 1.1. The following definition contained in Schedule B of the Note Purchase Agreement is hereby deleted and replaced in its entirety as follows:

"Consolidated Adjusted Cash Flow" means, for any period, the Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income, (a) depreciation and amortization for such period, (b) all current and deferred taxes on income, provision for taxes on income, provision for taxes on unremitted foreign earnings which are included in consolidated gross revenues and current additions to reserves for taxes, (c) any non-cash share based compensation for such period and (d) Consolidated Interest and Rental Expense, together with those items excluded from the definition of Consolidated Interest and Rental Expense pursuant to the proviso in such definition.

Article II

Conditions to Effectiveness

Section 2.1. This Fifth Amendment shall become effective as the date hereof when executed counterparts of this Fifth Amendment, duly executed by the Company and the holders of 51% of the outstanding Notes shall have been delivered to the Noteholders. The changes to the Note Purchase Agreement effectuated by Article I of this Fifth Amendment shall become effective on the date (such date, the *"Fifth Amendment Effective Date"*) when all of the following conditions have been satisfied:

- (a) the Noteholders shall have received evidence reasonably satisfactory to them that the Bank Credit Agreement have been amended substantially as proposed in the from annexed hereto annexed hereto as **Exhibit A**;
- (b) the holders of Notes shall have received evidence reasonably satisfactory to them that the 2013 NPA has been amended substantially as proposed in the form annexed hereto as **Exhibit B**;
- (c) the representations and warranties of the Company set forth Section 5 of the Note Purchase Agreement, as amended by this Fifth Amendment, are true and correct on and with respect to the date hereof;
- (d) the fees and expenses of Chapman and Cutler, LLP, counsel to the Noteholders, shall have been paid by the Company, in connection with the negotiation, preparation, approval, execution and delivery of this Fifth Amendment; and
- (e) The Company has not paid any consideration in connection with this Fifth Amendment or any similar amendment, waiver or modification in respect of other Debt of the Company other than legal fees and expenses in connection with the execution and

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delivery of this Fifth Amendment and that certain Fifth Amendment to the Bank Credit Agreement dated as of February 10, 2023.

Article III

Representations and Warranties of the Company

Section 3.1. To induce the Noteholders to execute and deliver this Fifth Amendment, the Company represents and warrants (which representations and warranties shall survive the execution and delivery of this Fifth Amendment) to the Noteholders, on the date hereof, that:

(a) this Fifth Amendment has been duly authorized, executed and delivered by the Company and this Fifth Amendment constitutes the legal, valid and binding obligation, contract and agreement of the Company enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally or general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(b) as of the date of the Fifth Amendment Effective Date, the Note Purchase Agreement, as amended by this Fifth Amendment, will constitute the legal, valid and binding obligation, contract and agreement of the Company enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally;

(c) the execution, delivery and performance by the Company of this Fifth Amendment (i) has been duly authorized by all requisite corporate action and, if required, shareholder action, (ii) does not require the consent or approval of any governmental or regulatory body or agency, and (iii) will not (A) violate (1) any provision of law, statute, rule or regulation or its certificate of incorporation or bylaws, (2) any order of any court or any rule, regulation or order of any other agency or government binding upon it, or (3) any provision of any indenture, agreement or other instrument to which it is a party or by which its properties or assets are or may be bound, including, without limitation, the Bank Credit Agreement, or (B) result in a breach or constitute (alone or with due notice or lapse of time or both) a default under any indenture, agreement or other instrument referred to in clause (iii)(A)(3) of this **Section 3.1(c)**;

(d) upon giving effect to this Fifth Amendment, the representations and warranties of the Company set forth Section 5 of the Note Purchase Agreement are true in all material respects on and as of the date hereof with the same force and effect as if made on and as of the date hereof (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation

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or warranty which is subject to any materiality qualifier shall be required to be true and correct in all respects); and

(e) as of the date hereof, no Default or Event of Default has occurred and is continuing, and no Default or Event of Default will be caused upon giving effect to this Fifth Amendment.

Article IV

Miscellaneous

Section 4.1. This Fifth Amendment shall be construed in connection with and as part of the Note Purchase Agreement, and except as modified and expressly amended by this Fifth Amendment, all terms, conditions and covenants contained in the Note Purchase Agreement and the Notes are hereby ratified and shall be and remain in full force and effect.

Section 4.2. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Fifth Amendment may refer to the Note Purchase Agreement without making specific reference to this Fifth Amendment but nevertheless all such references shall include this Fifth Amendment unless the context otherwise requires.

Section 4.3. The descriptive headings of the various Sections or parts of this Fifth Amendment are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

Section 4.4. This Fifth Amendment shall be governed by and construed in accordance with New York law.

Section 4.5. Each Subsidiary Guarantor acknowledges that its consent to this Fifth Amendment is not required, but each Subsidiary Guarantor nevertheless hereby agrees and consents to this Fifth Amendment and to the documents and agreements referred to herein. Each Subsidiary Guarantor agrees and acknowledges that (i) notwithstanding the effectiveness of this Fifth Amendment, each Subsidiary Guaranty (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time) shall remain in full force and effect without modification thereto, and (ii) nothing herein shall in any way limit any of the terms or provisions of each Subsidiary Guaranty executed by any Subsidiary Guarantor, all of which are hereby ratified, confirmed and affirmed in all respects. Each Subsidiary Guarantor hereby agrees and acknowledges that no other agreement, instrument, consent or document shall be required to give effect to this section. Each Subsidiary Guarantor hereby further acknowledges that the Company may from time to time enter into any further amendments, modifications, terminations and/or waivers of any provisions of the Note Purchase Agreement without notice to or consent from any Subsidiary Guarantor and without affecting the validity or enforceability of any Subsidiary Guaranty giving rise to any reduction, limitation, impairment, discharge or termination of any Subsidiary Guaranty.

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Section 4.6. This Fifth Amendment 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. The execution hereof by the Company shall constitute a contract between the Company and the Noteholders for the uses and purposes hereinabove set forth, and this Fifth Amendment may be executed in any number of counterparts, each executed counterpart constituting an original, but all together only one agreement. Delivery of this Fifth Amendment by facsimile, electronic mail or other electronic transmission shall be effective as delivery of a manually executed counterpart hereof. The parties agree to electronic contracting and signatures with respect to this Fifth Amendment. Delivery of an electronic signature to, or a signed copy of, this Fifth Amendment by facsimile, email or other electronic transmission shall be fully binding on the parties to the same extent as the delivery of the signed originals and shall be admissible into evidence for all purposes. The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Fifth Amendment shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Company, 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.

[Remainder of page intentionally left blank]

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The execution hereof by you shall constitute a contract between us for the uses and purposes hereinabove set forth, and this Fifth Amendment may be executed in any number of counterparts, each executed counterpart constituting an original, but all together only one agreement.

Very truly yours,

The Marcus Corporation

By: /s/Chad M. Paris
Name: Chad M. Paris
Its: Chief Financial Officer

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Acknowledged:

B & G SUN PRAIRIE, LLC
B&G REALTY, LLC
BROOKFIELD CORNERS DEVELOPMENT, LLC
CAFE REFRESHMENTS, INC.
CAPTAINS-KENOSHA, INC.
CENTURY LAKES WP CINEMA, LLC
COLONY INNS RESTAURANT CORPORATION
CORNERS OF BROOKFIELD, LLC
EFAH, LLC
FAMILY ENTERTAINMENT, LLC
FIRST AMERICAN FINANCE CORPORATION
GRAND GENEVA, LLC
GRAYDIENT CREATIVE, LLC
GS HOLDINGS, INC.
HOSPITALITAS INDEMNITY, INC.
INTERNATIONAL EXPORTS CHICAGO, LLC
INTERNATIONAL EXPORTS, LLC
MARCUS BIS PARTNERS, LLC
MARCUS BIS, LLC
MARCUS BLOOMINGTON, LLC
MARCUS CINEMAS OF MINNESOTA AND ILLINOIS, INC.
MARCUS CINEMAS OF OHIO, LLC
MARCUS CINEMAS OF WISCONSIN, LLC
MARCUS CONSID, LLC
MARCUS DEVELOPMENT, LLC
MARCUS EL PASO, LLC
MARCUS FRANKLIN, LLC
MARCUS HOTELS ASSOCIATES, INC.
MARCUS HOTELS HOSPITALITY, LLC
MARCUS HOTELS, INC.
MARCUS HOUSTON, LLC
MARCUS LINCOLN HOTEL, LLC
MARCUS LINCOLN, LLC
MARCUS MANAGEMENT LAS VEGAS, LLC
MARCUS MARYLAND, LLC
MARCUS MIDWEST, LLC
MARCUS MURIETA, LLC

By: /s/Chad M. Paris
Name: Chad M. Paris
Title: Chief Financial Officer

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Acknowledged:

MARCUS NORTH HOLLYWOOD, LLC
MARCUS NORTHSTAR, INC.
MARCUS OMAHA, LLC
MARCUS RESTAURANTS, INC.
MARCUS RS, LLC
MARCUS SCHIL, LLC
MARCUS SKIRVIN, INC.
MARCUS SOUTHPORT, LLC
MARCUS SOUTHRIDGE DEVELOPMENT, LLC
MARCUS SPB, LLC
MARCUS THEATRES MANAGEMENT, LLC
MARCUS THEATRES CORPORATION
MARCUS W, LLC
MCS CAPITAL, LLC
MH EXCHANGE HOLDINGS, LLC
MH EXCHANGE III, LLC
MH EXCHANGE IV, LLC
MH EXCHANGE V, LLC
MH EXCHANGE VI, LLC
MH EXCHANGE, LLC
MILWAUKEE CITY CENTER, LLC
MMT LAPAGAVA, LLC
MMT TEXNY, LLC
MOORHEAD GREEN, LLC
NEBRASKA ENTERTAINMENT, INC.
PARKWOOD WESTPOINT PLAZA, LLC
P-CORN ACQUISITIONS OF MINNESOTA AND ILLINOIS, LLC
P-CORN ACQUISITIONS MISSOURI CORPORATION
P-CORN ACQUISITIONS, LLC
PLATINUM CONDOMINIUM DEVELOPMENT, LLC
PLATINUM HOLDINGS LAS VEGAS, LLC
RESORT MISSOURI, LLC
RUSH ONTARIO, LLC
SAFARI MADISON, LLC
SAUK RAPIDS CINEMA, LLC
SHIP, LLC
SPRINGDALE 2006, LLC

By: /s/Chad M. Paris

Name: Chad M. Paris

Title: Chief Financial Officer

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Accepted as of the date first written above.

The Northwestern Mutual Life Insurance Company

By: Northwestern Mutual Investment Management Company, LLC, Its Investment Adviser

By /s/Michael H. Leske
Name: Michael H. Leske
Managing Director

We acknowledge that we hold \$24,000,000 4.32% Senior Notes due February 22, 2027

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Accepted as of the date first written above.

The Guardian Life Insurance Company of America

By /s/Brian Keating
Name: Brian Keating
Title: Authorized Signatory

We acknowledge that we hold \$15,000,000 4.32% Senior Notes due February 22, 2027

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Accepted as of the date first written above.

State of Wisconsin Investment Board

By /s/
Name:
Title:

We acknowledge that we hold \$11,000,000 4.32% Senior Notes due February 22, 2027

SIGNATURE PAGE TO
FIFTH AMENDMENT TO NOTE PURCHASE AGREEMENT

Exhibit A

Composite Copy of Bank Credit Agreement

Reflecting Fifth Amendment to the Bank Credit Agreement

[see attached]

Exhibit B

Fifth Amendment to the Note Purchase Agreement dated as June 27, 2013

[see attached]

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Exhibit 21

Subsidiaries of The Marcus Corporation as of December 29, 2022 December 28, 2023

The Marcus Corporation owns equity in the following entities:

Name State of Organization

B&G Realty, LLC Wisconsin

Corners of Brookfield, LLC Wisconsin

First American Finance Corporation Wisconsin

Hospitalitas Indemnity, Inc. Delaware

Marcus Consid, LLC Wisconsin

Marcus Hotels, Inc. Wisconsin

Marcus Restaurants, Inc. Wisconsin

Marcus Theatres Corporation Wisconsin

MCS Capital, LLC Wisconsin

Moorhead Green, LLC Delaware

B&G Realty, LLC is the sole member of the following limited liability companies:

Name State of Organization

Marcus Southridge Development, LLC Wisconsin

MH Exchange III, LLC Wisconsin

MH Exchange IV, LLC Wisconsin

MH Exchange V, LLC Delaware

MH Exchange VI, LLC Delaware

Colony Inns Restaurant Corporation owns all of the equity in the following entities:

Name State of Organization

EFAH, LLC Wisconsin

International Exports, LLC Wisconsin

International Exports Chicago, LLC Wisconsin

SHIP, LLC Wisconsin

Igloo Acquisition, LLC is the sole member of the following limited liability company:

Name State of Organization

Igloo Acquisition Owner, LLC Delaware

Marcus Cinemas of Minnesota and Illinois, Inc. owns all of the equity in the following entity:

Name State of Organization

Marcus Cinemas of Wisconsin, LLC Wisconsin

Marcus Cinemas of Wisconsin, LLC is the sole member of the following limited liability company:

Name State of Organization

MMT Texny, LLC Texas

Marcus Development, LLC is the sole member of the following limited liability companies:

Name State of Organization

Marcus Management Las Vegas, LLC Nevada

Platinum Condominium Development, LLC Nevada

Platinum Holdings Las Vegas, LLC Nevada

Marcus Hotels, Inc. owns all of the equity in the following entities:

Name State of Organization

Grand Geneva, LLC Wisconsin

Marcus Bloomington, LLC Minnesota

Marcus Development, LLC Wisconsin

Marcus Edgewater, LLC Wisconsin

Marcus El Paso, LLC Wisconsin

Marcus Hotels Hospitality, LLC Wisconsin

Marcus Lincoln Hotel, LLC Wisconsin

Marcus North Hollywood, LLC Wisconsin

Marcus Northstar, Inc. Minnesota

Marcus Omaha, LLC Wisconsin

Marcus Omaha Ownership, LLC Wisconsin

Marcus RS, LLC Wisconsin

Marcus SCHIL, LLC Wisconsin

Marcus Skirvin, Inc. Wisconsin

Marcus SPB, LLC Wisconsin

Marcus Steel City, LLC Wisconsin

Marcus W, LLC Wisconsin

MH Exchange Holdings, LLC Wisconsin

Milwaukee City Center, LLC Wisconsin

Pfister, LLC Wisconsin

Rush Ontario, LLC Delaware

Marcus Midwest, LLC is the sole member of the following limited liability company:

Name State of Organization

MMT Lapagava, LLC Wisconsin

Marcus Omaha Ownership, LLC is a 10% member of the following limited liability company:

Name State of Organization

Capitol District Hotel, LLCNebraska

Marcus Restaurants, Inc. owns all of the equity in the following entities:

Name State of Organization

Café Refreshments, Inc.Wisconsin

Captains-Kenosha, Inc.Wisconsin

Colony Inns Restaurant CorporationWisconsin

Marcus Skirvin, Inc. is a 60% member of the following limited liability company:

Name State of Organization

Skirvin Partners, LLCOKlahoma

Marcus Steel City, LLC is a 10% member of the following limited liability company:

NameState of Organization

Igloo Acquisition, LLC Delaware

Marcus Theatres Corporation owns all of the equity in the following entities:

Name State of Organization

Family Entertainment, LLCWisconsin

Marcus Cinemas of Minnesota and Illinois, Inc.Illinois

Marcus Cinemas of Ohio, LLCWisconsin

Marcus Midwest, LLCWisconsin

Nebraska Entertainment, Inc.Nebraska

P-Corn Acquisitions of Minnesota and Illinois, LLCWisconsin

P-Corn Acquisitions of Missouri CorporationMissouri

Reach Cinema Releasing, Inc. Wisconsin

MH Exchange Holdings, LLC is the sole member of the following limited liability company:

Name State of Organization

MH Exchange, LLCWisconsin

Exhibit 23

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 033-63299, 333-93345, 333-177573, 333-256726, and 333-256729 on Form S-8 and Registration Statement Nos. 333-11221 and 333-260154 on Form S-3 of our reports dated **March 3, 2022** **February 29, 2024**, relating to the financial statements of The Marcus Corporation (the "Company") and the effectiveness of **the** The Company's internal control over financial reporting appearing in this Annual Report on Form 10-K for the year ended **December 30, 2021** **December 28, 2023**.

/s/ Deloitte & Touche LLP

Milwaukee, Wisconsin

March 3, 2022 **February 29, 2024**

Exhibit 31.1

Certification of Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act and Rule 13a-14(a)
or 15d-14(a) under the Securities Exchange Act of 1934

I, Gregory S. Marcus, certify that:

1. I have reviewed this Annual Report on Form 10-K of The Marcus Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

DATE: **March 2, 2023** February 29, 2024

By: /s/ Gregory S. Marcus

Gregory S. Marcus,

President and Chief Executive Officer

Exhibit 31.2

Certification of Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act and Rule 13a-14(a)
or 15d-14(a) under the Securities Exchange Act of 1934

I, **Douglas A. Neis**, **Chad M. Paris**, certify that:

1. I have reviewed this Annual Report on Form 10-K of The Marcus Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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.

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

DATE: **March 2, 2023** February 29, 2024

By: /s/ Chad M. Paris
Chad M. Paris
Chief Financial Officer and Treasurer

Exhibit 32

**Written Statement of the Chief Executive Officer
and the Chief Financial Officer
Pursuant to 18 U.S.C. §1350**

Solely for the purposes of complying with 18 U.S.C. §1350, we, the undersigned President and Chief Executive Officer and Executive Vice President, Chief Financial Officer and Treasurer of The Marcus Corporation (the "Company"), hereby certify, based on our knowledge, that the Annual Report on Form 10-K of the Company for the year ended **December 30, 2021** **December 28, 2023** (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Gregory S. Marcus
Gregory S. Marcus
President and Chief Executive Officer

/s/ Chad M. Paris
Chad M. Paris
Chief Financial Officer and Treasurer

DATE: **March 2, 2023** February 29, 2024

THE MARCUS CORPORATION
INCENTIVE COMPENSATION CLAWBACK POLICY

1. **Purpose.** The purpose of this Recovery Policy (this "Policy") is to describe the circumstances under which The Marcus Corporation (the "Company") is required to or shall have the right to recover certain compensation paid to certain employees. Any references in compensation plans, agreements, equity awards or other policies to the Company's "recoupment", "clawback" or similarly-named policy shall be deemed to refer to this Policy with respect to Incentive-Based Compensation or Time-Based Compensation Received on or after the Effective Date. With respect to Incentive-Based Compensation or Time-Based Compensation Received prior to the Effective Date, such references to the Company's "recoupment", "clawback" or similarly-named policy in compensation plans, agreements, equity awards or other policies shall be deemed to refer to the Company's "recoupment," "clawback" or similarly-named policy, if any, in effect prior to the Effective Date.
2. **Mandatory Recovery of Compensation.** In the event that the Company is required to prepare an Accounting Restatement, the Company shall recover reasonably promptly the amount of Erroneously Awarded Compensation.
3. **Definitions.** For purposes of this Policy, the following terms, when capitalized, shall have the meanings set forth below:
 - a. **"Accounting Restatement"** shall mean any accounting restatement required due to material noncompliance of the Company with any financial reporting requirement under the securities laws, including 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.
 - b. **"Covered Officer"** shall mean:
 - i. for Incentive-Based Compensation, the Company's president; principal financial officer; principal accounting officer (or if there is no such accounting officer, the controller); any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance); any other officer who performs a significant policy-making function; or any other person who performs similar significant policy-making functions for the Company; and
 - ii. for Time-Based Compensation, one of the Company's "named executive officers" as defined in Item 402 of Regulation S-K.
 - c. **"Effective Date"** shall mean October 2, 2023.
 - d. **"Erroneously Awarded Compensation"** shall mean the excess of (i) the amount of Incentive-Based Compensation or Time-Based Compensation Received by a person (A) after beginning service as a Covered Officer, (B) in the case of Incentive-Based Compensation, who served as a Covered Officer at any time during the performance period for that Incentive-Based Compensation, (C) while the Company has a class of securities listed on a national securities exchange or a national securities association and (D) during the Recovery Period; over (ii) the Recalculated Compensation. For the avoidance of doubt, a person who served as a Covered Officer during the periods set forth in clauses (A) and (B) of the preceding sentence shall continue to be subject to this Policy even after such person's service as a Covered Officer has ended.
 - e. **"Incentive-Based Compensation"** shall mean any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure. A financial reporting measure is a measure that is determined and presented in accordance

with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures, regardless of whether such measure is presented within the financial statements or included in a filing with the Securities and Exchange Commission. Each of stock price and total shareholder return is a financial reporting measure. For the avoidance of doubt, incentive-based compensation subject to this Policy does not include stock options, restricted stock, restricted stock units or similar equity-based awards for which the grant is not contingent upon achieving any financial reporting measure performance goal and vesting is contingent solely upon completion of a specified employment period and/or attaining one or more non-financial reporting measures.

- f. *"Recalculated Compensation"* shall mean the amount of Incentive-Based Compensation or Time-Based Compensation that otherwise would have been Received had it been determined based on the restated amounts in the Accounting Restatement, computed without regard to any taxes paid. For Time-Based Compensation, and for Incentive-Based Compensation based on stock price or total shareholder return, where the amount of the Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in an Accounting Restatement, the amount of the Recalculated Compensation must be based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or total shareholder return, as the case may be, on the compensation Received. The Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the national securities exchange or association on which its securities are listed.
- g. Incentive-Based Compensation is deemed *"Received"* in the Company's fiscal period during which the financial reporting measure specified in the award of such Incentive-Based Compensation is attained, even if the payment or grant of the Incentive-Based Compensation occurs after the end of that period. Time-Based Compensation is *"Received"* in the year of payment or settlement.
- h. *"Recovery Period"* shall mean the three completed fiscal years of the Company immediately preceding the date the Company is required to prepare an Accounting Restatement; provided that the Recovery Period shall not begin before the Effective Date. For purposes of determining the Recovery Period, the Company is considered to be *"required to prepare an Accounting Restatement"* on the earlier to occur of: (i) the date the Company's Board of Directors, a committee thereof, or the Company's authorized officers conclude, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement, or (ii) the date a court, regulator, or other legally authorized body directs the Company to prepare an Accounting Restatement. If the Company changes its fiscal year, then the transition period within or immediately following such three completed fiscal years also shall be included in the Recovery Period, provided that if the transition period between the last day of the Company's prior fiscal year end and the first day of its new fiscal year comprises a

period of nine to 12 months, then such transition period shall instead be deemed one of the three completed fiscal years and shall not extend the length of the Recovery Period.

- i. *"Time-Based Compensation"* shall mean any compensation that is paid pursuant to an equity-based award the amount of which is determined wholly or partially in relation to the fair market value of a share of the Company's common stock, that is granted, earned or vests based solely on the passage of time or on the basis of non-financial reporting measures, and that is not Incentive-Based Compensation.

- 4. **Exceptions.** Notwithstanding anything to the contrary in this Policy, recovery of Erroneously Awarded Compensation will not be required to the extent the Company's committee of independent directors responsible for executive compensation decisions (or a majority of the independent directors on the Company's board of directors in the absence of such a committee) has made a determination that such recovery would be impracticable and one of the following conditions have been satisfied:

- a. The direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered; provided that, before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation that was Incentive-Based Compensation based on the expense of enforcement, the Company must make a reasonable attempt to recover such Erroneously Awarded Compensation, document such reasonable attempt(s) to recover, and provide that documentation to the national securities exchange or association on which its securities are listed.
- b. Recovery would violate home country law where, with respect to Incentive-Based Compensation, that law was adopted prior to November 28, 2022; provided that, before concluding that it would be impracticable to recover any amount of Erroneously Awarded

Compensation that was Incentive-Based Compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to the national securities exchange or association on which its securities are listed, that recovery would result in such a violation, and must provide such opinion to the exchange or association.

- c. Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

- 5. Manner of Recovery. In addition to any other actions permitted by law or contract, the Company may take any or all of the following actions to recover any Erroneously Awarded Compensation: (a) require the Covered Officer to repay such amount; (b) offset such amount from any other compensation owed by the Company or any of its affiliates to the Covered Officer, regardless of whether the contract or other documentation governing such other compensation specifically permits or specifically prohibits such offsets; and (c) subject to Section 5(c), to the extent the Erroneously Awarded Compensation was deferred into a plan of deferred compensation, whether or not qualified, forfeit such amount (as well as the earnings on such amounts) from the Covered Officer's balance in such plan, regardless of whether the plan specifically permits or specifically prohibits such forfeiture. If the Erroneously Awarded Compensation consists of shares of the Company's common stock, and the Covered Officer still owns such shares, then the Company may satisfy its recovery obligations by requiring the Covered Officer to transfer such shares back to the Company.

- 6. Other.
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- a. This Policy shall be administered and interpreted, and may be amended from time to time, by the Company's board of directors or any committee to which the board may delegate its authority in its sole discretion in compliance with the applicable listing standards of the national securities exchange or association on which the Company's securities are listed, and the determinations of the board or such committee shall be binding on all Covered Officers.
- b. The Company shall not indemnify any Covered Officer against the loss of Erroneously Awarded Compensation or any Recoupment Amount.
- c. The Company shall file all disclosures with respect to this Policy in accordance with the requirements of the Federal securities laws, including disclosure required by the Securities and Exchange Commission.
- d. Any right to recovery under this Policy shall be in addition to, and not in lieu of, any other rights of recovery that may be available to the Company.

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